

**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD
WRIT PETITION NO. 4994 OF 2013**

(1) Dr. Satish Vasantrao Yadav, Age 40 years, Occ-Service, R/o Sarda Nagar, Ambejogai Road, Latur, Dist-Latur (2) Dr. Kantrao Pralhadrao Pole, Age 41 years, Occ-Service, R/o Vikram Apartments, Akshay Nagar, Old Ausa Road, Latur Dist-Latur (3) Dr. Dilipkumar Ganpatrao Shelge, Age 47 years, Occ-Service, R/o Sambhajinagar, Murud, A/p Murud, Dist-Latur **PETITIONERS**

VERSUS

(1) The State of Maharashtra, Through its Secretary, Higher Education Department, Mantralaya, Mumbai-32 (2) The Director, Higher Education Maharashtra State Pune (3) The Joint Director, Higher Education, Nanded Region, Nanded (4) Swami Ramanand Teerth Marathwada University, Nanded Through its Registrar..... **RESPONDENTS**

WITH WRIT PETITION NO. 4997 OF 2013

(1) Dr. Vedprakash Avinash Malwade, Age 42 years, Occ-Service, R/o Madhav Nagar, Ausa Road, Latur, Dist-Latur (2) Dr. Ulka Sitaram Deshmukh, Age 53 years, Occ-Service, R/o Vishalnagar, Latur Dist-Latur (3) Dr. Asha Shivaji Munde, Age 49 years, Occ-Service, R/o Ambejogai Road, Latur Dist Latur (4) Dr. Aliya Meraj Sayyed, Age 49 years, Occ-Service, R/o Ambejogai Road, Latur Dist-Latur (5) Dr. Shivaji Mansingrao Kendre, Age 44 years, Occ-Service R/o Loha, Tq-Loha Dist-Nanded (6) Dr. Nanasahab Pundlikrao Suryawanshi, Age 44 years, Occ-Service, R/o Rukhme Nagar, Ahmedpur, Tq Ahmedpur, Dist-Latur (7) Dr. Ranooji Satwaji Parve, Age 46 years, Occ-Service R/o Prakash Nagar, Latur, Dist-Latur..... **PETITIONERS**

VERSUS

(1) The State of Maharashtra, Through its Secretary, Higher Education Department, Mantralaya, Mumbai-32 (2) The Director, Higher Education Maharashtra State Pune (3) The Joint Director, Higher Education, Nanded Region, Nanded (4) Swami Ramanand Teerth Marathwada University, Nanded Through its Registrar **RESPONDENTS**

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Mr. Pradeep Deshmukh h/f Mr. H.A. Joshi, Advocate for petitioners

Mr. S.K.Kadam, AGP for respondent State

.....

CORAM : R. M. BORDE AND SUNIL P.DESHMUKH, J.J.

DATE : 13 th SEPTEMBER 2013

JUDGMENT (PER SUNIL P.DESHMUKH, J.)

1. Rule. Rule made returnable forthwith. Heard finally by consent of the parties.

2. According to the petitioners, the issue involved in these petitions, is covered by the judgment rendered by this Court, in group of petitions bearing No.5271/2013 and other writ petitions and factual situation is almost identical.

3. The petitioners were appointed after selection by the duly constituted selection committee and they possess all the requisite qualification for being appointed as lecturers except National Eligibility Test (NET) or State Eligibility Test (SET). The petitioners have been appointed during the period from 1991 to 2000. The said group of writ petitions was decided after taking into account the stock of the situation and the directions issued by the University Grants Commission (UGC), from time to time. Under the said communications, indisputably, the petitioners stand exempted from passing NET / SET and UGC had, under communication dated 16.08.2011, which has been specifically referred to in paragraph No.12 of the judgment dated 28.08.2013 rendered by this Court in Writ Petition No.5271/2013 and other petitions, referring to that – **“Therefore, the services of such teachers for all purpose should be counted from the date of their regular appointment.”** This Court has also referred the conditions under which the said communication was issued,

pursuant to the order passed by Division Bench of this Court at Nagpur.

4. This Court, in the said judgment has also taken into account.

15. It appears that in Writ Petition (Lodging) No. 1326/2012, a statement was made on behalf of the State Government that Government Resolution would be issued exempting teachers, who were appointed after following prescribed procedure during the period from 19.09.1991 to 03.04.2000, and stating that a GR will be issued granting exemption from NET / SET to those teachers who were appointed during 1991 to 2000 and the Government and the Universities would protect the pay fixation, including increments already paid to the teachers and, therefore, there will be no recovery of annual increments which the teachers have already earned. It appears that subsequently, Government Resolution dated 27.06.2013 has been issued from which it emerges that it has been decided that

1. Notification dated 19.09.1991 of the UGC has been adopted by the State Government under a Resolution dated 23.10.1992 and, as such, the stipulations in the notification dated 19.09.1991 would not be applicable to the lecturers appointed before 23.10.1992.

2. The lecturers, who are appointed during 23.10.1992 to 03.04.2000, who do not possess NET / SET / Ph.D. / M.Phil., would be considered for all purposes, on fulfillment of the conditions that

(a) Their appointments should be on regular basis.

(b) Their appointments should be made after following the prescribed procedure.

(c) The lecturers shall have all other qualifications except NET / SET.

(d) Proposals of such lecturers should have been forwarded to the

UGC for approval.

5. Learned AGP appearing for the respondents, opposes the reliefs claimed by the petitioners, almost on the same grounds as have been taken while opposing writ petition No.5271/2013 and other petitions.

6. In the present petitions as well, it is not the case of the respondents that the petitioners do not possess the requisite qualifications except NET / SET and that the petitioners do not fulfill the conditions referred to under Government Resolution dated 27.06.2013.

7. Having regard to the decision rendered by this Court in the said group of petitions as well as to the position that the Government Resolution dated 18.10.2001, being of little

significance, recourse to Government Resolution dated 18.10.2001 in the face of Government Resolution dated 27.06.2013, is unsustainable and as such the impugned orders dated 21.02.2013 and 06.06.2013 issued by the Joint Director of Higher Education, Nanded Region, Nanded and further communications issued pursuant to the same are liable to be quashed and set aside and same are accordingly quashed and set aside and would be ineffective and inoperative.

8. Both the writ petitions thus succeed. Rule is made absolute in the above said terms with no order as to costs.

[SUNIL P.DESHMUKH, J.] [R.M.BORDE, J.]

** AF : P 81 **

नेटसेट मुक्त शिक्षकांच्या बाबतीत न्यायालयीन प्रकरणांची सद्यस्थिती

नेटसेट मुक्त शिक्षकांच्या बाबतीत मा. उच्च न्यायालयाच्या विविध खंडपीठापुढे निर्णय झालेल्या किंवा दाखल झालेल्या प्रकरणांची सद्यस्थिती पुढील प्रमाणे आहे.

