

Atul

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 3322 OF 2019**

Kalpana Ramachandra Gokhale

...Petitioner

Versus

State of Maharashtra, through the Principal
Secretary, Department of Education &
Employment & Ors

...Respondents

Ms Kanchan C Phatak, *with NP Deshpande, for the Petitioner.*
Mrs Ashiwini A Purav, *AGP, for Respondents Nos. 1 to 3.*
Mr Satyam R Dube, *for Respondents Nos. 4 and 5.*

**CORAM: S. C. DHARMADHIKARI &
G.S. PATEL, JJ**

DATED: 4th October 2019

PC:-

1. This writ petition under Article 226 of the Constitution of India is by a retired teacher. On this writ petition, on 26th August 2019 we had passed the following order:

“1. The respondent Nos. 4 & 5 could not be served as the petitioner’s Advocate has failed to provide their email addresses to the Registry of this Court.

2. We request the Education Inspector (North), the 3rd respondent to this petition, to provide the email addresses and other details pertaining to respondent Nos. 4 & 5. Let that be done within a period of three (3) days from today.

The same be provided by the 3rd respondent to the Registrar (Judicial-II) of this Court within this period.

3. The learned AGP shall assist the Registrar (Judicial-II) in obtaining the details and thereafter effecting service by email.

4. List on 4-9-2019.”

2. We had clarified that the order passed on that date and on 4th September 2019 does not confer any right, title and interest in the petitioner so as to claim the pay / enhanced pay and the pension in accordance therewith.

3. The 4th September 2019 order is heavily relied upon to claim the relief. Therefore we reproduce it:

“1. Heard.

2. At page 43 of the paper-book, there is a communication from Bhandup Educational Society English School addressed to the Accounts Officer, north Zone, Chembur, Mumbai. According to the school, which is an permanently unaided minority institution, the pay fixation has been done in accordance with the provisions of law.

3. Now, the petitioner complains that there is a communication of 22nd June, 2017 at page 83 of the paper-book, by which the school has failed to comply with the directions issued by this Court as also by the Department, namely, the Education Inspector acting on behalf of the Deputy Director of Education-respondent No. 3.

4. There is a communication which says that the difference between the pay scales which are to be regularly

obtained and the enhanced pay scale have not been released. The petitioner complains that the Education Officer, beyond sending letters, does nothing whereas the Education Officer expresses his helplessness as this is a permanently unaided minority institution, according to the school/education society.

5. We are unimpressed by this stand of respondent Nos. 1 to 3.

6. We think that no educational institution can function unless recognised by the Government. Therefore, the status may be of permanently unaided, still the recognition is by the State and there is enough power in the State to take action, should the teacher before us be harassed by the Management in this manner.

7. The minority institutions do not enjoy such freedom as would amount to condoning the maladministration and mismanagement of the affairs at their end. There is a complete lack of understanding in this regard.

8. We would, therefore, like an affidavit to be filed by the Deputy Director of Education indicating as to what steps he proposes to take against this management to redress the grievance of the petitioner.

9. List the petition on 24th September, 2019 on the "Supplementary Board".

4. On 24th September 2019 the Education Inspector (North) Greater Mumbai was fair enough to produce the original records.

5. Mrs Purav appearing on behalf of the State states on instructions that there is no let off as far as this educational

institution and its management are concerned, but there are certain inbuilt limitations. The Education Inspector can go no further.

6. We will have to, therefore, deal with the arguments of the petitioner's Advocate, but before we do that we deem it fit and proper to set out the basic facts.

7. The petitioner before us was employed by the 4th respondent education society to teach at the 5th respondent school. This is an unaided school. In such an institution, which derives no financial aid from the Government, the petitioner on the strength of her qualifications was appointed as an assistant teacher with effect from 19th June 1978. She claims to have an unblemished service record. However, the management reduced her in rank. She had, therefore, to approach the School Tribunal. She filed an appeal under Section 9 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977. In that appeal, the petitioner claimed that she was senior-most teacher but she was not appointed as the headmistress. Another crucial fact is that the petitioner filed S.C. Suit No. 1408 of 2003 in the City Civil Court at Mumbai. She filed Notice of Motion No. 1360 of 2003 seeking an interim injunction. The City Civil Court passed an order on 10th June 2003 directing that she be appointed by the management as the head of the institution with immediate effect and directed that all attendant benefits be released to her. The basic order to that effect is dated 7th April 2003.

