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 Order pronounced 31/07/2021.
 issued on -
 Duration-- 8 Years, 6 Months, 14 Days.



**Rashtrasant Tukadoji Maharaj Nagpur University, Nagpur
 BEFORE THE GRIEVANCES COMMITTEE.**

(Presided over by Shri. Arvind J. Rohee, former District Judge.)

Grievance Petition No. 02/2013

Applicant : Shri Chandresh Suryakant Jodhani,
Grievance 188, New Subhedar Lay Out,
Petitioner Nagpur-440024.

- VERSUS -

Non-Applicant: 1. Shri Shivaji Education Society
 through its President, Camp,
 Amravati.
 2. Shri Shivaji Education Society
 Amravati's Science college, through its
 Principal, Congress Nagar, Nagpur.

ORDER

(Delivered on 31/07 /2021)

1. This is an Appeal under Section 57 of the erstwhile Maharashtra Universities Act, 1994 (now Grievance Petition under Section 87(1) of the Maharashtra Public Universities Act, 2016) claiming salary as per 6th Pay Commission, Annual Increments, Release of withhold Salary, etc. and the following reliefs are sought:

- (i) Direct the respondents to make applicable the benefits of pay scales of 6th Pay Commission to the appellant with effect from 01.03.2007 and accordingly work out the pay fixation in the prescribed scale with effect from 01.01.2007 and to pay arrears of salary as per 6th Pay Commission from 01.03.2007 to 30.09.2012 as per that pay scale.

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- (ii) Direct the respondents to pay salary as per 6th Pay Commission after placement with effect from 01.10.2012 regularly.
- (iii) Direct the respondent to grant benefit of yearly increments to the appellant in the prescribed pay scale from 01.03.2007 to 30.09.2012, and accordingly effect the pay fixation by taking into account benefit of yearly increment from 01.03.2007 and to pay arrears of salary accruable to the appellant.
- (iv) Direct the respondents to prepare and update the Service Book of the appellant and supply the copy of updated Service book to the appellant.
- (v) Hold that the action of the respondents in withholding salary for the period from 01.05.2012 to 10.06.2012 is bad in law and direct the respondents to release and pay the withheld salary without any delay.
- (vi) The appeal may kindly be heard and decided on priority.
- (vii) Allow the appeal with costs.
- (viii) Grant any other relief, which this Hon'ble Committee deems, fit in the facts and circumstances of the case.

2.

The petition has a chequered history right from the year 1996. It is stated that on 15.12.1996, the Applicant was engaged on daily wages by the Non-Applicant No. 2 in a college run by Non-Applicant No. 1 in the Department of Computer Science, but on no grant basis. The Applicant rendered sincere and faithful service for a period of 10 years without any break. Thereafter, he submitted the Application dated 05.12.2006 (Annexure-A-1) to the Non-Applicant No. 2 for regularization of service and his absorption in permanent post of Laboratory Attendant. The college is affiliated to RTM Nagpur University, Nagpur and head office of the Respondent No. 1 Society is at Amravati. The Applicant claimed pay scale as prescribed by the State Govt. for the aforesaid post adopted by the University. It is stated that this application was moved in pursuance of the advertisement issued on 28.09.2006 to fill up the vacant posts.

3.

The Non-Applicant No. 2 held meeting of the Local Managing Committee of college to consider the aforesaid request dated 05.12.2006. A resolution came to be passed recommending regularization in service based on performance of the Applicant, the length of service rendered and his conduct. It is stated that in pursuance of the aforesaid decision of Local Managing Committee, the Non-Applicant No. 2 submitted a proposal dated 14.02.2007 (Annexure-A-2) to the Non-Applicant No. 1 for its approval. It is stated that the Respondent No. 1 granted approval to the aforesaid proposal of regularization in service, since the aforesaid proposal is endorsed by the President of the Society. Based on the aforesaid approval, the Non-Applicant No.2 on 26.02.2007 issued order of appointment (Annexure A-3) in favour of the Applicant & two others similarly placed on the post of Laboratory Attendant in the pay scale of Rs. 3050-75-3950-80-4590 and put them on probation for a period of two years. Some other conditions are also incorporated in Annexure A-3. In response to the aforesaid order of appointment, the Applicant and two others submitted joining report to the Non-Applicant No. 2 on 01.03.2007 (Annexure-A-4).

4.

It is stated that from the date of joining the service on regular basis till 30.11.2009, no dispute was raised by the Non-Applicants regarding the Applicant's appointment as Laboratory Attendant on regular basis. It is stated that the annual increment due on 01.03.2008 and 01.03.2009 were also released by the Non-Applicants and he received regular salary. The Applicant also completed the probationary period of two years on 28.02.2009 and hence according to him he became regular/permanent / confirm employee of Non-Applicants.

5.

It is stated that in December-2009, the office of Non-Applicant No. 2 prevented the Applicant and two others to sign the muster roll, since their names were removed there from. It is stated that subsequently the Non-Applicant No. 2 allowed



Applicant to attend duty. He also called upon the Applicant and two others to work during summer vacation by issuing a letter (Annexure-A-5). The Applicant and two others accordingly attended the duty from 01.06.2012 to 10.06.2012, however, they were not paid the salary for this period, it is alleged.

6. On 14.12.2009, the Applicant and two others submitted a common representation (Annexure-A-6) to the Non-Applicant No. 1 for redressal of grievance. However, since it was not considered favourably, the Applicant and two others approached the University & College Tribunal by way of separate appeals, challenging the illegal action of the Non-Applicants. In the said appeals, the Applicant and two others contended that since they were prevented from signing the muster roll, it is nothing but their otherwise termination from service. The Non-Applicants, however, took a stand in the aforesaid appeals before the University & College Tribunal that the Applicant and two others were not terminated from service and hence the University & College Tribunal has no jurisdiction to consider the appeals.

