IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 3669 OF 2018

Dr. Shafat Hussain Shafaquat
Hussain Talib .. Petitioner

Versus

The State of Maharashtra and others .. Respondents

Shri S. V. Adwant, Advocate for the Petitioner.
Mrs. G. L. Deshpande, A.G.P. for Respondent Nos. 1 to 4.

CORAM : S. V. GANGAPURWALA AND
A. M. DHAVALE, JJ.

Closed for orders on : 14.02.2019
Order pronounced on : 01.03.2019

FINAL ORDER (Per S. V. Gangapurwala, J.) :-

. The petitioner ought not have filed the present petition, more particularly in view of the earlier writ petition bearing Writ Petition No. 8987 of 2014 filed by the petitioner precisely for the similar reliefs. The Writ Petition No. 8987 of 2014 is partly allowed by this Court under judgment and order dated 08th May, 2015.

2. In Writ Petition No. 8987 of 2014, the petitioner had claimed following reliefs :

(i) The gratuity as per Government Resolution dated 21.08.2009 of Rs. 7,00,000/- (Rs. Seven Lacs) be paid to the petitioner.

(ii) The qualifying services for pension be calculated as twenty years and the petitioner be paid pension on the basis of 50% of last salary drawn.

(iii) The petitioner be paid three non compounded advance increments as per point No. 8(i) of Government Resolution dated 10.11.2009.

(iv) The petitioner be paid pension on the basis of last salary drawn after including non practicing allowance of 35% and the amount of three non compounded advance increments in his basic pay.

3. The petitioner after the Writ Petition No. 8987 of 2014 was decided under the judgment and order dated 08th May, 2015 had filed Review Application No. 121 of 2015. In the review application it was agitated that the review is filed for the limited purpose with regard to the rate of non practicing allowance to be considered for the pension. The said review application was also disposed of under order dated 14th October, 2016. The petitioner after lapse of one and half year has filed instant writ petition

claiming following reliefs :

(b) By issuing an appropriate writ, the cut-off date in the impugned GR dated 10.11.2009 issued by the State, be quashed and set aside and the respondents be directed to extent the benefit of 3 non-compounded increments to the petitioner from 1.1.2006 as per GR dated 21.8.2009.

(c) By issuing an appropriate writ or order, the cut-off dated in the impugned GR dated 24.7.2012, issued by the State be quashed and set aside and the respondents be directed to extend the benefit of inclusion of non-practising allowance @ 35% in the basic pay of the petitioner from 1.1.2006.

(d) By issuing an appropriate writ or order, the respondents be directed to extend the benefit of 3 non-compounded advance increments as per point No. 9(i) of the GR dated 10.11.2009.

(e) By issuing an appropriate writ or order, it be declared that the petitioner is entitled to claim and receive pension on the basis of the last drawn salary after including non-practising allowance of 35% and the amount of 3 non-compounded advance increments in his basis pay and draw the amount of pension accordingly as per the rule in vogue for the teacher retiring on and after 27.02.2009.

4. The Government Resolutions referred to in this writ petition were in force at the time of institution of earlier Writ Petition No. 8987 of 2014 decided under judgment and order dated 08th May, 2015. At the relevant time the petitioner did not assail the same.

5. In the earlier judgment dated 08th May, 2014, we had observed that benefit of three non-compounded increments under G. R. dated 10th November, 2009 is given as an incentive for the teachers who are in service and possessing the qualification. Incentive, naturally would be given to the person in service and not to a retired employee. The said fact was considered. In addition to that, we had also observed that, the petitioner had not challenged the clause 10 of the G. R. dated 10th November, 2009, that would not permit the petitioner to again file the petition for the same.

6. The petitioner had also claimed relief with regard to the non practicing allowance. The same was dealt with in detail while deciding the earlier writ petition. The petitioner even ventured to file Review Application No. 121 of 2015. In the said review application, the petitioner claimed that he is entitled for non practising allowance at the rate of 35%. The said aspect was

also dealt with by us while deciding the writ petition. As observed supra, the Government Resolutions impugned in the present writ petition were in force at the time of institution of earlier writ petition bearing Writ Petition No. 8987 of 2013 by the petitioner, so also the review application.

7. The petitioner ought not have filed present writ petition. The petitioner does not get a right to again agitate the same prayers by molding it differently and suggest that though in earlier writ petition Government Resolutions were not challenged, he is entitled to challenge and claim the same relief. Such a practice needs to be deprecated and cannot be encouraged.

8. The writ petition as such is dismissed with costs.

[A. M. DHAVALE, J.] **[S. V. GANGAPURWALA, J.]**

bsb/March 19