

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**CONTEMPT PETITION NO. 327 OF 2016
IN
WRIT PETITION NO. 6413 OF 2008**

Chandrakant Ramkrishna Burhade ..PETITIONER

VERSUS

Sitaram Kunte and Others ..RESPONDENTS

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Mr. V.J. Dhage, Advocate for petitioner

Mr. S.D. Ghayal, A.G.P. for respondent – State

Mr. S.V. Natu, Advocate h/f Mr.A.R. Joshi, Advocate for respondent nos.4 to 6

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**CORAM : PRASANNA B. VARALE AND
R.G. AVACHAT, JJ.**

DATED : 09th AUGUST, 2019

PER COURT :

Heard Mr. Dhage, learned Counsel for petitioner, learned A.G.P. for State and Mr. Natur, learned Counsel h/f Mr. Joshi, learned Counsel for Respondent Nos. 4 to 6.

2. On grievance of non compliance of order of this Court, contempt petition was filed. Notices were issued to respondents. Mr. Dhage invited our attention to order dated 15th October, 2015 passed by this Court. Division Bench in the said order expressed its displeasure on the approach adopted by management in clear terms such as “The management held that the petitioner's work was not found satisfactory, and therefore, they had decided

not to allow him to cross efficiency bar. With this order, the implementation of the interim order of this Court was almost violated and virtually set at naught.” The Division Bench further observed that management was carrying some grudge against petitioner and it is stated in the order that stand taken by management is clearly indicates that they had not really pardoned petitioner and that the animosity towards him had continued even today. Division Bench then observed that proposal of 17th February, 2007 was straight forward proposal which Joint Director ought to have accepted. Ultimately the petition was allowed in terms of prayer clauses 'B', 'C' and 'D'. It may be useful for our purpose to refer these prayer clauses for ready reference and said prayer clauses read thus :-

“B) By issuing Writ of Mandamus or order or any other Writ in the nature of Writ Mandamus, the Joint Director of Higher Education, Aurangabad Division, Aurangabad, may kindly be directed to decide the pay fixation of the petitioner as per proposal dated 17.02.2007 and to pay the consequential benefits.

C) By issuing Writ of Certiorari or orders or any other Writ in the nature of Writ of Certiorari, the order passed by Joint Director of Higher Education, Aurangabad Division, Aurangabad, dated 05.05.2008 may kindly be quashed and set aside.

D) By issuing Writ of Certiorari or orders or any other Writ in the nature of Writ of Certiorari, the order dated 11.06.1991, issued by the respondent No.4, Society, may kindly be quashed and set aside and the respondents be directed to give consequential monetary benefits to the petitioner with 12% interest p.a.”

3. Mr. Dhage, learned Counsel for petitioner then invited our attention to the statement made in the affidavit-in-rejoinder on behalf of petitioner. Petitioner admitted that petitioner received amount of Rs.3,38,435/- towards arrears of pension from August 1998 to October 2016. It is then stated that petitioner would be entitled to receive interest over said amount either at 12% simple interest or at 12% compound interest. Accordingly, petitioner submitted calculations in paragraph no.6 of affidavit-in-rejoinder and it is stated that if the calculation is made at 12% simple interest then the amount comes to Rs.3,01,850.15 and if calculation is made at 12% compound interest then the amount comes to Rs.6,10,176.79. Then similarly it is stated about arrears of gratuity and it reads that petitioner also received arrears of gratuity as per revised pension to the tune of Rs.20,213/-. The arrears of amount by 12% simple interest comes to Rs.44,775.83/- and by 12% compound interest comes to Rs.1,62,946.18. It is then stated that petitioner is entitled for interest as per Rule 129(A) and 129(B) of the Maharashtra Civil Services (Pension) Rules, 1982 and Government Resolution dated 24th April, 1995. Copies of the same were placed on record.

4. Though petitioner submitted before us that petitioner would be entitled to receive the arrears calculated at compound interest of 12%, we are not inclined to entertain the submissions for the reason that there was no such issue of grant of compound interest before the Division Bench and it is only

the direction to pay arrears @ 12% interest. As such, we can simply say that petitioner would be entitled to claim arrears @ 12% simple interest.

5. Now, in so far as the stand taken by management is concerned, Mr. Natu, learned Counsel for management submitted that the claim put forth by petitioner is beyond the order of this Court. It was submitted by Mr. Natu that there is no specification in prayer clause (D) as to from which period and what period petitioner would be entitled to receive consequential monetary benefits with 12% p.a. Mr. Dhage was justified in countering the submission to submit before this Court that there is already a reference in prayer clause (B) to the proposal dated 17th February, 2007 submitted by management itself. Our attention was invited to very proposal dated 17th February, 2007, found place at page no.46. It is not in dispute that petitioner stood retired in 1998 and proposal was submitted by management itself with a reference of order of this Court and annexure alongwith proposal referring to the date of retirement of petitioner i.e. 17th August, 1998. Thus, when the proposal itself was submitted by management and the same was taken into consideration by Division Bench while passing order of disposing of the writ petition, now the management cannot take a somersault on the claim of petitioner and put the burden on State Government. It is also not in dispute that the management at no point of time thought it fit to either challenge the order of this Court or seek any modification or review of order of this Court.

6. In such situation, we see hardly any reason to accept the opposition raised by management. Resultantly, we direct respondent – management to pay petitioner an amount of Rs.3,01,850.50/- as arrears @ 12% simple interest. The pension amount in the tune of Rs.44,775.83/- as the interest over the gratuity amount @ 12% itself. This calculation of amount is till 2017. Respondent – management is also directed to pay interest amount till realisation. The amount so referred to viz. Rs.3,01,850.50/- and Rs.44,775.83/- be paid within eight weeks from today. With these directions, contempt petition is disposed of.

(R.G. AVACHAT, J.)

SSD

(PRASANNA B. VARALE, J.)