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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.2981 OF 1999

Smt. Sulbha Sharad Vithalkar,
Adult, Occu: Service, Residing
at Flat No.3/A, Rajhans Deep
Housing Society Ltd., Dattawadi,
Old Bombay-Pune Road, Kalwa,
District Thane.

..Petitioner.

V/s.

1. Head Mistress, Mulinche Samartha
Vidyalaya, affiliated to Samartha
Shikshan Mandal and Charity Trust,
registered under the Bombay Public
Trust Act, 1950, Vidyanagari Marg,
Kalina, Santacruz, Mumbai-400 098.

2. Education Inspector, Western Region,
Jogeshwari, Mumbai-400 060.

3. Secretary to the Government of
Maharashtra in the Education Dept.
Mantralaya, Mumbai-400 032.

..Respondents.

Mr.K.K. Malpathak for the Petitioner.

Mr.Abhay L. Patki, AGP for the State-Respondent Nos.2 & 3.

***CORAM : ANOOP V. MOHTA AND
M.S. KARNIK, JJ.***

DATE : 29 MAY 2017

ORAL JUDGMENT (PER *ANOOP V. MOHTA, J.*)

The matter is called out for final hearing as the matter is specifically listed for final hearing. Heard the learned counsel for the parties.

2. The Petitioner has challenged the office order No. EI/MW/SEC/S44/11805 dated 24 May, 1999 issued by Respondent No.2 thereby directing recovery of the salary paid to the Petitioner for the last several years, though the appointment was approved by Respondent No.2 itself 14 years ago. There was no case of concealment of any fact or misrepresentation at the time of her appointment as Assistant Teacher with Respondent No.1. There was no serious issue raised till the impugned order was passed by Respondent No.2 and even by Respondent No.1 about the eligibility and / or qualification of the Petitioner for the post in question. Against the impugned order of recovery, the Petitioner filed the

present writ petition. This Court on 22 December, 1999, after hearing the parties has passed the following order and admitted the petition:-

“Rule. Respondents waive service.

2. The Petitioner was appointed as a teacher in Respondent No.1's school in 1985. At the time of joining the School, she possessed qualification of B.A. and degree of Sangit Visharad from the Gandharva University. Later on she passed M.A. in 1986. She was getting pay scale of Rs.365-760 which was revised to Rs.1400-2600 by reason of the 4th Pay Commission. Nearly 12 years after the Petitioner's appointment, an objection was sought to be raised for the first time that the Petitioner should have been treated as untrained teacher due to the fact that she did not possess B.Ed. degree and the degree of Sangit Visharad of Gandharva University was not recognized by the State Government at the relevant time. On that basis, recovery has been ordered against the Petitioner with retrospective effect at the rate of Rs.2500/- per month and three instalments have already been recovered.

3. According to the Petitioner, she having completed 12 years service, is entitled to higher pay scale of Rs.1640-2900 pursuant to the 4th Pay Commission Recommendations. She also contends the degree of Sangit Visharad was recognized as equivalent to B.Ed. degree and her appointment was made on that basis and was also approved by the Department. She is retiring in April, 2000.

4. Under the circumstances, we pass the following

interim order :

- A. Pending the hearing and final disposal of this Petition, effect and implementation of the impugned order No.EI/MW/SEC/S44/11805 dated 24/5/1999 of the Respondent No.2 and the impugned order No.36/99/2000 dated 22/7/1999 of the Respondent No.1 directing deduction of Rs.2500/- per month from the Petitioner's salary from August, 1999 onwards, is stayed.*
- B. On retirement of the Petitioner, her retirement benefits shall be released on the basis that she was entitled to the pay scale of 1400-2600.*
- C. As and when the State government decides to pay the benefits of the 5th Pay Commission to the School Teachers, the same shall be extended to the Petitioner also.*

Court Stenographer is permitted to issue an ordinary copy of this order to the parties. Parties to act on an ordinary copy of this order duly authenticated by the Court Associate.”

3. There is nothing on record to show that the concerned Respondents have challenged the order passed by this Court on 22 December, 1999. In the result, the Petitioner has been taking the benefits, including the salary as per the basic appointment letter entitlement. As stated, the Petitioner has retired in April, 2000. The statement is made that she has been getting all the retirement

benefits pursuant to the order passed by this Court as recorded / noted above. After hearing the parties and after going through the averments as well as the documents placed on record, we have also noted that there is no case of any suppression of fact and / or misrepresentation of fact and / or fraud. Such recovery after more than 14 years of basic appointment, in our view, is also not sustainable specifically in the background that she has been working on the post without any interruption based upon the initial sanction and approval by the said Respondents. Therefore, the entitlement benefits of the Petitioner, in our view, ought not to have been disturbed in such a fashion after more than 14 years of the Petitioner's first appointment. The observations made by the Division Bench while passing the interim order dated 22 December, 1999 has remained intact till this date. This in our view is an additional factor to confirm the same. There is no case even otherwise to disturb the entitlement of the Petitioner in view of the observations made above, especially after the interim order as passed more than 18 years back.

4. Therefore, it is made clear that the Petitioner's future

entitlement atleast the retirement entitlements is to be calculated in view of the order already passed on 22 December, 1999.

5. Therefore, taking overall view of the matter, the present petition is allowed in terms of prayer clauses (i) and (ii) of the main petition and clauses A and B of the interim order dated 22 December, 1999, which read as under:-

- (i) That this Hon'ble High Court be pleased to issue a writ of mandamus or a writ order or direction in the nature of mandamus, quashing and setting aside the impugned order dated 24/5/1999 bearing No.EI/MW/SEC/S44/11805 (Exh.D) issued by the Respondent No.2 directing deduction of salary allegedly paid in excess to the Petitioner;
- (ii) That this Hon'ble High Court be pleased to issue a writ of mandamus or a writ order or direction in the nature of mandamus, quashing and setting aside the impugned order dated 22/07/1999 bearing No.36/99-2000 (Exh.H colly)

issued by the Respondent No.1 pursuant to the impugned order dated 24/5/1999 of the Respondent No.2 (Exh-B) resolving deduction of salary at Rs.2500/- per month from August, 1999 onwards and further fixing her pay-scale as untrained teacher on 335-680 (old);

- A. Pending the hearing and final disposal of this Petition, effect and implementation of the impugned order No.EI/MW/SEC/S44/11805 dated 24/5/1999 of the Respondent No.2 and the impugned order No.36/99/2000 dated 22/7/1999 of the Respondent No.1 directing deduction of Rs.2500/- per month from the Petitioner's salary from August, 1999 onwards, is stayed.
- B. On retirement of the Petitioner, her retirement benefits shall be released on the basis that she was entitled to the pay scale of 1400-2600.

5. Rule is made absolute in the above terms. No costs.

(M.S.KARNIK, J.)

(*ANOOP V. MOHTA, J.*)