8. The allegation in this petition is that instead of complying with this order the 4th respondent got itself declared as a minority institution.

9. The petitioner then filed Writ Petition No. 1715 of 2003 in this Court challenging this status. On 19th August 2003, a Division Bench of this Court admitted the writ petition and continued the petitioner as a headmistress.

10. The petitioner attained the age of superannuation and retired on 31st August 2008.

11. She instituted another writ petition No. 2919 of 1988 in this Court for arrears of salary going back to 1988. This Court passed an order only partially granting relief. The management approached the Hon'ble Supreme Court of India by way of Special Leave Petition No. 3118 of 2003. This was dismissed on 14th January 2010. The writ petitioner before us received arrears of salary only up to November 1996. In another writ petition, being Writ Petition No. 1397 of 2009, a Division Bench of this Court directed the Education Inspector to give hearing to her and pass an appropriate order. On 22nd March 2010, that writ petition was disposed of.

12. Since the petitioner was deprived of gratuity, she filed yet another writ petition, being Writ Petition No. 1317 of 2010. That writ petition is stated to be pending but during its pendency the management has paid her gratuity but only for a period of eleven

years. The petitioner says she has served for 30 long years and is entitled to gratuity for the whole of her service period.

13. The grievance of the petitioner is that she was not treated fairly by the management during her entire tenure. The petitioner was waiting for a favourable response of the Education Inspector and though he conducted hearing, he passed no order. The petitioner filed a contempt petition, after which the petitioner was informed that the Education Inspector, North Zone will hear parties. He did in fact hear them. He passed an order dated 15th December 2012. The order was initially not communicated but after the petitioner issued an Advocate's notice, a copy of that order was supplied to her.

14. The petitioner's monetary claims were not settled by the management despite an order of the Education Inspector. Even reminders did not result in any favourable response.

15. It is in these circumstances and when the Education Inspector says that the school being unaided, he cannot assist the petitioner beyond a particular limit, that one more writ petition was brought by the petitioner before this Court. The present petition follows another writ petition of the petitioner being Writ Petition No. 719 of 2014. The petitioner's Advocate withdrew that writ petition with a statement being recorded that she would approach the Education Officer. Since all contentions were kept open, the petitioner attempted to raise them before the Education Officer. The petitioner also issued a reminder.

16. The petitioner has thus approached this Court with identical reliefs as were claimed earlier and resulting in an order dated 15th December 2012 of the 3rd respondent. Since that was not implemented or enforced, the petitioner was advised to file this writ petition.

17. On our question, one we repeatedly posed, to the petitioner's Advocate as to how such reliefs can be demanded when the school is unaided, all that is stated is that we must look at earlier communications as also a communication dated 22nd June 2017 from the Education Officer, a copy of which is at page 83 of the paperbook. That was a communication addressed to the Chairman of the 4th respondent and the headmistress of the 5th respondent school. Both were informed by the Education Officer that there was an order passed by him and duly communicated but not acted upon. The initial order says that the grievance of the petitioner has to be fully redressed and it is expected that the said order would be complied with.

18. Our attention has been drawn by Mr Deshpande to this order repeatedly. That is but an intervention by the Education Officer at the instance of this petitioner. That intervention is that the petitioner must be assisted by providing her the pay scale or fixing her pay in terms of the applicable Rules and Regulations. The petitioner submits that this is an order which binds the institution though it claims no aid.

19. A careful perusal of that order would reveal that there is no substance in any of the grievances of the petitioner nor her contentions raised before us. The petitioner was provided a copy of the service book on account of the intervention of the Education Inspector. Then, a verification had to be carried out of the applicable pay scale and Rules admissible to the petitioner. On such verification and scrutiny, the management was directed to pay the differential amount, if any. The petitioner claims that she must be granted the regular pay scale and the pay scales which are styled by her as higher pay scale as well. The school has not been agreeing to this request and it is pointed out repeatedly that it being an unaided school and the petitioner not being entitled to the pay scales as claimed by her, they are not bound to release them. The version of the school is recorded in the order itself. That version is based on the documents produced before the Education Inspector.

20. The Education Inspector may maintain that his order is binding but nothing has been pointed out which would enable us to conclude that a writ would go to and can be issued so as to enforce the order of the Education Officer/Inspector against an unaided school.

