IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3237 OF 2015

Mrs.Shamin Yakub Inamdar ...Petitioner
V/s.
The State of Maharashtra
Through Secretary,
Education Department & Ors. ...Respondents

Mr.Madhav J. Jamdar for the Petitioner.

Mr.S.S. Pachpor, AGP for the Respondent Nos.1 to 4-State.

Mr.Uday P. Warunjikar for Respondent Nos.5 and 6.

CORAM : S.C. DHARMADHIKARI &
SMT.BHARATI H. DANGRE, JJ.

DATE : 21st NOVEMBER 2018

P.C.:

1. By this Writ Petition under Article 226 of the Constitution of India the petitioner claims the following reliefs:-

> *"a) By an appropriate writ, order or direction of this Hon'ble Court, the Respondent Nos.1 to 4 be directed to give appropriate directions to Respondent Nos.5 and 6 to pay to the Petitioner the difference in salary as per the IV and Vth pay commission of the petitioners husband Mr.Y.B. Inamdar as set out in letter dated 22.09.2008 (Exh.'K' hereto) and to pay to the Petitioner the revised*

pension and the gratuity amount.

b) By an appropriate writ, order or direction of this Hon'ble Court, letter dated 12.02.2014 of the Respondent No.6-Principal, Satara English Medium School (Exh.'S' hereto) be quashed and set aside.

c) Pending the hearing and final disposal of the present writ petition the Respondent Nos.1 to 4 be directed to give appropriate directions to Respondent Nos.5 & 6 to pay to the Petitioner the difference in salary as per the IV and Vth pay commission of the Petitioner's husband Mr.Y.B. Inamdar as set out in letter dated 22.09.2008 (Exh. 'K' hereto) and to pay to the Petitioner the revised pension and the gratuity amount.

d) Ad-interim and interim relief in terms of prayer Clauses (c) be granted.

e) Cost of the present petition be provided for.

f) Any other order in the interest of justice and kindness and in the facts and circumstances of this case as the Hon'ble Court may deem fit and proper be passed.

2. It is common ground that the reliefs are founded on a claim of the petitioner's deceased husband Mr.Y.B. Inamdar.

3. The petitioner's deceased husband was serving as a teacher in the 5th respondent-school managed by the 6th respondent-society.

4. In paragraph No.1 of the writ petition the petitioner says that the writ petition is filed because the respondent Nos.5 and 6 are not granting gratuity nor the benefit of 4th, 5th and 6th Pay Commissions' Recommendation to the petitioners husband and consequential benefits.

5. The petitioner is obtaining, on the death of her husband, meagre pension of Rs.630/- as family pension.

6. It is a common ground that the petitioner's husband was appointed as teacher (Assistant Teacher) on 26.06.1984 and worked with the New English School, Satara to 26.06.1984 to 09.06.1985 and thereafter again joined the service as Assistant Teacher in the respondent No.6-School since 03.07.1985 and worked as such till his superannuation on 01.06.2007.

