

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 531-532 OF 2013
(Arising out of SLP(C) Nos. 27286-27287 of 2009)

State of Maharashtra and others

...Appellants

versus

Nowrosjee Wadia College and others

...Respondents

J U D G M E N T

G. S. Singhvi, J.

1. The question which arises for consideration in these appeals is whether respondent Nos.1 and 2 are entitled to reimbursement of the amount paid to the teachers by way of leave encashment under the statutes framed by the Pune University.

2. Dr. Anagha Anant Nadkarni and Dr. Moreshwar J. Bedekar, who were employed as Professors in respondent No.1 college retired from service in November, 2003. They filed applications before Pune University Grievance Committee (for short, 'the Committee') for encashment of earned leave. The Committee passed order dated 3.5.2007 and recommended payment of the amount in lieu of earned leave. However, respondent No.1 did not act upon the recommendations of the Committee. Therefore, Dr. Anagha Anant Nadkarni and Dr. Moreshwar J. Bedekar

filed Writ Petition Nos.8763 and 8775 of 2007 for issue of a mandamus to respondent No.1 to pay the amount of leave encashment. The same were disposed of by the Division Bench of the Bombay High Court vide order dated 7.4.2008 along with 11 other writ petitions. The Division Bench relied upon order dated 22.1.2007 passed in Writ Petition No.4936/2006 – V. S. Agarkar v. The Chairman, Grievance Cell Committee, Pune University and others and held:

“ . Therefore, there could not be any controversy over the issue of entitlement of the petitioners for encashment of unutilised earned leave on superannuation which in the case of V.S. Agarkar (supra) has been discussed at length and, therefore, we dispose of these petitions with a direction to the respondent-institution and the Principal that the Principal of the Institution where the petitioners were employed to pay to the petitioners leave encashment for maximum 180 days or lesser to the extent that the petitioners are entitled to and that they shall complete the exercise within a period of eight weeks from today. We further make it clear that the Institution after discharging their liability of payment of leave encashment as per the entitlement of the petitioners, are entitled to claim reimbursement by way of grant from the Respondent-State.”

3. By another order dated 9.6.2008 passed in Writ Petition No.2881/2007 – Khandesh College Education Society v. Arjun Hari Narkhede and others, the Division Bench of the High Court directed payment of leave encashment to the teachers in terms of the order passed in V. S. Agarkar’s case. Simultaneously, liberty was given to the institutions to seek reimbursement from the State. That order was modified on 20.6.2008 in the following terms:

“We have disposed of these petitions by common order dated

9.6.2008. It has been pointed out by the petitioner in W.P. No.6540/2007 that this court has observed that Grievance Committee has rejected the claim of the petitioner on the ground that it is barred by delay and laches as the petitioner had approached the Grievance Committee after lapse of three years. It is submitted that this statement was made without proper instructions. In fact, the Grievance Committee had given a report in favour of the petitioner which was dealt by the Grievance Committee after petition came to be filed. We, therefore, record this to be read at the end of Paragraph No. 4 that later on Counsel has submitted as aforesaid. This does not in any manner affect the substantive relief granted by the court in favour of the petitioner.

2. Learned A.G.P. submitted that this court has observed in concluding Paragraph that respondent - institution will be entitled to claim reimbursement by way of grant from the respondent - State. Only correction requires to be done is that the liability of the State would be subject to claim of the respondent being admissible under law. Therefore, we add a sentence at the conclusion of Paragraph No. 9 if admissible under law. Our order be read accordingly.”

4. Khandesh College Education Society challenged the orders of the High Court in SLP (C) Nos.17039-17040/2008, which were disposed of by this Court vide order dated 5.7.2011 along with a batch of similar special leave petitions. The two Judge Bench first considered the question whether the provisions of Maharashtra Civil Services (Leave) Rules, 1981 (for short, ‘the 1981 Rules’) are applicable to the teachers employed by respondent No.1, and held:

“From the very language of different provisions of Rule 54 of the Maharashtra Civil Services (Leave) Rules, 1981 it is clear that it applies only to “a government servant”. Respondents 1 to 14 are not government servants and, therefore, cannot be denied earned leave on the basis of provisions made in Rule 54 of the Maharashtra Civil Services (Leave) Rules, 1981.”

