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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.1809 OF 2013

Mrs. Lila Shankar Nage and others …. Petitioners.
V/s.
Sabhapati, Sangli Miraj Kukpwad Mahanagar Palika Prathamik Shikshan Mandal, Sangli and others …. Respondents

Mr. Surel S. Shah, for the Petitioners.
Mr. A. A. Kumbhkoni, Senior Advocate for Respondent Nos 1 & 2.
Mr. S. P. Prabhu, for the Respondent No.3.
Mr. P. G. Sawant, A.G.P., for the Respondent-State.

CORAM : RANJIT MORE &
DR. SHALINI PHANSALKAR-JOSHI, JJ.

DATE : 22nd MARCH, 2016.

P.C. :

1. Heard. Rule.

2. Since the controversy involved in this petition is short, rule is made returnable forthwith and by consent of learned counsel appearing for the respective parties, the petition is taken up for final hearing.

3. Heard Mr. Shah, learned counsel appearing for the petitioner, Mr. Kumbhkoni, learned Senior Counsel appearing for respondent Nos 1 & 2, Mr. Prabhu, learned counsel appearing for respondent No.3 and Mr.

Sawant, learned AGP for the State.

4. By this petition filed under Article 226 of the Constitution of India, the petitioners seek directions to respondent Nos. 1 to 3 to release and pay the amount of Provident Fund with accrued interest thereon. They have further sought direction for the payment of difference in dearness allowance payable to them for the period between January 2002 and July 2003 with accrued interest thereon.

5. The petitioners are the retired Primary Teachers. There is no dispute that the petitioners were working as Primary Teachers in the schools run by School Board, Sangli-Miraj-Kupwad Municipal Corporation. The contention of the petitioners is that since their retirement till this date they have not received the amount of provident fund and arrears of dearness allowance within the stipulated period of three months, as per clause 17 of the Schedule M of Bombay Primary Education Rules, 1949. The claim of the petitioners as prayed for is not disputed by learned counsel for respondent No.3.

6. Mr. Kumbhkoni, learned Senior Counsel, appearing for respondent Nos 1 & 2 submitted that the School Boards run by the Corporation stand dissolved after completion of their term i.e. on 14th August 2014, by virtue of enactment of the City of Mumbai Primary Education, the Maharashtra Primary Education, the Hyderabad

Compulsory Primary Education and Madhya Pradesh Primary Edcuation (Repeal) Act, 2003 (for short to be referred as, "the Repeal Act") and therefore, the petitioners cannot claim any relief against respondent No.1.

7. Learned counsel Mr. Prabhu appearing for respondent No.3.submitted that having regard to the financial position of respondent No.3, it is not possible for them to make payment immediately. He seeks six months' time to make the said payment to the petitioners. He also submitted that the amount of Provident Fund deducted from the petitioners' salary came to be invested by the School Board with Vasantdada Shetkari Sahakari Bank Ltd. Sangli, and the said bank has gone into liquidation and liquidation proceedings are going on.

8. Under the provisions of the Bombay Primary Education Act, 1949 and the Rules made thereunder, it is obligatory on respondent No. 1 to establish provident fund in accordance with Section 193 of the Primary Education Act. In pursuance thereof, the Provident Fund was established and from the salaries of the primary teachers deductions towards P.F. contributions were made by the school Board. Under Rule 193(4) of the Rules, the fund is required to be administered, maintained and used in accordance with the Rules prescribed in the Schedule M to the Rules. On retirement of teachers, it is mandatory to release the provident fund to the subscriber within three months from the date of his retirement. Under

Section 21 of the Primary Education Act, for every school Board an Administrative Officer is appointed, who is the Chief Executive Officer of the Board and therefore, it is his bounden duty to ensure that the amount of Provident Fund of the retired teacher is released within the stipulated period of three months from his retirement. This position is not disputed by the learned counsel for the respective parties.

9. The State of Maharashtra has enacted Maharashtra Act No.XXV of 2014, to repeal City of Mumbai Primary Education Act, the Maharashtra Primary Education Act, the Hyderabad Compulsory Primary Education Act, 1952 and the Madhya Pradesh Primary Education Act, 1956. This Repeal Act came into force on 1st July, 2013. On commencement of the said Repeal Act, (a) the City of Mumbai Primary Education Act, (b) the Maharashtra Primary Education Act, (c) Hyderabad Compulsory Primary Education Act, 1952, (d) the Madhya Pradesh Primary Education Act, 1956 stand repealed in terms of provisions of Section 3(2) (a) of the Repeal Act. On commencement of the Repeal Act, the School Boards, Local Committees or other Committees or Boards constituted under the repealed Acts and the Rules made thereunder, stand dissolved at the expiry of their respective terms and members shall vacate their office accordingly. Such School Boards, Local Committees or any other Committees or Board shall work under the superintendence,

direction and control of the concerned Local Authorities.

10. Under clause (d) of section 3 (2) of the Repeal Act, all debts, liabilities and obligations incurred by School Boards and Local Committees, immediately before the commencement of the Repeal Act and lawfully subsisting against any such School Boards and Local Committees shall be discharged and satisfied by the concerned local authority.

11. Under clause (h) of section 3(2) of the Repeal Act, the Provident Fund, Gratuity, Pension and other benefits payable to the teaching and non-teaching employees of schools established under the repealed Acts, shall be maintained and paid by the concerned local authority as per the existing policy under the repealed Acts and the Rules made thereunder;

12. The above provisions abundantly make it clear that respondent No.3 is under an obligation to discharge the liabilities of respondent No.1. Respondent No.3 is duty bound to pay to the petitioners amount of Provident Fund with interest accrued thereon and the difference in dearness allowance for the period between January, 2002 and July, 2003 alongwith interest accrued thereon.

13. Mr. Prabhu, learned counsel for respondent No.3 does not dispute the liability of respondent No.3 of paying to the petitioners said

amounts. He, however, stated that in view of the financial position of respondent No.3, six months time may be given to pay said amounts to the petitioners. This request is vehemently opposed by Mr. Shah, learned counsel appearing for the petitioner.

14. Since there is no dispute that the respondent Nos. 1 & 2 have deducted amounts towards Provident Fund from the petitioners' salary and ultimately respondent No.3 by virtue of Repeal Act, is liable to pay the said amount, we allow this petition in terms of prayer clauses (a) and (b). Since the petitioners have retired from the service in a period between 2009 to 2012, and amount of Provident Fund has become due and payable immediately after retirement, we are not inclined to grant six months time to respondent No.3 to pay the said amount. We accordingly direct respondent No.3 to pay the said amount to the petitioners within a period of six weeks from today..

15. Rule made absolute in above stated terms.

[DR. SHALINI PHANSALKAR-JOSHI, J.] [RANJIT MORE, J.]