21. We have, therefore, directed that original record be produced for our perusal. The original record itself shows that the petitioner corresponded with the school before her retirement. She was to retire on 31st August 2008. She began her career as an assistant teacher. She was appointed as such on 19th June 1978 and thereafter as a headmistress on 7th April 2003. The petitioner says that salary

for the month of August 2008, gratuity and other benefits be released on the last date of her service.

22. That is how she crystallized her grievance. She received an immediate response from the management on 29th August 2008. The management said that salary for the month of August would be paid to her on 30th August 2008. As regards the gratuity, the management relied upon a judgment of the Hon'ble Supreme Court which held that teachers are not covered by the gratuity benefits payable under the Payment of Gratuity Act 1972. As far as other benefits are concerned, the payment would be made as soon as possible. Now, the petitioner in November 2008 after accepting the amounts raised this grievance once again with regard to payment of gratuity. She said that Section 3(i) of the Maharashtra Employees of Private Schools (Condition of Service) Regulation Act 1977 has in categorical terms stated that the provisions of the Act shall apply to all private schools in the State of Maharashtra, whether receiving any grant-in-aid from the State Government or not. Thus, there is no distinction between teachers working in aided and unaided schools. However, all employees and teachers from aided and unaided schools should get gratuity regardless of the Supreme Court judgment related to gratuity payment. She requests the management to look into her grievance. The management once again did not respond. Therefore, the first and the subsequent petitions.

23. We do not see how we can, after a rejection of all prior petitions on the very cause of action, entertain this petition. Though the petitioner has relied on a communication from the 3rd

respondent dated 8th February 2008, that is but a reiteration of the earlier stand. The Education Officer informed the management that the petitioner was appointed in 1978. However, from 18th August 2003 she had been treated as an employee working in a unaided section because the school or management was recognized as such. She had, therefore, served in such a section and retired on 31st August 2008. The Education officer pointed out that the BES English High School, Bhandup (East), Mumbai is an English Medium permanently unaided school. As far as the permanently unaided schools are concerned, the grant of higher pay scales and selection grade pay scales are not admissible to the teachers working in such institutions and that is why the Government Resolution dated 28th November 2006 has been relied upon. There are also orders of this Court which also reiterate the same position. As far as the approval to the petitioner's appointment is concerned, the approval was granted and that approval was not such as would enable the petitioner to draw the pay scales claimed by her. This stand is again reiterated with reference to the Government Resolution, and it has been also stated therein that for the purposes of other benefits, services rendered in a permanently unaided school/section cannot be taken into consideration for applying the higher pay scales or the selection grade pay scales.

24. In these circumstances, once we find that this Government Resolution and the subsequent communication have not been expressly challenged, but all that is claimed is enforcement and execution of the communication/order dated 15th December 2012, this writ petition cannot be entertained. This is not an order which we can enforce in the teeth of the Government Resolution dated

28th November 2006 as also the orders of this Court passed from time to time based on this Government Resolution. The communication of 15th December 2012 being at variance with the above it is not possible for us to issue any writ to enforce it. This communication and the order is passed on some directions of this court and those were limited to the consideration of grievance / representation of the petitioner. Neither the orders of this Court nor the order of the 3rd respondent dated 15th December 2012 can be relied upon to claim substantive reliefs. We cannot, unmindful of the Government Resolution dated 28th November 2006, the orders of this Court passed thereon, and the Supreme Court judgment in regard to payment of gratuity to the teachers, grant any reliefs in this fresh writ petition, one that is based on an earlier cause of action. That cause of action cannot be constantly re-agitated. It was the subject matter of prior writ petitions.

25. There must be some finality. On more than five occasions, the petitioner approached this Court with a similar request but could not succeed. Now, in the new fresh writ petition of 2019 claiming the same reliefs, we cannot take a different view.

26. It is thus clear that the petitioner retired in 2008 and accepting her position in law has not complained thereafter. She has not approached the higher Court against this Court's earlier order disposing of her prior writ petitions.

27. All this would, therefore, enable us to hold that the instant writ petition also cannot be entertained.

28. The writ petition is accordingly dismissed. There will be no order as to costs.

(S. C. DHARMADHIKARI, J)

(G. S. PATEL, J)