riate

Filed on - 21/08/2021

Order reserved on 25-02-2022.

Order pronounced/ issued on - 30/04/2022

Duration-- --- Year, 8 Months, 9 Days.

Rashtrasant Tukadoji Maharaj Nagpur University, Nagpur

BEFORE THE GRIEVANCES COMMITTEE.

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

Applicants/Petitioners in

Grievance Petition No. 11/2021

WITH

1. Shri Rishipal Tarachand Kawale,
Behind Hotel Grand Sita,
Mahavir Colony, Gondia-441614.
Phone No. 9823250200

Grievance Petition No. 12/2021

WITH

2. Shri Jayant Gopalrao Lakkewar,
Arihant Colony, Tirora Road,
Kudwa, Gondia-441614.
Phone No. 8788906918

Grievance Petition No. 13/2021

WITH

3. Shri Arun Balwantram Damahe,
Parmatma Ek Nagary Suryatoal Road, In front of Jangde Woodan Furniture, Gondia-441614.
Ph. No. 7264865901, 9421795701

Grievance Petition No. 17/2021

WITH

4. Shri Mukund Ganpatrao Nisal,
Ring Road Sharda Nagar, Lohiya Ward Behind Shivwam Hotel
Gondia-441614.
Phone No. 9960327033

Grievance Petition No. 18/2021

WITH

5. Shri Rameshgiri Chetangiri Bharadwaj,
At- Post, Khamari, Gondia-441614
Phone No. 9823913607

Grievance Petition No. 20/2021

WITH

6. Shri Ayub Gulabmiya Khan,
Saket Colony, Plot No. 20,
Near Adarsh Colony, Kudwa,
Gondia-441614.
Phone No. 9049475145

Grievance Petition No. 26/2021

WITH

Grievance Petition No. 27/2021

WITH

Grievance Petition No. 28/2021

7. Shri Tekram Yadorao Chirwatkar,
Hanuman Nagar, Rind Road,
Gondia-441614.
Phone No. 90494755074

8. Shri Nilesh Chandubhai Shah,
Near Ram Mandir, Ram Nagar,
Gondia-441614.
Ph. No. 8329698503/9823202462

9. Shri Vishwakumar Goverdhan Bisen,
Near Surya Tola, Power House,
Ram Nagar, Gondia-441614.
Phone No. 9373644153

- VERSUS -

Respondent:

1. Gondia Education Society,
NMD College Campus, Gondia,
Through its President.
Address: Shri Prafulla M. Patel,
Ram Nagar, Gondia.

2. Manoharbhai Patel Institute of Engineering and Technology,
Kudwa, Gondia-441614
Through its Principal

3. Gondia Education Society,
NMD College Campus, Gondia.
Through its Secretary.

Respondents are common in all the above referred Grievance Petitions.

COMMON ORDER

(Delivered on 30/04/2022)

1. This common order will govern the above referred Grievance Petitions since the Applicants claim to be similarly placed as Skilled Assistant working under the Respondents and the relief sought is also the same.

2. The Applicants approached this forum under section 79 (1) of the Maharashtra Public Universities Act 2016 (for short Act of 2016), seeking the following common reliefs as per the prayer clause:

(i) Direct the Non-Applicants to fix the pay of the Applicant in the appropriate pay scale and pay the applicant arrears arising out of such fixation;

(ii) Direct the Non-Applicants to pay the regular monthly salary as per the pay scales applicable to the post of Skilled Assistant as prescribed under the 7th Pay Commission and as per the University norms;

(iii) Direct the Non-Applicants to fix the salary of the Applicant as per the recommendations of the 7th Pay Commission and release the increments and further release the arrears accordingly;

(iv) Cost of Rs. 25,000/- be saddled upon the Non-Applicants for the torture and humiliation they have given to the Applicant and further for the mental pressure and physical pain the Applicant has gone through;

(v) Grant any other or further relief including costs as may be deemed fit in the facts and circumstances of the case and also in the interest of justice.

3. It is stated that the Applicant No. 1 was appointed as Assistant Instructor Cum Draftsman on 01.07.1989, whereas Applicant No. 2 on 01.01.1987 as Attendant, Applicant No. 3 on 06.08.1984, Applicant No. 4 on 19.09.1985, Applicant No. 5 on 01.07.1985, Applicant No. 6 on 01.07.1987, Applicant No. 7 on 17.04.1985, Applicant No. 8 on 10.08.1987 and Applicant No. 9 on 01.01.1987 by Respondents and they rendered the service in Respondent No. 2 college.

4. It is stated that in due course of time the Applicants secured promotion to the post of Skilled Assistant on different dates and since then they are working under Respondents in a college at Kudwa, Gondia. It is also stated that the Applicants were initially appointed on Ad-hoc basis and subsequently were regularly appointed.

5. It is stated that since the Applicants are regularly appointed, they are entitled to get the benefits of 7th Pay Commission including revised pay scale w.e.f. 01.01.2016, which according to them are not released by the Respondents so far, inspite of repeated representations. They were paid meagre salary as mentioned in the tabular statement / chart obtained from internet on applicability of 7th Pay Commission and since June-2019, they are not paid anything. It is stated that the Applicants being non-teaching employees, they are governed by the provisions of Maharashtra Non-Agricultural Universities and Affiliated Colleges Standard Code (terms and conditions of service of non-teaching employees) Rules 1984 framed under the earstwhile Nagpur University Act, 1974.

6. It is stated that the Applicants are full time non-teaching employees appointed on time scale of pay and the post of Skilled Assistant falls in category-III of the Standard Code Rules, 1984, Rule 16(1) of which confers a right on non-teaching employees to get time scale of pay from the commencement of service till its cessation. The Standard Code Rules 1984 were made applicable vide notification dated 27.07.1989 retrospectively w.e.f. 01.01.1986, issued by the Govt. of Maharashtra in Education and Employment Department.

