

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
25 WRIT PETITION NO.3757 OF 2018**

HAUSAJI NAGORAO MORE

..PETITIONER

VERSUS

THE STATE OF MAHARASHTRA AND OTHERS ..RESPONDENTS

...

Mr. Shambhuraje V. Deshmukh, Advocate for the Petitioner.

Mr. S. B. Joshi, AGP for Respondent-State.

Mr. Vivek J. Dhage and Mr. D. A. Karnik, Advocate for the Respondent Nos.3 and 4.

...
**CORAM : S. V. GANGAPURWALA &
R. G. AVACHAT, JJ.**

DATED : 19th DECEMBER, 2018.

PER COURT:-

1. Mr. Deshmukh, learned counsel for petitioner submits that the petitioner is not paid salary since October 2013. He is entitled for the salary as per the pay scale alongwith interest at the rate of 12% per annum. The petitioner is not in a position to discharge his duties because of high handed action of the respondents. The respondents are not allowing the petitioner to work. It is only after the complaint was filed by the petitioner under the Atrocities Act, various allegations are leveled against the petitioner.

2. Mr. Dhage, learned counsel for respondents submits that the petitioner was on unaided post. Subsequently, the grant has been sanctioned, but the amount of grant is not paid. The learned

counsel submits that the numerous allegations and complaints are received against the petitioner. The petitioner is not attending the school since 7th September 2017.

3. There are rival contentions. The averments of the petitioner are that the Institution is not allowing the petitioner to work. Whereas, the contention of the respondent-Institution is that the petitioner submitted application for leave on 9th September 2017 and is not attending the school since 7th September 2017. The petitioner contends that he is not allowed to work. The same would amount to otherwise termination. In that event, the petitioner would have remedy before the School Tribunal. In view of that, we are not entering into the said debate.

4. Admittedly, the petitioner is in service with the respondents-Institution atleast till 7th September 2017. The petitioner is entitled for the salary as per the pay scale prescribed in Schedule 'C' of the M.E.P.S. Rules. The payment of salary is the primary responsibility of the employer. It is the bounden duty of the employer to pay the salary.

5. Mr. Dhage, learned counsel for respondents has placed reliance on the judgment of the Apex Court in a case of **S. P. Chengalvaraya Naidu (Dead) By L.Rs. Vs. Jagannath (Dead) By L.Rs. And Others**

reported in (1994) 1 Supreme Court Cases 1 to contend that the petitioner has not approached the Court with clean hands and has suppressed the fact as such he is not entitled to invoke the writ jurisdiction of this Court and is not entitled for any relief.

6. As far as the payment of salary is concerned, it is not disputed that the petitioner has not been paid the salary since October 2013 and even as per the contentions of the respondents the petitioner was in service atleast upto 7th September 2017. It is not disputed that the salary has not been paid to the petitioner since October 2013, no question arise of suppression visa-a-vis the payment of salary is concerned. The question of suppression/fraud would arise if the petition is being entertained for other reliefs.

7. The petitioner would be entitled for the salary for the period of three years prior to the filing of the writ petition. The petition is filed in March 2018. The respondent-Institution shall pay to the petitioner the salary as per the pay scale prescribed in Schedule 'C' of the M.E.P.S. Rules since 01st March 2015 till 07th September 2017. The same shall be paid within a period of four (04) months from today. In case, the Institution receives grant-in-aid, it is entitled to adjust the said amount.

8. All contentions of respective parties with regard to the other reliefs are kept open.

9. Writ Petition is disposed of. No costs.

(R. G. AVACHAT)
JUDGE

(S. V. GANGAPURWALA)
JUDGE

Devendra/December-18