(1) **W.P. No. (L) 1326 OF 2012** :- IN THE HIGH COURT OF JUDICATURE AT BOMBAY ORDINARY ORIGINAL CIVIL JURISDICTION WRIT PETITION (LODGING) NO.1326 OF 2012 Akhil Bharatiya Vidyarthi Parishad and anr. .. Petitioners. Versus The State of Maharashtra and ors. .. Respondents CORAM : MOHIT S. SHAH, C.J. & M.S. SANKLECHA, J. DATE : 10 May 2013. **Judgment circulated on page 61 of 2013 NUTA Bulletin.**

(2) **W.P. No. 11477 OF 2010** :- IN THE HIGH COURT OF JUDICATURE AT BOMBAY BENCH AT AURANGABAD WRIT PETITION NO.11477 OF 2010 CORAM : A. H. JOSHI & SUNIL P. DESHMUKH, JJ. JUDGMENT RESERVED ON 23RD JULY, 2013. JUDGMENT PRONOUNCED ON 1ST AUGUST, 2013 ORAL JUDGMENT (PER A.H. JOSHI, J) **Judgment circulated on page 114 of 2013 NUTA Bulletin.**

(3) **W.P. No. 5271 OF 2013** :- IN THE HIGH COURT OF JUDICATURE OF BOMBAY BENCH AT AURANGABAD WRIT PETITION NO.5271 OF 2013 CORAM : MOHIT S. SHAH, C.J. AND SUNIL P.DESHMUKH, J. DATE : 28 th AUGUST 2013 JUDGMENT (PER SUNIL P.DESHMUKH, J.) **Judgment circulated on page 145 of 2013 NUTA Bulletin.**

(4) **W.P. No. 4994 OF 2013** :- IN THE HIGH COURT OF JUDICATURE OF BOMBAY BENCH AT AURANGABAD WRIT PETITION NO. 4994 OF 2013 [CORAM : R . M. BORDE AND SUNIL P.DESHMUKH, J.J.] DATE : 13 th SEPTEMBER 2013 JUDGMENT (PER SUNIL P.DESHMUKH, J.): **Judgment circulated on page 205 of 2013 NUTA Bulletin.**

(5) **W.P. No.5025 OF 2013** :- Case Details (1) Bench:- Nagpur (2) Stamp No.:- WPST/16000/2013 (3) Filing Date:- 04/09/2013 (4) Reg. No.:- WP/5025/2013 (5) Reg. Date:- 19/09/2013 (6) Petitioner:- Tikaram S/O Dewaji Kose and others (7) Respondent:- The State of Maharashtra and others (8) Petn.Adv.:- Firdos Mirza, Anand Deshpande, (9) Resp.Adv.:- Copy Served to G.P. (10) Bench:- DIVISION (11) Status:- **Pre-Admission** (12) Category:- WRIT PETITION (13) Next Date:- 27/09/2013 (14) Coram:- HON'BLE SHRI JUSTICE B.R. GAVAI : HON'BLE SHRI JUSTICE Z.A. HAQ (15) Last Date:- 20/09/2013 (16) Stage:- PETITIONS FOR ADMISSION - FRESH [CIVIL SIDE MATTERS] (17) Last Coram:- HON'BLE SHRI JUSTICE B.R. GAVAI : HON'BLE SHRI JUSTICE Z.A. HAQ (18) Act :- Constitution Matter (19) **Order dated 20.09.2013 is circulated on page 207 of 2013 NUTA Bulletin.**

(6) **W.P. No.5073 OF 2013** :- Case Details (1) Bench:- Nagpur (2) Stamp No.:- WPST/16665/2013 (3) Filing Date:- 19/09/2013 (4) Reg.No.:-WP/5073/2013(5) Reg. Date:- 20/09/2013 (6) Petitioner:- Ramesh Sheshrao Sontakke and Others

(7) Respondent:- The State of Maharashtra and others (8) Petn.Adv.:- AM Sudame (9) Bench:- DIVISION (10) Status:- **Pre-Admission** (11) Category:- WRIT PETITION (12) Last Date:- 21/09/2013 (13) Stage:- PETITIONS FOR ADMISSION - FRESH [CIVIL SIDE MATTERS] (14) Last Coram:- HON'BLE SMT JUSTICE V. A. NAIK : HON'BLE SHRI JUSTICE A.S. CHANDURKAR (15) Act :- Constitution Matter (16) **Order dated 21.09.2013 is circulated on page 208 of 2013 NUTA Bulletin.**

(7) **W.P. No.6687 OF 2013** :-Case Details (1) Bench:- Aurangabad (2) Stamp No.:- WPST/23598/2013 (3) Filing Date:- 22/08/2013 (4) Reg. No.:- WP/6687/2013 (5) Reg. Date:- 22/08/2013 (6) Petitioner:- Sunil Madhukar Nave and others (7) Respondent:- The State of Maharashtra and others (8) Petn.Adv.:- Yashodeep Deshmukh and S.S.Kulthe (9) Resp.Adv.:- Copy served on GP (10) Bench:- DIVISION (11) Status:- Pre-Admission (12) Category:- Writ Petitions (D.B.) (13) Last Date:- 23/09/2013 (14) Stage:- AWAIT NOTICES (15) Last Coram:- HON'BLE SHRI JUSTICE R. M. BORDE HON'BLE SHRI JUSTICE S.P. DESHMUKH (16) Act :- SERVICE - RETIRAL BENEFITS (17) **Order dated 26.08.2013 is circulated on page 209 of 2013 NUTA Bulletin.**

(8) **W.P. No.7421 OF 2013** :- Case Details (1) Bench:- Aurangabad (2) Stamp No.:- WPST/24538/2013 (3) Filing Date:- 31/08/2013 (4) Reg. No.:- WP/7421/2013 (5) Reg. Date:- 16/09/2013 (6) Petitioner:- Kishor Govind Kolhe and others (7) Respondent:- The State of Maharashtra and others (8) Petn.Adv.:- Sarvade Anuja D. (9) Resp.Adv.:- Copy served on GP (10) Bench:- DIVISION (11) Status:- **Pre-Admission** (12) Category:- Writ Petitions (D.B.) (13) Next Date:- 23/09/2013 (14) Stage:- URGENT CIRCULATION (CIVIL) (15) Coram:- HON'BLE SHRI JUSTICE R. M. BORDE HON'BLE SHRI JUSTICE S.P. DESHMUKH (16) Act :- NORTH MAHARASHTRA UNIVERSITY ACT 1994 SERVICE - ABSORPTION REGULARISATION

(9) **W.P. No.7605 OF 2013** :- Case Details (1) Bench:- Aurangabad (2) Stamp No.:- WPST/26087/2013 (3) Filing Date:- 13/09/2013 (4) Reg. No.:- WP/7605/2013 (5) Reg. Date:- 21/09/2013 (6) Petitioner:- Raju Sitaram Pawar and others (7) Respondent:- The State of Maharashtra and others (8) Petn.Adv.:- Deshmukh Yashodeep P. (9) Resp.Adv.:- Copy Served on GP (10) Bench:- DIVISION (11) Status:- **Pre-Admission** (12) Category:- Writ Petitions (D.B.) (13) Next Date:- 23/09/2013 (14) Stage:- URGENT CIRCULATION (CIVIL) (15) Coram:- HON'BLE SHRI JUSTICE R. M. BORDE HON'BLE SHRI JUSTICE S.P. DESHMUKH (16) Act :- Constitution of India

(10) **W.P. No.2082 OF 2013** :- By MFUCTO

(11) **W.P. No.1886 OF 2013** :- By MFUCTO

For Case Details of the Two (Net-Set) Cases filed by MFUCTO see page 211 of this Bulletin

