

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 6504 OF 2015
WITH CP/367/2015

MUMTAZBEE ABDUL SAMAD
VERSUS
MADARSA-A-FAIZ ULOOM THROUGH ITS PRESIDENT AND OTHERS

...
Advocate for Petitioner : Mr. S. R. Barlinge
Advocate for respondent Nos. 1 and 2: V.G. Salgare
AGP for Respondents 3 to 5: Mr. V.H. Dighe
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**CORAM : S. V. GANGAPURWALA AND
V. K. JADHAV, JJ.**

DATED : 8th SEPTEMBER, 2016

P.C. :-

1. The petitioner claims arrears of salary from the date of her appointment i.e. 15.6.1992. Mr. Barlinge, learned counsel for the petitioner states that the petitioner is appointed on 15.6.1992 and since then she is not paid the salary. The petitioner was terminated in the year 2003. The said termination order is set aside by this Court in writ petition No. 957 of 2007 vide judgment and order dated 7.7.2010. Learned Single Judge of this Court set aside the termination order granting reinstatement in service with back wages due from the date of termination till reinstatement and the continuity in service. Learned counsel submits that the respondent management assailed the said order in Letters Patent Appeal before

the Division Bench bearing L.P.A. No. 243 of 2010. The said L.P.A is dismissed. Against the said judgment, the management preferred Special Leave to Appeal before the Apex Court. The Apex Court also dismissed the S.L.P. and directed the concerned authority to create one post so that petitioner herein can be properly accommodated. Learned counsel submits that pursuant to the said order, respondents created one post in April, 2012 and thereafter has granted approval to the appointment of the petitioner since the date of her appointment i.e. from 15.6.1992. Learned counsel submits that since the date of creation of post, respondent State is liable to pay the salary and till then the management is liable to pay the salary as per 5th pay Commission and from 1.1.2006 as per 6th Pay Commission.

2. Mr. Salgare, learned counsel for the respondent management submits that the petitioner is not entitled for the alleged arrears of salary from respondent management. The approval has been granted to the appointment of the petitioner since 15.6.1992 and if any arrears of salary is remained to be paid, the same is to be paid by the State. Learned counsel further submits that the petitioner was appointed on the post 'not approved' and as such, the management is not liable to pay arrears of salary. The petitioner has nowhere shown that the petitioner during the said period was unemployed. As

such, petitioner is not entitled for the back wages. Learned counsel relies on the judgment of the Apex Court in the case of ***Mulin Sharma vs. State of Assam and others, reported in 2016 AIR (SCW) 3225***. Learned counsel further submits that in view of the judgment of Nagpur Bench if at all the liability is fastened, the same has to be fastened as per the 4th Pay Commission. The petitioner is not entitled for salary as per 5th and 6th pay Commissions.

3. Mr. Dighe, learned A.G.P. submits that as per the direction of the Education Department, the additional post has been created w.e.f. 20.4.2012. The approval is granted from the date of appointment with certain conditions. The State is not liable to bear any financial liability. The State would be liable to pay the salary from the date of approval granted on 13.7.2015.

4. We have considered the submissions. The arguments of Mr. Salgre, learned counsel for the respondent management that during the period of termination the petitioner was employed and not entitled for back wages cannot be considered in this petition in view of dictum of this Court in writ petition No. 957 of 2007, wherein the respondent management is directed to reinstate the present petitioner alongwith continuity in service and back wages. The said judgment has been confirmed by the Apex Court. The parties are

bound by the said judgment. As such, it would be far fetched on the part of learned counsel to argue about the back wages when between the same parties the issue has been concluded up to the Apex Court.

5. The question would remain about the quantum of salary to which the petitioner is entitled and who has to pay the same.

6. The Apex Court vide its order dated 10.2.2012 has directed the authorities to create one post so that the petitioner herein can be properly accommodated. The said directions of the Apex Court were required to be implemented immediately; however it took almost three years for the respondent-State to implement the order of the Apex Court to create one additional post. The said additional post was created in 2015 and approval is granted by the State to the appointment of the petitioner since 15.6.1992.

7. The approval order itself is with certain conditions. The additional post is created only as per the order of the Apex Court. The post was to be immediately created. Considering that the order is passed by the Apex Court on 10.2.2012 and considering reasonable time for the respondent State to take decision, we direct that the respondent State would be liable to pay salary from 1.4.2012

and the management shall submit the salary bills of the petitioner from 1.4.2012 as per the salary admissible to the petitioner as on the said date to the State authority and the State authority shall process the same and if there is no other impediment, sanction it and the management shall also submit regular salary bills.

8. From the date of termination till 31.3.2012 it would be the respondent management who would be liable to pay the salary in view of the judgment of the learned Single Judge of this Court in writ petition No. 957 of 2007 confirmed up to the Apex Court. Though the petitioner has claimed salary as per 5th pay Commission up to 30.12.2005 and as per 6th pay Commission from 1.1.2006 we are unable to accept the arguments of Mr. Barlinge, learned counsel for the petitioner in view of the judgment of Division Bench of this court at Nagpur, in the case of ***Mahadeo Pandurang More and others vs. State of Maharashtra and others, reported in 2014 (5) Mh.L.J. 877.*** It has been held that Schedule to the M.E.P.S. Act is not amended as per 5th and 6th Pay Commissions and the same is amended only up to 4th pay Commission. The petitioner is entitled for the salary as per 4th pay Commission. The respondent management shall pay the salary to the petitioner as per 4th pay Commission from the date of termination i.e. 30.4.2003 till 31.3.2012. The respondent management has already deposited an amount of Rs.1,00,000/- in

the account of the petitioner, the same shall be adjusted. 50% arrears shall be paid within six months from today and remaining 50% arrears shall be paid within six months thereafter.

9. Writ petition is accordingly disposed of.

10. In view of observations made in the order passed in writ petition No.6504 of 2015, the contempt petition bearing No. 367 of 2015 does not survive and the same is disposed of.

(V. K. JADHAV, J.)

(S. V. GANGAPURWALA, J.)

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