7. On 02.08.2010 the University & College Tribunal passed interim order (Annexure-A-7), directing the Applicant and two others to attend the college on 03.08.2010 and the Non-Applicants to make available muster roll for their signatures. In pursuance of the aforesaid order, the Applicant and two others attended the college and Non-Applicant No.2 permitted them to sign the muster. In the said appeal on 22.10.2010, the Non-Applicants filed affidavit stating that in view of the above factual position the appeals do not survive and it is liable to be rejected. On the aforesaid affidavit the University & College Tribunal passed the order on 25.02.2011 (Annexure-A-8) holding that the issue of otherwise termination would be decided on merit after hearing both the parties. In pursuance thereof the final order dated 30.11.2011 (Annexure-A-9) came to be passed by the University &

College Tribunal, dismissing the appeals as not maintainable for lack of jurisdiction. Liberty is also granted to the Applicant and two others to approach appropriate forum to resolve the issue of payment of salary, although the issue of otherwise termination was kept open.

8. Aggrieved by the aforesaid Order dated 30.11.2011, the Applicant and two others approached Hon'ble High Court of Mumbai Bench at Nagpur in separate Writ Petitions. During pendency of the aforesaid Writ Petitions the Applicant and two others approached this forum in separate Appeals on 17.01.2013. The Hon'ble High Court on 20.06.2013 disposed off the Writ Petitions on the statement made on behalf of the Non-Applicant No.1 that the Applicant and two others will get continuity in service and hence main grievance in the Writ Petitions stands redressed.

9. The record shows that the previous Grievances Committee entertained the Appeals dated 17.01.2013 during pendency of Writ Petitions. On decision of High Court Applicant and two others submitted supplementary pleadings in the pending Appeals dated 17.01.2013, in which the following reliefs are sought:-

- (i) Take the present supplementary pleadings on record of adjudication along with the appeal No. 01/2012 in view of order dated 20.06.2013 passed by the Hon'ble High Court in writ petition No. 2614 of 2012 thereby accepting the continuity in service of the appellant and holding that the services of the appellant were never terminated.
- (ii) Direct the respondents to grant status of deemed confirmation of service to the appellant w.e.f.01.03.2009 and accordingly effect the pay fixation by taking into account benefit of yearly increment as per 6th Pay commission and to pay the said salary regularly.
- (iii) Direct respondents to reinstate the appellant on the post of Laboratory Attendant in respondent No. 2 college with all consequential benefits namely back wages, continuity in service and seniority w.e.f. 02.12.2009.



- (iv) Hold that the action of the respondents in once again withholding salary for the period from 01.05.2013 to 15.06.2013 is bad in law and direct the respondents to release and pay the withheld salary without any delay.
- (v) The appeal may kindly be heard and decided on priority.
- (vi) Allow the appeal with costs.
- (vii) Grant any other relief, which this Hon'ble Committee deems, fit in the fact and circumstances of the case.

10. On 31.08.2013, the Sub-Committee of Grievances Committee submitted a draft order to the then Chairman of the Grievances Committee, which is accepted on 03.02.2014, and following operative order is passed.


"The Grievance Committee allowed the appeals and directed the respondent No. 1 Society and respondent No. 2 Shri Shivaji Science college, Nagpur----

- (1) to treat the appellant as continued in service in view of the order dated 20/6/2013 passed by the Hon'ble High Court in Writ Petition No. 2614/2012 thereby accepting the continuity of service.
- (2) to make applicable the benefits of pay-scale of 6th Pay Commission to the appellant with effect from 1.3.2007 and pay arrears of salary for the period 1.3.2007 to 30.9.2012.
- (3) to effect the pay fixation by taking into account benefit of earlier annual increments as per the 6th Pay Commission and to pay the said salary regularly.
- (4) to allow all consequential benefits namely back wages, continuity in service and seniority with effect from 2-12-2009.
- (5) to release the held-up salary for the period from 1.5.2013 to 15.6.2013.
- (6) to prepare and update the service book of the appellant and supply the copy of updated service book to the appellant".

11. The aforesaid decision of the Grievances Committee was then placed before the Management Council of the University on 6th March, 2014 for approval and it was accepted.

12. The said decision was then communicated to the Applicant and two others and Non-Applicants by the office of the University vide letter dated 19.03.2014. The record shows that Non-Applicants since dis-satisfied with it, challenged the aforesaid decisions in separate Writ Petitions before the Hon'ble High Court of Mumbai, Bench at Nagpur. The Writ Petitions are allowed by the Hon'ble High Court vide common order dated 27.02.2015 and the matter is remanded to the Management Council of the University to reconsider the report of the Grievances Committee after giving due opportunity to the Applicant and the Non-Applicants to put forth their say in the matter and the Management Council thereupon shall take a decision in accordance with law. Thereafter the Management Council on receiving the order constituted a Sub-Committee to consider the case. The Sub-Committee after hearing the Applicant and Non-Applicants submitted its report/ recommendations to the Management Council of the University for consideration, which was accepted in a meeting dated 30.01.2016 granting the relief to the Applicant and two others.