परीक्षा असहकार कालावधीचे वेतन कापण्याचा बेकायदेशीर प्रयत्न

डॉ. प्रवीण रघुवंशी, नुटाचे अध्यक्ष व महाराष्ट्र प्राध्यापक महासंघाचे उपाध्यक्ष

सन २०१३ मध्ये महाराष्ट्र प्राध्यापक महासंघाच्या नेतृत्वाखाली जे परीक्षेच्या कामाशी असहकार आंदोलन झाले त्या आंदोलन काळातील महिन्यांचे वेतन अदा न करण्याचा शासनाचा निर्णय पूर्णपणे बेकायदेशीर असून त्याबाबत महाराष्ट्र प्राध्यापक महासंघाच्या वतीने राज्याच्या मा. उच्च शिक्षण मंत्र्यांना दिनांक २७ मे २०१३ रोजी एक तपशीलवार निवेदन सादर करण्यात आले होते. हे निवेदन यापूर्वीच सन २०१३ च्या नुटा बुलेटीनच्या पृष्ठ ९६ ते ९८ वर प्रसृत करण्यात आलेले आहे. त्या निवेदनामध्ये परिच्छेद १२ मध्ये शासनाला स्पष्टपणे पुढील प्रमाणे कळविण्यात आले होते :- “ MFUCTO states that even when a teacher is placed on suspension for misconduct of a serious nature, the Statutes of all the Universities as also MCSR provide for subsistence allowance to be paid at 50% of the salary, to be enhanced by to 75% on completion of 120 days and in some cases full salary to be paid after 4 months. Not releasing salaries for the months of March and April 2013 to teachers who have attended to their college level duties by remaining present and signing the muster, amounts to an act which is unsupported by any law and/or Statute and/or rules. ”

२. राज्याच्या मा. मुख्यमंत्र्यांनी ९ व १० मे २०१३ रोजी वृत्तपत्रामध्ये मुलाखती देऊन प्राध्यापकांनी पुढच्या दोन दिवसात आंदोलन मागे घेतले तर त्याबाबत कोणतीही कारवाई केली जाणार नाही असे जाहीर केले होते. “सभ्य गृहस्थाचा शब्द” म्हणजे काय असतो याची शासनाने आठवण ठेवावी असेही महासंघाने २७ मे २०११ च्या शासनाला पाठविलेल्या या निवेदनाच्या परिच्छेद १६ मध्ये नमूद केले होते. ते पुढील शब्दात :- “ MFUCTO submits that the Hon'ble Chief Minister, Shri Prithviraj Chavan had

through newspapers and mass media called upon the agitating college teachers to resume duties within two days. In the Hon'ble High Court MFUCTO had proposed withdrawal of the agitation with immediate effect and from 11th May 2013 the teachers have reported for duties. In the light of this MFUCTO hopes that Government of Maharashtra will honour the gentleman's promise given by no less a person than the Hon'ble Chief Minister of the State and issue directions for the release of salaries of teachers for the months of March and April 2013 which have been withheld. ”

३. दिनांक २७ मे २०१३ च्या महासंघाच्या निवेदनाच्या १७ व्या परिच्छेदामध्ये शासनाला पुढील प्रमाणे विनंती करण्यात आली होती. “ MFUCTO therefore prays that - (A) The government be good enough to immediately direct the Joint Directors of Higher Education to release the withheld salaries without any further loss of time. (B) Alternatively government grants time to the MFUCTO for holding discussion on this subject as directed by the Hon'ble High Court.”

४. मा. उच्च न्यायालयाच्या १० मे २०१३ च्या आदेशाच्या परिच्छेद २१ मध्ये याबाबत संघटनेने शासनाशी चर्चा करावी असे पुढील शब्दात नमूद करण्यात आले होते. “On this issue, we do not propose to express any opinion. We are of the view that, this issue also respondent No.2 Association may discuss with the authorities for considering as to how much salary should be released to the teachers who have not extended their co-operation for the examination related work.” मा. खंडपीठाने दिलेल्या उपरोक्त आदेशाचा आदर करणे हा सुद्धा २७ मे २०१३ चे निवेदन सादर करण्यामागे महासंघाचा हेतू होता.

५. शासनाशी उक्त प्रश्नावर चर्चा करण्याची महासंघाच्या कार्यकारी मंडळाने जी तयारी दर्शविली त्याला शासनाकडून कोणताही प्रतिसाद मिळाला नाही. प्रतिसाद न मिळाल्यास याबाबत मा. उच्च न्यायालयासमोर याचिका दाखल करावी अशा प्रकारचा निर्णयही महासंघाच्या कार्यकारी मंडळाने घेतला होता. जवळ जवळ दोन महिने वाट पाहिल्यानंतर शासनाकडून कोणताही प्रतिसाद येत नाही, असे दिसून आल्यावर महासंघातर्फे दिनांक १७ जुलै २०१३ रोजी याबाबतची याचिका दाखल करण्यात आली. मा. उच्च न्यायालयाच्या मुंबई

(सहपत्र : एक)

बैठकीची सूचना

मा. मंत्री (उ.व. तं.शि) यांच्या अध्यक्षतेखाली बुधवार, दिनांक २५.०९.२०१३ रोजी दुपारी ४.०० वाजता यांच्या मंत्रालयातील दालनात खालील विषयावर बैठक आयोजित करण्यात आली आहे.

बैठकीचा विषय : परीक्षेच्या कामकाजावरील बहिष्कार घातलेल्या कालावधीचे वेतन देणेबाबत.

तात्काळ/फॅक्सद्वारे

महाराष्ट्र शासन

उच्च व तंत्र शिक्षण विभाग, मंत्रालय, मुंबई ४०० ०३२.

क्रमांक : न्यायाप्र २०१३/(३५७/१३)/विशि-१

दिनांक : १७ सप्टेंबर, २०१३

प्रति,

प्रधान सचिव (वित्त) * प्रधान सचिव (उ.व. तं.शि) * प्रधान सचिव (नियोजन)
* प्रधान सचिव (विधी व न्याय) * संचालक, उच्च शिक्षण, महाराष्ट्र राज्य
पुणे * प्रा. शिवाजीराव पाटील, अध्यक्ष, एमफुकटो

महोदय,

उपरोक्त विषयाबाबत मला आपणास असे कळविण्याचे निदेश आहेत की, उक्त बैठकीस विहित वेळेत आवश्यक त्या माहितीसह उपस्थित रहावे, ही विनंती.

आपला

(गौ.जो.रसाळ)

शासनाचे सहसचिव

प्रत : मा. मंत्री (उ.व. तं.शि) यांचे खाजगी सचिव * मा. राज्यमंत्री (उ.व. तं.शि) यांचे खाजगी सचिव * प्रधान सचिव (वित्त) यांचे स्विय सहायक * प्रधान सचिव (उ.व. तं.शि) यांचे स्विय सहायक * प्रधान सचिव (सेवा) यांचे स्विय सहायक * प्रधान सचिव (नियोजन) यांचे स्विय सहायक * प्रधान सचिव (विधी व न्याय) यांचे स्विय सहायक * यांना विनंती करण्यात येते की, उक्त बैठकीबाबत मान्यवर व अधिकाऱ्यांना अवगत करावे.

