IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.2982 OF 2013

Ramchandra Rayappa Fulari … Petitioner

Vs

State of Maharashtra and Ors. … Respondents

Mr.S.S. Kanetkar a/w Mr.Nikhil Dangre for the Petitioner.

Mrs.S.D. Vyas, "B" Panel Counsel for State-Respondent Nos.1 and 2.

Mr.Priyal G. Sarda for Respondent Nos. 3 and 4.

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

THURSDAY, 29TH NOVEMBER, 2018

P.C. :

1 By this Writ Petition under Article 226 of the Constitution of India, the writ petitioner claims release of pensionary benefits from the date of superannuation and in the event, within the time stipulated by this Court they are not released, then, the same should carry interest at the rate of 18% per annum till actual disbursement and to be computed from the date on which the same is due and payable.

2 The petitioner has stated that the first respondent is the State and the second respondent is the Education Officer (Secondary), Zilla Parishad, Solapur. The third and fourth respondents are the Management and the concerned Educational Institution.

3 The petitioner says that he is duly qualified holding the Master Degree in Arts and a Bachelor Degree in Education.

4 He came to be appointed as Head Master in one of the schools with effect from 11th June, 1973. Since there were warring groups in the Management and there were litigations, the petitioner apprehended that the amount of non-salary grant released through the Education Officer by way of cheque would not be used for the purpose for which it has to be used and utilized. He handed over the said cheque to the then Secretary of the Management, who returned it to the Education Officer, Zilla Parishad, Solapur.

5 This conduct of the petitioner agitated the President and Chief Executive Officer of the Trust and they harassed the petitioner. They initiated an inquiry and issued a termination order effective from 26th May, 2006.

6 The petitioner, aggrieved and dissatisfied with such termination, instituted legal proceedings by way of an Appeal before the competent School Tribunal (School Appeal No.73 of 2006 before the School Tribunal, Pune Region, Solapur). On 25th June, 2008, the concerned Presiding Officer of the School Tribunal allowed the Appeal directing reinstatement with full back wages. But, the petitioner retired in the intervening period. On complete success, the petitioner prayed for his pensionary benefits. That was on the strength of the order passed by this Court in Civil Writ Petition No.5585 of 2008, instituted by the Management and its dismissal on 27th January, 2009. This Court, speaking through the Single Judge, directed the release of pensionary benefits at the earliest.

7 Since the petitioner superannuated on 31st May, 2006, his pension papers were to be finalized, but because they were not finalized even after more than seven months from the date of the order in Civil Writ Petition No.5585 of 2008, the petitioner instituted Contempt Petition No.335 of 2009.

8 On account of the Contempt Petition, the second respondent forwarded the pension papers for sanction of the Accountant General, Mumbai on 3rd August, 2011. The petitioner received pensionary benefits in September, 2011 i.e. after about five and half years of his superannuation.

9 Now, what the petitioner says is that he should be paid interest on delayed payments or delayed release and payment of the pensionary benefits and heavily relied upon Rule 129(A) of the Maharashtra Civil Services (Pension) Rules, 1992.

10 There is no denial of the factual averments and assertions. There is no dispute that the pension was not released and disbursed within a reasonable time expected by this Court in its order passed in a Writ Petition, reference to which is made in paragraphs 3 and 4 of the Petition. In fact, the learned Single while dismissing the Writ Petition of the Management issued the following directions :-

> *"There is no dispute that payment is due to the petitioner No.1 on account of non-salary grants. The Education Officer is still willing to make payment to the petitioner No.1. The Education Officer shall therefore issue fresh cheques for the non-salary grants to the petitioner No.1 within a period of four weeks from today. Petitioners are also directed to finalise the pension case of the respondent No.1 as soon as possible. Rule disposed of accordingly."*

11 Since the pensionary benefits were not released and eventually obtained by the petitioner belatedly, we do not think that we should deny him the benefit of interest. In fact, he had to struggle for five and half years to obtain the pensionary benefits.