7. It is stated that as per 7th Pay Commission the post of Skilled Assistant fetches minimum pay scale of Rs. 70,100/-. However, the same is not paid by the Respondents to the Applicants to which they are legally entitled. Further, the Applicants are also governed by the provisions of the Maharashtra Non-Agricultural Universities and Affiliated Colleges Standard Code (revised pay of non-teaching employees) Rules-1989. It is stated that since the college is affiliated to Nagpur University, the Respondents are governed by the provisions

of the Act of 2016 and the affiliation is granted subject to fulfilment of the conditions mentioned in Section 81(1)(1) & (f) of Section 108 of the aforesaid Act of 2016.

8. It is stated that from the very beginning of their appointment, the Applicants were not paid the salary as per prescribed pay scale. The Applicants have filed a tabular statement /chart obtained from internet showing amount due, paid and balance to be recovered from the Respondents. It is stated that the Respondents are liable to pay arrears on account of revision of pay scale prescribed by Pay Commission in view of the decision rendered by Hon'ble Supreme Court in Secretary Mahatma Gandhi Mission & Another V/S Bhartiya Kamgar Sena & Others (2017) 4 (Supreme Court cases 449), whether the college is receiving the grant in aid from the State Govt. or is running on its own funding.

9. It is stated that since the Respondents failed to extend the benefits and grant revision of pay as per 6th Pay Commission, the Applicants along with other similarly placed non-teaching employees, approached the Hon'ble High Court of Bombay, Bench at Nagpur in Writ Petition No. 6016/2013, in which a settlement was done and accordingly the Respondents have paid the arrears to the Applicants and others, in compliance of the order passed by the Hon'ble High Court. As such, the Applicants are entitled to get benefits of 7th Pay Commission on similar lines also and the said relief cannot be denied to them.

10. On notice the Respondents appeared and by a common reply dated 04.12.2021 resisted the claim, by raising few preliminary objections as stated under:

(a) That the Applicants failed to produce on record any documentary evidence such as appointment order and hence they were never

appointed by the Respondents on the posts alleged by them and hence they are not entitled to any relief.

(b) The Applicants have suppressed the fact that they along with other employees approached the Hon'ble High Court of Bombay, Bench at Nagpur in Writ Petition No. 5134/2018 in which they are seeking similar relief. Hence, they have not come with clean hands. They have no locus to approach this forum and hence the petitions are liable to be dismissed.

(c) That since the previous Writ Petition No. 5134/2018 is still pending, the present Grievance Petitions are barred by the principle of Res-Judicata. The prayer clause six of the aforesaid Writ Petition reads as under:

"By way of interim reliefs, direct the Respondent No. 3 Gondia Education Society through its President, NMD Campus Gondia and Respondent No. 4 Manoharbhai Patel Institute of Engineering & Tech., Gondia to pay the petitioner regular salary and regular prescribed pay scale".

In view of above, the present Grievance Petition is liable to be rejected.

(d) That in the aforesaid pending Writ Petition No. 5134/2018, the Hon'ble High Court vide order dated 02.11.2020 directed the Respondents to pay amount of 45 days salary in accordance with the law to the Petitioners therein and other employees of the institution. In compliance of the aforesaid order, the Respondents have distributed amount of Rs. 5 crores to the employees including the Applicants. However, the Applicants are again trying to get same relief to which they are not entitled.

(e) That there cannot be parallel proceedings before different forums for seeking the same relief, one in the High Court and other before this forum. As such this forum has no jurisdiction to proceed with the mater since claim is pending before the higher forum.

(f) It is further stated that the Applicants are not governed by the Govt. Resolution dated 11.09.2019 concerning 7th Pay Commission as alleged by them, since it is applicable to Govt.

and Non-Govt. aided institutes only. Admittedly, the Respondent No. 2 college is un-aided institute since receives no financial assistance (grants)from the State Govt. As such the Applicants are not entitled to any relief.

(g) It is stated that as per the Directions issued by the Rashtrasant Tukadoji Maharaj Nagpur University, Nagpur Non-Teaching Employee means person in employment of the University or the affiliated colleges as the case may be and appointed on a time scale of pay other than the teachers or the teachers of the University. It is stated that since the Applicants are not appointed on a time scale of pay in absence of appointment order since not produced by them, the claim is not maintainable.

11. On merit, it is stated that from perusal of the branch-wise intake capacity of the 1st to 4th year for the Academic Session 2017-18 till 2021-22, it is revealed that there was a constant decrease of admissions in the college since last 5 years and hence it is not possible for the Respondents to consider the Applicant's claim. Since it is un-aided college the Respondents have to bear the expenditure of maintenance of the infrastructure of the college, payment of salary to the teachers and other staff from its own source i.e. fees charged and collected by the college from its students, which is fixed by the Fee Regulating Authority. The college is facing severe financial difficulties from the last several years and is running in deficit since suffering from huge loss. The details of income and salary expenditure of the college for the academic years 2017-18 to 2021-22 is also given in a tabular form and it is stated that the salary expenditure is more than the income. Hence Applicants claim cannot be granted.

12. It is stated that the Applicants are first required to demonstrate that their appointment has been made by following due process of law and to produce the appointment order and then question of entitlement of salary will arise that merely entitlement is

not the only criteria, but their service conditions, past performance, tenure and other particulars need to be verified. After making payment in compliance of the order passed by the Hon'ble High Court in previous Writ Petition, the office of the Respondents verified each case and it was noticed that excess payment has been made to the employees and huge recovery needs to be made, for which separate action will be proposed. Further, the Applicants cannot take shelter of the earlier benefits given to them on humanitarian ground, which does not automatically make them liable for higher pay.

13. It is stated that since the institute was running constantly in total loss, the Governing Body of the Society in its meeting dated 17.01.2018 took a decision to close the college from the academic year 2018-19. The issue of closure is pending consideration before the Hon'ble High Court of Bombay, Bench at Nagpur in Writ Petition No. 6890/2018 and another Writ Petition No. 5134/2018 filed by the Applicants and others are tagged with former Writ Petition for joint hearing. In view of above, it is stated that the present Grievance Petition may kindly be stayed till decision in the above referred Writ Petitions.