13. The Non-Applicants again aggrieved by the aforesaid decision of Management Council of University challenged it in separate Writ Petitions in the year 2016. By a common order dated 27.09.2019, the aforesaid Writ Petitions are allowed and order dated 30.01.2016 passed by the Management Council of the University is set aside and the matter is remitted to this Grievances Committee for fresh decision to be taken after hearing the parties in accordance with law and after recording reasons therefor. This order came to be passed since the Management Council itself has not heard the Applicant and the Non-Applicants and instead entrusted the said task to the Sub-Committee which is not permissible. In the meantime, since the Maharashtra Public Universities Act, 2016 came into force w.e.f. 01.03.2017 by



repealing the erstwhile Maharashtra Universities Act, 1994, in which the power and jurisdiction of the Management Council of University to take a decision on a report submitted by the Grievances Committee is taken away. The matter is, therefore, remitted to this Grievances Committee and not to the Management Council of the University. In the aforesaid decision of remand, in which the Hon'ble High Court issued further directions as under:

"It is made clear that the compliance of the directions shall be without prejudice to the contentions of the petitioners and if the respondents-employees are found entitled to a lesser amount in view of the decision of the Grievance Committee, the excess amount shall be refunded by the employees within one month of the decision. Similarly, if the employees are found entitled to more salary or further benefits in view of the decision of the Grievance committee, the petitioners shall pay the employees the shortfall in the salary or any other financial benefits within thirty days subject of course to their right to challenge the decision of the Grievance Committee in appropriate proceedings.

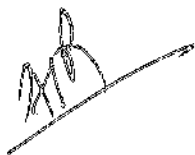
The petitions are disposed of in the afore-stated terms."

14. This is how the present Grievance Petition along with two others are placed before this Grievances Committee for consideration and decision in accordance with law. Thus all the previous decisions rendered by the Grievances Committee and Management Council of University have no force or binding effect and matter needs to be adjudicated afresh by this Grievances Committee in view of the last order dated 27.09.2019 of Hon'ble High Court.

15. On notice, both the parties appeared before this Grievances Committee after remand. Initially the Non-Applicants by a common reply dated 12.03.2013 resisted the appeal by denying all the adverse averments, contentions and grounds raised therein. It is stated that although the Applicant is presently working under Non-

Applicant No. 2 on the post of Laboratory Attendant, his appointment is temporary and conditional. It is stated that the claim made is not maintainable and hence the same is liable to be dismissed, since no cause of action arose to approach this forum. It is stated that the Applicant is not entitled to get benefits of 6th Pay Commission as claimed.

16. It is stated that the Applicant by order dated 26.02.2007 was appointed as Laboratory Attendant, which order was conditional and in a college running on no grant basis in Computer Science Department. Since the department of Computer Science in college still runs on no grant basis, expenses are exclusively borne by the Management including salary of the employees working in the said department. The claim cannot be granted in violation of the provisions of Section 81 of the Maharashtra Universities Act, 1994.
17. It is stated that at no point of time the salary is paid to the applicant as per specified segment of State Govt. and hence claim of the Applicant for grant of pay fixation as per 6th Pay Commission is not maintainable. His salary and other service benefits are decided by the Local Managing Committee of the college. It is also stated that since Local Managing Committee has not taken any decision regarding grant of service benefits to the Applicant, the reliefs sought cannot be granted.
18. It is stated that the appeal is barred by limitation since filed after 5 years from the date of appointment of order.
19. It is stated that till date, salary is paid to the Applicant from the exchequer of the Society. For this reasons also salary as per 6th Pay Commission cannot be granted which is not applicable to the Applicant. It is repeated that since appointment is conditional, no relief can be granted to the Applicant.



20. It is also stated that since appointment order is issued under the signature of the Non-Applicant No. 2, the Applicant cannot say that he has been regularly appointed by Shri Shivaji Education Society, which has exclusive right to make appointment of teaching and non-teaching staff after publishing advertisement in local newspaper.
21. It is also stated that approval or permission of the Competent Authority is not sought for making appointment of the Applicant. It is also stated that the appeal is bad for non-joinder of State Govt. and Deputy Director of Education as the necessary party respondents.
22. It is, however, admitted by the Non-Applicants that the Applicant was initially appointed as daily wager in the college under respondent No. 2 under his signature in a department which was being run on no grant basis. It is, however, denied that the Applicant was senior most in the college and hence was appointed to the post of Laboratory Attendant. It is also stated that the Applicant's appointment has been made without following due process and hence he is not entitled to any relief and appeal being without merit, is liable to be rejected.
23. The members of the Grievances Committee present heard and considered the submissions made by the Applicant and substituted Applicant. On behalf of Non-Applicants, the submissions were made by Shri Sheshrao Khade, Secretary of Shri Shivaji Education Society, Amravati and Dr. Mahendra Dhore, present Principal of Shri Shivaji Science College, Nagpur, quite at length. The photocopies of relevant documents produced by Non-Applicants are taken on record. The original register produced by the Non-Applicants as directed for perusal by the Committee Members & returned to.... By relating its photocopies on record.

24. After matter is closed for orders, the members of the Grievances Committee present have carefully gone through the entire case record. They have also held deliberations and discussions on all the issue involved in the matter including the legal aspect of the case.
25. This order is authored by the undersigned and it was circulated to the members of the Grievances Committee present and on their approval by considering suggestions, corrections by them, it is pronounced in presence of the parties with due notice to them. The order is signed by the chairman of the Grievances Committee for and on behalf of all the members of the Grievances Committee as per the prevailing practice.
26. On the basis of the submissions made and the material produced on record, the following points arise for consideration of the Grievances Committee and the findings recorded thereon are given below for the reasons that follow:

<u>Points</u>	<u>Findings</u>
1) Whether the Applicant's appointment dated 26/2/2007 on the post of Laboratory Attendant by regularization of past service rendered on daily wages is legal and proper.?	The claim is not maintainable in absence of a decision of Governing Body of college.
2) Whether the Applicant is entitled to the reliefs sought?	Does not arise.
3) What order?	As per the operative order.