7. Pertinently, in paragraph 3(a) it is stated that the husband of the petitioner was employed with the 6th respondent

since 11.10.1979. Thereafter, he resigned and joined school as Assistant Teacher on 26.06.1984. Though the petitioner's husband put in 27 years of service, it is evident that the period of 27 years is reckoned from 11.10.1979 till 01.06.2007. Far from it being continuous service, it was interrupted by a resignation and seeking reappointment as an Assistant Teacher. That is for a duration of one year namely 26.06.1984 to 09.06.1985. Again the service was interrupted and the husband joined as Assistant Teacher from 03.07.1985 and worked as such till superannuation on 01.06.2007. It is that duration of 22 years at best which is claimed to be a meritorious pensionable service. It is not the case of the petitioner that her husband was not paid salary. However, the case is that he was not given the increased salary scale as applicable with effect from 01.01.1986. He was not given additional dearness allowance though he was demanding the same. It is evident that letters addressed by the deceased husband are now relied upon to claim the re-fixation of pay. This re-fixation of pay will have to be done necessarily so as to enable the petitioner to obtain additional pensionary benefits. That gratuity is not a claim which can be now obtained particularly in the light of the communication of the school that it is not having any such scheme. What we find is that this is not a claim simplicitor for release of pension in terms of the applicable law, rules and regulations. It is a claim which is composite in nature. It is evident that when the petitioner's husband was in service, he addressed communication and relied upon the fact that there was a discrepancy in his service book. His service book was not completed. The petitioner's husband while in service applied for re-fixation based on the 4th and 5th Pay Recommendations. When that was not done he addressed several letters followed by reminders. Despite this, the claim is that no action was not taken on his letters. On the other hand, this very petitioner has averred in the writ petition, particularly at page 9, that though no action was not taken, her husband addressed a letter dated 13.07.2000 informing the 6th respondent that he has failed to fulfill the request made in the letters on 10.09.1996 and 21.07.1997. He has not received the amount due and payable in accordance with the 4th Pay Commission Recommendations. In the meanwhile, 5th Pay Recommendations also came into effect and thus pay scale would have to be revised. He gave a chart as to how his pay increased from Rs.6,500/- to Rs.7,100/- from 01.01.1996 to 01.01.2000 in accordance with Pay Commission Recommendation. The petitioner's husband, beyond oral assurances, found that nothing was done by the respondent Nos.5 and 6. He did not complain to the Statutory Authority, but was satisfied with his correspondence with the school and the management. Since he retired in 2007, he once again addressed a letter to the headmaster of the school. He also submitted on 23.06.2007, the documents pertaining to his Provident Fund. He preferred an application claiming gratuity. Then the service book ought to be supplied to him was the further request. The request was not only to supply it, but make appropriate correction therein. We do not think how this corrections can now be carried out post superannuation of the petitioner's husband and his death. The claims that the petitioner's husband made while in service were expressly refused. If no action was taken thereon and the petitioners husband still retired from service on attaining the age of superannuation, it is apparent that a writ Court cannot beyond a point assist his widow even if he moved the Deputy Director of Education, Kolhapur. Thus, the date of retirement or superannuation to be precise is 01.06.2007. By the letter dated 22.09.2008 addressed to the Deputy Director of Education, Kolhapur it was requested to issue direction to the 6th respondent to clear the dues. The dues were computed along with interest @ Rs.12,78,388/-.

8. At Exh-L to this Writ Petition are the letters which the school has addressed to the petitioner's husband and which enabled

him to approach the Education Officer (Secondary) of Satara Zilla Parishad. That he did on 13.10.2008. Based on that, it is stated that the said authority intervened and addressed the communication (copy of which is at page 86/86-A) of the paper book i.e. dated 13.10.2008. It is a letter from the Education Officer to the Headmaster of the school calling upon him to comply with the Pay Commission Recommendation and take further steps. That would mean the steps will have to be taken to compute the salary, emoluments and pension. The Education Officer (Secondary), Satara Zilla Parishad sought a compliance report as well.

9 . It is evident that after the receipt of this letter the school authorities did not forward any compliance report to this Education Officer. The petitioner's husband carried out correspondence and finally through his advocate, but did not file the writ petition immediately thereafter. It is evident that this Writ Petition was filed on 02.03.2015. It is evident that the petitioner's husband died on 27.12.2012.

10. It is claimed that the Pay Commission recommendation are applicable even to the employees employed by a school and management such as respondent Nos.5 and 6. They would have to

make this Pay Commission recommendation applicable and by re-fixing the salaries. The writ petition is bereft of any details as to whether the respondent Nos.5 and 6 has indeed made this Pay Commission Recommendation applicable to its employees or that the petitioner's husband was the sole employee who raised a protest against non-implementation of the pay commission recommendation. That the pay commission recommendation apply is taken to be an admitted fact.