The Bench then referred to the relevant provisions of the Maharashtra Universities Act, 1994 (for short, 'the 1994 Act'), Statutes 424(3) and 424(C) of the University of Pune and observed:

“On the other hand, Section 115 of the Act while repealing the different Acts applicable to different universities in the State of Maharashtra provides in sub-section (2)(xii) that all Statutes made under the repealed Acts in respect of any existing university shall, insofar as they are not inconsistent with the provisions of the Act, continue in force and be deemed to have been made under the Act in respect of the corresponding university until they are superseded or modified by the Statutes made under the Act. Hence, Statutes 424(3) and 424(C) of University of Pune, which were applicable to the University, continue to be in force and are deemed to be made under the Act if they are not inconsistent with any provision of the Act or are not superseded, modified by Statutes made under the Act.

Sections 5(60), 8 and 14(5) of the Act confer power on the State Government to exercise control over the University in some matters and also empower the State Government to issue directives to the University and cast a duty on the Vice-Chancellor to ensure compliance with such directives, but these provisions in the Act do not prohibit grant of earned leave to a teacher or Lecturer of any affiliated college who can avail a vacation from being entitled to earned leave or from being entitled to encashment of accumulative earned leave at the time of retirement. In other words, Statutes 424(3) and 424(C) of University of Pune are not in any way inconsistent with the provisions of the Act. The learned counsel for the petitioners and the State Government have also not brought to our notice any statute of the University modifying or superseding Statute 424(3) or Statute 424(C) of University of Pune which were applicable to the University.

Statutes 424(3) and 424(C) of University of Pune are extracted hereinbelow:

“424. (3). Leave.—

(a)-(b) * * *

(c) Earned leave.—

(a) The confirmed non-vacation teacher shall be entitled to earned leave at the rate of one-eleventh of the period spent on duty subject to his accumulating maximum of 180 days of leave.

(b) The teacher other than the one included in (a) above shall be entitled to one twenty-seventh of the period spent on duty and the period of earned leave as provided in the proviso to Section 423 subject to his accumulation of maximum of 180 days. For this purpose the period of working days only shall be considered.”

* * *

“424(C). Encashment of unutilised earned leave on superannuation.—The teacher shall be entitled to encash earned leave in balance to his credit on the date of his superannuation subject to a maximum of 180 days.

In case the teacher is required to serve till the end of academic session beyond the date of his superannuation, he shall be entitled to encash the balance of earned leave to his credit on the date of his actual retirement from service.”

A reading of Statute 424(3) extracted above would show that clause (a) applies to confirmed non-vacation teachers and clause (b) applies to teachers other than non-vacation teachers and clause (b) clearly states that teachers other than non-vacation teachers shall be entitled to earned leave subject to their accumulation of maximum 180 days. Statute 424(C), quoted above, further provides that teachers shall be entitled to encash earned leave in balance to their credit on the date of his superannuation subject to a maximum of 180 days.

It, however, appears that the State Government has issued directives from time to time to the universities to amend the Statutes so as to ensure that Lecturers or teachers working in Vacation Departments are not entitled to earned leave and encashment of earned leave, but the fact remains that Statutes 424(3) and 424(C) of University of Pune have not been modified or superseded. There are also no provisions in the Act to the effect that the Statutes of a university which are inconsist-

ent with the directives of the State Government will be invalid. Section 115(2)(xii) rather states that statutes which are not inconsistent with the provisions of the Act and which have not been modified or superseded shall continue to be in force. Hence, Respondents 1 to 14 were entitled to earned leave and encashment of earned leave as per the provisions of Statutes 424(3) and 424(C) of University of Pune.”

5. After recording the aforesaid observations, the Bench declined to grant leave but gave three months time to the SLP petitioners to comply with the directions given by the High Court.

6. After 3 years of enactment of the 1994 Act, which resulted in repeal of various existing statutes including the Poona University Act, 1974, under which Statutes 424(3) and 424(C) had been framed, the State Government issued instructions to the Universities to discontinue payment of leave encashment to the teachers by pointing out that they fall in the categories of employees working in the ‘Vacation Department’. The State Government also took cognizance of the orders passed by the High Court in Writ Petition No. 2671/2006 and Contempt Petition No. 191/2006 and directed that the University Statutes should be amended with retrospective effect and till then, the concerned University should bear expenses incurred in payment of leave encashment. This was reiterated vide letter dated 20.10.2008 sent by the Director of Education (Higher Education), Maharashtra to all the universities.

