

JPP

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

WRIT PETITION NO. 10038 OF 2014

Shaikh Shafiuddin Fayyazuddin

... Petitioner.

V/s.

Deputy Director of Education & Ors.

... Respondents.

Ms. Devyani Kulkarni for the Petitioner.

Ms. Nisha Mehra, AGP for Respondents 1 & 5.

Mr. N.R. Bubna a/w. Manisha Salekar for Respondents 3 & 4.

***CORAM : PRADEEP NANDRAJOG, C.J. &
N.M. JAMDAR, J.***

DATE : 4 JUNE 2019.

P.C. :-

It is unfortunate that no counter affidavit has been filed by the Respondents to the Writ Petition which was filed in the year 2014 and thus, we are constrained to decide the Writ Petition on the averments made therein without the same being traversed.

2. The Writ Petitioner was appointed as a Clerk in the fourth Respondent – School established by the third Respondent – Trust. The school is an aided school. The appointment was on 1 July 1990.

3. During period of probation, the Petitioners appointment was terminated by the third Respondent on 30 March 1991. Challenge to the termination before the School Tribunal, Nashik succeeded with a direction issued that the Petitioner will be reinstated with full back-wages and consequential benefits. The Petitioner was reinstated. As against his claim for back-wages in sum of ₹ 37,722/-, he was paid only ₹ 8,722/-. The Petitioner filed a contempt proceedings before the School Tribunal resulting in the tribunal passing an order on 22 March 2001 directing representation to be made to the Director of Education concerning computation of back-wages.

4. The Director of Education was to decide the same.

5. Representation made to the Director of Education was not decided.

6. The first relief sought in the instant Petition is for back-wages to be paid as per computation made by the Petitioner.

7. The second issue concerns benefit of placement in the higher pay scale on rendering 12 years of service in terms of Government Resolution dated 30 April 1998. The Petitioner, appointed on 1 July 1990, completed 12 years service in June 2002. He raised the issue of being placed in the higher pay scale. His request not being dealt with resulted in the Petitioner filing Writ

Petition No. 4288 of 2009 in which direction was issued on 2 December 2013 to consider the Petitioner's claim and pass necessary orders. The necessary order came to be passed on 10 April 2014 granting the Petitioner placement in the higher pay band because by then pay scales were replaced by pay bands. However, the order was made perspective with effect from 10 April 2014.

8. The second claim in the Writ Petition is to the benefit being accorded retrospectively from the year 2002.

9. In view of the fact that the averments in the Writ Petition have not been traversed and noting the order dated 30 October 2013 passed directing that the Respondents been served the Writ Petition will be disposed of finally on 27 November 2017, we direct that arrears of back-wages in sum of Rs.29,000/- will be paid by Respondent No.4 with interest calculated @ 8 % per annum reckoned from 17 February 1994. On the issue of the Petitioner being entitled to be placed in the higher pay scale on rendering 12 years service, we declare that the entitlement would be from 1 July 2002. The Respondent No.4 would take necessary step; pass the necessary order in view of the fact that as of said year pay scales were in vogue and pay band with grade pay were implemented in view of implementation of 6th Pay Commission from 1 January 2006.

10. We also issue a mandamus to the first Respondent to

ensure that Respondent No.4 complies with the mandamus issued within 12 weeks from today. The arrears of enhanced salary with effect from 1 July 2002 shall be paid to the Petitioner within further six weeks of passing of the necessary order and if not paid within the time granted by the Court, same shall be paid with interest @ 8% per annum reckoned from said date. Needless to state that being an aided School, the Respondent No.4 will be entitled to make appropriate representation to the State for reimbursement as per law.

N.M. JAMDAR, J.

CHIEF JUSTICE