14. It is stated that since there are no admissions for the 1st, 2nd, 3rd and 4th year for the Academic Session 2021-22, the Applicants have no work and are sitting idle. As such on the principle of no work no pay, the Applicants are not entitled to any relief.

On the above grounds, it is stated that the Grievance Petitions are liable to be rejected.

15. On 25.02.2022, the Applicants have filed a common rejoinder to the reply filed by the Respondents, in which all the preliminary objections raised are denied, since the same are misleading, false and incorrect statements made by Respondents. It is stated that Writ

Petition No. 5134/2018 is filed by the Applicants and other employees claiming the relief that the management should not close the college. The said relief is not obviously sought before this forum. The preliminary objections are liable to be rejected. It is stated that the management has paid 45 days salary as per the 6th Pay Commission and not as per 7th Pay Commission.

16. It is stated that the Applicants and other employees are working since last more than 25 years and the management has not raised the issue regarding the appointment of Applicants before any authority. It is only when the Applicants demanded their legitimate salary, the management has come up with a false case that the Applicants are not its employees since not appointed.

17. It is also stated that since the Applicants have completed more than 240 days of continuous service without break long back, they attained permanency and hence appointment order cannot be insisted, since they are deemed permanent employees. It is stated that the Govt. Resolution dated 11.09.2019 is applicable to all the aided and non-aided affiliated colleges. As such the Applicants are fully governed by the said resolution. The theory of no work no pay is not attracted in the present case, since the issue of closure is sub-judice and the Applicants are ready and willing to offer their service. The Applicants continuously approached the college authorities but the management is not permitting to them to work. The Applicants are working since more than 25 years without any break and no departmental inquiry is initiated against them for any misconduct nor any punishment imposed on them. The Grievance Petitions are, therefore, liable to be allowed.

18. The parties were allowed to file the documents in support of their rival contentions. On 25.02.2022 on behalf of Applicants their

representatives Shir Rishipal T. Kawale, Shri Jayant Lakkewar, Shri Kailash K. Nagpure and Shri Mitesh K. Parmar were appeared and heard on merit, so also the reply arguments of Dr. Devendra Pande, In-charge Principal of the college on behalf of the Respondents.

19. The members of the Grievances Committee present have carefully gone through the entire case record including pleadings of the parties and the documents produced. They held deliberations and discussed the issues involved in the matter. A draft order is then authored by the Chairman of the Grievances Committee and it was circulated to members, who approved it before it is pronounced today.

20. On the basis of the material produced on record and the submissions advanced, the following points arise for consideration of this forum, with the findings thereon as under:

Sr. No.	Points	Findings
1.	Whether the Grievance Petitions are liable to be rejected on any of the preliminary objections raised by the Respondents?	No
2.	On merit, whether the Applicants are entitled to the reliefs sought?	Partly Yes.
3.	What Order?	As per concluding para.

REASONS

As to Point No. 1:

21. So far as the first Preliminary Objection raised by the Respondents is concerned, the record shows that in this group matter, the Applicant Shri Rishipal Kawale has produced photocopy of letter correspondence dated 01.07.1989 issued by the Secretary of the Society to him informing that he has been appointed on the post of Laboratory Attendant in the scale of Rs. 200-3-230-5-255 on probation upto 30.06.1991. Similarly, the Applicant Shri Arun Damahe has

produced correspondence dated 06.08.1984 showing his appointment on the post of Draftsman-cum-Instructor for a period of 2 years in a time scale of Rs. 290-10-390-15-465. Similarly, the Applicant Shri Mukund Nisal has also produced appointment order dated 19.09.1985 for the post of Laboratory Attendant but on temporary basis on fixed salary of Rs. 500/-. The Applicant Shri Rameshgiri Chetangiri Bharadwaj has also produced order dated 01.07.1985 for his appointment on the post of Welder-cum-Instructor with fixed salary of Rs. 825/- on temporary basis. Similarly, the Applicant Shri Tekram Chirwatkar produced similar order dated 17.04.1985 for the post of Draftsman-cum-Attendant on a fixed salary of Rs. 500/- on temporary basis. Again the Applicant Shri Vishwaskumar G. Bisen produced similar photo copy of order of appointment dated 01.01.1987 on the post of Laboratory Attendant-cum-Electrician on fixed salary of Rs. 450/- on temporary basis. Whereas the Applicants Shri Jayant Lakkewar, Shri Ayubkhan G. Khan and Shri Nilesh C. Shah have not produced any order of appointment issued by the Respondents and instead the Applicant Shri Nilesh Shah has produced photo copy of his I-card, Salary Certificate dated 21.04.2003 for the month of March-2003, Provident Fund slips issued by the Competent Authority in his name and that of college in support of his contention that he is employee of the Respondent. Similarly, the Applicant Shri Jayant Lakkewar has filed Salary Certificate dated 16.09.2004, photo copy of his I-card, Letter of Appreciation dated 14.01.2016 issued by the Principal of the college, whereas the Applicant Shri Ayub Khan has filed Salary Certificate dated 10.04.2003 issued by Principal, Certificate of Appreciation issued by the Principal/HoD and his I-card.

We hold that the above documents prima facie show that the above Applicants are employees of the Respondents.