11. It is on such a writ petition that we have heard Mr.Jamdar appearing for the petitioner and he says that there is an affidavit in reply filed to this writ petition, but that raises only a technical objection. A legally justified claim and that to of pension cannot be thrown out on such hyper technical grounds. He would submit that the plea of limitation raised on affidavit has no merit and in that context the judgment of the Hon'ble Supreme Court in the case of ***Asger Ibrahim Amin V/s. Life Insurance Corporation of India reported in (2016) 13-SCC-797,*** is relied upon.

12. The contesting respondents are represented by Mr.Warunjikar. Mr.Warunjikar relied upon the statements made in the affidavit in reply as also the plea of limitation. He says that this

is not a claim of pension simplicitor. It is claim to re-fix the salary on the basis of the applicable pay commission recommendation. Such re-fixation was sought by the petitioner's husband while in service, but though there was inaction on the part of the management, according to him still, he did not pursue that cause even post retirement and till his death. Now a good two years or more after his death, the petitioner's widow is claiming that the salary be re-fixed and the pensionary benefits be extended on the basis of such re-fixed salary. Therefore, this is not a case, according to Mr.Warunjikar, wherein the petitioner deserves any sympathy. Nor can the petitioner derive any benefit from the judgment of the Hon'ble Supreme Court.

13. We have anxiously considered the rival contentions. The judgment of the Hon'ble Supreme Court was rendered in the case of an employee who claimed pensionary benefits even though he resigned from the service on his wishes. He had joined the services of the Life Insurance Corporation and in paragraph No.2, the Hon'ble Supreme Court refers to the factum of the resignation from service on health ground. It is claimed that the staff regulations as also the pension rules enabled such resigned employee also to claim pension. The rule that enables the employer

to take a stand that resignation results in forfeiture of 27 years past service would not be any assistance. The claim of pension was however pressed by the said employee relying upon the Pension Rules notified on 25.06.1995, but given retrospective effect from 01.11.1993. The employee had resigned on 20.02.1991. Admittedly he had rendered 23 years and 7 months of service which could have been taken to be a qualifying service. The Hon'ble Supreme Court found that after the pension rules were brought into effect the employee raised the demand. He also came across some report wherein similarly placed employee had approached the High Court for pension. Thereupon he sent a legal notice. The stand of the Corporation before the Supreme Court is but reiteration of the reply to the advocate's legal notice and to this effect that having resigned from service he was not eligible to claim pension under the Pension Rules. It is incidental that the claim was denied on the ground of delay and laches.

14. It is in this backdrop that the Hon'ble Supreme Court in paragraph 4 held that such cases are nothing but continuing or successive wrongs and claims of pension could not have been refunded on the hyper technical ground of delay and latches.

15. True it is that this judgment is binding, but what we have before us is an entirely different factual scenario. There is no admission of the liability on behalf of respondent Nos.5 and 6. It has not admitted the claim nor it has informed anybody, including the petitioner, that the petitioner's husband was entitled to the benefit of the Pay Commission Recommendation and his salary will have to be re-fixed on that basis. If the petitioner was entitled to such benefit and there was never any dispute raised, then, that would have been a different question and possibly covered by the observations in paragraph No.4 of the above judgment relied upon by Mr.Jamdar. On the other hand, what we have is a complete denial of the claim. Infact, this denial is reiterated by the letter at page 84 of paper book. A copy of the letter dated 25.09.2008 addressed to the petitioner's husband in his lifetime states that the petitioner's husband's demands were not admitted. This letter says that the Management has made a computation of salary and in terms of the computation in its record it has released the sum. However, when the salary was paid from time to time on the basis of its record, the petitioner's husband, while accepting the quantum or sum as determined by the Management, filled in some details in the column and to the effect that it is net salary. The petitioner's husband was informed that if the records of the school maintained