7. In furtherance of the directives given by the State Government, the Vice-Chancellor of Pune University passed order dated 1.2.2009, which reads as under:

“WHEREAS the Maharashtra State Legislature has enacted the Maharashtra Universities Act, 1994 (Maharashtra Act No. XXXV of 1994), which has come into force with effect from 22nd July, 1994.

AND WHEREAS as per Section 51(8) of the Maharashtra Universities Act 1994, the University has power to prescribe the terms and conditions of the services of the teachers by framing Statutes.

AND WHEREAS the University, in exercise of the power vested in it, as per Section 51(8) of the Maharashtra Universities Act, has framed the Statutes regarding the entitlement, surrender and encashment of the earned leave to the teachers.

State Government, vide its letter dated 9th August, 2007, University to repeal the provisions of earned leave effect, since the teachers of the University of the vacation, they are not entitled for earned leave in the Statutes with retrospective effect, since the Teachers of the University and affiliated colleges avail of the vacation, they are not entitled for earned leave.

AND WHEREAS the State Government, vide its further letter dated 20th October, 2008 directed all Universities to repeal the provisions of earned leave in the Statues with retrospective effect, within a period of one month from the date of the letter.

AND WHEREAS as per Section 14(5) of the Maharashtra University Act, 1994, it is, inter alia, duty of the Vice-Chancellor to ensure that directives of the State Government are strictly observed.

AND WHEREAS as per Section 5(60) of the Maharashtra Universities Act, 1994, the University has to comply with and carry out any directives issued by the State Govt from time to time.

AND WHEREAS a proposal as regards repealing the Statute 424(C) in respect of encashment of earned leave with retrospective effect, was placed before Management Council in its meeting held on 22nd August, 2008.

AND WHEREAS the Management Council of the University in its above said meeting resolved that an administrative decision as regards repealing the Statute 424 (C), be taken and the directives be issued in this regard in view of the provisions of Section 5(60) and Section 14(5) of the Maharashtra & Universities Act, 1994.

AND WHEREAS the Management Council of the University, in its meeting held on 1st October, 2008 confirmed its earlier decision as regards repealing the Statute 424 (G), be taken and the directives be issued in this regard in view of the provisions of Section 5(60) and Section 14(5) of the Maharashtra Universities Act 1994 and resolved that the said decision be implemented with effect from 1st February, 2009.

AND WHEREAS it will take some time to repeal the said Statute and place the same before the Statutory Authorities in the University as laid down in Section 52 of the Maharashtra Universities Act, 1994.

Therefore, I Dr. Narendra Damodar Jadhav, Vice-chancellor of the University of Pune, by and under the powers vested in the under sub section 8 of Section 14 of the Maharashtra Universities Act, 1994, hereby issue the following directives;

The Teachers Statute 424 (C) is repealed w.e.f. 1st February, 2009.

Ref: No.LAW/2009/73
Dated 1.2.2009

Dr. Narendra Jadhav
Vice-Chancellor.

Present Statute

Amendment
Proposed

Statute after
amendment

Statute 424 (C) encashment of Delete

Unutilized Earned Leave on statute 424
Superannuation (C)

The teacher shall be entitled to encash earned leave in balance to his credit on the date of his superannuation subject to a maximum of 180 days.

In case the teacher is required to serve till the end of academic session beyond the date of his superannuation, he shall be entitled to encash the balance of earned leave to his credit on the date of his actual retirement from service.”

(The order has been extracted from the SLP paper-book)

8. Feeling aggrieved by the directives issued by the State Government, respondent Nos. 1 and 2 filed Writ Petition No.6609/2009 for issue of a mandamus to the State Government to reimburse the total amount of Rs.4,46,815/- paid to Dr. Anagha Anant Nadkarni and Dr. Moreshwar J. Bedekar and for grant of a declaration that State Government is liable to reimburse the amount paid to other teachers by way of leave encashment.

9. The State Government contested the writ petition by relying upon the provisions of the 1981 Rules and the instructions issued for repeal of the Statutes with retrospective effect and pleaded that the writ petitioners are not entitled to reimbursement of the leave encashment paid to the teachers employed in the ‘Vacation Department’.