** AF : P111 **

IN THE HIGH COURT OF JUDICATURE

AT BOMBAY

NAGPUR BENCH AT NAGPUR

WRIT PETITION NO.5025/2013

Tikaram s/o Devaji Kose and others **VERSUS** The State of Maharashtra, through Principal Secretary, Higher and Technical Education, Department Mantralaya, Mumbai and others

Mr. F.T. Mirza, Adv. for petitioners. : Mrs. B.H. Dangre, Adll.G.P. for respondents 1 to 3.

CORAM : B.R. GAVAI AND Z.A. HAQ, JJ.

DATE : 20.09.2013

Issue notice to the respondents returnable on 27/9/2013. Mrs. Dangre, the learned Additional Government Pleader, waives notice for respondents 1 to 3. Hamdast granted for respondents 4 and 5.

JUDGE

JUDGE

खंडपीठापुढे सादर झालेली ही सन २०१३ ची याचिका क्रमांक १९१३ होय. या याचिकेचा पुर्ण तपशील पुढील प्रमाणे :- "W.P. No. 1913 OF 2013 :- Case Details (1) Bench:-Bombay (2) Presentation Date :- 17/07/2013 (3) Lodging No.:- WPL/1760/2013 (4) Filing Date:- 17/07/2013 (5) Reg. No.:- WP/1913/2013 (6) Reg. Date:- 22/08/2013(7) Petitioner:- Maharashtra Federation of University and College Teachers Organization (8) Respondent:- The State of Maharashtra and 2 Ors. (9) Petn.Adv.:- N.M. Ganguli & C.R. Sadasivan (10) Resp.Adv.:- Govt. Pleader R.Nos 1,2,3 (11) Bench:- DIVISION (12) Status:-Pre-Admission (13) Category:- WRIT PETITION(LABOUR MATTERS) (14) Next Date:- 25/09/2013 (15) Stage:- WRIT PETITION FOR ADMISSION (16) Coram:- HON'BLE SHRI JUSTICE S.J. VAZIFDAR HON'BLE SHRI JUSTICE K.R. SRIRAM (17) Act :- Mah. Universities Act, 1994 "

६. तपशिलाचे काळजीपूर्वक अवलोकन केल्यास असे लक्षात येते की ही याचिका दिनांक २५ सप्टेंबर २०१३ रोजी मा. मुंबई उच्च न्यायालयातील मा. न्यायमूर्ती श्री. एस.जे. वझीफदार व मा. न्यायमूर्ती श्री.के.आर.श्रीराम यांच्या खंडपीठासमोर ४१ व्या क्रमांकावर सुनावणीसाठी ठेवण्यात आली होती. ही याचिका का दाखल करून घेऊ नये याबाबतच्या नोटीसा मिळाल्यानंतर शासनाला खडबडून जाग आली व शासनाने नेमके त्याच दिवशी म्हणजे २५ सप्टेंबर २०१३ रोजी (म्हणजे सुनावणीच्या दिवशी) महासंघाला दुपारी ४ वाजता या विषयावर बैठकीसाठी बोलाविले. या बैठकीचे निमंत्रण देणारी ही सूचना याच अंकात (सहपत्र : एक) प्रकाशित केलेली आहे.

७. ही बैठकीची सूचना काळजीपूर्वक वाचली तर ही चर्चा शासनाशी आहे की 'व्यथा निवारक यंत्रणे'शी (Grievance Redressal Mechanism) आहे हे त्या सूचनेतील मजकूरावरून स्पष्ट होत नाही. शासनाशी या मुद्यावर चर्चा करण्याची महासंघाची तयारी होती व म्हणूनच २७ मे २०१३ रोजी महासंघाने शासनाला तसे निवेदन दिलेले होते. बैठकीच्या सूचनेतील मजकूरावरून व्यथा निवारक यंत्रणेच्या साऱ्या सदस्यांना बोलाविण्यात आल्याचे स्पष्ट दिसून येते. अशा या "बोगस व्यथा निवारक यंत्रणे"समोर जायचे काय? हा एक प्रश्न व दिनांक २५ सप्टेंबर २०१३ रोजीच बैठक बोलाविण्याचा हेतू काय? हा दुसरा, असे दोन महत्वाचे प्रश्न महासंघासमोर निर्माण झाले. शिवाय शासनाशी चर्चा असते तेव्हा महासंघाच्या कार्यकारी मंडळाला चर्चेसाठी बोलाविले जाते, व्यथा निवारक यंत्रणेसमोर फक्त अर्जदारालाच (म्हणजे महासंघाच्या अध्यक्षांनाच) बोलाविले गेले, हा फरकसुद्धा लक्षात घेण्यासारखा होता. महासंघाच्या कार्यकारी मंडळाची तातडीची बैठक बोलाविण्यात आली. दिनांक २२ सप्टेंबर २०१३

रोजीच्या महासंघाच्या कार्यकारी मंडळाच्या या बैठकीत उक्त प्रश्नांवर तपशीलवार चर्चा करण्यात आली व मुद्दे निहाय निर्णय घेण्यात आले. महासंघाच्या या निर्णयांचा समावेश असलेले ७ परिच्छेदाचे निवेदन शब्दशः विचारात घेण्यात आले व संमत करण्यात आले. संघटनेच्या मा. अध्यक्ष व सचिवांनी दिनांक २४ सप्टेंबर २०१३ रोजी मा. उच्चशिक्षण मंत्र्यांना ते निवेदन सादर करावे असाही निर्णय बैठकीत घेण्यात आला व त्याप्रमाणे तसे करण्यात आले.

८. महाराष्ट्र प्राध्यापक महासंघाच्या वतीने दिनांक २४ सप्टेंबर २०१३ रोजी मा. उच्च शिक्षणमंत्र्यांना सादर केलेल्या या निवेदनाच्या (यापुढे उल्लेख 'आताचे निवेदन' असा) परिच्छेद ३ मध्ये असे नमूद करण्यात आलेले आहे की, :- "The entire teaching community in the State is shocked by the composition of the Grievance Redressal mechanism in the form of a Committee inasmuch as the creators of the grievance are assigned the role to act as arbitrators through the said Committee.As your honour are fully aware that no decision in the Higher Education Department is taken without the approval of either the cabinet or the Minister of the cabinet rank holding the charge of the department of Higher Education. In the mechanism constituted by the G.R., the Hon'ble Minister is occupying the post of Chairman of the Committee. The other members are mostly either instrumental in taking decision or are subordinate to the decision-makers. The present arrangement is completely opposed to the concept of fair-play and justice and would only make a mockery of the Grievance Redressal Mechanism which the Hon'ble High Court had very thoughtfully and rightly directed to be constituted. " महाराष्ट्र प्राध्यापक महासंघाने पाठविलेले हे निवेदन याच अंकात (सहपत्र : दोन) प्रकाशित केलेले आहे.

९. स्थापन झालेल्या 'व्यथा निवारक यंत्रणे'पुढे उच्च शिक्षण विभागाचे प्रधान सचिव, सहसचिव किंवा उपसचिव यांनी हजर राहून उच्च शिक्षण विभागाची वाजू मांडावयाची आहे. ते स्वतःच त्या यंत्रणेचे सदस्य म्हणून कसे काय बसू शकतात? याबाबतची तक्रार महासंघाच्या आताच्या निवेदनाच्या परिच्छेद ५ मध्ये पुढील शब्दात करण्यात आलेली आहे. :- " In fact, the Principal Secretary to Higher Education, Joint Secretary and Deputy Secretary in the Higher Education Department (Vishi) would be the answerable parties before the grievance redressal mechanism in respect of the grievances that MFUCTO may raise. They cannot therefore be the members of such Committee. This arrangement would ask the very persons whose actions have resulted in the grievance to hold hearing and decide the matter."

