IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIRCUIT BENCH AT KOLHAPUR
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 10234 OF 2015

1) Shri. Kayyum Rahimbaksha Mujawar]
Age – adult, Occupation – nil]
R/at – Village Ekhatpur]
Tal: Sangola, Dist: Solapur] **… Petitioner**

Versus

1) State of Maharashtra]
[Notice to be served upon Assistant]
Government Pleader, High Court,]
Appellate Side, Mumbai]]

2) Director of Education, Maharashtra State,]
Central Building, Pune - 411001]

3) Deputy Director of Education, Pune]
Region, Pune 17, Dr. Ambedkar Road,]
Pune 411001]

4) Nivruti Seva Sangha, Ekhatpur,]
Taluka- Sangola, Dist. Solapur.]

5) Principal, College of Education]
Ekhatpur, Taluka- Sangola, Dist. Solapur.]
… Respondents.

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Mr. Suhas S. Inamdar, Advocate for Petitioner.
Mr. R. P. Kadam, A.G.P. for Respondent-State.
Mr. Ashok B. Tajane (Through VC) a/w Mr. Balaji P. Shinde, Advocates for Respondent Nos. 4 and 5.

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CORAM : RAJESH S. PATIL &
ABHAY J. MANTRI, JJ.
RESERVED ON : 21st September, 2026.
PRONOUNCED ON : 25th November, 2026.

JUDGMENT: (PER: ABHAY J. MANTRI, J).

1. **Rule.** Rule made returnable forthwith and, by consent, taken up for final hearing at admission stage.

2. The Petitioner seeks direction to the Respondents to pay the arrears of salary as per the chart annexed at Exhibit-E and/or to direct the Deputy Director of Education to take into consideration the arrears due and payable to the Petitioner after working out his salary as per the 6th Pay Commission, by deducting the actual salary paid to him.

2.1. By way of amendment, the Petitioner further seeks to direct the Respondents to pay arrears of salary as per Schedule (c) and as per Government Resolution dated 6th September, 2016 and 16th October, 2018 w.e.f. 1st January, 2006 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulations Act, 1977 (for short ***"the M.E.P.S. Act"***) and the chart produced at Exhibit-B of the affidavit-in-rejoinder.

3. Heard the learned Advocate for the Petitioner and for Respondent Nos. 4 and 5, and the learned AGP for the Respondent-State. Perused the record and the judgments relied upon by the learned Advocate for the Petitioner.

4. The Petitioner holds an M.A., B.P. Ed. Degree and was appointed as a lecturer in the College of Education run by Respondent No. 5-Institution since 1984 as a Physical Education Teacher. The Petitioner served in the said college continuously for more than 30 years. He was not paid salary as per the pay scales prescribed under the M.E.P.S. Act and as per Government Resolutions issued from time to time for paying salary to teachers serving in recognised schools and Junior Colleges of Education.

5. Till 2006, the Respondent did not pay salary as per the pay scale prescribed under the 4th Pay Commission. Therefore, the Petitioner filed ***Writ Petition No. 2685 of 1995 (Shri Kahum Rahimbaksha Mujawar vs. the State of Maharashtra and others)***. After considering the material and facts before it, this Court allowed the said Petition partly and directed Respondent Nos. 3 and 4 therein to ensure that, in case the salary of the Petitioner had not yet been paid in the

prescribed pay scale as applicable to the aided school, he shall be paid the said benefit along with the arrears within six months from the said order and, on failure to do so, the said Respondents may proceed to withdraw the recognition granted to the college. Despite the said order, no salary was paid to the Petitioner. Therefore, he filed a Contempt Petition, and the salary was paid to him.

6. After applying the 6th Pay Commission recommendations to employees serving in non-grant-in-aid schools and junior colleges, the Government issued a resolution dated 21st May, 2010, directing the Management to pay salary to all teachers and non-teaching staff as per the 6th Pay Commission recommendations.