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REASONS27. As to point No. 1:

The main grievance of the Applicant and two others revolves around the fact whether their full fledged appointment on the post of Laboratory Attendant is legal, proper and validly made. This is so because the Non-Applicants have taken a specific defence that their appointment is not properly made, meaning thereby that it has not been validly made by the appropriate appointing authority by following the prescribed procedure.

28. To proceed with, it is not disputed that prior to appointment of the Applicant and two others as Laboratory Attendant, they rendered service for about 10 years on daily wages in Computer Science Department, which was admittedly running on no grant basis. The Applicant must have been paid the salary since Non-Applicant No.1 is a big and reputed educational institution, in Vidarbha Region, which is established by Late Dr. Punjabrao Deshmukh who happened to be the Central Minister of Agriculture. The Non-Applicants also stated that salary is paid to the Applicant out of exchequer of the society or determined by the Management Committee and not as per the prescribed pay scale for the said post. Being the educational society it has Managing Committee/ Executive Body with Chairman and other elected Members. Regular elections of Executive Body is held as per rules, it is stated. The object of the society being to impart education, it must have been registered as a public trust too under the Bombay Public Trust Act, 1950. It is needless to say that for making appointment of teaching or non-teaching staff in any college run by society, prescribed procedure is required to be followed as per rules. It is stated that the Society received grants-in-aid from Govt. for

different subjects/departments in various colleges run by the Society, except for department of Computer Science. The only difference is that the Computer Department in Non-Applicant No. 2 college being run on no grant basis, the appointments of any teaching/non-teaching staff made by the Managing Committee of the society need not be communicated to the University, although college is affiliated to it and roster point for reservation is required to be approved by the University for appointment of staff even in college /department run on no grant basis. Had it been receiving grant in aid from the State Government, the position would have been slightly different, in which case the appointments made for the teaching and non-teaching staff in a college are also required to be approved by the University, since the question of payment of salary by the college from its exchequer does not arise once it is borne by State Govt. It is needless to say that sanctioned posts of each category for teaching and non-teaching staff are approved, depending upon the prescribed strength of the students to be admitted in each class.

29. In the background of the above factual position, it is not disputed by the Applicant that he rendered services as Laboratory Attendant and received the payment/ remuneration by way of daily wages from the Non-Applicant No.2, i.e. he was appointed to work in a college run on no grant basis, which he accepted, perhaps under apprehension that in future the Computer Science Department would receive grant-in-aid from the Govt. and he will be absorbed as regular employee.

30. Applicant further contended that having rendered 10 years of service on daily wages, he applied for regularization of service and for his appointment on a regular sanctioned post with prescribed pay scale by the Government. The salary of

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such employees who are appointed by following due process, even in a college run on no grant basis, is to be paid by the Management out of education fees collected from the students and funds raised from other sources. The record shows that the Application submitted by the Applicant was placed for consideration before the Local Managing Committee of Non-Applicant No. 2 college, of which Principal is ex-officio Member-Secretary. There are other members from teaching and non-teaching staff in the Local Managing Committee, which is headed by the President/Chairman of the Society. However, any decision taken by Local Managing Committee in the matter of appointment of staff is required to be forwarded to the Managing Committee /Executive Body of the Society for its approval. As stated earlier the Managing Committee /Executive Body of Society is headed by the President beside the Vice-President, Secretary, Treasurer and other members. As such any proposal forwarded by the Local Managing Committee of the college is required to be approved by the Managing Committee/Executive Body of the Society for making the appointment of teaching and non-teaching staff.

31. So far as the administrative business of aided and unaided private colleges affiliated to the University is concerned, the position is governed by Ordinance No. 24, College Code which came into effect from the academic session 1967-68. This was prior to enactment of Maharashtra Universities Act, 1994 in which the Administrative Committee of college was referred as Local Managing Committee (LMC). The position is slightly changed in the year 2016 after enactment of Maharashtra Public Universities Act, 2016 in which it is referred as College Development Committee (CDC).

32. Perusal of the Ordinance No. 24 reveals that the provision for constitution of the Governing Body for management of the

college is made under clause 8 & 9, by which Chairman of the Foundation Society (Education Society) is Ex-officio Chairman of the Governing Body. Similarly, the Secretary of the Education Society is its Ex-officio Member. Further, the Principal of the concerned college is nominated as Ex-officio Secretary of the Governing Body and four Members appointed by the Education Society, three Members elected from among themselves by the teachers of the College who have been confirmed teachers in that college for not less than 7 years, completes the formation of Governing Body. It is obvious that the Non-Applicant No. 2 college must have the Governing Body in terms of above provisions.

33.

The formation of the Governing Body and Foundation Society is prescribed in clause 17 to 23 of Ordinance No. 24. We are mainly concerned with the provisions of clause 17 and 20 thereof which reads as under:

(17) The Governing Body shall be responsible for the Management of the College and in particular for the –

- (a) management and regulation of the Finance, Accounts and Investment;
- (b) preparation of the Budget and Financial Statements;
- (c) institution of teaching and other posts;
- and (d) appointment of Teachers and other Servants of the College.

(20) The Governing Body shall submit to the Foundation Society proposals for –

- (a) items of new expenditure not provided in the College budget exceeding Rs. 1,000/- in the case of recurring expenditure and exceeding Rs. 3,000/- in the case of non-recurring expenditure;
- (b) institution of new teaching posts;
- and (c) any proposal involving liability on the Foundation Society or affecting directly or indirectly the rights of the Foundation Society or its members.