10. The Division Bench of the High Court referred to order dated 7.4.2008 passed in Writ Petition No. 8763/2007 and connected matters and disposed of the writ petition vide order dated 24.8.2009 by taking cognizance of the statement made by the Assistant Government Pleader that the amount paid to the teachers will be reimbursed by way of grant. The Director of Higher Education and others filed Civil Application No.2320/2009 for modification of order dated 24.8.2009. The same was disposed of by the High Court on 9.10.2009 by relieving the Assistant Government Pleader of the concession made by him. However, the direction given for reimbursement of the amount paid by the institutions to the teachers in lieu of earned leave was maintained on the premise that order dated 7.4.2008 passed in Writ Petition No.8763/2007 and batch has become final.

11. On 3.11.2009, this Court ordered notice in SLP (C) Nos.27286-27287/2009 but dismissed a batch of special leave petitions by recording the following observations:

“These SLPs arise from the common order dated 7.4.2008 in a batch of writ petitions. There is a delay of 480 days.

It is submitted that the order dated 7.4.2008 has been followed in another batch of cases - Khandesh College Education Society vs. Arjun Hari Narkhede & Ors. and connected cases W.P.No.2881/2007 dated 9.6.2008. Later, having found that there was an obvious omission, the High Court made an amendment to the order dated 9.6.2008, by or-

der dated 20.6.2008 by adding the words "if admissible under law" after the words "are entitled to claim reimbursement by way of grant from the Respondent-State". It is submitted that the High Court, having made the said amendment in the order dated 9.6.2008 in W.P.(C) No.2881/2007, ought to have made the said correction in the impugned order dated 7.4.2008 also as that order also contained a similar omission by oversight. Therefore, it will be appropriate if the petitioner-State approaches the High Court and point out that the correction having been found necessary in the order dated 9.6.2008, it ought to have been made in the order 7.4.2008 also when correcting the order dated 9.6.2008."

12. In furtherance of the observations made by this Court, the appellants filed applications for clarification of order dated 7.4.2008 passed by the High Court. Respondent Nos. 1 and 2 resisted the prayer made in the applications by asserting that the clarifications sought by the State would completely change the nature of relief granted by the High Court. After considering the objections, the High Court passed order dated 3.5.2011, paragraphs 5, 6 and 7 of which read as under:

"5. In our opinion, the clarification sought by the applicant-State of Maharashtra is a benign clarification. Inasmuch as, the respondents (original writ petitioners) or the management of the school in which the teachers were employed and have been paid leave encashment amount, cannot be heard to contend that the management would be entitled for reimbursement of the amount so paid by them even if the same is inadmissible in law. In other words, the directions contained in the order dated 7.4.2008 will have to be understood to mean that the management would be entitled to claim reimbursement by way of grant from the respondent-State to the extent of the amount paid by it to the teachers as leave encashment, if permissible in law.

6. In this view of the matter, we allow all these Civil Applications by adding at the end of paragraph 4, the following words:-

“if permissible in law.”

7. We, however, record the submission of the management as well as the teachers (original writ petitioners) with approval that the fact that such clarification has been issued does not necessarily mean that the management is not entitled for reimbursement in law. That is a matter which will have to be examined in appropriate proceedings as and when occasion arises.”

13. Shri Chinmoy Khaladkar, learned counsel for the appellants referred to the provisions of the 1994 Act, the 1981 Rules and argued that the appellants are not obliged to reimburse the amount paid by respondent No.1 to the teachers by way of leave encashment in terms of the Statutes framed by the Pune University because neither the Poona University Act, 1974 nor any other enactment mandates reimbursement of the amount paid in lieu of the earned leave. Learned counsel pointed out that in terms of Rules 52 and 54 of the 1981 Rules, the teachers employed in the Government colleges are not entitled to the benefit of leave encashment and argued that it would amount to invidious discrimination if the teachers employed in the private colleges affiliated to the University are held entitled to the benefit of leave encashment.

