

FARAD CONTINUATION SHEET No.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

M.C.A. NO.719/2016 IN WRIT PETITION NO. 1912/2004 (D)
(A.P.M.C., YAVATMAL VERSUS STATE OF MAHARASHTRA & ANOTHER)

Office Notes, Office Memoranda of Coram,
 appearances, Court's orders of directions
 and Registrar's orders

Court's or Judge's orders

Shri Abhay Sambre, counsel for the applicant.
 Shri A.A. Madiwale, A.G.P. for the R-1 & 3.
 Mrs. U.A. Patil, counsel for the R-2.

CORAM : SMT. VASANTI A NAIK AND
PRASANNA B. VARALE, JJ.

DATE : AUGUST 19, 2016.

By this review application, the applicant-Agriculture Produce Market Committee, Yavatmal seeks a review of the judgment dated 17.12.2015, so far as it directs the applicant-Committee to pay the arrears of salary to the original petitioner.

It is stated on behalf of the applicant that though by the order dated 17.12.2015, the petitioner was granted leave to delete the prayer for declaration and in stead seek a prayer for protection of services, by amending the writ petition, while seeking the protection of employment, the petitioner has sought for the consequential benefits of fixation of proper pay-scale and a direction to the respondent no.2 to pay the arrears with increments.

We find on a perusal of the order granting leave, dated 17.12.2015 that leave was granted to the petitioner to only delete the prayer in respect of the declaration and incorporate a prayer for protection of services. Leave was not granted to the petitioner to seek the fixation of proper pay-

scale or seek a direction to the respondent no.2, i.e. present applicant, to pay the arrears with increments. We find that on the basis of the said amendment, we have directed the respondent-Market Committee, i.e. the applicant herein, to pay the entire arrears of salary. We find that in the petition that was filed in the year 2004, there was no prayer in regard to the fixation of proper pay-scale.

It is stated that the original petitioner is now claiming the arrears of salary after fixation of proper pay-scale with effect from 1998-99, though the said relief was barred by limitation.

We find much force in the submission made on behalf of the applicant that the prayer for a direction to the Market Committee to pay the arrears of salary from 1998-99 to the petitioner would be barred by limitation, except for a period of three years before the date of rendering of our judgment on 17.12.2015. It is well settled by the decisions of the Hon'ble Supreme Court, reported in **(1997) 11 SCC 13** (*Jaidev Gupta Versus State of H.P. & Another*), **(2007) 9 SCC 274** (*Shiv Dass Versus Union of India & Others*), **(1995) 5 SCC 628** (*M.R. Gupta Versus Union of India & Others*) and **(2008) 8 SCC 648** (*Union of India & Others Versus Tarsem Singh*) that even if a monetary claim is found to be sustainable and an employee is held entitled to the same in view of the continuity of the cause of action, the monetary relief should be restricted for three years, preceding the date on which the proceedings for grant of the said relief is filed in the Court. In the instant case, though the original petitioner has approached this Court in the year 2004, there is no prayer in the writ petition for a direction to the respondents to fix

the salary in the proper pay-scale and pay the arrears. It is conspicuous to note that a prayer of this nature was made by the petitioner by filing another petition in the year 2006 and the same was withdrawn in pursuance of an objection raised on behalf of the Market Committee that the petitioner would have an alternate remedy before the Joint Registrar. The Joint Registrar had refused to accept the application of the petitioner and despite that, the petitioner did not amend this writ petition or file another petition for seeking appropriate relief. The petitioner could have at the time of filing of this petition itself, sought this relief but, that was not sought and only a declaration was sought in the matter of appointment of the petitioner. In the absence of any prayer for grant of monetary benefits till the date of the judgment dated 17.12.2015, the petitioner cannot be permitted to seek the monetary benefits from the year 1998-99. The judgment of the Full Bench reported in **2003(3) Mh.L.J. 1025** (*Maharashtra State Road Transport Corporation, Nagpur Versus Premlal Khatri Gajbhiye*) and relied on by the counsel for the original petitioner would not be applicable to the facts of this case. In any case, since we had permitted the petitioner to amend the petition only for the purpose of deleting the prayer in respect of declaration and make a prayer for protection of services, the petitioner could not have amended the writ petition and sought a direction against the respondents to fix the pay-scale and pay the arrears of salary in the proper pay-scale to the petitioner. In our view, while rendering the judgment dated 17.12.2015, we had directed the respondent-Market Committee to fix the pay of the petitioner and pay the arrears of salary as we generally do

in all petitions, without adverting our mind to the aforesaid aspects. In the circumstances of the case, since the original petitioner was not permitted to amend the petition so as to seek a direction to the respondent-Market Committee to pay the entire arrears of salary to the petitioner, the relief of payment of entire arrears may not have been granted in favour of the petitioner, specially in the absence of a representation by a counsel on behalf of the Market Committee in the Court on 17.12.2015. Though we do not find any necessity to modify the order in regard to the fixation of pay of the petitioner, in the circumstances of the case, we would wish to review our order and direct the respondents to pay the arrears of salary to the petitioner for a period of three years from the date of the judgment dated 17.12.2015.

It is informed to this Court that in pursuance of an order passed in the miscellaneous civil application, the amount of arrears of salary for a period of three years is paid to the original petitioner during the pendency of this miscellaneous civil application.

At this stage, the learned counsel for the original petitioner states that the Market Committee has not fixed the pay in accordance with law and has not granted the increments and higher pay-scale to the petitioner after completion of the requisite period of service. It is stated that the fixation of the pay is not properly done and the arrears of salary for the past three years is also not paid in accordance with law.

Shri Sambre, the learned counsel for the applicant, states that the Market Committee would look into this aspect and do the needful.

Hence, for the reasons aforesaid, the miscellaneous civil application is allowed. We hereby modify our judgment dated 17.12.2015 only so far as it directs the Market Committee to pay the entire arrears of salary to the petitioner. We restrict the payment of arrears of salary to the petitioner for a period of three years preceding the date of the judgment.

Order accordingly. No costs.

JUDGE

JUDGE

APTE

CERTIFICATE

I certify that this Judgment/Order uploaded is a true and correct copy of original signed Judgment/Order.

Uploaded by: Rohit D. Apte.

Uploaded on : 22.08.2016.