22. It is, however, stated by the Respondents that none of the Applicants in the group have produced any documentary evidence of appointment, which is not true since few applicants have produced some documentary evidence about their appointment. On instructions, it is stated by the representatives of the Applicants that the Respondents although obtained their signatures the original appointment order is not handed over to them, but they bonafide believing in Respondents, continued to render their services and they received salary for it. It is obvious that although appointment orders are not issued to few Applicants they rendered their services and were allowed to work on their respective posts and it appears that their services have been regularized. It appears from record that subsequently, the Applicants in this group have secured promotion to the post of Skilled Assistant and they are accordingly rendering service in said capacity. It has also come on record that subsequently the Respondents have released the benefits of 4th & 5th Pay Commission to the Applicants and many other similarly placed which fact is not denied by the Respondents. So far as claim for 6th Pay Commission is concerned, it is obvious from record that the matter is settled between the parties vide order dated 21.07.2017 passed by the Hon'ble High Court of Bombay, Bench at Nagpur in Writ Petition No. 6016/2017 filed by the Applicants and others in all 56 non-teaching staff against the Respondents and others. Couple of monetary benefits are given to them as per terms of the compromise petition, including the amount worked out by the parties to the extent of Rs. 1,08,70,708/- towards arrears of 6th Pay Commission in instalments. It is stated by both the parties that the amount settled in terms of the aforesaid compromise has already been disbursed which according to the Non-Applicants

excess payment made, for which they reserve right to initiate appropriate proceeding for recovery of balance amount.

23. From the above discussion, it is obvious that the Respondents have accepted the present Applicants and others working on various non-teaching posts as their employees, although the appointment orders are not issued to few applicants. This is so because, in the Writ Petition before the Hon'ble High Court the Respondents could have declined to grant any relief to the petitioners therein taking a stand that they are not their employees or appointed by them. This is not done and on the contrary the Respondents entered into compromise thereby accepting the status of Applicants as their duly appointed employees. They have not contested the aforesaid Writ Petition and there is no order issued by any forum to show that Applicants are not the employees of the Respondents. This being so, the Respondents are estopped in law in contending that the Applicants and others are not their duly appointed employees. In this respect, it may be stated here that the college is unaided i.e. not receiving any grant from Govt. and everything is at the mercy of the office bearers of the Society to tackle the situation and there is hardly any voice to the poor employees by raising clashes with the employer. The fact, however, remains that they were employed initially on temporary basis and since it was continued for more than 240 days without any break, as per settled legal position, such employees are deemed to have acquired permanency. From the above discussion, it is obvious that it does not now lie in the mouth of the Respondents to contend that the Applicants are not their duly appointed employees. It will have to be presumed that the Respondents have followed due procedure while making appointment of Applicants, after initially engaging few of them on temporary basis. The preliminary objection raised, therefore, does not

have any force to hold anything in favour of the Respondents, or against the Applicants.

24. So far as the second Preliminary Objection regarding suppression of institution of Writ Petition No. 5134/2018 by the present Applicant and other similarly placed Applicants, we do not find any force in this contention for the reason that the said Writ Petition has been filed by the Applicants and others similarly situated non-teaching staff against the Respondents opposing the prayer of the Respondents in the event, they challenge the order declining permission by the University for closure of the college. The record shows that the Respondents have subsequently filed Writ Petition No. 6890/2018 against the RTM Nagpur University and others, in which the report dated 30.05.2018 of the Visiting Committee of RTM Nagpur University and the decision taken thereon by the University refusing to grant permission for prospective closure of the college from academic year 2018-19 in terms of the communication dated 13.08.2018 is challenged. It is thus obvious that the issue involved in both the above referred Writ Petitions is different, than the one pending consideration in these Grievance Petitions filed by the Applicants and other similarly placed employees. Instead of filing separate Writ Petition No. 5134/2018, the Applicants and others could have sought permission of Hon'ble High Court to intervene as Co-Respondents in the subsequent Writ Petition No. 6890/2018 filed by the Respondents. However, since they preferred to file separate Writ Petition that too earlier to filing of the Writ Petition by the Respondents challenging the order passed by the University declining to grant permission for closure of the college, no adverse inference can be drawn against the Applicants. The record shows that other similar Writ Petitions are filed by some other employees and all the Writ Petitions are consolidated /tagged together for final hearing. Number of interim

orders are passed by the Hon'ble High Court in the aforesaid Writ Petitions, but it is not necessary to refer them.

25. From the above discussion, it is obvious that this forum does not find any force in the contention of the Respondents regarding suppression of fact of Writ Petition filed by the Applicants and others and on its basis it cannot be said that they have no locus to approach this forum nor that they have not come with clean hands. This objection is, therefore, devoid of any substance and hence liable to be rejected. It is accordingly rejected.

26. So far as the third Preliminary Objection regarding Res-Judicata is concerned, it is stated on behalf of the Respondents that in the aforesaid Writ Petition No. 5134/2018 in prayer clause 6 thereof the Applicants therein have sought interim relief directing the Respondents to pay the petitioners regular salary in prescribed pay scales. On its basis, it is further stated that the Hon'ble High Court in the aforesaid Writ Petition passed the interim order and the Respondents were directed to deposit amount and accordingly they settled it and deposited Rs. 5 crores and it has been distributed to the petitioners therein. However, by no stretch of imagination, although it can be said that some monetary relief at interim stage during pendency of the Writ Petition filed by Applicants and others is granted by the Hon'ble High Court and on its basis some amount is disbursed to the Applicants and others, it cannot be said that the principle of Res-Judicata is attracted in this case as provided under Section 11 of the Code of Civil Procedure 1973, especially when there is no final order. Res-Judicata is attracted when there is final decision on some issue between the parties and subsequently same issue is agitated by parties before same forum or different forum same is not the case here. Further even if some benefit is received by the Applicants and others, it will be liable to be adjusted in the final settlement of claim of grant

of benefits of 7th Pay Commission and arrears to be received by the Applicants and others, in the event their claim is allowed. As such at this stage, it cannot be said that the Grievance Petitions are barred by the principle of Res-Judicata.

27. Further the objection raised by the Respondents that the Applicants are seeking similar relief before the higher forum i.e. Hon'ble High Court and this forum and hence the present Grievance Petitions are required to be dismissed or atleast stayed since claim is pending before Higher Forum, we do not find any force in this contention for the simple reason that although some interim relief is granted by the Hon'ble High Court during pendency of the Writ Petition and the Applicants and others are stated to have received some monetary benefit therefrom as stated earlier, it cannot be said that the present petitions seeking implementation of 7th Pay Commission and arrears thereof are liable to be rejected and hence it will have to be decided on merit.

