

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

Writ Petition No.5884 of 2016 (D)
Shri Nandkumar s/o Vishwasrao Shelke

Versus

Rohit Bahu-Uddeshiya Sewa & Vikas Sanstha, through its President, Shri Dhanraj Sarile, New Koradi, Tah. Kamptee, District Nagpur, and others.

Office Notes, Memoranda of Coram,
appearances, Court's orders or directions Court's or Judge's orders
and Registrar's order

Shri P.D. Randive, Advocate for Petitioner/Applicant.
Shri S.A. Radke, Advocate for Respondent Nos.1 to 3.
Ms M.A. Barbade, Assistant Government Pleader for Respondent
Nos.4 and 5.

Coram : R.K. Deshpande & Arun D. Upadhye, JJ.
Date : 7th June, 2019

Civil Application (CAO) No.1009 of 2019 in Misc. Civil Application Stamp No.29970 of 2018 (for Review) :

1. For the reasons stated in Civil Application (CAO) No.1009 of 2019 for condonation of delay of 306 days in filing Misc. Civil Application Stamp No.29970 of 2018 for review of the judgment and order dated 17-1-2018 delivered by this Court in Writ Petition No.5884 of 2016, is allowed. The delay caused is condoned.

2. Civil Application (CAO) No.1009 of 2019 stands disposed of.

Misc. Civil Application Stamp No.29970 of 2018 (for Review) and Civil Application (CAW) No.1820 of 2018 (for clarification of the judgment and order dated 17-1-2018 passed in Writ Petition No.5884 of 2016) :

1. Writ Petition No.5884 of 2016 filed by the petitioner-employee was partly allowed by the Division of this Court by

its judgment and order dated 17-1-2018; the operative part of which, is reproduced below :

“ Hence, for the reasons aforesaid, the writ petitions are partly allowed. The respondent no.4 is directed to continue to pay 20% of the salary to the petitioners till the petitioners are in service and if the school is brought on further grant-in-aid, to pay the appropriate salary to the petitioners. We direct the respondent nos.1 and 2 to pay the arrears of full salary to the petitioners from September, 2016 till January, 2017 and arrears of 80% of their salary for the period from February, 2017 till date. The respondent nos.1 and 2 are directed to continue to pay the regular salary to the petitioners except the salary, that is, payable by the Education Authorities. The respondent nos.1 and 2 are directed to make the payment of arrears of salary to the petitioners within six weeks. The petitioners are at liberty to take an appropriate proceedings to seek the arrears of salary about which there is a dispute.”

2. In Civil Application (CAW) No.1820 of 2018 for clarification, it is stated that the Management has been paying the salary to the petitioner-employee at the rate of Rs.3,000/- per month and, therefore, 80% and 20% arrears of the salary payable in terms of the aforesaid decision of this Court would be in relation to the amount of Rs.3,000/- per month.

3. The petitioner-employee filed Writ Petition No.5884 of 2016 seeking direction to make the payment of salary to him from the date of appointment, i.e. 22-6-2005. The order of appointment discloses

the appointment of the petitioner as Assistant Teacher in the scale of Rs.5500-175-9000, and the condition No.3 therein states that the terms of employment and the conditions of service shall be as laid down in the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 and the rules made thereunder. According to the Management, the 100% salary grant was not available to the School and, therefore, the appointment has to be construed as per the actual payment of monthly salary paid to the petitioner.

4. Perusal of the order of appointment clearly shows that the payment was in the scale of Rs.5500-175-9000 and as per the provisions of the MEPS Act and the rules framed thereunder. This fact is not disputed. The actual payment at the rate of Rs.3,000/- per month, as alleged, is not based upon the statutory provisions or the terms of the order of appointment.

5. In view of above, the judgment and order dated 17-1-2018 delivered by this Court in Writ Petition No.5884 of 2016 is clarified to the effect that the payment has to be made in the scale of Rs.5500-175-9000 and the arrears are required to be calculated accordingly. Non-receipt of the 100% grant-in-aid cannot be a justification for denial of salary in the regular scale.

6. With the aforesaid observations, Misc. Civil Application Stamp No.29970 of 2018 for review and Civil Application (CAW) No.1820 of 2018 for clarification stand disposed of.

Contempt Petition No.101 of 2018 :

Put up this contempt petition after eight weeks.

(Arun D. Upadhye, J.)

(R.K. Deshpande, J.)