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34. It is obvious from the above provisions that any decision taken by the Governing Body in the matter of appointment of teachers and other servants i.e. non-teaching staff needs to be taken in its meeting by a resolution and the said proposal which involves financial liability on the Education Society regarding payment of salary when appointments are in unaided colleges, it is required to be approved by the Education Society in the meeting of Management Committee / Executive Body.

35. In the present case although the photo copy of the resolution of the Governing Body is produced on record by the Non-Applciant No. 1, containing minutes of meeting dated 06.12.2006, in which various items/subjects are discussed and decision taken thereon. It is stated by the Applicant and Non-Applciant No. 2 that Item No. 6 relates to regularization of the service of Applicant and two others and hence on it basis a proposal dated 14.2.2007 (Annexure-A-2) is served on the President of the Society for approval. However, careful perusal of said Item/subject No. 6 nowhere mentions names of the Applicant and two others nor regarding any discussion held on the issue of regularization of their services nor it reflects any decision taken by the Governing Body to regularize service of the Applicant and two others. It only speaks about request made by one Shri L. B. Bute non-teaching staff representative to the Chairman of the Society to consider the cases of contractual/daily wagers working for more than 9 years for appointment on regular basis. It appears that the Principal of the college orally submitted necessary details. However, it is specifically mentioned that the Chairman has not approved the proposal and as such it cannot be said that the case of the 3 incumbents was considered for regularization of their service and it is accepted. It only states that President said that the issue of daily wagers should not have been raised and the and

the teaching staff should bear the salary of such daily wagers out of their additional pay, meaning thereby it was not considered nor approved. However, record shows that the then Principal of the college submitted a false and fabricated proposal (Annexure-A-2) mentioning that a decision was taken in a meeting dated 06.12.2006 of the Governing Body for regularization of the service of three incumbents. Perhaps, for this reason the documentary evidence regarding dispatch of proposal to the Society is not produced by Non-Applicant No.1 in the present case, so also a decision taken by the Executive Body of the Society on alleged proposal of Governing Body. It is obvious that the then Principal exceeded his authority by issuing the incorrect/false/fabricated proposal and without waiting for the decision of Society on it issued appointment order after 15 days. During this period no correspondence is shown to have been made by the Non-Applicant No. 2 and in pursuance of the appointment order the three incumbents joined and they continued in service till 01.12.2009 on which day they were prevented from signing on muster roll. Thereafter series of the court proceedings were held as a result of which the Applicant and two others were continued in service, based on the submission made by the President of the Society in a pending Writ Petition before the Hon'ble High Court that the Applicant and two others will be continued in service. However, this does not mean that three incumbents have been validly appointed on regularization of service by the Society. This being so, it is stated that the Applicant and two others are continued and are getting the benefits of pay scale as per 6th Pay Commission and hence it should be held that their services are validly regularized. This is devoid of substance for reasons to follow.

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36.

Looking to the facts of the present case in the background of the above position, it is obvious that the proposal (Annexure-A-2) for appointment of Applicant on regularization of service is not proved to have been forwarded by Non-Applciant No.2 Principal to the Non-Applciant No. 1 President of the Society for approval of its Managing Committee/Executive Body and although there appears to be endorsement of the President of the Society on said proposal (Annexure-A-2), it cannot be said that the said proposal has been approved by the Managing Committee /Executive Body of the Society. It may be stated that the President of the Society was present when the proposal was considered by the Local Managing Committee in his capacity as Chairman of Local Managing Committee. It is also stated on behalf of the Non-Applciant No. 1 that the endorsement / signature of the then President of the Society is subsequently obtained on the aforesaid proposal and he was unaware about it. In any case as stated earlier for making a valid appointment of any teaching or non-teaching staff in a college run by Society, on receiving grants or no grants, approval of Managing Committee /Executive Body of Society is mandatory, without which it can't stand. In the present case as stated and discussed above such approval is to be lacking. However, it is also obvious from record that the President of Society was served with copy of proposal sometimes after meeting of the Local Managing Committee of college and as such the then President of Society was bound to take further necessary steps to place the proposal before the Managing Committee/ Executive Body of the Society, which it appears that he failed to do. Since the President of Society chaired the meeting dated 06.12.2006, the Local Managing Committee was well aware about decisions taken in the said meeting and there is no decision on regularization of service of three incumbents. Hence no adverse inference can be drawn against Non-

Applicants No. 1. Photo copy of the minutes of meetings and resolution produced on record. Its perusal shows that as many as thirteen proposals /subjects were discussed and decision taken thereon. As such he was fully aware about it. It cannot be said that since there is nothing on record to show that the proposal is disapproved by Society, it is deemed to have been approved by Society.

37.

