

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

WRIT PETITION NO. 2309 OF 2013

Shri. Jaisingh Gopal Pailwan	}	Petitioner
versus		
State of Maharashtra	}	
and Ors.	}	Respondents

Ms.Kalyani Tulankar with Mr.Yatin Malvankar for the petitioner.

Mr.B.V.Samant-AGP for State.

Mr.Vinod R. Dandge-Deputy Director, Directorate of Art present.

**CORAM :- S. C. DHARMADHIKARI &
R. I. CHAGLA, JJ.**

DATED :- NOVEMBER 14, 2019

P.C. :-

1. Heard both sides.
2. The petitioner has filed this writ petition seeking to set aside an order dated 28th July, 2011 as well as a prior order of 31st December, 2010.
3. The petitioner before this court claims that the first respondent is the State, the second respondent is the Directorate of Art and the fourth respondent is the Inspector of Art and Craft, all of which are the officials of the concerned department of the

Government of Maharashtra, whereas, the third respondent is the Management.

4. The petitioner before this court has filed the instant writ petition alleging that he is working as a Lecturer in Kalavishwa Mahavidyalaya, Sangli. The petitioner was promoted to the post of Professor after one Ganpat Shankar Majgaonkar, who was working as the Principal of this college, retired. The petitioner has been promoted with effect from 1st July, 2006. Upon promotion, a letter was addressed to the concerned official of the Directorate/ Department of Government of Maharashtra requesting that an approval be granted to the appointment by promotion with effect from 1st July, 2006. The petitioner very clearly says in para 3 of the writ petition that no action was taken on this proposal from 1st July, 2006 up till 7th October, 2008. On 7th October, 2008, the second respondent wrote a letter to the third respondent informing it that the teachers, whose names are mentioned in the letter dated 7th October, 2008, their appointments are approved. The petitioner's name appears at serial number 1 in that list of teachers. The petitioner then claims that the petitioner has been drawing salary of the post of teacher, but the Inspector of the office of respondent no. 2 visited respondent no. 3, carried out an inspection on 28th October, 2010, after which, he was pleased to

inform the third respondent that the petitioner's appointment by promotion is approved with effect from 7th October, 2008. The petitioner would be entitled to draw the salary of the post of Professor from this date and not from 1st July, 2006. The amount paid to the petitioner from 1st July, 2006 up to 7th October, 2008 was paid erroneously and that is required to be repaid to respondent nos. 1 and 2. This letter has been written by the Inspector without any opportunity of hearing or raising objections by the petitioner. On the basis of this letter, the further order of the second respondent has been passed, both of which, the petitioner is aggrieved by and has thus approached this court.

5. Ms.Kalyani Tulankar appearing in support of this writ petition would urge that this court must carefully peruse the communications and then determine whether the petitioner has indeed relied on any communication emanating from himself. In other words, he is not relying on any self generated document nor he colluded with the Management in alleging that the appointment as a professor is from a prior date and therefore, the salary for the post of Professor was admissible from that date. There is no question of recovery once the petitioner has been appointed in a lawful manner by the Management. In these circumstances there is no role attributable to the petitioner personally in the act of the

Management allegedly not forwarding the proposals in time or if forwarded, not pursuing them. For these reasons, she would submit that the writ petition be allowed.

6. On the earlier occasion, we were not satisfied with the assertion of the petitioner and therefore, we called for the original records to be produced. The original record is produced and Mr.Samant learned AGP appearing for respondent nos. 1, 2 and 4 would submit that there is an overwriting and the letter allegedly sent on 10th September, 2006 is not accompanied by any of the documents and if there was indeed a Resolution passed by the Management appointing the petitioner on promotion with effect from the date mentioned in the communication of 2006, then, its accompanying documents would definitely be in the original records. They are conspicuous by their absence in the original record.

7. With the assistance of both advocates, we have perused the writ petition and its annexures. On the date of filing of the writ petition, the petitioner was aged 56 years. Now, the petitioner has retired. The petitioner has been paid and is being regularly paid the pension as per the admissible pay-scales. The dispute is very narrow and whether the salary for the period 10th September, 2006 to 7th October, 2008 has to be released from the public funds or was it the obligation of the Management.

