



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

(907) WRIT PETITION (L) NO. 3980 OF 2022

Mrs. Prachi P. Kulkarni ... Petitioner
versus
State of Maharashtra and Ors. ... Respondents

**WITH
WRIT PETITION (L) NO. 4069 OF 2022**

Mr. Suhas Narayan Gogate ... Petitioner
versus
State of Maharashtra and Ors. ... Respondents

**AND
(908) WRIT PETITION (L) NO. 3987 OF 2022**

Namrata V. Desai ... Petitioner
versus
State of Maharashtra and Ors. ... Respondents

**AND
(909) WRIT PETITION (L) NO. 3991 OF 2022**

Kalpana Ramesh Purohit ...Petitioner
V/S
State Of Maharashtra & Ors. ...Respondents

**AND
(910) WRIT PETITION (L) NO. 12161 OF 2024**

Sunita Ajit Subhedar & Ors. ...Petitioners
Versus
State Of Maharashtra & Ors. ...Respondents

applicable to the Respondent University and also that they are not being paid correct and admissible dearness allowance.

2. Writ Petition No. (L) No. 12161 of 2024 is filed by 16 retired employees. Writ Petition (L) No. 3980 of 2022 is filed by one employee Prachi P. Kulkarni. Writ Petition (L) No.4069 of 2022 is filed by one employee Suhas Narayan Gogage. Similarly, Writ Petition (L) No. 3987 of 2022 is filed by one employee Namrata V. Desai and Writ Petition (L) No. 3991 of 2022 is filed by one employee Kalpana Ramesh Purohit. Except Writ Petition (L) No. 12161 of 2024 other Writ Petition i.e. Writ Petition (L) No. 3980 of 2022, Writ Petition (L) No.4069 of 2022, Writ Petition (L) No. 3987 of 2022 and Writ Petition (L) No. 3991 of 2022 have been filed by individuals.

3. Details of the Petitioners in Writ Petition (L) No. 12161 of 2024 are as under:

Sr. No.	Name and	Date of appointment	Date of retirement	Retirement post
1.	Sunita Ajit Subhedar	22.01.1986	31.3.2019	Office Superintendent
2.	Sunil L. Jabare	22.06.1984	30.9.2021	Lab Assistant
3.	Dhondia G. Kudale	02.05.1984	31.5.2017	Peon
4	Mohini S. Isawe	01.07.1996	31.3.2023	Office Superintendent
5.	Praful Sawant	09.12.1997	31.12.2019	Peon-cum-Hamal
6.	Waman R. Sawant	19.03.1987	30.6.2020	Peon

7.	Punita Ishwarlal Rawal	19.3.1987	30.6.2013	Sr. Clerk
8.	Pravina R. Shroff	25.10.1973	31.8.2006	Senior Clerk
9.	Raghava M. Puthran	27.09.1989	31.10.2012	Sr. Clerk
10.	Rajani Salunkhe	12.11.1995	30.6.2023	Sweeper
11.	Uday Dandekar	1.1.1990	31.12.2022	Office Superintendent
12.	Madhukar S. Kewte	17.03.1987	31.7.2011	Peon
13.	Swati Uday Dandekar	27.6.1989	31.5.2021	Head Clerk
14.	Jayesh S. Upadhyay	1.8.1986	31.7.2016	Office Superintendent
15.	Martha A. Fernandes	01.07.1995	31.10.2016	Maid Servant
16.	Mrs. Amita A. Gagangras	01.07.1983	30.8.2016	Senior Typist

4. In Writ Petition (L) No. 3980 of 2022, the Petitioner worked as senior head clerk and retired from services on 30 September 2015. In Writ Petition (L) No. 4069 of 2022, the Petitioner worked as Peon and has retired from service on 30 November 2011. In Writ Petition (L) No. 3987 of 2022, the Petitioner worked as Junior Clerk and has retired in the year 2009. In Writ Petition (L) No. 3991 of 2022, the Petitioner has retired as Junior Clerk on 31 July 2010.

5. Writ Petition (L) No. 15683 of 2024 is not on board. Taken on board. There are 20 employee Petitioners in this petition, whose details are as under:

Sr.	Name and	Date	of	Date	of	Retirement
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No.		appointment	retirement	post
1.	Jameela Maksud Khan	1.11.1990	30.4.2022	Junior Accountant
2.	Savithri Ramaksrishnan	1.10.1997	31.10.2014	Clerk-cum-Typist
3.	Mrs. Neha Narendra Naik	1.1.1989	30.6.2021	Clerk
4	Sneha Nikam	15.04.1998	28.02.2019	Clerk-cum-Typist
5.	Late Shantaram Babaji Chavan	02.12.1980	03.01.2000	Duplicate Machine Operator
6.	Ashwin Muktilal Kothari	03.09.1963	30.06.2002	Senior Typist
7.	Gangaram Mahadev Phalke	17.05.1982	31.10.2018	Duplicate Machine Operator
8.	Sahadev Anaji Raut	1.1.1991	24.11.2011	Security Guard
9.	Late Bharatiben Bhartkumar Bhatt	01.06.1982	31.10.2008	Senior Typist
10.	Sidhu N. Kokare	19.05.1982	31.05.2015	Hawaldar
11.	Govind Gangaram Raut	15.02.1962	30.04.2008	Skilled Worker
12.	Late Raju Lalji Solanki	1.6.1987	31.8.2019	Administrative Officer
13.	Late Ulhas Shantaram Admane	2.5.1986	31.1.2007	Technical Assistant
14.	Baliram Pandurang Raut	20.05.1974	31.05.2011	Peon
15.	Indumati Shridhar Sapkal	1.7.1987	31.3.2012	Maid Servant
16.	Late Mohan Dhondu More	27.11.1992	17.02.2018	Peon
17.	Mankumar Solanki	01.07.1987	17.12.2004	Duplicate