28. Similarly, on behalf of Respondents, it is stated that vide interim order dated 02.11.2020 in the pending Writ Petition No. 5134/2018 the Hon'ble High Court directed to pay 45 days salary to the petitioners therein and in pursuance thereof Respondents have distributed amount of Rs. 5 cores as stated earlier. For the reasons recorded earlier, we simply reject the contentions of the Respondents that on account of grant of interim relief to the Applicants and others, the present Grievance Petitions are not maintainable.

29. On behalf of Respondents, it is further stated that there cannot be parallel proceeding for the same relief before different forums and when the Hon'ble High Court is seized of the matter, the subordinate authority i.e. present forum should not proceed with the Grievance Petitions and should stay the same till final out-come of the pending Writ Petitions. In this respect we made it clear that it cannot

be said that the pending Writ Petitions in the Hon'ble High Court and the Grievance Petitions before this forum are parallel proceeding, especially when different reliefs are sought in both the matters, although some interim monetary relief is granted to them. In view of the provisions of the Act of 2016, the employees of affiliate college have right to approach this forum for seeking the appropriate pay scale, which they have done in the present case and the claim is restricted to implementation and release of the benefits of 7th Pay Commission only, since the revised scale as per 4th, 5th and 6th Pay Commission are already stated to have been released to the Applicants, which fact is not specifically denied by the Respondents and hence in fact they acquised to it and hence we simply reject the contentions of the Respondents in this behalf.

30. Similarly, the last objection raised by the Respondents regarding un-tenability of the Grievance Petitions by referring to the provisions of Section 27 of the Standard Code and also Directions issued by the University explaining the term "non-teaching employees", it is stated that the Applicants in the present group of Grievance Petitions and others are not appointed on a time scale of pay. This aspect is already discussed earlier and it is already held that although few Grievance Petitioners do not have the appointment order, the record shows that they have been duly appointed and in view of the compromise between the parties in the previous Writ Petition, the Respondents are in fact now estopped in denying the status of the Applicants and others as their non-teaching employees. Their hands are tied since it has been repeatedly told by the Respondents that they are trying to protect the interest of the Applicants and others purely on humaneterian ground and hence entered into compromise in a claim before the Hon'ble High Court. It is difficult to digest the submission that the Respondents are taking responsibility to pay huge amount of

arrears purely on humaneterian ground, which they could have denied to avoid liability. This being so we reject all the preliminary objections raised by the Respondents challenging maintainability of the present group of Grievance Petitions and others. We, therefore, answer Point No. 1 in the negative.

As to Point No. 2:

31. So far as merit of the claim is concerned, it is true that from the statistical data produced by the Respondents alongwith their reply, it appears that there is gradual but slow decline in intake capacity of students in the college from academic the year 2017-18 till 2021-22 in various subjects and consequently monetary loss of income in the form of fees from the students and hence expenditure is more than the income. It is also obvious from record that considering the fact that it is not beneficial to run the institute, the Respondents have finally taken a decision on 17.01.2018 for progressive closure of the college from the academic year 2018-19. Accordingly, a proposal is forwarded to the University seeking permission for closure. However, it is obvious that permission is declined on the basis of report of Visiting Committee and hence the said decision is subject matter of the Writ Petition NO. 6890/2018 filed by the Respondents. It is the settled law that till permission is granted by the University for closure of the institute by withdrawing the affiliation, the liability of the institute to pay salary to its employees does not cease and it continues till closure is permitted, subject to certain conditions. In the present case that stage is yet to come since the matter is sub-judice before the Hon'ble High Court. Even if it is considered that the respondents may succeed in seeking closure, still it will always be prospective in nature and it cannot be retrospective from the year 2018-19. As such till then the Respondents

are not absolved of their liability to pay salary to its employees as per Rules.

32. The record further shows that on the basis of various interim orders passed by the Hon'ble High Court in the pending Writ Petition No. 5134/2018 and other connected matters, the Respondents are trying their best to get themselves relieved of the liability of making payment of salary to its employees. They have also shown some bonafides by trying to raise adequate funds by proposing to sell the immovable property of the Society which is registered Public Trust, by seeking permission of the Joint Charity Commissioner, Nagpur Region for its sale and recently vide order dated 18.01.2022 passed by the Hon'ble High Court in the aforesaid bunch of pending Writ Petitions, directions are issued to the Joint Charity Commissioner, Nagpur Region to expedite the hearing of the Application bearing No. 71/2021 filed on 07.12.2021 by the Respondents for permission to sell the immovable properties of the Trust and to decide the Application in accordance with law at the earliest preferably on or before 24.01.2022. The record further shows that subsequently by a recent order dated 25.01.2022, the Hon'ble High Court directed to implead the Joint Charity Commissioner, Nagpur Region as party Respondent in the pending Writ Petition. It will take its own time to decide the pending proceeding before Joint Charity Commissioner and Hon'ble High Court. It is not necessary to wait till then or to stay the present proceedings as claimed by the Respondents.

33. From the above factual position, it can safely be said that the Respondents are making sincere efforts to discharge their liability of payment of salary to the teaching and non-teaching staff employed in the college. It cannot be said that since there is no intake capacity and since it is not possible to provide the work to the Applicants and others they are not entitled in law to get anything on the principle of no work

no pay as alleged by the Respondents, since it is their exclusive responsibility to discharge burden.

34. So far as this aspect of the case is concerned, the Applicants have rightly placed reliance on the decision of the Hon'ble Supreme Court in a case of Secretary Mahatma Gandhi Mission & Another V/S Bhartiya Kamgar Sena & Others (2017) 4 Supreme Court cases 449 in support of their contentions that even unaided institute is liable to pay salary to its employees till its closure. We desire to elaborate this aspect of the case, since it goes to the root of the case.