Be that as it may, it is obvious from record that both the then Principal and President of Society are at fault in not placing the proposal before the Managing Committee/Executive Body for taking decision on it. The Applicant although cannot be said to be at fault for inaction on the part of both the Non-Applicants and he cannot be blamed or punished but for this sole reason on the claim cannot be allowed. Further, there is nothing on record to show that after 14.02.2007 any steps were taken by the then Principal of the college for seeking approval of the Society to the aforesaid proposal. It is also not made clear if the proposal was despatched through post or hand delivery in the office of the President of the Society, at Amravati. In this respect it may be stated that the Non-Applicant No. 2 produced the original outward register of college dated 14.2.2007 containing entry in different ink indicating that the Appointment order of three incumbents is forwarded to the Society and not the proposal for approval of decision for regularization of their service. The inward register of society does not contain entry of having received the said letter. Without taking any steps or without waiting for orders of the Society on the proposal alleged to have been forwarded, the Non-Applicant No.2 proceeded further and issued order of appointment dated 26.02.2007 (Annexure-A-3), thereby appointing the Applicant and two others on the post of Laboratory Attendant in the prescribed pay scale and also by



putting them on probation of two years with certain other conditions. This appointment order has been issued under signature of the Non-Applicant No.2 by the then Principal and based on it the Applicant was allowed to join on the said post on 01.03.2007 and he continued to work and receive the salary till 30.11.2009. Till then the office of Non-Applicant No. 1 did not raise any objection for said appointment or payment of salary. Hence, it is stated that he is deemed to have accepted it and for this reason, also the appointment order cannot be faulted. It is difficult to digest this submission since it is not in accordance with the material produced on record.

38.

It is stated that from 01.03.2007 to 30.11.2009 i.e. till lapse of probationary period of two years, nobody raised any objection nor prohibited the Applicant and two others regarding their full-fledge appointment on the post of Laboratory Attendant. Further there is nothing on record to show that before completion of two years of probationary period they have been terminated from service or it is extended further. As such the three incumbents are deemed to have attained permanency on completion of two years of probationary period and hence cannot be removed except by initiation of a departmental action against him, it is urged and hence such action of office of Non-Applicant No. 2 prohibiting them from signing muster from 01.12.2009 cannot be said to be legal. It is very difficult of rely on this submission, since the fundamental requirement of passing specific resolution by Governing Body about regularisation of service of three incumbents is lacking.

39.

Before concluding it may be mentioned here that so far as regularization of service for giving appointment on permanent post with prescribed pay scale is concerned, the law laid down by the Hon'ble Supreme Court in a land mark decision of The Secretary, State of Karnataka & another VS Uma Devi and

others, Appeal (Civil) 3595-3612 of 1999 decided on 10.04.06 and reported in 2006 Supreme Court cases (L & S) 753 is very clear, relevant and worth consideration. This is to because as stated earlier the Applicant claims that he has been appointed on regular post of Laboratory attendant with prescribed pay scale vide his appointment order and the Non-Applicants also accepted issuance of order, although the Non-Applicant No. 1 denied that he has been appointed on a regular post and according to him the appointment is temporary that too in the Department run on no grant basis. With the risk of repetition, it may be stated here that the Non-Applicant No. 2 issued the appointment order after waiting for a fortnight without seeking approval to the alleged proposal by the Society. The fact, however, remains that the three incumbents were allowed to join, they worked on the said post till December-2009 without any obstruction from Non-Applicant No. 1 and according to them during this period annual increments were also released to them, before it came to the notice of the office of Non-Applicant No. 1 that their appointment is not approved.

40.

In the aforesaid case of Uma Devi, issue of public employment in the light of absorption, regularization or permanent continuance of temporary, contractual casual, daily wagers or ad-hoc employees appointed /recruited and continued for long in public employment, de-horse the constitutional scheme of public employment is elaborately considered. The element of equity for all in the matter of employment and not of just few before the court, by holding of constitutional scheme of public employment is also considered. Allowing appeals the Hon'ble Supreme Court held that the court should not issue such directions regarding absorption/regularization in service of casual, daily wagers or contractual employees unless the recruitment itself was made regularly and



in terms of the constitutional scheme. Interpreting the scope and jurisdiction of the power vested in High Courts it is held that it is not entitled to be used for issuance of directions to defeat the concept of social justice, equal opportunity for all and the constitutional scheme of public employment. Deprecating the practice of State Govt. in turning nelson's eye to such appointments/employment it is insisted on the state to make regular recruitment and appointments and not to encourage or shut its eyes to the persistent transgression of the rules of regular recruitment.

41. It is also held that only because an employee had been continued beyond the term of this appointment by the state or its instrumentalities, he will not be entitled to any right to be absorbed or make permanent in service, only on the strength of such continuance, if original appointment was not made by following due process of selection as envisaged by the relevant rules. It is also held that it is not open to the courts to prevent regular recruitment on the insistence of such employees. In the aforesaid case daily wagers were employed against vacant, sanctioned posts without undertaking recruitment process as per rules and directed to restart the regular recruitment process for such employees and others applying in pursuance of the advertisement. It is stated that the cases of the employees continued to work for 10 years or more without intervention or orders of courts or tribunals may have to be considered for regularization on merits in the light of the principles laid down in this case as one time measure, within 6 months from the date of this judgement.

42. Paragraph No. 10, 11 & 12 of aforesaid judgement are worth quoting. Hence, they are reproduced here for ready reference.

(10) In addition to the quality clause represented by Article 14 of the Constitution, Article 16 has specifically provided for equality of opportunity in matters of public employment. Buttressing these fundamental rights, Article 309 provides that subject to the provisions of the Constitution, Acts of the legislature may regulate the recruitment and conditions of service of persons appointed to public services and posts in connection with the affairs of the Union or of a State. In view of the interpretation placed on Article 12 of the Constitution by this Court, obviously, these principles also govern the instrumentalities that come within the purview of Article 12 of the Constitution. With a view to make the procedure for selection fair, the Constitution by Article 315 has also created a Public Service Commission for the Union and Public Service Commissions for the States. Article 320 deals with the functions of Public Service Commissions and mandates consultation with the Commission on all matters relating to methods of recruitment to civil services and for civil posts and other related matters. As a part of the affirmative action recognized by Article 16 of the Constitution, Article 335 provides for special consideration in the matter of claims of the members of the scheduled castes and scheduled tribes for employment. The States have made Acts, Rules or Regulations for implementing the above constitutional guarantees and any recruitment to the service in the State or in the Union is governed by such Acts, Rules and Regulations. The Constitution does not envisage any employment outside this constitutional scheme and without following the requirements set down therein.