				Machine Operator
18.	Padmanabha Sapaliga	19.11.1988	01.11.2007	Watchman
19.	Laxmi Narayan Gurav	01.08.1996	31.03.2020	Maid/Servant
20.	Late Laxman Parke	01.04.1983	11.04.2017	Peon

6. There is no dispute before us on two counts - (a) that 7th pay commission is applicable to the Respondent University and (b) that pensionary benefits as per 7th pay commission are not being paid to the Petitioners. It is also not in dispute that current pensionary benefits as per 6th pay commission are being paid. The Petitioners contend that Dearness Allowance which is enhanced in respect of the other employees, is not enhanced for the Petitioners. It is the case of the Petitioners is that there is substantial difference between 6th and 7th pay commission pension and they are put to serious hardship because of non-payment as per the 7th pay commission. According to the Petitioners, dear allowance is @142% and existing employees are receiving it @164% of the basic pay.

7. When Writ Petition (L) No. 3980 of 2022 and others came on board, the following order came to be passed on 11 March 2024 :

“ Three Petitioners are before us. Petitioner- Prachi P.Kulkarni was working as a Senior Head Clerk with the Respondent - University. Petitioner - Suhas Narayan Gogate was working as a Peon and Petitioner - Namrata V. Desai was working as a Junior Clerk with the Respondent -University. All these Petitioners have retired on superannuation a long time ago. It is

their grievance that they are not being paid pensionary benefits. They rely upon various circulars, government resolutions and also the consent order passed by the Division Bench of this Court in Review Petition (L) No. 52 of 2001 in Writ Petition No. 894 of 1999 (The Registrar SNDT Women's University vs SNDT Women's University Non teaching Employees Union and Ors.). In these consent terms, the University had agreed for pensionary benefit to non-teaching employee whether aided or unaided divisions as a matter of principle. At that time, the issue was of Sixth Pay Commission. Now, the issue is of Seventh Pay Commission.

2. Considering this position, we had called upon the learned Counsel for the Respondent -University drawing their attention to the above mentioned order passed by this Court.

3. Today, the learned Counsel for the Respondent - University tenders affidavit in Writ Petition (L) No. 3987 of 2022 wherein it is stated that the University has decided to pay pension as per recommendations of Seventh Pay Commission. However, there is further steps to be taken regarding Management Council for approval. As regards other Petitioners are concerned, no affidavit is filed. The learned Counsel for the Respondent -University states that the similar decision is likely to be taken in respect of other Petitioners as well.

4. We have to remind the University that it is a public body in the field of education and it is expected that it will conduct itself as such.

Needlessly withholding the pensionary benefit of its retired employees is not something that a University is expected to do.

Therefore, by way of indulgence, we grant four weeks' time for disbursement of pensionary benefit to all these Petitioners. If by the next date the amount is not so disbursed, then this Court will be constrained to call the Registrar of the University to explain the position and also why the Court should not impose penal interest.

5. Stand over to 15 April 2024, to be listed under the caption "For Directions".

Thereafter the matters were adjourned from time to time for the Respondent- University to make a commitment regarding the schedule of payments.

8. The matters were heard yesterday in the presence of the Registrar of University. However, no specific commitment was coming forth. Therefore, we kept the matter today for the learned counsel of the Respondent - University to receive written instructions. All that is handed over by the learned counsel for the Respondent- University are minutes of the meeting chaired by the Vice Chancellor and some of the employees. However, nothing regarding payment is stated therein.

9. It is the stand of the Respondent- University that it will pay the pension as per 7th pay commission after sufficient corpus is generated which the University expects from June 2025. We had repeatedly put to the Respondent- University to take a reasonable stand regarding payment by installment, however, unfortunately no reasonable stand is coming forth. The learned counsel for the Respondent- University,

obviously for lack of any specific instructions, can only state before us that University is trying to generate corpus fund and after corpus fund is received, which the University expects, in not less than 12 months amount can be disbursed. The learned counsel for Respondent- University states that date of implementation of the 7th pay commission to un-aided non-teaching pensionary staff of the University and the arrears can be only after 1 June 2015.