35. It was a case under Maharashtra Universities Act, 1994 under Section 8(3) and the Rules of 2009 framed thereunder. In that case the non-teaching staff in unaided affiliated college were treated differently in respect of pay revision against their counterpart in aided colleges. This was held to be discriminatory and hence it is obvious that non-teaching staff of unaided and affiliated colleges are also governed by the same pay scale and revision of pay from time to time on acceptance of the recommendations of the Pay Commissions by the Govt. at the interval of every ten years. The Applicant's case is fully governed under said decision. In the aforesaid case, it is further, held that Section 8(3) of the Maharashtra Universities Act, 1994 clearly authorizes the State Govt. to frame rules dealing with service conditions of the employees (both teaching and non-teaching) of various educational institutions. While exercising such powers, it is further held that the State of Maharashtra drew artificial distinction between aided and unaided educational institutions, which is not permissible in law.

36. In the aforesaid decision so far as fee structure is concerned and right of the educational institutions to calculate fees from the

students and pay salary to its employees out of it, para 85 to 90 are worth quoting. The same are reproduced here for ready reference.

"**85.** Another submission of the appellants that is required to be dealt with is that since the appellant does not receive any financial aid from the State, calling upon the appellants to pay its employees in terms of the revised pay scales would be compelling them to perform in impossible task. The appellants submitted that their only source of revenue is the fee collected from the students. Their right to collect fee is regulated pursuant to judgements of this Court in coherence with T.M.A. Pai Foundation V. State of Karnataka and Islamic Academy of Education V. State of Karnataka. Therefore, if they are compelled to pay their staff higher salaries they would be without any financial resources as they do not receive any aid from the State.

86. On the other hand it is argued by the respondent that the determination of the fee structure and the amount of the fee that could be collected by the appellants from the students is made by the Fee Regulatory Committee and such a body is bound under law and does in fact take into account the various relevant factors in determining the fee structure. It is, therefore, submitted that it is always open to the managements to make an appropriate application before the Fee Regulatory Committee bringing all the relevant factor to the notice of the body competent to determine the fee structure and raise appropriate revenue.

87. At the outset, we make it clear that at least insofar as non-teaching staff are concerned, the appellants have no excuse for making such a submission because in the earlier round of litigation the respondents non-teaching employees of the appellants, though succeeded both before the High Court and this Court in obtaining appropriate directions to the appellant and other authorities to revise the pay scales of the employees in tune with the Fifth Pay Commission, entered into a settlement dated 30-1-2006, the terms of which have already been taken note in this judgement at para 4.

88. Under the said agreement, the management agreed to revise the pay scales from time to time in tune with the revision of the pay scales of the employees of the State. Therefore, the submission of the management in this regard is liable to be rejected on the ground alone.

89. Even otherwise, if the appellants are obliged under law, as we have already come to the conclusion that they are in fact obliged, it is for the appellants to work out the remedies and find out the ways and means

to meet the financial liability arising out of the obligation to pay the revised pay scales.

90. In the result, the appeals being devoid of merit are dismissed with no orders as to costs."

37. It is thus obvious that the institute/society is not absolved of its liability to pay salary to its employees, although it receives no grant from the State Govt. and runs out of the funds raised by way of fees from students. In the event sufficient income is not earned by such Society out of the fees, they have to make provision for raising sufficient funds out of their own sources. As stated and discussed above the Respondents are estopped from contending that the Applicants in this group and others are not their employees duly appointed nor they are entitled to get salary as per the Pay Commission, since in past it has come on record that they have already been granted benefit of revision of salary under 4th, 5th and 6th Pay Commissions. In this respect on behalf of the Respondents it is stated that Govt. of Maharashtra Resolution dated 11.09.2019 regarding applicability of 7th Pay Commission, issued by Higher & Technical Education Deptt. does not speak about unaided colleges and hence they are not bound to extend benefits to its employees since not receiving any grant from the Govt. However, considering the fact that liability to pay salary to employees by aided or un-aided colleges is the same, by anology, the aforesaid resolution can be said to be applicable to non-aided colleges also especially when the service conditions for appointment of non-teaching staff in aided and un-aided colleges affiliated to University and governed by UGC or AICTE norms are the same. The law laid down by Hon'ble Supreme Court in above referred decision in Bhartiya Kamgar Sena's case will also come to the help of Applicants, which is necessarily binding on the Respondents.

38. Further the aforesaid Govt. Resolution No. सावेआ–११११/प्र.क. ४४/१९ तांशि–२ dated 11.09.2019 issued by Higher & Technical Department although does not make specific reference regarding un-aided colleges and the title speaks about "Revision of Pay Scales, Minimum Qualifications for the appointment, Terms and Conditions of Teachers and other academic staff such as Library and equivalent cadre in Degree Level Technical Education as per AICTE Scheme (7th Commission) to Dr. Babasaheb Ambedkar Technological University, Lonere/Institute of Chemical Technology, Government Deemed University, Matunga, Mumbai, All Government and Non-Government Aided Institutes, University affiliated and Autonomous institutes conducting Professional Degree Courses such as Engineering and Technology, Pharmacy, Architecture, Hotel Management and Catering Technology etc," it is obvious from perusal of Clause-I of the aforesaid GR regarding its applicability to University affiliated colleges in addition to others and no specification is made indicating University affiliated un-aided or aided colleges, it is deemed to have been applicable to both aided and un-aided colleges affiliated to University. Admittedly, Respondent No.2 college is affiliated to R.T.M. Nagpur University and is approved by AICTE. This being so it cannot be said that the un-aided colleges are not covered by the aforesaid G.R. dated 11.09.2019.

39. From the above discussion, we do not find any force in the contentions of the Respondents that the Applicants are not entitled to any relief. The Applicants have produced on record a chart/statement obtained from internet showing the claim i.e. actual salary due, already drawn by them or paid and the difference to be received till filing of the Grievance Petitions. They claim similar relief for subsequent period

also till closure of institute. These charts/statements shall form part of this common order for consideration of Respondents and for ready reference. We, therefore, hold that the Applicants are entitled to main relief sought.