१०. दिनांक २५ जुलै २०१३ च्या शासननिर्णयाने जी व्यथानिवारक यंत्रणा अस्तित्वात आणली ती ताबडतोब मोडीत काढावी अशी विनंती आताच्या या निवेदनाच्या परिच्छेद ७ मध्ये पुढील शब्दात करण्यात आलेली आहे. :- "We wish to bring to your notice the feelings of unpleasantness among the teachers in Maharashtra. We therefore request that the Grievance Redressal Mechanism in the form of a Committee proposed in the G.R. dated 25-7-2013 be scrapped altogether and a new mechanism may be brought into existence within 15 days. In case this is not done and fresh orders for constituting new mechanism for just resolution of the grievances are not issued, MFUCTO may be compelled to take appropriate legal proceedings."

११. परीक्षा असहकार आंदोलन काळातील वेतन कपातीच्या संदर्भात महासंघाने यापूर्वी शासनाला सादर केलेले दिनांक २७ मे २०१३ रोजीचे निवेदन, त्यानंतर मा. उच्च न्यायालयापुढे सादर करण्यात आलेली सन २०१३ ची याचिका क्रमांक १९१३, ही याचिका दिनांक २५ सप्टेंबर २०१३ रोजी मा. खंडपीठासमोर सुनावणीसाठी असणे, त्याच दिवशी शासनाने तथाकथित व्यथानिवारक यंत्रणेची बैठक बोलावणे, महासंघाच्या कार्यकारी मंडळाची दिनांक २२ सप्टेंबर २०१३ रोजी झालेली तातडीची बैठक व त्यानंतर शासनाला पाठविण्यात आलेले २४ सप्टेंबर २०१३ रोजीचे निवेदन हा सारा घटनाक्रम उपरोक्त परिच्छेदातून विदित केलेला आहे.

**IN THE HIGH COURT OF JUDICATURE
AT BOMBAY
NAGPUR BENCH AT NAGPUR
WRIT PETITION NO.
5073/2013**

Ramesh Sheshrao Sontakke and others **VERSUS**
State of Maharashtra through the Secretary, Department
of Higher & Technical Education Mantralaya, Mumbai
- 32 and others

Shri A.M. Sudame, Adv. for petitioners

**CORAM : SMT. VASANTI A. NAIK AND
A.S. CHANDURKAR, JJ.
DATE : 21.09.2013**

Heard. Issue notice to the respondents, returnable
on 14.10.2013. Learned Additional Government Pleader
Mrs. B.H. Dangre waives notice on behalf of the
respondent nos.1 to 3. Service to the other respondents
by R.P.A.D. in addition to the regular mode of service
is permitted.

JUDGE JUDGE

(सहपत्र :दोन)

MAHARASHTRA FEDERATION OF UNIVERSITY & COLLEGE TEACHERS' ORGANISATIONS (MFUCTO)

Registered under the Trade Union Act 1926. No By II-8162 of 1985

Affiliated to the All India Federation of University and College Teacher's Organizations (AIFUCTO)

Vidyapeeth Vidyarthi Bhavan, 'B' Road, Churchgate, Mumbai – 400 020

PRESIDENT

Prof. Shivajirao Patil
SHIVAI 39 Rewu Nagar, Dheku Road,
Amalner 425 401, District Jalgaon
(9422278418)

GENERAL SECRETARY

Dr. Tapati Mukhopadhyay
Park Side 3, Wing, Flat No. 1308 Kulupwadi
Road, Borivali (East) Mumbai 400 066
(022-28871430, 9820319455)

MUMBAI, 24TH SEPTEMBER 2013

To

Shri Rajesh Tope

Hon'ble Minister for Higher & Technical Education
Maharashtra State
Mantralaya, Mumbai 400 032.

Sub: Request for scrapping of the newly constituted Grievance Redressal mechanism in the form of a Committee

Ref: Government Resolution No.NyayanPra-2013/(213/13)-Vishi-1 dated 25th July 2013 issued by your Ministry.

Hon'ble Minister, Sir:

1. In Writ Petition No.1326 of 2012, the Hon'ble High Court was pleased by Judgment and Order dated 10th May 2013 to direct as under : "24. Whatever may be the reason for delay in taking the decision or justification or otherwise for not extending the cooperation to the examination related work, it is the students who are bound to suffer on account of such non-cooperation between the teachers and the authorities. We are therefore of the view that State Government should set up the **Grievance Redressal Mechanism** before which the teacher or their Association can raise their grievances or demands and after considering the recommendations of such body, the State Government or the University may take necessary decisions. It is on account of **absence of such mechanism** to get the disputes and grievances resolved and redressed that the present unfortunate agitation started. The Grievance Redressal Body should be set up by 31st July 2013."

2. Thereafter Government of Maharashtra by G.R. No. Nyayanpra-2013/(213/13)-Vishi-1 dated 25th July 2013 has constituted the Grievance Redressal mechanism in the form of a Committee, the composition of which shown in the G.R. referred above is as under in para.3: -

1. Hon'ble Minister (Higher & Technical Education)
....President

2. Hon'ble State Minister (Higher & Technical Education)
...Vice President

3. Principal Secretary (Higher & Technical Education)
...Member

4. Principal Secretary (Service)...Member

5. Principal Secretary (Finance)...Member

6. Principal Secretary (Planning)...Member

7. Principal Secretary (Law and Justice)...Member

8. Joint Secretary/Deputy Secretary (Vishi)...Member"

3. **The entire teaching community in the State is shocked by the composition of the Grievance Redressal mechanism in the form of a Committee inasmuch as the creators of the grievance are assigned the role to act as arbitrators through the said Committee.**

4. **As your honour are fully aware that no decision in the Higher Education Department is taken without the approval of either the cabinet or the Minister of the cabinet rank holding the charge of the department of Higher Education.** In the mechanism constituted by the G.R., the Hon'ble Minister is occupying the post of Chairman of the Committee. The other members are mostly either instrumental in taking decision or are subordinate to the decision-makers. The present arrangement is completely opposed to the concept of fair-play and justice and would only make a mockery of the Grievance Redressal Mechanism which the Hon'ble High Court had very

thoughtfully and rightly directed to be constituted.

5. **In fact, the Principal Secretary to Higher Education, Joint Secretary and Deputy Secretary in the Higher Education Department (Vishi) would be the answerable parties before the grievance redressal mechanism in respect of the grievances that MFUCTO may raise.** They cannot therefore be the members of such Committee. This arrangement would ask the very persons whose actions have resulted in the grievance to hold hearing and decide the matter.

6. MFUCTO as a gesture of constructive contribution proposes that the composition of the Grievance Redressal mechanism in the form of a Committee should be of two or three retired Presiding Officers of the University & College Tribunals in Maharashtra who are either sitting Judges or retired Judges of the Hon'ble High Court at Bombay whose impartiality cannot be doubted by the parties.