10. The learned counsel for the Petitioners submitted that all the Petitioners are senior citizens. Some of the employees have expired and their claims are being pursued by their heirs. The learned counsel for the Petitioners has drawn our attention to the fact that this is not the first time that the employees of this University have to struggle to get their pensionary benefits and this University has a history of not paying its employees in time. The learned counsel for the Petitioners had drawn our attention to the order dated 25.10.2005 in respect of applicability of 6th pay commission. It reads thus :

“ This is a petition seeking review of our order dated 24.12.1999 passed in Writ Petition 894 of 1999. That writ petition was filed by the Union of the non-teaching employees of the SNDT University. At the time of the hearing of the petition a broad based arrangement was arrived at between the parties and the order under review was passed on the basis of the minutes of order filed by the parties. However, the University could not implement the order due to certain procedural difficulties.

. After the review petition was filed there were negotiations between the University and the Union and they have arrived at a settlement and fresh minutes of order are presented by the counsel for the University and the Union. The minutes of order are taken on record and marked "X" for identification. By consent of the learned counsel for the University and the Union the order dated 24.12.1999 is recalled and order is passed in terms of fresh minutes of order filed by the University and the Union.

. By consent it is directed that this order shall apply to the entire category of non teaching employees of the University employed in any of its establishment/ colleges/ departments/ institutions including autonomous colleges whether aided or unaided and shall apply prospectively from the date of this order. All the promotions/ nominations/transfers already made on the basis of the separate seniority lists shall not be affected by this order.

. We may also state that the University has agreed and undertaken that whenever any non teaching employee is transferred from unaided to aided establishment/ department/institution the University shall make proportionate contribution to the appropriate agency for pension payable to such employee at the rate fixed by the government. Similarly whenever the non teaching employee transferred from the aided to unaided self supporting establishment/ college/department/ institution the University shall protect the and wages and difference of such employee. Thus there shall be no extra financial burden on the State.

. Review petition stands disposed.”

As we note, the earlier order directing the Respondent-

University to pay certain amounts within time bound period was reviewed after negotiations and settlement between the University and others.

11. Thereafter, when 7th pay commission was applicable to the Respondent- University in September 2022, with effect from 1 January 2016, again the Respondent- University is not paying as per revised pay scale and its employees are back in the Court.

12. The Respondent- University is a statutory body governed under the Maharashtra Public Universities Act 2016 (in short “the Act of 2016”). The Act of 2016 is brought about for strengthening and regulating the public universities regarding standard of education and academic excellence. This cannot be achieved without the participation of the teaching and non teaching staff of the University. The functioning of the University cannot be at the cost of the welfare of its employees. The Act of 2016 provides for funds, accounts and audits and a special provision is made under Chapter 13 of the Act of 2016 for Respondent - Shreemati Nathibai Damodar Thackersey Women’s University. The learned counsel for the Petitioners states that as per his information, more than 300 colleges are affiliated to the University.

13. When 7th pay commission was made applicable, the University ought to have started on the path of securing funds and creating of corpus. It is not to be created and efforts are not to be made, only after petition is filed in this Court. Even when the Court called upon

the Respondent- University to submit time limit, it is not stated as to what efforts have been made to raise the funds after the pay commission have been made applicable.

14. The Hon'ble Supreme Court in case of *Mahatama Gandhi Mission and Anr. V. Bhartiya Kamgar Sena and Ors.*¹ has observed even if grant is not received, it is for the institution to find innovative ways to raise funds to discharge their liability regarding payment under revised pay commission. Since there cannot be a debate regarding entitlement of the Petitioners, the only question therefore would be of payment by way of schedule. But unfortunately, as stated above, no commitment of payment is coming forth, in spite of the fact that the petitions are adjourned from time to time and in spite of the Registrar of the University attending the hearing on one date.

15. That leaves us no option but to set time limit for the payment. It cannot be that there is absolute refusal even to consider paying any amount till after one year i.e. till June 2025. Such a stand on the part of a Statutory University in respect of its own employees, cannot be accepted. If such conduct of the University is accepted, the colleges affiliated to this University will be embolden to disregard dues of its own teaching and non teaching staff.

16. In these circumstances, by way of interim order, we direct that the Respondent- University will commence payment of pensionary benefits including dearness allowance to the Petitioners as per 7th pay

1 (2017) 4 SCC 449

commission from 1 July 2024 onwards.

17. As regards arrears are concerned we direct installments as follows :

(A) 33% of the arrears as on date, shall be paid to the Petitioners within three months from today. Next 33% of the arrears shall be paid within three months thereafter and the remaining 34% of the arrears shall be paid within three months further thereafter.

(B) If the first installment of 33% arrears is not paid within next three months, the facility of next 2 installments would be withdrawn and entire pending arrears will become payable within six months from today.

18. To secure compliance, we issue Rule in all these petitions. Respondents waive service. If there is any default, we grant liberty to the Petitioners to take out interim application for necessary orders.

19. Petitioners to remove all office objections by **14 June 2024**.

(M.M. SATHAYE, J.)

(NITIN JAMDAR, J.)