14. Shri Colin Gonsalves, learned senior counsel for respondent Nos. 1 and 2 argued that despite the order passed by the High Court on 3.5.2011, the appellants are duty bound to reimburse the colleges the amount paid to

the teachers by way of leave encashment. Learned senior counsel submitted that in view of Section 115(2), the existing Statutes and Ordinances made under the Acts specified in sub-section (1) of Section 115 will be deemed to have been saved because the University had not framed fresh Statutes or repealed the existing Statutes.

15. We have considered the respective arguments. Sections 3(1), 5(9), 5(49), 5(57), 5(60), 8(1)(a) to 8(c), 8(1)(g), 8(2), 8(3), 8(4), 14(5), 51(5), 51(8), 52(6), 115(1) and 115(2)(xii) of the 1994 Act, Rules 50(1)(a), 50(1)(b), 52, 54(1), 54(2), the relevant extract of Appendix II of the 1981 Rules and Statutes 424(3) and 424(C), which have bearing on these appeals, read as under:

The 1994 Act.

“3. Incorporation of universities:- (1) In relation to each of the existing universities specified in column (1) of Part I of the Schedule, with effect from the date of commencement of this Act, the corresponding university with the name, specified against it in column (2) of the said Part, is hereby constituted under this Act, for the same area specified in column (3) of the said Part for which it was constituted immediately before the date of commencement of this Act.

5. Powers and duties of university: - The university shall have the following powers and duties, namely:-

(1) to (8) xxx xxx xxx

(9) to create posts of directors, principals, professors, readers, lecturers and other teaching or non-vacation academic posts required by the university with the prior approval of the State Government and to prescribe their qualifications and make appointments thereto;

(10) to (48) xxx xxx xxx

(49) to lay down for teachers and university teachers, service conditions including code of conduct, workload, norms of performance appraisal, and such other instructions or directions as, in the opinion of the university, may be necessary in academic matters;

(50) to (56) xxx xxx xxx

(57) to evolve an operational scheme for ensuring accountability of teachers, non-vacation academic and non-teaching staff of the university, institutions and colleges;

(58) to (59) xxx xxx xxx

(60) to comply with and carry out any directives issued by the State Government from time to time, with reference to above powers, duties and responsibilities of the university.

8. Control of State Govt. and universities: - (1) Without prior approval of the State Government, the university shall not, -

(a) create new posts of teachers, officers or other employees;

(b) revise the pay, allowances, post-retirement benefits and other benefits of its teachers, officers and other employees;

(c) grant any special pay, allowance or other extra remuneration of any description whatsoever, including ex gratia, payment or other benefits having financial implications, to any of its teachers, officers or other employees;

(d) to (f) xxx xxx xxx

(g) take any decision regarding affiliated colleges resulting in increased financial liability, direct or indirect, for the State Government.

(2) The university shall be competent to incur expenditure from the funds received from, -

(a) various funding agencies without any share or contribution from the State Government;

(b) fees for academic programmes started on self-supporting basis;

(c) contributions received from the individuals, industries, institutions, organisations or any person whosoever, to further the objectives of the university;

(d) contributions or fees for academic or other services offered by the university;

(e) development fund, if any, established by the university;

for the purposes of -

(i) creation of post in various categories for specific period;

(ii) granting pay, allowances and other benefits to the posts created through its own funds provided those posts are not held by such persons, who are holding the posts for which government contribution is received;

(iii) starting any academic programme on self-supporting basis;

(iv) incurring expenditure on any development work;

without referring the matter for approval of the State Government, provided there is no financial liability, direct or indirect, immediate or in future on the State Government.

(3) The State Government may in accordance with the provisions contained in this Act, for the purpose of securing and maintaining uniform standards, by notification in the Official Gazette, prescribe a Standard Code providing for the classification, manner and mode of selection and appointment, absorption of teachers and employees rendered surplus, reservation of post in favour of member of the Scheduled Castes, Scheduled Tribes, Denotified Tribes (Vimukta Jatis) and Nomadic Tribes and Other Backward Classes, duties workload, pay, allowances, postretirement benefits, other benefits, conduct and disciplinary matters and other conditions of service of the officers, teachers and other employees of the universities and the teachers and other employees in the affiliated colleges and recognised institutions (other than those managed and maintained by the State Government, Central Government and the local authorities). When such Code is pre-

scribed, the provisions made in the Code shall prevail, and the provisions made in the Statutes, Ordinances, Regulations and Rules made under this Act, for matter included in the Code shall, to the extent to which they are inconsistent with the provisions of the Code, be invalid.

