

Urmila Ingale

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 6228 OF 2003
WITH
CIVIL APPLICATION NO. 1639 OF 2016

Mahadeo Manbodh Prajapati
Residing at Krishna Anand Bldg.
2nd floor, Chandan Baug, Bhiwandi,
Dist. Thane .. Petitioner

Vs.

1. Principal
Shree Satyanarayan Madhyamik
Hindi Vidyalaya, College Road,
Dhamankar Naka, Bhiwandi,
Dist. Thane.
2. Secretary
Shree Satyanarayan Shiksha
Seva Sangh,
Dhamankar Naka, Bhiwandi,
Dist. Thane.
3. Education Officer (Secondary)
Zilla Parishad, Thane
4. Dy. Director of Education
Nasik.

5. State of Maharashtra .. Respondents

Mr. M.V. Limaye, for the Petitioner.
None for Respondents No.1 & 2.
Mr.Rohan Sawant, AGP for Respondents No.3 to 5.

**CORAM : A.A.SAYED &
M.S.KARNIK, JJ.**

**RESERVED ON : 14th JUNE, 2017
PRONOUNCED ON : 21st JUNE, 2017**

JUDGMENT (PER M.S.KARNIK, J) :

1. The grievance of the petitioner in the instant Writ Petition is that though he has been working as an assistant teacher and is duly qualified, he has not been paid his salary and allowance. According to him, though his appointment was approved for some years, it has not been approved by the Education Officer for the years 1995-96, 1997-98, 2000-01 and consequently not paid any salary for the said period.

2. As per the affidavit-in-reply filed by the Deputy Education Officer, Zilla Parishad, Thane, the department has approved the post of the petitioner on year to year basis in 1996-97, 1998-99, 1999-2000. According to the respondent No.3 approval for appointment of the petitioner in 2000-01 was not given as one Shri K.P. Singh was absorbed as surplus teacher in respondent No.1 – School. There was no vacant post for the

petitioner in 2000-01. The management did not obtain prior consent of respondent No.3 before appointment of the petitioner in the year 2000-01. Respondent No.3 has given approval for the post of the petitioner since 01/02/2001, since surplus teacher retired and the petitioner was appointed in place of retired teacher.

3. The Deputy Education Officer on behalf of respondent No.3 in the affidavit has stated that in the year 1995-96, the petitioner was working in the primary section and hence, respondent No.3 cannot be held liable to pay salary to the petitioner prior to 17/01/1996.

4. Learned Counsel for the petitioner in all fairness submits that he is not pressing prayer 20(a) (iii). His main contention is that as admittedly from 1996-97 onwards, the petitioner is teaching as a full time assistant teacher with the respondents No.1 & 2 in the secondary section, he should be paid wages as per the prescribed pay scale for the period from the year 1996 onwards till 2001. According to the petitioner as

he is retired, the period during which he is admittedly worked in the secondary section from 1996 onwards may be counted for the purposes of calculating his terminal benefit , pension etc. and continuity of service.

5. The affidavit filed by the Deputy Education Officer further indicates that as there was clear break in service in 2000-01, the benefit of previous service cannot be granted to the petitioner and there is no provision to condone the break period to obtain financial benefits and increment.

6. The petitioner had approached this Court on an earlier occasion by filing Writ Petition No. 4399 of 2001. By an order dated 05/11/2001, this Court was pleased to dispose of the petitioner by observing thus:

“3. If the petitioner is not being paid his salary allowance on account of the fact that the Education Officer has not granted approval, obviously respondents No.1 & 2 are obliged to pay him the salary. But before that is done, we direct the Education Officer to consider the matter and after considering all the facts and circumstances, record a finding as to whether the petitioner is eligible for appointment as Assistant Teacher. If he finds that the respondents have not paid him salary/allowance for any

period for which he is entitled to receive the salary/allowance, he shall direct the respondents to pay to the petitioner the salary allowance for the period in question. However, if he comes to the conclusion that approval may be granted for the appointment of the petitioner, then for those years as well, he may pass appropriate order and consequently, sanction payment of grant in aid to the school in question for meeting the obligation of payment of salary allowance to the petitioner for the years in question.

4. The petitioner is directed to make a representation to the Education Officer- respondent No.3, within a period of two weeks from today and the Education Officer will dispose of the matter within a period of 8 weeks from the date of receipt of the representation. Advanced copy of the representation should be served upon respondents No. 1 and 2. All contentions are left open to the parties concerned.

The Writ Petition is disposed of in above terms.”

