

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO. 6009 OF 2016

Tejram S/o Maroti Panchbhai

-vs-

State of Maharashtra, thr.the Principal Secretary, Ministry of Social Welfare & Education & ors..

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Mr.A.H.Jamal, counsel for the petitioner.
Ms Tajwar Khan, AGP for the respondent Nos.1, 2 and 6.

CORAM : SMT. VASANTI A NAIK &
MRS. SWAPNA JOSHI, JJ.

DATE : 15.11.2016.

By this writ petition, the petitioner seeks a direction against the respondents to pay the arrears of salary-back wages to the petitioner from 01/11/2000 to 30/04/2003.

When the petitioner was asked to retire from service at the age of 58 years on the ground that he had attained the age of superannuation in the year 2000, the petitioner had filed Writ Petition No.3631 of 2000 challenging the retirement notice dated 30/09/2000, issued by the headmaster. The petitioner had also sought a direction against the concerned respondents to consider that the petitioner had retired at the age of 60 years and not at the age of 58 years as per the impugned retirement notice dated 30/09/2000. The said writ petition was partly allowed by the judgment dated 03/03/2005. It was declared that the petitioner was entitled to continue in service till the age of 60 years. Though the retiral benefits were granted to the petitioner by considering his retirement at 60 years, the petitioner was not paid the salary for a period of two years during which he did not work. The petitioner, therefore, filed a second writ petition bearing Writ Petition No.80 of 2010 seeking a direction against the respondents to pay the arrears of salary to the petitioner for two years. The said petition was permitted to be withdrawn. After the writ petition was

withdrawn, the petitioner filed a contempt petition bearing Contempt Petition No.2 of 2012 for taking action against the respondents for not paying the arrears of salary from the date of the retirement notice till the age of 60 years. The contempt petition was disposed by an order dated 31/03/2016, after observing that there was no prayer in Writ Petition No.3631 of 2000 that the respondents should pay the back wages to the petitioner for a period of two years. After the contempt petition was disposed of, the petitioner has again filed the present writ petition seeking a direction against the respondents to pay the arrears of salary-back wages to the petitioner from the date of the retirement notice till the petitioner attained the age of 60 years.

We are afraid, the present writ petition would not be tenable. In the first writ petition filed by the petitioner bearing Writ Petition No.3631 of 2000, the petitioner had not specifically made a prayer for a direction to pay the salary to the petitioner for two years. The petitioner had vaguely prayed that the petitioner be granted the benefits of superannuation at the age of 60 years. The writ petition was partly allowed by the judgment dated 03/03/2005 and it was held that the petitioner was entitled to continue in service till the age of 60 years. The petitioner filed a second writ petition bearing Writ Petition No.80 of 2010 for a direction against the respondents to pay the arrears of salary to the petitioner for a period of two years. The said writ petition was withdrawn. After the writ petition was withdrawn on 25/06/2010, the petitioner filed the contempt petition for action against the respondents for not paying the arrears of salary for two years. It was observed in the contempt petition that there was no specific prayer for a direction to the respondents to pay the arrears of salary till the petitioner attained the age of 60 years. After the contempt petition was disposed of, the petitioner has filed the present writ petition, that is the third writ petition for a direction against the respondents to pay the arrears of salary to the petitioner for a period of two years. This writ petition would be barred by the principles akin to the principles of constructive *res judicata*. The petitioner has not sought any specific directions against the respondents for payment of salary in

the first writ petition. The second writ petition filed by the petitioner in the year 2010 bearing Writ Petition No.80 of 2010 was also permitted to be withdrawn.

The claim of the petitioner that a sum of Rs.1,34,876/- was wrongly deducted by the treasury after the petitioner started receiving pension at the age of 60 years and, therefore, the said action is bad-in-law also cannot be considered in this writ petition. After the petitioner started receiving the pensionary benefits, if there was any grievance in regard to the wrongful deduction of an amount of Rs.1,34,876/-, the petitioner would have surely agitated the said issue in Writ Petition No.80 of 2010. We find that Writ Petition No.80 of 2010 was permitted to be withdrawn, with the result that the petitioner was not granted the relief claimed. If that is so, the petitioner cannot by this third writ petition make a grievance that a sum of Rs.1,34,876/- was wrongly deducted from his pensionary benefits. If the aforesaid amount was wrongfully recovered, the petitioner should have made a grievance about the same, immediately in the year 2006. Also, it is necessary to note that this Court had observed in the order in the contempt petition that admittedly the petitioner has received all the retiral benefits by considering his age of retirement to be 60 years. In view of the solemn statement made by the counsel for the petitioner in the contempt proceedings, the petitioner cannot be heard to state after more than ten years from the date of rendering of the judgment in the first writ petition that an amount of Rs.1,34,876/- was wrongly deducted from his pensionary benefits.

It appears that the petitioner is vexing the Court by filing proceedings time and again in respect of the same matter that could have been agitated in the first petition. In the circumstances of the case, the judgment of the Hon'ble Supreme Court, reported in 2016 I CLR 228 (Shobha Ram Raturi v. Haryana Vidyut Prasaram Nigam Ltd. & Ors.) cannot be made applicable. In the case before the Hon'ble Supreme Court, the High Court had denied the back wages to the petitioner on the principle of "no work no pay" and the Hon'ble Supreme Court had held in the aforesaid reported judgment that the

High Court was not justified in rejecting the prayer for back wages on the principle of “no work no pay”. The issue involved before the Hon'ble Supreme Court was entirely different and in that matter the order of the High Court was challenged before the Hon'ble Supreme Court by the petitioner therein. In this case, the petitioner has not challenged the orders in the first or the second petition before the Hon'ble Supreme Court.

In the absence of any specific prayer in regard to the payment of arrears of salary in the first writ petition and in view of the withdrawal of the second writ petition, the present writ petition would not be maintainable.

In the aforesaid set of facts, we dismiss the writ petition with no order as to costs.

JUDGE

JUDGE