(11) In spite of this scheme, there may be occasions when the sovereign State or its instrumentalities will have to employ persons, in posts which are temporary, on daily wages, as additional hands or taking them in without following required procedure, to discharge the duties in respect of the

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posts that are sanctioned and that are required to be filled in terms of the relevant procedure established by the Constitution or for work in temporary posts or projects that are not needed permanently. This right of the Union or of the State Government cannot but be recognized and there is nothing in the Constitution which prohibits such engaging of persons temporarily or on daily wages, to meet the needs of the situation. But the fact that such engagements are resorted to, cannot be used to defeat the very scheme of public employment. Nor can a court say that the Union or the State Governments do not have the right to engage persons in various capacities for a duration or until the work in a particular project is completed. Once this right of the Government is recognized and the mandate of this constitutional requirement for public employment is respected, there cannot be much difficulty in coming to the conclusion that it is ordinarily not proper for courts whether acting under Article 226 of the Constitution or under Article 32 of the Constitution, to direct absorption in permanent employment of those who have been engaged without following a due process of selection as envisaged by the constitutional scheme.

(12) What is sought to be pitted against this approach, is the so called equity arising out of giving of temporary employment or engagement on daily wages and the continuance of such persons in the engaged work for a certain length of time. Such considerations can have only a limited role to play, when every qualified citizen has a right to apply for appointment, the adoption of the concept of rule of law and the scheme of the Constitution for appointment to posts. It cannot also be forgotten that it is not the role of courts to ignore, encourage or approve appointments made or engagements given outside the constitutional scheme. In effect, orders based on such sentiments or approach would result in perpetuating illegalities

and in the jettisoning of the scheme of public employment adopted by us while adopting the Constitution. The approving of such acts also results in depriving many of their opportunity to compete for public employment. We have, therefore, to consider the question objectively and based on constitutional and statutory provisions. In this context, we have also to bear in mind the exposition of law by a Constitution Bench in State of Punjab Vs. Jagdip Singh & Ors. (1964) (4) SCR 964). It is held therein, "In our opinion, where a Government servant has no right to a post or to a particular status, though an authority under the Government acting beyond its competence had purported to give that person a status which it was not entitled to give, he will not in law be deemed to have been validly appointed to the post or given the particular status."

43.

So far as the applicability of the decision in Uma Devi's case is concerned, it is obvious that it is mainly applicable to the employment in public offices i.e. various departments of Central Govt. or State Govts. and Public Sector undertakings. The Non-Applicant No. 1 Society or the Non-Applicant No. 2 College is neither any Department of Central Govt. or State Govt. nor it can be referred as a Public Sector undertaking. Permission is granted to the college to run permanently on no grant basis i.e. Department of Computer Science. This being so, as stated earlier, the payment of salary to the teaching and non-teaching staff is required to be exclusively borne by the Society/College, to be paid out of the amount of tuition fees received from the students admitted to the college and other resources of the Society, if any. This being so, it cannot be said that the Applicant and two others were engaged in public employment thereby casting burden on the State Exchequer. Thus, it is obvious that Non-Applicants are at liberty to take independent decision regarding appointment to

be made of teaching and non-teaching staff, of course by following the provisions of College Code—Ordinance No.24 as stated and discussed above. In other words, it cannot be said that the law laid down in Uma Devi's case is applicable to the appointments made in the college run on no grant basis, by regularization of past service. Had it been appointment in Govt. college run by State Govt. or Central Govt., position would have been different, in which case there is hardly any scope for regularization of past service rendered by daily wagers or contractual employees. This being so, the Grievances Committee is of the opinion that it will not be necessary to consider Uma Devi's case while considering the case for regularization of the Applicant and two others. However, with a view to elaborate point of distinction, the ratio laid down in Uma Devi's case is elaborately stated in the forgoing paragraphs.

44.

During the course of arguments, it submitted by the Applicant that he was not at fault since whatever steps are taken on his application by the Non-Applicant No. 2 and he bonafide believed that necessary and prescribed procedure of recruitment has been followed before issuance of the appointment order to him. It is astonishing that the Non-Applicant No. 2 assumed unfettered powers in issuing the appointment order to the Applicant, even without waiting for approval of Society to the alleged proposal. It is true that the Applicant and two others are not at fault in the entire process. They presumed that they have been lawfully appointed on the post of Laboratory Attendant. However, for the reasons recorded earlier, it did not matter much since as per so called appointment order they completed probationary period of two years and since it was not extended nor they were terminated before the completion of the said period, they are deemed to have attained permanency and cannot be removed without

following due process. Since the very appointment is ex facie illegal because not in accordance with prescribed rules, it is insignificant that he completed more than two years of service and no weightage can be given to it.

45.

The record shows that the Non-Applicant No. 2 also committed many blunders in the entire episode and the Non-Applicant No. 1 is also responsible to some extent in not considering the issue seriously and promptly when copy of the proposal was served on the then President of the Society. As a result, the three incumbents continued without any obstruction or impediment on the post of Laboratory Attendant with prescribed pay scale till 01.12.2009.

46.