while he was in service are being questioned, then, the petitioner's husband must forward the requisite details and how he arrived at the quantum or figure of total salary or net salary should be indicated. It requested the petitioner's husband to fill in all the details in the form which is referred to and relied upon. A copy of this letter was also forwarded to the Education Officer (Secondary) and the Deputy Director of the Education, Kolhapur region. Hence, what the petitioner is now desirous of is that the salary of the petitioner's husband, who is deceased, be re-fixed and the recommendation of the 5th pay commission which is admissible while in service should now be extended to her in the form of pensionary benefit. However, she does not dispute that this would require re-fixation and re-working of the salary of the petitioner's husband based on the applicability of the pay commission recommendation. When that fact is disputed by the Management throughout and her husband brought no action against the Management challenging that denial, then, merely relying upon the communication from the Education Officer, copy of which is at page 86-A of the paper book dated 13.10.2008, will not result in any benefit to the petitioner. Even the Education Officer calls upon the management to re-fix the petitioner's husband's salary in terms of the Pay Commission Recommendations namely 4th and 5th pay commission recommendation and then to compute the pensionary benefits. This letter is also of 2008, but no action has been taken in this regard. Once the Management disputes the liability to make payment, we do not see how such disputed issue can be resolved in our limited jurisdiction. It is a clear factual dispute. It is evident that on 17.10.2008 the Management replied to the petitioner's husband that it is not admitting the calculations and computation made by him and enclosed with the letter dated 22.09.2008. It is denying that this is the salary payable or admissible to him. It is also denying it's liability to pay any differential amounts towards salary. Once the entire claim of the petitioner's husband, which could have been adjudicated, when he was in service, is not disputed, then, the petitioner has to first establish and prove the calculations as forwarded by her husband. For that, she will have to establish and prove that the 4^{th} and 5^{th} pay commission recommendation are applicable to all schools, including those not taking any financial aid or grant from the Government.

16. Pertinently Mr.Jamdar in his arguments maintains total silence on the petitioner's case that the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 and the M.E.P.S. Rules 1981 are invoked. They are assumed to be

applicable to the respondent No.6 whereas the said respondent claims otherwise. These Rules set out a complete scheme pay and allowances of the Employees in the Private school are to be determined in accordance with Schedule “C” thereto. Now, all the per-requisites to claim applicability of the pay-scales in terms of this law have to be established and proved. Moreso, when the applicability thereof is disputed. After crossing this hurdle, it would have to be further proved that the above Rules incorporated and stipulation throughout that once the pay scales of Government servants are revised in terms of the Pay Commission Recommendations, then, such recommendations are admittedly applicable to the teachers in Private Non-aided Schools and even if that is taken to be admitted position still such benefits were indeed extended to every teacher/non-teacher of respondent No.6 and the petitioner's husband was illegally and arbitrarily excluded from the enjoyment thereof.

17. Assuming that the obligation to pay such amount arises not from the nomenclature and label attached namely, Permanent/Temporary teacher, aided or unaided schools, but from the factum of its recognition, then, the terms and conditions of the recognition would have to be brought on record. Which term of the

recognition granted to the 5th respondent to establish a school obliges it to extend all pay benefits as computed by the Government in case of his own employee would be the further fact to be established and proved. By merely forwarding the calculation, the petitioner cannot succeed. She will have to prove each and every entry therein and the ultimate figure. It is then the petitioner can succeed. Today, we do not have anything on record, including the directions from the Government stated to be issued from time to time to all such Managements on par with respondent Nos.5 and 6. Then, the next hurdle to be crossed is that the respondent Nos.5 and 6 has to extend pay commission benefits to its employees irrespective of whether it obtains financial aid from the Government or not. Once this is not the position emerging from documents on record, we cannot, on the assumption of the petitioner, grant any relief to her. All these benefits can be granted provided the petitioner has an established and proven claim and that is unreasonably and unjustifiably or illegally denied by the Management. Then only we can call upon the Education Officer to initiate the requisite steps, including for recovery of the admitted or adjudicated demand. It is then we can grant relief as drastic as seeking a direction to the Government to commence the process of de-recognition of the 5th respondent-school. We are not obliged to grant such relief to the petitioner in the absence of the proven or admitted facts or the adjudicated demand.

18. As a result of the above discussion, we do not find any merit in this writ petition and the same is dismissed. No costs.

(SMT.BHARATI H. DANGRE, J.) **(S.C. DHARMADHIKARI,J.)**