7. We wish to bring to your notice the feelings of unpleasantness among the teachers in Maharashtra. We therefore request that the Grievance Redressal Mechanism in the form of a Committee proposed in the G.R. dated 25-7-2013 be scrapped altogether and a new mechanism may be brought into existence within 15 days. In case this is not done and fresh orders for constituting new mechanism for just resolution of the grievances are not issued, MFUCTO may be compelled to take appropriate legal proceedings.

Thanking you,

Yours faithfully

(Dr. Shivajirao Patil)
President

(Dr. Tapati Mukhopadhyay)
General Secretary

IN THE HIGH COURT OF JUDICATURE OF BOMBAY

BENCH AT AURANGABAD

WRIT PETITION NO.6687 OF 2013

Sunil Madhukar Nave & others..... **Petitioners**

VERSUS

State of Maharashtra & others **Respondents**

Mr.Pradeep Deshmukh, advocate holding for
Mr.Yashodeep Deshmukh, advocate for petitioners.

Mr.K.J.Ghute Patil, A.G.P. for Respondents No.1
to 3.

CORAM : R.M.BORDE & SUNIL P.DESHMUKH, JJ.

DATE :26th August, 2013.

PER COURT

Issue notice before admission to the Respondents
Returnable on 23.09.2013.

Learned A.G.P. waives notice for Respondents No.1
to 3.

SUNIL P. DESHMUKH
JUDGE

R.M.BORDE
JUDGE

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.6369 OF 2013

SHIVAJI UNIVERSITY TEACHERS ASSOCIATION (SUTA), Through Secretary, Dr.R.H. Patil and Ors. ...PETITIONERS.
VERSUS The State of Maharashtra, Through the Secretary, Ministry of Higher And Technical Education and Anr. ...RESPONDENTS.

Mr.C.G.Gavnekar, for the petitioner. : Ms.S.S. Bhende, AGP, for the respondents.

CORAM: A. S. OKA & REVATI MOHITE DERE, JJ. : SEPTEMBER 3, 2013.

P.C. :- 1. Heard learned counsel appearing for the petitioners and the learned AGP for the respondents. The Petitioner nos.2 to 142 retired from the employment of the Shivaji University by superannuation during the period from 1st January, 2006 to 1st January, 2009. The petitioners are claiming a benefit of higher amount of gratuity on the basis of the Judgment and Order dated 30th January, 2013 passed by the Apex Court in *Association of College and University Superannuated Teachers v/s. Union of India and Ors (Civil Appeal No.908 of 2013)*. In the case before the Apex Court, the challenge was to the order of this Court rejecting a Writ Petition under Article 226 of the Constitution of India. In the said Writ Petition, the challenge was to the Government Resolution dated 21st August, 2009 by which the State Government decided to raise the ceiling on the maximum amount of Retirement Gratuity and Death Gratuity from Rs.5 lacs to Rs.7 lacs with effect from 1st September, 2009. The Apex Court interfered with the decision of this Court and allowed the Appeal. The operative part of the order of the Apex Court reads thus :-

“In the result, the appeal is allowed and the impugned order is set aside. The cut-off date, i.e.01.09.2009 specified in G.R. dated 21.08.2009 is declared unconstitutional and it is held that the employees governed by Government Resolution dated 5.5.2009 are entitled to the benefit of enhanced gratuity, i.e. Rs.7 lacs. As a sequel to the above, we direct that within three months from the date of receipt/production of copy of this order, State Government shall pay to the members of the appellant and other similarly situated employees difference of the gratuity already paid and enhanced gratuity payable in terms of G.R. dated 21.08.2009. The parties are left to bear their own costs.”

2. The Petitioner nos. 2 to 142 have superannuated prior to 1st September, 2009 but after 1st January, 2006. Naturally, the State Government will have to extend the benefit of the Judgment and Order of the Apex Court to the said petitioners. Infact the respondents were under an obligation to extend the benefit of the Judgment and Order dated 30th January, 2013 to

the employees who have been similarly situated on par with the employees represented by the appellant Association before the Apex Court. Infact the petitioners ought not to have been forced to approach this Court by filing a fresh writ petition.

3. As a matter of fact, for giving effect to the Judgment dated 30th January, 2013 passed by the Apex Court, the State ought to have issued a fresh Government Resolution.

4. Hence, while disposing of this petition, we propose to issue a direction to the State Government to take appropriate decision for giving effect to the Judgment of the Apex Court, so that similarly placed teachers need not be forced to approach the High Court.

5. Hence, we dispose of this petition, by passing the following order :-

(i) We direct the second respondent to scrutinize the cases of the petitioner nos.2 to 142 for grant of benefit in accordance with the Judgment and Order dated 30th January, 2013 of the Apex Court in Civil Appeal No.908 of 2013 ;

(ii) We grant time of three months to the second respondent to scrutinize the cases of the aforesaid petitioners. The benefit of the order passed by the Apex Court shall be extended to those who are found to be on par with the Members of the Association of College and University Superannuated Teachers, which was the appellant before the Apex Court ;

(iii) We direct the State Government to take a policy decision on the basis of the order of the Apex Court dated 30th January, 2013, within a period of four weeks from today ;

(iv) Though we have disposed the above petition with the aforesaid directions, for reporting compliance, the petition shall be placed on the Daily Board on 14th October, 2013 under the caption of ‘Directions’

(REVATI MOHITE DERE,J.)

(A.S. OKA,J.)

** AF : P 88 **

१ जानेवारी २००६ नंतर पण २९ ऑगस्ट २००९ पूर्वी सेवानिवृत्त झालेल्या प्राध्यापकांसाठी : ३

४. एक जानेवारी २००६ नंतर पण २९ ऑगस्ट २००९ पूर्वी सेवानिवृत्त झालेल्या विद्यापीठीय व महाविद्यालयीन प्राध्यापकांना सेवानिवृत्ती समयी अदा करावयाच्या ग्रॅज्युईटी संदर्भात मा. सर्वोच्च न्यायालयाने दिनांक ३० जानेवारी २०१३ रोजी दिलेल्या निर्णयासंदर्भात शनिवार, दिनांक ३ ऑगस्ट २०१३ रोजी शिक्षक भवन, अमरावती विद्यापीठ परिसर, अमरावती येथे दुपारी ४.०० वाजता झालेल्या सभेमध्ये ठरल्याप्रमाणे (१) नागपूर सहसंचालकांच्या क्षेत्रातील ३२ प्राध्यापकांच्या वतीने एक व (२) अमरावती सहसंचालकांच्या क्षेत्रातील ८९ प्राध्यापकांच्या वतीने दुसरी अशा दोन याचिका मा. उच्च न्यायालयाच्या नागपूर खंडपीठासमोर दाखल करण्यात आलेल्या आहेत.