It was tried to contend by the Applicant that since before Hon'ble High Court, the Non-Applicant No. 1 has undertaken to grant continuity in employment of the Applicant on the post, he is now estopped in contending that the appointment is not in accordance with rules. The Grievances Committee does not find any force in this contention, for the simple reason that since beginning the appointment order issued by the Non-Applicant No. 2 is not based on a decision of Governing Body which is approved by Society and hence it cannot be taken into account for any purpose. The Grievances Committee cannot enter into shoes of the Governing Body of the college to take a decision on the representation, since it is its prerogative which cannot be taken away.

47.

During the course of arguments, the Non-Applicants have raised the issue of limitation to approach this forum after period of over 5 years from the date of appointment. However, it is obvious that no period of limitation is prescribed under the erstwhile Maharashtra Universities Act, 1994 or in the present



Maharashtra Public Universities Act, 2016. Further, the Applicant firstly approached the University and College Tribunal after rendering more than 3 years of service, since he was prevented from signing the muster roll and the matter went up to the High Court thrice and during pendency of the Writ Petition the Applicant has filed the present grievance petition. In any case, it cannot be said that it is barred by limitation.

48. Secondly, it is stated that the grievance petition is bad for non-joinder of State Govt. and Deputy Director of Education as necessary parties. However, as stated earlier, since the appointment was made in a department receiving no-grant, the State Govt. or Deputy Director of Education have no role to play in the matter. As such it cannot be said that the grievance petition is bad and liable to be dismissed for non-joinder of necessary parties. On merit as stated earlier the Petition cannot be allowed to sustain since appointment order is found to be patently illegal and issued without following due process of recruitment and has been issued by the Non-Applicant No. 2 in his sole capacity as the Principal of the college, without getting approval from the Society. In any case no relief can be granted to the Applicant.

49. As stated and discussed above, there being no decision of the Governing Body of the college regarding regularization of service of the three incumbents and consequently want of approval of the Society to any such proposal, it can safely be said that the then Principal is solely responsible for the entire episode for his vested interest. However, considering the fact that the Applicants and two others have rendered 10 years of service on daily wages and thereafter 3 years of service on the strength of the appointment order issued by the then Principal and thereafter they are continued on the strength of the submission made by the Chairman of the society before the

Hon'ble High Court and they are still receiving the salary, the members of the Grievances Committee unanimously decided that this is a fit case to remand the matter to the present Governing Body of Non-Applicant No. 2 college for consideration, whether the services of Applicant & two others should be regularized and they should be appointed on the post of Laboratory Attendant and till a decision is taken they should be continued on said post. The following operative order is, therefore, passed.

50.

- (a) In view of above, the Grievance Petition is not maintainable for want of a decision of Governing Body of college on Applicant's representation.
- (b) However, in the interest of justice, the matter is remitted to the present college Development Committee of the Non-Applicants No. 2 college for consideration of the prayer for regularization of service of the Applicant and two others, especially taking note of length of their previous service on daily wages, their unblemished record, their family liabilities, and the fact that they are still continued in service and getting salary, by virtue of Court's order, on sympathetic grounds keeping in view the above aspects of the case.
- (c) Both Non-Applicants are, therefore, directed to convene a special meeting of the present College Development Committee of Non-Applicants No. 2 college and consider the request for regularization of services of the Applicant and two others on sympathetic grounds and take a decision thereon within a period of one month from the date of receipt of authenticate copy of this order.
- (d) The College Development Committee shall pass a resolution regarding decision taken by recording

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reasons therefore on the issue of regularization of service and then forward a proposal immediately to the President of the Education Society i.e. Non-Applicants No. 1 who shall convene a special meeting of the Managing Committee/Executive Body of the Society and shall consider the proposal submitted by the Governing Body of the Non-Applicants No. 2 college sympathetically and take appropriate decision thereon. This exercise shall be undertaken and completed within a period of 3 months from today and latest by 31.10.2021.


- (e) Depending on the decision to be taken, necessary office orders shall be issued which will be applicable and effective till the date of death of Applicant and necessary steps shall be taken accordingly.
- (f) The Non-Applicants are also directed to forward copy of the decision taken by them in this matter to this Grievances Committee for perusal and information.
- (g) Office is directed to forward authenticate photo copy of this order to both the parties at the earliest for taking appropriate steps in the matter as indicated above.
- (h) It is also directed that till a final decision is taken in the matter by the Society, the Non-Applicants are directed to continue services of the spouse of the deceased incumbent Shri Anil Uttamrao Gawande who is reported to have been engaged on a fixed remuneration by the Non-Applicants during pendency of her Grievance Petition, as stated by her, and also of other two incumbents. It is needless to say that further continuance of two incumbents will be subject to final decision of Society in that matter.
- (i) It is further directed that in the event a favourable decision is taken for regularization of the services of

the Applicant and other incumbents from the date to be fixed by the Executive Body of the Society, the necessary office order be issued and it be communicated to them.

- (j) The Non-Applicant No. 1 may consider initiation of a criminal proceeding against the then Principal of Shri Shivaji Science College, Congress Nagar, Nagpur for preparing and submitting false and fabricated proposal dated 14.02.2007 after giving opportunity of personal hearing to him, beside initiating a departmental action/inquiry against him for grave misconduct, if not initiated earlier in accordance with law.
- (k) In the facts and circumstances of the case, the parties are directed to bear their respective costs of this petition.

Nagpur.

Dated: 31-07-2021.


(Arvind J. Rohee)

Chairman, Grievances Committee,
RTM Nagpur University, Nagpur.

True Copy.



Superintendent,
Grievances, Ordinance, Statute & Legal Section,
Rashtrasant Tukadoji Maharaj
Nagpur University, Nagpur.