7. The Petitioner requested the Management to pay him salary as per the pay scales prescribed under the 6th Pay Commission. At that time, the Management asked him to give a written undertaking that he would not claim salary as per the 6th Pay Commission, subject to which his service would be continued and, failing which, he would be removed from service. Fearing termination, the Petitioner gave the undertaking as required by the Respondent-Management. Accordingly, he was continued in service, but he was not paid the salary admissible

to employees in a grant-in-aid Junior College of Education. Accordingly, he made a representation to the Management to pay him the salary admissible in a grant-in-aid College of Education and also issued a legal notice through his Advocate in that regard. Instead of paying the admissible salary as per the 6th Pay Commission, the Respondent-Management, on 30th April, 2015, served him with a termination order, *inter alia*, informing him that, since there is a reduction in the number of students, he is being retrenched. The Petitioner submits that he would challenge the said termination order before the appropriate forum. However, the Petitioner approaches this Court seeking the directions as referred to above.

8. Respondent Nos. 4 and 5, i.e., the Public Charitable Trust and the Principal, College of Education, resisted the Petition, contending that although the Petitioner claimed arrears from 1st January, 2006 to 31st July, 2015, no details were given after June 2011. By notice dated 30th April, 2015, the Petitioner was terminated.

9. The Petitioner had undertaken that he would not claim 6th Pay Commission salary. Therefore, the Writ Petition is not maintainable. Though the Petitioner stated that he would challenge the

termination order before the appropriate forum, he did not provide any details. The Petitioner was terminated on 30th April, 2015; therefore, he is not entitled to claim any benefits.

10. Pursuant to the orders dated 08th April 2010 and 6th January 2011passed in Contempt Petition No. 250 of 2009 in Writ Petition No. 2685 of 1995, the Respondent-Management paid the entire arrears due till then, thereby complying with the orders passed by this Court; accordingly, Contempt Petition No. 250 of 2009 was disposed of.

11. The Government did not pay the Management the amount as per the 6th Pay Commission. The 6th Pay Commission was implemented from 1st January, 2006, and the revised pay scale was made applicable to the employees from 21st May, 2010. The Respondent-Management has not received any amount under the 6th Pay Commission and 7th Pay Commission from the Government. Upon receipt, it will pay it to the employees. As such, they urge dismissal of the Petition.

12. The learned Advocate for the Petitioner emphasised that Section 3 of the M.E.P.S. Act applies to all private Schools in Maharashtra, including non-grant-in-aid schools. As such, they are also liable to pay the salaries prescribed by the 6th Pay Commission and the 7th Pay Commission to the employees; therefore, the Respondent-Management cannot say that they do not apply to them.

13. During the argument, he drew our attention to the decision of this Court in Writ Petition No. 2685 of 1995 dated 28th April, 2006 and submitted that after the Application of the 4th Pay Commission, the Respondent-Management did not pay the salary as prescribed therein; therefore, the Petitioner had filed Writ Petition No. 2685 of 1995, and in the said order, this Court categorically held that the mandate laid down in Section 3 of the M.E.P.S. Act applies to all private schools in the State of Maharashtra, whether grant-in-aid schools or non-grant-in-aid schools, and therefore directed the Respondent-Management to pay the salary as prescribed in the 4th Pay Commission.

14. He also pointed out the Government Resolution dated 21st May, 2010, and other correspondence, the Petitioner made to the Respondent-Management, and prayed that the Petition be allowed.

15. Learned Advocate for Respondent Nos. 4 and 5 and the learned AGP strongly opposed the Petition, contending that the Petitioner had given an undertaking to Respondent-Management that he would not claim salary as per the 6th Pay Commission and, thereby, waived his claim. Alternatively, it is argued that the Petitioner's service was terminated from 30th April, 2015 and, therefore, he is not entitled to get any benefits. Hence, they urged for rejection of the Petition.

16. Having heard the rival contentions of the parties and gone through the record, the short question that arises for consideration is '*whether the Petitioner is entitled to salary as prescribed under the 6th Pay Commission and arrears of salary?*

17. It is not in dispute that the Petitioner was appointed as a lecturer in Respondent No. 5-College of Education since 1984 and served for more than 30 years. It is undisputed that the 6th Pay Commission was made applicable from 1st January, 2006. Similarly, as per Government Resolution dated 21st May, 2010, the same was made applicable to the service conditions of employees serving in non-grant-in-aid schools and junior colleges.