५. दरम्यानच्या काळात “IN THE HIGH COURT OF JUDICATURE AT BOMBAY CIVIL APPELLATE JURISDICTION WRIT PETITION NO.6369 OF 2013 Shivaji University Teachers Association (SUTA), Through Secretary, Dr.R.H. Patil and Ors. ...Petitioners. v/s. The State of Maharashtra, Through the Secretary, Ministry of Higher And Technical Education and Anr. ...Respondents.” या प्रकरणात दिनांक ३ सप्टेंबर २०१३ रोजी निर्णय झालेला असून त्या निर्णयामध्ये मा.उच्च न्यायालयाने पुढीलप्रमाणे आदेश पारित केलेले आहेत. :-

“5. Hence, we dispose of this petition, by passing the following order :- (i) We direct the second respondent to scrutinize the cases of the petitioner nos.2 to 142 for grant

of benefit in accordance with the Judgment and Order dated 30th January, 2013 of the Apex Court in Civil Appeal No.908 of 2013 ; (ii) We grant time of three months to the second respondent to scrutinize the cases of the aforesaid petitioners. The benefit of the order passed by the Apex Court shall be extended to those who are found to be on par with the Members of the Association of College and University Superannuated Teachers, which was the appellant before the Apex Court ; (iii) We direct the State Government to take a policy decision on the basis of the order of the Apex Court dated 30th January, 2013, within a period of four weeks from today ; (iv) Though we have disposed the above petition with the aforesaid directions, for reporting compliance, the petition shall be placed on the Daily Board on 14th October, 2013 under the caption of ‘Directions’

६. हा निर्णय याच पृष्ठावर प्रसृत करण्यात आला आहे. हा निर्णय आपल्या विधिज्ञामार्फत मा. नागपूर खंडपीठाच्या लक्षात आणून देण्यात येत आहे.

डॉ. प्रवीण रघुवंशी, अध्यक्ष, (NUTA) डॉ. अनिल ढगे, सचिव,

PR : (1) P93-95 NB 2013 (2) P153 NB 2013 (3) P210 NB 2013

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.
WRIT PETITION NO. 383 OF 2013**

Dr. Suresh s/o Bhagwanji Rewatkar, Aged about 47 years, Occ: Service, R/o. Armori, Distt. Gadchiroli. ...PETITIONER. **VERSUS**
(1) The State of Maharashtra, Through Principal Secretary Higher Education Department, Mantralaya Mumbai 32. (2) The Joint Director of Higher Education, Nagpur Region, Nagpur. (3) Gondwana University Gadchiroli, Through it's Registrar, having office at MIDC Road Complex, Gadchiroli - 442 605. (4) Manoharbai Shikshan Prasarak Mandal, Armori, Distt. Gadchiroli, Through it's President, Shri Murlidhar Wamarao Wanmali. (5) Mahatma Gandhi Arts, Commerce and Late N. Panjwani Commerce College, Armori, Distt. Gadchiroli, Through it's Principal.RESPONDENTS.

Shri Firdos Mirza, Advocate for the petitioner., Smt. Bharti Dangre, Addl. G.P. for R1 and 2., Shri B.G.Kulkarni,

Adv. for R3., Shri Anand Parchure, Advocate for R4 and 5.

**CORAM: B.R.GAVAI & Z.A.HAQ,JJ
DATE : 6.9.2013
ORAL JUDGMENT (PER B.R.GAVAI, J)**

Heard.

2. Rule. Rule made returnable forthwith. By consent of the parties, taken up for hearing.

3. The present petition is a classic case as to how the private Managements, who are receiving grant-in-aid from the State Government are disobeying the directions of the State Government from whom they receive grant-in-aid and thereby harassing the employees who are at their mercy.

4. The petitioner was appointed in a clear and permanent vacancy in the respondent no.5 College as lecturer with effect from 17.11.1988.

5. It appears that initially the post of Principal could be held by an incumbent for a unlimited period. However, the University Grants Commission, which is undisputedly the Central Council insofar as the matters regarding Higher Education are concerned, framed Regulations in September, 2009 called as "UGC Regulations on minimum qualifications for appointment of teachers and other academic staff in Universities and Colleges and measures for the maintenance of standards in Higher Education, 2009". As per Regulation no. 5.1.6, the term of appointment of the College Principal shall be for a fixed period of Five years with eligibility for reappointment for only one more term after undergoing a similar selection committee process.

6. The State Government, taking into consideration the fact that the post of Principal was a tenure post, has issued Government Resolution dated 15.3.2011 wherein though the provision of grant of lien in other cases has been made only for a period of two years, the same has been made for five years insofar as the statutory posts are concerned.

7. One Ballarpur Seva Samiti had advertised on 8.6.2011 for filling up the post of Principal in its College, at Wadsa. The petitioner, being eligible, applied for the said post through proper channel. It is to be noted that the Principal of the College, where the petitioner was working, recommended the said application and has given 'No Objection' for application. Consequently, the petitioner, being successful in the selection process, came

to be selected for the said post. The respondent University, vide order dated 11.1.2012, has also granted its approval for the period of five years or attaining the age of 62 years whichever is earlier. The said Ballarpur Seva Samiti accordingly issued order of appointment in favour of the petitioner on 15.1.2012. The petitioner, therefore, applied to the respondent no.4 for grant of lien on 13.1.2012. Since the said application was not responded, after waiting for almost a period of one month, the petitioner has sent reminder on 6.2.2012. Since there was no reply, the petitioner has joined his duties on 10.2.2012 at the College wherein he was selected. It appears that subsequently on 23.2.2013, the respondent no.5 addressed a communication to the petitioner calling upon him to show cause as to why, without being relieved from the College, he had joined the services at some other College. The petitioner has duly replied to the said communication.

8. It further appears that on account of the inaction on behalf of the Management in giving him lien, the petitioner made a representation to various authorities including the University and Director of Higher Education. The University has also sought explanation from the respondent no.5. It appears from record that the Director (Higher Education) has issued a communication dated 13th September, 2012 to the respondent no.4 to grant lien to the petitioner. Since, in spite of the same, respondent no.4 has not taken any action, the petitioner has approached this Court.

9. It is the contention of the petitioner that in view of the Government Resolution dated 15.3.2011, on **selection of a lecturer for the post of Principal in some other College, the respondent Management is duty bound to grant a lien.** It is submitted that since the Post of Principal is now a tenure and if the Managements do not grant lien, it will not be possible to fill up any post of Principal. The learned counsel further submits that an authority of the State Government has issued a directive to the respondent Management, and that the respondent Management is bound to comply with the same.

10. Shir Parchure, the learned counsel appearing on behalf of the respondents 4 and 5, on the contrary, submits that granting of lien is not a matter of right. He submits that the question as to whether the lien should be granted or not is exclusively within the domain of the Management. The learned counsel submits that the petitioner, without seeking leave of respondents 4 and 5, has joined the services in other College and as such has committed indiscipline. **The learned counsel further submits that in the extra ordinary jurisdiction under Article 226 of the Constitution of India, this Court does not have power to issue a writ of mandamus to the respondent Management to grant lien since it is a matter of discretion of the management.**

11. Smt. Bharti Dangre, learned Addl. G.P., appearing for respondents 1 and 2 and Dr. B.G.Kulkarni, learned counsel appearing for respondents 3, **support the case of the petitioner.** It is submitted that once the petitioner was selected in due selection process, the respondents 4 and 5 ought to have granted a lien to him in view of the post of the Principal being tenure post, for a specific period of five years.