(4) In case of failure of the university to exercise powers or perform duties specified in section 5 or where the university has not exercised such powers or performed such duties adequately, or where there has been a failure to comply with any order issued by the State Government, the State Government may, on making such inquiry as it may deem fit, issue a directive to the university for proper exercise of such powers or performance of such duties or comply with the order; and it shall be the duty of the university to comply with such direction.

Provided that, in case the university fails to comply with the directives, the State Government shall call upon the university to give reasons in writing why the directives were not complied with. If the State Government is not satisfied with the explanation, it may refer the matter to the Chancellor for taking necessary action under sub-section (3) of section 9.

(5) xxx xxx xxx

14. Powers and duties of Vice-Chancellor:-

(1) to (4) xxx xxx xxx

(5) It shall be the duty of the Vice-Chancellor to ensure that the directives of the State Government if any and the provisions of the Act, Statutes, Ordinances and Regulations are strictly observed and that the decisions of the authorities, bodies and committees which are not inconsistent with the Act, Statutes, Ordinances or Regulations are properly implemented.

(6) to (14) xxx xxx xxx

51. Statutes:- Subject to the provisions of this Act, the Statutes may provide for all or any of the following matters, namely :-

(1) to (4) xxx xxx xxx

(5) the principles governing the seniority and service conditions of the employees of the university;

(6) to (7) xxx xxx xxx

(8) qualifications, recruitment, workload, code of conduct, terms of office, duties and conditions of service, including periodic assessment of teachers, officers and other employees of the university and the affiliated colleges (except those colleges or institutions maintained by the State or Central Government or a local authority), the provision of pension, gratuity and provident fund, the manner of termination of their services, as approved by the State Government;

(9) to (17) xxx xxx xxx

52. Statutes how made:-

(1) to (5) xxx xxx xxx

(6) Notwithstanding anything contained in the foregoing subsections, the Chancellor, either suo motu or on the advice of the State Government, may, direct the university to make provisions in the Statutes in respect of any matter specified by him and if the Senate fails to implement such a direction within sixty days of its receipt, the Chancellor may, after considering the reasons, if any, communicated by the Senate for its inability to comply with such direction, make or amend the Statutes suitably.

115. Repeal and savings:- (1) On and from the date of commencement of this Act,-

- (a) the Bombay University Act, 1974 (Mah.XXII of 1974);
- (b) the Poona University Act, 1974 (Mah.XXIII of 1974);
- (c) the Shivaji University Act, 1974 (Mah.XXIV of 1974);
- (d) the Dr. Babasaheb Ambedkar Marathwada University Act, 1974 (Mah.XXV of 1974);
- (e) the Act, 1974 (Mah.XXVI of 1974);
- (f) the Shreemati Nathibai Damodar Thackersey Women's University Act, 1974 (Mah.XXVII of 1974)
- (g) the Amravati University Act, 1983 (Mah.XXXVII of 1983); and

(h) the North Maharashtra Universities Act, 1989, shall stand repealed (Mah.XXIX of 1989).

(2) Notwithstanding the repeal of the said Acts, -

(i) to (xi) xxx xxx xxx

(xii) all Statutes and Ordinances made under the said Acts in respect of any existing university shall, in so far as they are not inconsistent with the provisions of this Act, continue in force and be deemed to have been made under this Act in respect of the corresponding university by the Senate or the Management Council, as the case may be of that university, until they are superseded or modified by the Statutes made under this Act;”

The 1981 Rules.

“50. Earned leave for Government Servant serving in Departments other than Vacation Department— (1)(a)

The leave account of every Government servant who is serving in a Department other than a vacation Department, shall be credited with earned leave, in advance, in two instalments of 15 days each on the first day of January and July of every calendar year.

(b) The leave at the credit of a Government servant at the close of the previous half year shall be carried forward to the next half year, subject to the condition that the leave so carried forward plus the credit for the half year do not exceed the limit of 240 days.

52. Vacation Department—A Vacation Department is, subject to the exceptions and to the extent stated in Appendix II, a department or part of a department to which regular vacations are allowed, during which a Government servant serving in the department is permitted to be absent from duty.