40. Now the question for consideration is from which date the revision of pay and grant of benefits should be made applicable to the Applicants. For this purpose, it is obvious that the recommendations of 7th Pay Commission are accepted by Central Govt. for its employees and then by University Grants Commission/All India Council for Technical Education for University employees and employees working in affiliated colleges. On its basis the State Govts. have also accepted the recommendations for its employees as well as employees of Universities and affiliated colleges. As such the affiliated colleges are bound by the decision taken by UGC/AICTE/State Govt. in the matter of revision of pay scale to its teaching faculty and non-teaching staff too and no distinction can be made between them for getting benefits. However, for un-aided colleges affiliated to University distinction is made regarding the date of the applicability of the provisions of the Pay Commission to non-teaching employees, in comparison to State Govt. employees and employees of aided private colleges receiving salary and other type of grants from the State Govt., for whom it is applicable from 01.01.2016. This is so because the private un-aided colleges have to meet the expenses of salary and other administrative cause out of the fees recovered from the students admitted to various courses and from its own sources. This being so, it is very difficult for such un-aided private colleges to pay the arrears of revised pay to its employees retrospectively from the date of implementation of the Pay Commission, in the present case the 7th Pay Commission from 01.01.2016. The Govt. was well aware about this situation since additional fees cannot

be recovered nor the students who have left the college in the meantime can be asked to deposit the additional fees on account of revision of pay to compensate the burden.

41. Considering this aspects, the Govt. of Maharashtra Higher & Technical Education, Department, Mantralaya, Mumbai issued Notification No. MIS-2019/(CR-278/19)/UNI-1 dated 08.12.2020, in exercise of the powers conferred under Maharashtra Public Universities Act, 2016 and makes the rules prescribing the Standard Code for the revised pay scale of the non-teaching employees of Non-Agricultural Universities in the Maharashtra State (including its officers) other than those managed and maintained by the State Govt. These rules are called the Maharashtra Non-Agricultural Universities Standard Code (revised pay of non-teaching employees) Rules 2020. Rules 1(2) thereof states that these rules shall be deemed to have come into force on the first day of January-2016 i.e. the date of implementation of recommendations of the 7th Pay Commission. However, it is further provided that actual benefits of revised pay scale shall be given from the first day of November-2020 i.e. not from 01.01.2016. Further Rule 1(3) specifically provides that arrears of revised pay for the period first day of January-2016 to 31st October, 2020 shall not be entitled. Further Rule (2) prescribes categories of employees to whom these rules apply and it is provided that it shall apply to all full time non-teaching employees of Public Universities other than those managed and maintained by the State Govt. and Nagpur University is one of it.

42. The question for consideration is whether the Applicant and others are governed by the later notification dated 08.12.2020 on the basis of which Govt. Resolution dated 10.12.2020 is issued or the former Govt. Resolution dated 11.09.2019. Both the Resolutions

however, can be said to be applicable to University affiliated aided & unaided educational institutions. However, a distinction is made regarding applicability of the former Govt. Resolution and the later one to the non-teaching staff. In the former, although date of effect is given as 01.01.2016 and it is applicable to teaching faculty right from Assistant Professor to Principal/Director, all cadres of non-teaching staff are not included in it. As per aforesaid G.R. only full time working staff such as library and of equivalent cadre is included. As per clause 6.1 thereof Workshop Superintendent including Senior Scale and Selection Grade are covered, whereas as per Clause 6.3 Assistant Librarian and as per Clause 6.4 Assistant Director-Physical Education are included. Although the Applicants are working in Engineering college as full time non-teaching staff, still they do not fall under any of the aforesaid categories mentioned in Clause 6.1, 6.3 & 6.4. As such it cannot be said that the Applicants and other similarly placed are governed by the provisions of the former Govt. Resolution dated 11.09.2019 and consequently they are not entitled to revision of pay as per 7th Pay Commission w.e.f. 01.01.2016.

43. So far as the later Govt. Resolution dated 10.12.2020 is concerned, it is however, made applicable to all the non-teaching staff/employees working in Non-agricultural Universities. Although the Respondent No. 2 is a degree level college for Engineering course i.e. technical branch, it indeed comes under Non-agricultural University and Nagpur University is one of it as per Clause 2(1)(d) of the Notification dated 08.12.2020. As such we hold that the Applicants are governed by the provisions of the later Govt. Notification dated 08.12.2020. As per clause 1 (2) thereof, it came into force w.e.f.

01.01.2016 notionally with the embargo that the benefit of revised pay shall, however, be admissible from 01.11.2020 and not from 01.01.2016. It is also made clear in Clause 1(3) that the arrears /revised pay for the period from 01.01.2016 to 31.10.2020 will not be admissible. This follows that the Applicants and other similarly placed are not entitled to the benefit of revision of pay as per 7th Pay Commission from 01.01.2016 as claimed by them. It is needless to say that the Applicants are working in affiliated college under Rashrasant Tukadoji Nagpur University and are full time employees. Hence they are governed by the aforesaid Govt. Notification dated 08.12.2020 and subsequent Govt. Resolution dated 10.12.2020. As per the information of few Hon'ble Members of this forum, since discrimination is made by the State Govt. in the matter of applicability of 7th Pay Commission to non-teaching staff, it is challenged before the Hon'ble High Court and matter is sub-judice, since there is difference of 58 months arrears on revision of pay. In the event the Writ Petitions are allowed, the embargo regarding date of applicability in above referred two Govt. Resolutions will go.

44. Before concluding, it may be mentioned here that during the course of arguments, the Applicants have not referred the Govt. Resolution dated 10.12.2020 however we have considered it since found relevant and as stated earlier prima facie the Applicants are governed by the said Notification. In order to remove any doubt and to avoid any decision without hearing parties on the issue of applicability of Govt. Resolution dated 10.12.2020, both the parties were telephonically called to appear before the Grievances Committee on 27.04.2022 to make submissions in this behalf. In response to it, d

representatives of the Applicants attended and made submissions. The Principal of the College who represented the respondents however, telephonically expressed his inability to the Secretary of this Grievances Committee to remain present, since he is held up in Hon'ble Supreme Court at New Delhi in some matters of the Society.