7. In terms of the order dated 05/11/2001, the petitioner made a representation on 13/11/2001 to respondent No.3. From the record, it appears that the representation dated 13/11/2001 was not decided in terms of the order dated 05/11/2001 and therefore, order of this Court is not complied with.

8. Respondent No.3, however, by communication dated 04/03/2002 addressed to the respondent No.1, insofar as the petitioner is concerned, granted approval to the appointment of

the petitioner as an assistant teacher with effect from 01/02/2001. Though there is reference to the order passed by this Court on 05/11/2001, the issues that were required to be dealt with by the respondent No.3 as regards payment of salary and arrears for the academic years 1997-98 & 2000-01 were not dealt with by the respondent No.3. Respondent No.3 required the respondent No.1 to furnish some information regarding the salary paid to the petitioner for the period from 1996-97 to 2000. Learned Counsel for the petitioner, however, submits that no such information was ever supplied, as a result, the petitioner's appointment was not granted approval for the years 1997-98 and 2000-01. He was not paid salary for this period even though it was the primary responsibility of the respondents No.1 & 2 to have paid the salary.

9. The petitioner has therefore prayed that he is entitled for arrears of salary for the years 1997-98 and 2000-01 as per prescribed pay scale along with interest. Learned Counsel for the petitioner has indicated that for the period 1995-96 as he

had worked in the primary section, he is restricting his claim for salary for the period 1997-98 and 2000-01.

10. Respondents No.1 & 2 have filed an affidavit contending that for the period 1997-98 & 2000-01 in respect of secondary section, approval was not received from the concerned department. The stand of the respondents No.1 & 2 as far as unpaid salary for the period 1997-98 & 2000-01 is for issuance of necessary directions to the Education Officer Zilla Parishad and if their approvals are received, then respondents No.1 & 2 have no objection to comply with the said directions.

11. Having regard to the stand taken by respondents, there is no dispute that the petitioner has been discharging his duties as an assistant teacher in the secondary section for the period from 1996-97 till his retirement. From the academic year 2001-02, the petitioner's appointment as an assistant teacher has been approved in the secondary section. It is only in the year 1997-98 & 2000-01 that the appointment of the petitioner was

not approved. The petitioner has nevertheless discharged duties as an assistant teacher even during this period. As the petitioner has worked as an assistant teacher in the secondary section of respondents No.1 & 2 - School during the period 1997-98 & 2000-01, the petitioner is entitled to full salary as per prescribed pay scale.

12. As we find that there is no proper compliance of the order dated 05/11/2001 passed by this Court in Writ Petition No. 4399 of 2001, it is necessary in the interest of justice to permit the petitioner to make a comprehensive representation to the respondent No.3 for treating the period from 1996-97 till 2000-01 for the purpose of continuity of service. If a representation is so made, the Education Officer may consider the said representation on its merits without being influenced by the stand taken by them in the affidavit-in-reply and the order dated 04/03/2002 at Exhibit 'H' page 29 of the Writ Petition.

13. Respondent No.3 may also examine the issue of granting approval to the petitioner's appointment afresh for the period for years 1997-98 & 2000-01 in the peculiar circumstances that the petitioner has since retired so that the period from 1996 onwards during which time he is discharging his duties as an assistant teacher may be counted for the purpose of continuity of service.

14. It is the primary responsibility of the respondents No.1 & 2 to pay to the petitioner the salary of an assistant teacher of secondary school as per prescribed pay scale for the academic years 1997-98 & 2000-01. If after paying the amount as directed below, an application is made by respondent No.1 for reimbursement for the said amount from respondent No.3, the said application may be decided on its own merits and in accordance with law. Hence, the following order.

ORDER

- i) Respondents No.1 & 2 are directed to pay to the petitioner salary as per prescribed pay scale for the period 1997-98 and 2000-01 along with interest @ 6% p.a. from the date on which the same became due and payable within a

period of 10 weeks from today.

- ii) The petitioner to make a representation to respondent No.3 for considering the period 1996-97 to 2000 -01 for continuity of service as an assistant teacher in the secondary school and if the petitioner chooses to make a representation within a period of 4 weeks from today, the respondents may decide the same in accordance with law within a period of 8 weeks from the date of receipt of the representation.
- iii) In the event, respondents No.1 & 2 make an application to respondent No.3 for reimbursement of the arrears of salary paid to the petitioner, the same may be considered on its own merit.
- iv) In view of disposal of the Writ Petition, Civil Application No.1639 of 2016 does not survive and the same also stands disposed of accordingly.
- v) No order as to costs. Rule is partly made absolute.

(M.S.KARNIK, J.)

(A.A.SAYED, J.)