

***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION***

WRIT PETITION NO. 4600 OF 2011

1 Vaijayantimala Vilasrao Shelar & Ors. ... Petitioners

Vs

1 Education Officer, Secondary & Ors. ... Respondents

Mr. Sandeep Phatak i/b Sugandh B. Deshmukh for the Petitioners.

Mrs. Shruti D Vyas 'B' Panel Counsel for the Respondent-State.

Mr. Vivek V. Salunkhe for the Respondent No.2.

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

MONDAY, 19TH NOVEMBER, 2018

P.C. :

1 Rule. Rule made returnable forthwith.

2 By this petition under Article 226 of the Constitution of India, the petitioner had sought the following reliefs :

[A] That this Honourable Court be pleased to issue a writ mandamus or writ in the nature of mandamus or any other appropriate writ direction or order under Article 226 of the Constitution of India, 1950, directing the

Respondent no.1 herein to grant the approval to the appointment of the Petitioner no.1 and Petitioner no.2 in the Respondent no.2 Institution forthwith.

[B] That this Honourable Court be pleased to issue a writ mandamus or writ in the nature of mandamus or any other appropriate writ direction or order under Article 226 of the Constitution of India, 1950, directing the Respondent no.2 to pay the arrears of the salary from the date of the appointment of the Petitioner no.1 and Petitioner no.2 with such interest as the Honourable Court may deem fit forthwith to the Petitioner no.1 and 2.

3 It is common ground that the writ petition was dismissed as a whole by this Court and by a speaking order.

4 Subsequently, a Review Petition was filed and on that Review Petition, this Court passed the following order on 8th February, 2017:

“ *Heard*

2 By filing this review petition, the petitioners is seeking review/recall of the order dated 26th August, 2011. According to learned counsel for the petitioner in Writ Petition following were the reliefs claimed for :

[A] That this Honourable Court be pleased to issue a writ mandamus or writ in the nature of

mandamus or any other appropriate writ direction or order under Article 226 of the Constitution of India, 1950, directing the Respondent no.1 herein to grant the approval to the appointment of the Petitioner no.1 and Petitioner no.2 in the Respondent no.2 Institution forthwith.

[B] That this Honourable Court be pleased to issue a writ mandamus or writ in the nature of mandamus or any other appropriate writ direction or order under Article 226 of the Constitution of India, 1950, directing the Respondent no.2 to pay the arrears of the salary from the date of the appointment of the Petitioner no.1 and Petitioner no.2 with such interest as the Honourable Court may deem fit forthwith to the Petitioner no.1 and 2.”

3 *The Division Bench while deciding the Writ Petition vide order dated 26th August, 2011 has considered only the first prayer i.e. prayer Clause [A] and decided the petition against the petitioners. He submits that prayer Clause [B] was relating the claim of unpaid salary to the petitioners in regard to that the entire order is silent. In the circumstances, according to him, there is error apparent on the face of record and therefore this Court may recall the order and restore Writ Petition to its original number so far it relates to the relief claimed prayer Clause [B].*

4 *Having gone through the prayer made in the Writ Petition and the order passed dated 26th August, 2011 by the Division Bench we are of the view that the Division Bench has not considered the prayer Clause [B] of the*

Writ Petition and has decided the Writ Petition only in respect of prayer Clause [A].

5 *In the circumstances, the order so far as it relates to the dismissal of the petition in the entirety including prayer Clause [B] is recalled. The petition is restored to its original number so far as it relates to only in relation to prayer Clause [B] and that too for petitioner no.1 as the petitioner no.2 has already stated that she does not want to press Review Petition.*

6 *The Writ Petition be listed for admission on 24th February, 2017.”*

5 Now, the writ petition survives only insofar as prayer clause [B] reproduced above.

6 In that regard, Mr. Phatak has invited our attention to the affidavit of one Avinash Arjun Sawant, Power of Attorney holder of the petitioner No.1 filed in this petition, copy of which is at pages 34 to 37 of the paper-book. This affidavit dated 6th June, 2018, contains annexures in the form of certified true copies of the orders passed by this Court in similar writ petitions.

7 It is conceded before us that the statements made in this affidavit of the petitioner's Power of Attorney holder are accurate. There is no dispute with regard to the contents thereof. There is no dispute about the orders of the Division Benches of this Court either.

8 Having heard both, the petitioners' advocate as also Mr. Salunkhe for the Management, we dispose of this writ petition with similar directions. The Division Bench order dated 30th November, 2009, in Writ Petition No.242 of 2009 shall govern the outcome of this writ petition and the Management before us represented by Mr. Salunkhe is directed to compute the arrears of salary of the petitioner No.1 and release the sums as expeditiously as possible and, in any event, within a period of two months from today. In the event, the second respondent fails to comply with the order and direction of this Court, then, the amount shall carry interest at the rate of 8% per annum till payment. In the event there is a default, then, the Education Officer (Secondary) Zilla Parishad, Pune, shall initiate such proceedings as are permissible in law against the second respondent-Management, including withdrawal of recognition for

non-compliance of the orders passed by this Court.

SMT. BHARATI H. DANGRE, J.

S.C. DHARMADHIKARI, J.