45. We have heard the representatives of the Applicants who stated that Govt. Resolution dated 10.11.2020 is not applicable to them and they are governed by the previous Notification dated 11.09.2019. For the detail reasons stated in the preceding paras, we are unable to accept the Applicants contentions and hence confirm that they are governed by the aforesaid latter Govt. Resolution dated 10.12.2020 for applicability of 7th Pay Commission.

46. In this behalf, it is stated by the representatives of the Applicants that few colleges in Nagpur City have already extended benefit of 7th Pay Commission to its non-teaching staff from the date prior to 01.11.2020 and hence same anology should be applied to the Applicants in this group. We are unable to accept this contention, since it lacks any basis, especially when the G.R. dated 10.12.2020 is very clear. We, therefore, reject this contention.

47. During pendency of this proceeding on 27.04.2022, the office and the Applicants have brought to the notice of this Committee that the previous Writ Petition No. 5134/2018 filed by the Applicants opposing claim for closure of the college and Writ Petition No. 6890/2018 filed by the respondents against refusal to grant closure and other few other Writ Petitions filed by the teaching and non-teaching staff concerning implementation of 6th Pay Commission, came

to be decided by a common judgement and order dated 19.04.2022 passed by the Hon'ble High Court. We have carefully gone through the said decision. It is stated that those Writ Petitions pertain to teaching and non-teaching staff, however, so far as benefit of 6th Pay Commission is concerned, the Applicants have already settled their claim way back in 2013 with the respondents and hence the said decision is not applicable to them, so far as the implementation of 6th Pay Commission is concerned (leaving the other reliefs granted to them by the Hon'ble High Court) and it pertains to teaching staff. As such in this proceeding we do not find it necessary to consider the aforesaid decision rendered by the Hon'ble High Court in details.

48. However, in this behalf it may be mentioned here that during the course of arguments on behalf of the Respondents, it is stated that on the principle of 'no work no pay', the Applicants are not entitled to any relief. This aspect has been considered by the Hon'ble High Court in the above referred common decision dated 19.04.2022 and in para No. 88 it is observed that since it is a creative by the Management itself that student strength was reduced and hence the principle of no work no pay cannot be invoked and it is not established that employees were not ready to work. It is further observed that because there is no order of closure, the relationship of Employer-Employee continues and hence the Management and College are duty bound in law to pay the monthly salary payable to the employees till their services are dispensed with by procedure known to law or closure is effected. It is further, observed that it is open to the Management to utilise the services of the employees in other institution, if it so desires. As such, it is not possible to accept Respondents contentions.

49. Further in para 89 of the above referred common judgement, it is observed that having considered the above position it is clear that there a liability cast upon the Management to pay the arrears of 6th Pay Commission and other dues and it is not a matter of charity. A reference to the land mark decision rendered by Hon'ble Supreme Court referred earlier, in the case of Secretary Mahatma Gandhi Mission is also considered. In this behalf during the course of arguments on behalf of Respondents, it is stated without admitting the claim of the Applicants that the dues beyond period of 3 years are not permissible. In this behalf, in the same para No. 89 it is observed by Hon'ble High Court that there is no indication in the decision of the Hon'ble Supreme Court in the case of Secretary Mahatma Gandhi Mission that dues need to be restricted to 3 years. However, in the present group of Grievance Petitions, this question does not arise since the 7th Pay Commission is applicable from 01.11.2020 and not from 01.01.2016, based on the Govt. Resolution dated 10.12.2020 as discussed in details in the preceding paras. In view of above the Point No. 2 is answered as partly yes and we proceed to pass the following operative order:

50. (a) The Grievance Petitions are partly allowed.

(b) The Applicants are entitled to revision of pay in this group of Grievance Petitions in appropriate scale, notionally as per 7th Pay Commission, according to their designation, with effect from 01.01.2016.

(c) The revised pay scale shall however, be applicable w.e.f. 01.11.2020, with no arrears for the period from 01.01.2016 to 31.10.2020. However, in future if there is any modification regarding date of applicability by the State Govt., the same shall be applicable to the Applicants and the Respondents will liable to fix the pay accordingly and arrears to be paid to the Applicants and other similarly placed employees.

(d) The Applicants will however, be entitled to annual increments due from 01.11.2020 as per 7th Pay Commission till the date

of this order and subsequently also till closure of the institution.

(e) For fixation of pay on the aforesaid date and arrears to be drawn up w.e.f. 01.11.2020, the statements / charts filed by the Applicants obtained from internet and marked as Annexure-A-1 to A-9 shall form part of this order and the Respondents are directed to consider and follow it for calculation of arrears.

(f) It is made clear that the amount received by the Applicants so far by virtue of the orders passed in pending Writ Petitions, the same will be adjusted towards the amount of arrears to be drawn and balance shall be paid to the Applicants.

(g) No interest or any compensation is allowed on the claim of arrears for the reason that the Respondent No. 2 is unaided college and proceeding for closure is pending consideration.

(h) The above exercise shall be done within a period of 2 months from today by the Respondents and actual arrears so drawn shall be paid to the Applicants within a further period of 2 months in full compliance of this order.

(i) In the event of non-compliance of this order, the Applicants will be at liberty to approach the Appropriate Authority for taking legal action against the Respondents.

(j) The parties are directed to bear their respective costs of this proceeding.

(k) The office is directed to forward authenticate copy of this order to both the parties at the earliest for taking necessary steps in the matter as directed above.

Nagpur.
Dated: 30/04/2022.

(Dr. Nitin Kongre)
Member, Grievances Committee,
RTM Nagpur University, Nagpur

(Arvind J. Rohee)
Chairman, Grievances Committee,
RTM Nagpur University, Nagpur.

(Shri Rajendra Pathak)
Member, Grievances Committee,
RTM Nagpur University, Nagpur

(Adv. Anuja Kulkarni)
Member-Secretary
Grievances Committee,
RTM Nagpur University, Nagpur.

TRUE COPY

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