12. Shri Parchure, learned counsel further submitted that the reason given for refusal of lien is genuine. The learned counsel submits that initially the petitioner was given lien for

CASE DETAILS OF THE TWO (NET-SET) CASES FILED BY MFUCTO

(10) W.P. No.2082 OF 2013 :-**Case Details** (1) Bench:-**Bombay** (2) Presentation Date 19/08/2013 (3) Lodging No.:- WPL/ 2065/2013 (4) Filing Date:- 19/08/2013 (5) Reg. No.:- WP/2082/2013 (6) Reg. Date:- 19/09/2013 (7) Petitioner:- **Maharashtra Federation of University and College Teachers Organization** (8) Respondent:- **The State of Maharashtra and 2 Ors.** (9) Petn. Adv.:- N.M. Ganguli (10) Resp. Adv.:- Government Pleader R.Nos 1 and 2 (11) Bench:- DIVISION (12) Status:-**Pre-Admission** (13) Category:- WRIT PETITION(SERVICE MATTERS) (14) Next Date:-19/10/2013 (15) Stage:- **(16) Coram:- ACCORDING TO SITTING LIST (17) Act :-** Mah. Universities Act, 1994

(11) W.P. No.1886 OF 2013 :-**Case Details** (1) Bench:-**Bombay** (2) Presentation Date 05/08/2013 (3) Lodging No.:- WPL/ 1934/2013 (4) Filing Date:- 05/08/2013 (5) Reg. No.:- WP/1886/2013 (6) Reg. Date:- 21/08/2013 (7) Petitioner:- **Maharashtra Federation of University and College Teachers Organization** (8) Respondent:- **The State of Maharashtra and 2 Ors.** (9) Petn. Adv.:- N.M. Ganguli (10) Resp. Adv.:- Government Pleader R.Nos 1 to 3 (11) Bench:- DIVISION (12) Status:-**Pre-Admission** (13) Category:- WRIT PETITION (SERVICE MATTERS) (14) Next Date:-26/09/2013 (15) Stage:- WRIT PETITION FOR ADMISSION **(16) Coram:- HON'BLE SHRI JUSTICE S.J. VAZIFDAR HON'BLE SHRI JUSTICE K.R. SRIRAM (17) Act :-** Mah. Universities Act, 1994

two years to better his qualification. It is submitted that the petitioner was teaching the subject of Chemistry and if the petitioner is given lien, the College would suffer inasmuch as a teacher to teach P.G. Students would not be available. Mr. Parchure, learned counsel further submits that the **permission which was granted to the petitioner was only for making an application and not for joining the other College.**

13. **We find that the entire conduct of the respondent Management, to say the least is of harassing the person,** who was duly selected in selection process conducted under the supervision of the University and the State Government and that too, after he was given no objection by the College.

14. Perusal of the record would reveal that the petitioner prior to making the application for applying for the post of Principal in Mohsinbhai Zaweri College, Wadsa, had sought 'No Objection' of the respondent no.5. There is an endorsement of respondent no.5 to the following effect.

"College has recommended the said application and have 'No Objection' for application. "

15. **On the basis of 'No Objection' granted to the petitioner, the petitioner has made an application to the College, which had invited the applications.** Not only this, it is a respondent no.5, who has granted Experience Certificate to the petitioner and has also wished him all the success in his future endeavor. On the basis of this 'No Objection and Experience Certificate', the petitioner faced the selection process. He was successful in the said selection process. Not only this but the respondent University, vide order dated 11.1.2012, granted approval to the selection. As per the order dated 11.1.2012, the said approval was to be valid for a period of one month and on the failure of the petitioner to join the College, same was to come to an end, at the expiry of the period of one months. Accordingly, the petitioner made representation to the respondent no.4 on 13.1.2012 for grant of lien. For a period of one month, though the said application is received, the respondent no.4 has not cared to respond. Since the period of one month, during which approval was to be alive, was coming to an end, second representation was made to the respondent no.4 on 6.2.2012. To this also, the respondents gave deaf ear. Since the period of one month was to expire on 11.2.2012 the petitioner joined his services at Mohsinbhai Zaweri College, Wadsa on 10.2.2012 and gave intimation to the respondent no. 4 on the same day. Thereafter, on 23.2.2012, for the first time, show cause notice is issued to the petitioner by the Management.

16. The contention of Shri Parchure, the learned counsel that **'No Objection' which was given, was given only for making application and not for the purpose of joining, in our opinion, does not even sound to common sense.** If a person was not to be permitted to join services in other institute, then there was no purpose in giving him permission to make an application and also give him 'No Objection and Experience Certificate' along with best wishes for future endeavour. In that view, we find that the said contention is without any substance.

17. Apart from that the respondents 4 and 5 would now be estopped from requiring lien by application of Doctrine of Estoppel. We may gainfully refer to the Judgment of the Apex Court in case of **B.L.Sreedhar and others vs. K.M.Munireddy (Dead) and others, reported in AIR 2003 Supreme Court, 578.** wherein para no.37, it is observed as under:

"If a man either by words or by conduct has intimated that

he consents to an act which has been done and that he will not offer any opposition to it, although it could not have been lawfully done without his consent, and he thereby induces others to do that which they otherwise might have abstained from, he cannot question legality of the act he had sanctioned to the prejudice of these who have so given faith to his words or to the fair inference to be drawn from his conduct."

18. **It is, thus, clear that it is only on the basis of the 'No Objection' and recommendation given by the respondent no.5 along with Experience Certificate, the petitioner had applied. On being selected, he immediately made an application for grant of lien on 13.1.2012.** After waiting for a period of almost one month, since there was no response, he sent another reminder on 6.2.2012. However, till 10th February, 2012, there was no response from the respondent Management either granting permission or denying the same. The petitioner, therefore, bona fide believing that on the basis of the earlier 'No Objection' the respondent Management has 'No Objection' appears to have joined the services on 10.2.2012, inasmuch the period of approval granted by the University would have come to an end on 11.2.2012. Only after the petitioner has joined the services at another College, after a period of 15 days notice is issued to the petitioner. In that view, we find that the petitioner's case is squarely covered by the aforesaid Judgment.

19. Insofar as the contention of Shri Parchure, the learned counsel that the lien is not a matter of right, the learned counsel is right in that aspect. However, it is to be noted the respondent no.5 is receiving grant-in-aid from the State Government. Not only that insofar as the regulatory measure including affiliation etc. is concerned, **it comes under the regulatory jurisdiction of respondent no.3. Insofar as the grants are concerned, it comes under the regulatory jurisdiction of the Director of Education.**

20. In the case of **Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust and others vs. V.R.Rudani and others, reported in (1989) 2 Supreme Court Cases, 691, the Apex Court in clear terms has held that even to private Management which is under regulatory control of University and which receives grant-in-aid from the public exchequer, writ can be issued by this Court while exercising power under Article 226 of the Constitution of India.** In that view of the matter, when an Officer of the State Government i.e. Director of Education has issued a direction to the respondents 4 and 5 to grant lien to the petitioner, we can very well in exercise of the jurisdiction under Article 226 of the Constitution of India, issue a writ of mandamus directing the respondents 4 and 5 to comply with the directives issued by the Director of Education.

21. In that view of the matter, the Rule is made absolute in the following terms. The respondents 4 and 5 are hereby directed to comply with the directions issued by the Education Officer on 13th September, 2012 and grant lien to the petitioner with effect from 10th February, 2012 for a period of five years. In the peculiar facts and circumstances, the said compliance shall be done within a period of eight days from today. Needless to state that on lien being granted, the proposal for grant of salary to the petitioner by the respective Colleges would be submitted to the Joint Director of Higher Education within a period of three weeks from today and on receipt of the said proposal, the Joint Director of Higher Education, Nagpur – **the respondent no.2 shall take necessary steps for payment of salary to the petitioner.**

JUDGE

JUDGE

** AF : P 93 **

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