54. Earned leave for persons serving in Vacation Departments—(1) A Government servant serving in a Vacation Department shall not be entitled to any earned leave in respect of duty performed in any year in which he avails himself of the full vacation.

(2)(a) In respect of any year in which a Government servant

avails himself of a portion of the vacation, he shall be entitled to earned leave in such proportion of 30 days, as the number of days of vacation not taken bears to the full vacation:

Provided that no such leave shall be admissible to a Government servant not in permanent employment in respect of the first year of his service.

(b) If, in any year, the Government servant does not avail himself of any vacation earned leave shall be admissible to him in respect of that year under rule 50.

Explanation – For the purposes of this rule, the term “year” shall be construed as meaning not calendar year but twelve months actual duty in a Vacation Department.

Note 1.- A Government Servant entitled to vacation shall be considered to have availed himself of a vacation or a portion of a vacation unless he had been required by general or special order of a higher authority to forego such vacation or portion of a vacation; provided that if he has been prevented by such order from enjoying more than fifteen days of the vacation, he shall be considered to have availed himself of no portion of the vacation.

Note 2.- When a Government servant serving in a Vacation Department proceeds on leave before completing a full year of duty, the earned leave admissible to him shall be calculated not with reference to the vacations which fall during the period of actual duty rendered before proceeding on leave but with reference to the vacations that fall during the year commencing from the date on which he completed the previous year of duty.

APPENDIX II

(See rule 52)

List of Government servants serving in Vacation/Non-vacation Department

The following classes of Government servants serve in Vacation Departments when the conditions of rule 52 are fulfilled:—

1. (a) Under the Directorate of Education, —(i) All Heads of Government Educational Institutions belonging to Class I, II

and III.

(ii) Professors, Readers, Associate Professors, Research Assistants, Lecturers, Assistant Lecturers, Demonstrators, Tutors in Class I, II and III, as the case may be, in Government Arts, Science, Commerce and Law Colleges.

(iii) Professors, Lecturers, Co-ordinators, Assistant Lecturers etc. in Class I, II and III as the case may be, in Government Training Colleges.

(iv) Physical Instructors in Government Colleges and Secondary Schools.

(v) Laboratory Assistants, Laboratory Attendants in Government Colleges and Secondary Schools.

(vi) Lecturers or other teachers in Government Primary, Middle and Secondary Schools and in Primary Training Institutions and other special Institutions.

(vii) All other staff in Government Institutions excepting those mentioned as belonging to Non-Vacation Department.”

Statutes

“**424. (3). Leave.**—

(a)-(b)

* * *

(c) **Earned leave.**—

(a) The confirmed non-vacation teacher shall be entitled to earned leave at the rate of one-eleventh of the period spent on duty subject to his accumulating maximum of 180 days of leave.

(b) The teacher other than the one included in (a) above shall be entitled to one twenty-seventh of the period spent on duty and the period of earned leave as provided in the proviso to Section 423 subject to his accumulation of maximum of 180 days. For this purpose the period of working days only shall be considered.

424(C). Encashment of unutilised earned leave on super-annuation.—The teacher shall be entitled to encash earned

leave in balance to his credit on the date of his superannuation subject to a maximum of 180 days.

In case the teacher is required to serve till the end of academic session beyond the date of his superannuation, he shall be entitled to encash the balance of earned leave to his credit on the date of his actual retirement from service.”

16. An analysis of the provisions of the 1994 Act shows that universities constituted under Section 3(1) are autonomous and they are, by and large, independent in their functioning. However, the State Government can exercise control in some matters including those which have financial implications and issue directives which are binding on the universities. The creation of posts and conditions of service of the teaching and non-teaching staff which impacts finances of the universities are some such matters. Section 8 makes it obligatory for the universities to seek approval of the State Government for creation of new posts of teachers, officers or other employees and revision of their pay, allowances, post-retirement benefits, etc. No university can grant special pay or allowance or extra remuneration to the employees except with the prior approval of the State Government. Likewise, any decision regarding affiliated colleges resulting in additional financial liability can be taken only after obtaining approval from the State Government. The Statutes framed under Section 51(8) in matters like qualifications, recruitment, workload, code of conduct, terms of office, duties and conditions of service of teachers, officers and other employees of the university and the

affiliated colleges, except those maintained by the State or Central Government or a local authority, require approval of the State Government. By virtue of Section 115(2)(xii), the Statutes framed by various universities prior to the enforcement of the 1994 Act were continued till their supersession or modification by the Statutes made under the new Act.