8. It is well settled that if there is any reworking of the salary or that the salary is over paid allegedly or wrongly, then, the question is of recovery or adjustment and when such adjustment has to be effected, both, the Management and the concerned teachers have to be issued notice and thereafter, the necessary orders have to be passed.

9. Today, the communication at page 12 of the paper book (Exhibit 'B') says that the Inspector visited the college/ institution. An audit was carried out for the financial year 2009-2010. That denoted certain discrepancies. There is a communication dated 7th October, 2008 from the Directorate of Art, which says that the petitioner, together with one S.B.Pandit and H.V.Patil have been promoted. This is evident from the documents and papers available in the Management's record. The record also reveals a Resolution of 21st July, 2006. The record also reveals that with the letter of 10th September, 2006, there is this Resolution of the Management. However, the management is alleged to have not forwarded both communications in time, but sometime in October, 2008. If indeed the promotion is back dated, then, the records in relation to that promotion should have been forwarded promptly so that the deemed date would have been determined accordingly. However, all the teachers have been paid the amounts from 21st

July, 2006 from the public funds. It is in these circumstances that the records were directed to be produced and if not, the necessary steps should be taken.

10. It is on that basis that the Directorate of Art, Government of Maharashtra issued the communication of 28th July, 2011. That is Exhibit 'C' at page 13 of the paper book. That refers to the Management's letter of 11th April, 2011. The Directorate maintains that the appointments on promotion have been made with effect from 7th October, 2008. Therefore, salary for the period July, 2006 to October, 2008 should be recovered and there is no question of making the financial grant admissible for this period.

11. We are of the view that such a communication comes on 28th July, 2011. From the original records, though that letter of 10th September, 2006 has overwritings, it is evident that the communication from the Management dated 26th August, 2008 says that the Government Resolution dated 30th December, 2006 has approved the staff strength. Therefore, in terms of that, the promotions and the appointments have been made. The institution maintains that it made the appointment on promotion with effect from 1st July, 2006. The appointment is approved on 7th October, 2008, according to the Directorate of Art. It disputes that any letter of 10th September, 2006 was ever written. However, curious

is a note of inspection by the Inspector, copy of which is at Exhibit 'B' at page 12 of the paper book. That refers to the Resolution of the Management dated 21st July, 2006. The contemporaneous record thus was found in the papers and proceedings of the Management, of which, inspection was taken. If the institute was responsible in either backdating a letter or making overwriting or interpolation in the letter relied upon by the petitioner, then, the least that was expected from respondent nos.1, 2 and 4 till date was to file an affidavit explaining how the Government found the Management's Resolution in the original record, of which, inspection was taken. If there is indeed such a Resolution, then, there is no explanation as to why the petitioner's appointment cannot be reckoned from the date in that Resolution. It may be that the said Resolution or its copy was not accompanying the Management's letter of 10th September, 2006. However, the petitioner cannot be blamed for all this and admittedly, the petitioner has not been attributed any act amounting to fraud or collusion or connivance allegedly with the Management. Thus, there is no overt act attributed to the petitioner. Therefore, the least that was expected is adherence to the principles of natural justice.

12. We find that the Management is depriving the petitioner of the pay-scales which are admissible for the post of Professor. The amount was paid for the period of two years from July, 2006 to October, 2008. How, till the inspection was carried out and thereafter, till the communication of 28th July, 2011, the authorities did not notice the error or took any steps, has never been explained to us. Why the authorities did not take any action, including filing of any civil suit for recovery against the Management and the concerned teachers has also not been clarified. Thus, the position conceded is that neither the institution nor the petitioner was issued any notice. By mere overwriting allegedly made and for which the petitioner is not held responsible, the authorities cannot effect the recovery. The proceedings and the records speak for themselves. The impugned actions, therefore, smack of arbitrariness, unreasonableness and unfairness and thus are violative of the mandate of Articles 14 and 16 of the Constitution of India. We are unable to sustain them.

13. For the reasons aforementioned, the writ petition succeeds. The impugned communications are quashed and set aside. The petitioner having now retired, should not be visited with any recovery from the amount of pension admissible month to month. If any amount has already been recovered, the shortfall in the

pension may be made good within a period of two months from the date of communication of this order.

14. The writ petition is disposed of accordingly.

(R.I.CHAGLA, J.)

(S.C.DHARMADHIKARI, J.)