18. Apart from that, Section 3 of the M.E.P.S. Act prescribed that the provisions of the said Act apply to all private schools in the State of Maharashtra, whether grant-in-aid schools or non-grant-in-aid schools, and in view of the mandate in Section 3, the Government Resolution was made applicable in respect of the 6th Pay Commission to Respondent No. 5-College.

19. Earlier, Respondent Nos. 4 and 5 did not pay the salary to the Petitioner as prescribed in the 4th Pay Commission; therefore, the Petitioner had filed Writ Petition No. 2685 of 1995 before this Court, and this Court allowed the same partly and directed the Respondent-Management to pay the salary in the prescribed pay scale as applicable to the aided schools. The said order made it clear that employees in private unaided schools are also entitled to the salary applicable in grant-in-aid schools or non-grant-in-aid schools.

20. It is trite law that employees in private schools in the State of Maharashtra, whether grant-in-aid or non-grant-in-aid, are bound by Section 3 of the M.E.P.S. Act.

21. The Hon'ble Supreme Court and this Court, in a plethora of judgments, including ***Secretary, Mahatma Gandhi Mission and Anr. Vs. Bharatiya Kamgar Sena and Ors***[1] has categorically held that the exclusion of the teaching and non-teaching employees of the unaided educational institution while extending the benefits of the revised pay scales as per 5th and 6th Pay Commission to the teaching and non-teaching employees of the aided educational institution, as such a classification, is clearly violative of Article 14 of the Constitution of India and therefore, confirmed the decision given by this Court in Writ Petition No.333 of 2002, whereby the benefits of the revised pay scales were extended, as recommended by the 5th Pay Commission set up by the Government of India to the employees of the Appellants therein.

22. We find from the facts and circumstances of this case that Respondent Nos. 4 and 5 asked the Petitioner to give an undertaking that he would not claim salary as per the 6th Pay Commission, subject to his services being continued, and failing which he would be removed from service. These facts indicate that Respondent Nos. 4 and 5 compelled him to sign such an undertaking, amounting to

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extracting an undertaking under coercion, duress, and against his free will. The Petitioner's anxiety is evident from the fact that his services continued after executing the purported undertaking.

23. Thus, the purported undertaking given by the Petitioner to Respondent No.5 cannot deprive him of the benefits prescribed under the 6th Pay Commission, as Respondent No.5 obtained it under coercion to remove the Petitioner from service. Therefore, in our view, a purported undertaking given under coercion cannot deprive the Petitioner of the benefits of the revised pay scales under the 6th Pay Commission. Therefore, we do not find any merit in the contentions of Respondent Nos. 4 and 5 in that regard.

24. Moreover, compelling any person to sign an undertaking by way of a contract is contrary to law, or a statutory provision would amount to ‘contracting out’.

25. The State of Maharashtra implemented the 6th Pay Commission for employees in government and private institutions, as per Government Resolution dated 21st May, 2016. The same was made applicable to the employees serving in grant-in-aid schools and non-grant-in-aid schools.

26. In light of the above discussion, it appears that from 1984 to 30th April, 2015, the Petitioner was in service with Respondent No. 5-College. The 6th Pay Commission was made applicable from 1st January, 2006, and to employees in Government non-grant-in-aid schools/colleges from 21st May, 2010. Therefore, Respondent Nos. 4 and 5 are liable to pay the Petitioner salary as prescribed under the 6th Pay Commission from 21st May, 2010 to 30th April, 2015, after deducting the salary already paid to him.

27. As a result, **we allow the Petition partly,** directing Respondent Nos. 4 and 5 to pay the salary as per the 6th Pay Commission to the Petitioner from 21st May, 2010 to 30th April, 2015 after deduction of salary already paid to him and to pay the amount to which the Petitioner is entitled pursuant to the Government Notification and Government Resolution dated 21st May, 2010 within a period of six months from today. If it fails to do so, Respondent Nos. 1 to 3 may proceed to withdraw the recognition granted to the college.

28. The Rule is made absolute in the above terms. No order as to costs.

29. The Petition is disposed of in the above terms.

(ABHAY J. MANTRI, J.) **(RAJESH S. PATIL, J.)**

TALLE SHUBHAM ASHOKRAO

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