17. We may now advert to the 1981 Rules. Rule 50(1) lays down that leave account of every Government servant other than the one serving in a Vacation Department shall be credited with earned leave, in advance, in two instalments of 15 days each in January and July of every year and the leave at the credit of a Government servant at the close of the previous half year is to be carried forward to the next half year subject to the maximum limit of 240 days. Rule 52 defines the Vacation Department as a department or part thereof to which regular vacations are allowed and during which an employee serving in that department is permitted to be absent from duty. As per Appendix II, which finds reference in Rule 52, all Heads of Government Education Institutions belonging to Class I, Class II and Class III and Professors, Readers, Associate Professors and other teachers in Class I, II and III employed in Government Arts, Science, Commerce and Law Colleges, Government Training Colleges, Physical Instructors in Government Colleges and Secondary Schools, Laboratory Assistants, Laboratory Attendants in Government Colleges and

Secondary Schools, Lecturers and other teachers in Government Primary, Middle and Secondary Schools and in Primary Training Institutions and other special Institutions as also other staff in Government Institutions, except those mentioned as belonging to Non-Vacation Department, are treated as serving in the Vacation Departments.

18. Although, Rule 54 has the caption “Earned leave for persons serving in Vacation Departments”, sub-rule (1) thereof declares that a Government servant serving in a Vacation Department shall not be entitled to any earned leave in respect of duty performed in any year in which he avails the full vacation. Sub-rule (2) of Rule 54 deals with a situation in which a Government servant avails himself of a portion of the vacation, in that event he is entitled to earned leave in such proportion of 30 days as the number of days of vacation not taken bears to the full vacation. Clause (b) of Rule 54(2) lays down that if a Government servant does not avail himself of any vacation in any year, earned leave shall be admissible to him in respect of that year in terms of Rule 50.

19. We are in complete agreement with the view expressed by the coordinate Bench in *Khandesh College Education Society, Jalgaon v. Arjun Hari Narkhede* (2011) 7 SCC 172, that the provisions contained in the 1981 Rules are not applicable to the university teachers and the teachers of the affiliated colleges because they are not Government servants but this cannot lead to an inference that the affiliated colleges are

entitled to reimbursement of the amount paid to the teachers in lieu of earned leave. Though the Statutes framed by the Pune University under the 1974 Act entitle the teachers of the affiliated colleges to get the benefit of leave encashment, there is no provision either in that Act or in the 1994 Act which obligates the State Government to extend the benefit of leave encashment to the university teachers or to the teachers of the affiliated colleges and the mere fact that the Statutes of the particular university provide for grant of leave encashment to the teachers, does not entitle the concerned university or college to claim reimbursement from the State Government as of right.

20. The criticism of the directives issued by the State Government to the universities to amend the Statutes under which the teachers are given the benefit of leave encashment is wholly misplaced. It is neither the pleaded case of respondent Nos. 1 and 2 nor it has been argued by Shri Gonsalves that the teachers employed in the Government colleges are entitled to the benefit of leave encashment. Therefore, the State Government was perfectly justified in issuing directives to the universities to amend their Statutes. No doubt, in some of the communications reference has been made to Rules 50, 52 and 54 of the 1981 Rules but this does not detract from the fact that the State Government is empowered to issue such directives. It is a different thing that for almost two years the Pune University failed to take action in accordance with the binding

directives issued by the State Government.

21. In paragraph 18 of the Khandesh College Education Society, Jalgaon v. Arjun Hari Narkhede (supra), this Court has taken cognizance of the directives issued by the State Government from time to time to the universities to amend the Statutes and observed that till the Statutes, which are not inconsistent with the provisions of the 1994 Act, are modified or superseded the same shall continue to remain in force. However, these observations cannot be interpreted in a manner which would entitle the university or the affiliated colleges to claim reimbursement.

22. In the result, the appeals are allowed, the impugned orders are set aside and the writ petition filed by respondent Nos. 1 and 2 is dismissed. The parties are left to bear their own costs.

.....J.
[G.S. SINGHVI]

.....J.
[H.L. GOKHALE]

New Delhi,
January 29, 2013.