12 Mr.Sarda, learned advocate appearing on behalf of the Management tendered an affidavit-in-reply and relied on the admitted dates and events. He submitted that the claim for interest is disputed by the Management on the ground that it is the petitioner who is responsible for this delay. It is the petitioner who was not co-operating. It is the petitioner who has suppressed from this Court, true and correct facts. It is the claim of the Management that when called upon by the Education Officer to release the pensionary benefits, it informed the petitioner that the Service Book and cheques have been retained illegally by the petitioner. It will not be possible to process the pension papers and forward them to the Government in the absence of his Service Book and related documents. This correspondence would show as to how the petitioner is to be blamed for the lapses and he is directly responsible for the same. There were even criminal proceedings pending.

13 We have perused this affidavit-in-reply carefully and what we find is that this affidavit relies upon certain events and developments, which are of the year 2007, 2008 and ending with the communication of the Education Officer dated 1st December, 2009.

14 Pertinently the Management does not deny that Appeal No.73 of 2006 was allowed by the School Tribunal on 25th June, 2008. On 27th January, 2009, the Management's Civil Writ Petition No.5585 of 2008 was dismissed with the direction in the final paragraph reproduced above. It is thereafter that the Management was expected to release the pension and merely because some conduct attributed to the petitioner was responsible for the delay in releasing it, nothing prevented the Management from bringing to the notice of this Court, at least in contempt proceedings. We have a dismal picture in matters after matters of this nature. This is a typical scenario. Once a person like the petitioner has strained relationship with the Management leading to the civil and criminal prosecution, then, very often Management decides to teach a lesson to him or, even if he succeeds in legal proceedings, he is never taken back until his attaining age of superannuation. Unfortunately in this Petition, the petitioner retired on

attaining the age of superannuation during the proceedings before the School Tribunal. Once he stood retired during the pendency of such proceedings, but eventually the Appeal filed by him was allowed, the least that is expected from the Education Department and the Management is that such pensionary benefits are promptly released reserving any legal right either in the State or Management. In the event, the orders of the School Tribunal, as are brought to our notice in this case, are challenged by the Management in this Court in the legal proceedings, then, it is the bounden duty of the State to ensure that the pensionary benefits are released, subject to the outcome of the litigation or that the *bona fides* are shown by the Management by bringing the amount in the Court and keep it deposited, subject to the outcome of the legal proceedings. We have not seen the Education Officer or the Management conducting themselves in such fair and decent manner. In fact, at this level, we expect the professionals appearing in such cases to conduct themselves in such a manner so that they are not blamed for taking sides or being attached to the legal proceedings. The litigants, particularly, the Managements are expected to behave and conduct themselves reasonably and not to deviate from these traditions and practices. This alone shows the *bona fides* of the litigants. Once the litigants know that they can take chances and tire out parties like the petitioner, then, obviously for five to ten years, pensionary benefits are delayed. It is this conduct, which is taken note by the Hon'ble Supreme Court as well. That is how on delayed payment of pensionary benefits, the State as also other functionaries have been directed to pay interest. That would act as deterrent is the expectation of the Hon'ble Supreme Court. To say the least, even that is not fulfilled. The Managements have not been exhibiting such a stand and as now projected, blaming the parties like the petitioner. The arguments go to the extent of urging that the petitioner ran away with the Service Book and original documents. That is why the Management was handicapped. We are aghast that such submissions are canvassed and in the teeth of the language of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981, particularly, Rule 11. To our mind, therefore, accepting the stand of the Management would make a mockery of the rule of law.

15 As a result of the above discussion, this Writ Petition succeeds. The amount of pension released in favour of the petitioner, shall carry interest at the rate of 8% per annum and not at the rate of

18% per annum, as claimed from the date when the same was due and payable. In this case, we do not reckon that date to be the date within four or six weeks from his superannuation. We reckon that date from 17th June, 2009 till the date of actual disbursement. The amount of interest shall be paid at 8% per annum for this duration. The Writ Petition succeeds accordingly. There will be no order as to costs. The interest amount shall be released within a period of four (4) weeks from the date of communication of this order.

[SMT. BHARATI H. DANGRE] **[S.C. DHARMADHIKARI, J.]**