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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 242 OF 2013**

Manojkumar S. Amare and ors. ..Petitioners

VS.

The State of Maharashtra & ors. ..Respondents

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Ms. Prachi Khandge I/b. M/s. M.P. Vashi & Associates for
petitioners.

Ms. Hiral Vora I/b. Maniar Srivastava Associates for respondent No.6.

Mr. Vikas Mali, AGP for respondent Nos. 1 to 4.

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CORAM : S.C. DHARMADHIKARI &

M.S. KARNIK, JJ.

RESERVED ON : 7th MARCH, 2019

PRONOUNCED ON : 27th JUNE, 2019

JUDGMENT (PER M.S.KARNIK, J.):-

By this Petition filed under Article 226 of the Constitution of India, the petitioners are praying for direction to respondent Nos. 5 and 6 to pay the salary and other allowances and all other perks to the petitioners as per the scales prescribed under Rule 7 of the Maharashtra Employees of Private Schools

(Conditions of Service) Rules, 1981 (hereinafter referred to as 'the Rules of 1981' for short) and in accordance with the reports of the 5th and 6th Pay Commissions, including the arrears and the difference in salary due to revision of scales.

2. The facts of the case in brief are as under :

The petitioners are qualified permanent teachers working in the fifth respondent school. The petitioners are governed by the service conditions as prescribed under the Maharashtra Employees of Private Schools (Conditions of Service) Regulations Act, 1977 (hereinafter referred to as 'the Act of 1977' for short) and the Rules of 1981. The fifth respondent school is an unaided private secondary English medium school recognized by the Government of Maharashtra.

3. The 5th Pay Commission report was implemented with effect from 1/1/1996. It is the case of the petitioners that respondent Nos. 5 and 6 did not implement the report in full and the members of the staff were not paid the salary as per the scales prescribed under the said 5th Pay Commission report. A

slight increase was made in their salary. The petitioners joined the school on different dates mentioned in the statement which is at Exhibit 'A' to the Petition. The petitioners repeatedly requested respondent Nos. 5 and 6 to pay the salary according to the scales prescribed. The petitioners also requested to respondent Nos. 2, 3 and 4 viz. The Director of Education, Maharashtra, The Deputy Director of Education, Mumbai and The Education Officer (Secondary), Zilla Parishad, Thane, to ensure that 5th and 6th Pay Commission reports were implemented and the salaries paid to the petitioners accordingly. The 6th Pay Commission report was published to be implemented from January 2006.

4. In the year 2009, the State of Maharashtra passed a Resolution that all the schools should implement the 6th Pay Commission Report and pay the salary to the staff along with the difference in salary payable to them from January 2006. The respondent No. 5 – school avoided to implement the report. They failed to pay the salary and arrears as per the

recommendations made in the report taking a plea of financial incapability.

5. The petitioners therefore through their advocate's notice dated 3/11/2012 demanded the arrears and placement in the appropriate scale.

6. Learned Counsel for the petitioners submitted that though they are entitled to salary as per the pay scale prescribed by the Act of 1977 and the Rules of 1981, the same is not being paid to them. Learned Counsel would submit that once the State of Maharashtra has accepted the recommendations made by the 5th and 6th Pay Commission Reports, the respondent No.5 then is obliged to pay salary and allowances and arrears as per the 5th and 6th Pay Commission reports. Learned Counsel would submit that the petitioners' case is squarely covered by the decision of the Hon'ble Supreme Court in the case of **Secretary, Mahatama Gandhi Mission and another v/s. Bhartiya Kamgar Sena and others reported in (2017) 4 SCC 449.**

7. Per contra, the learned Counsel appearing on behalf of the respondent Nos. 5 and 6, inviting our attention to the affidavit-in-reply filed on their behalf on 16th February, 2015, opposed the grant of any relief in favour of the petitioners. It is the specific stand of respondent No.6 in paragraph 4 that the recommendations of the 5th and 6th Pay Commission are not enforceable as against respondent Nos. 5 and 6 as they run private unaided school. It is further their stand that the petitioners have not produced any circular/Government Resolution on record to show that 5th and 6th Pay Commissions are adopted under the Act of 1977. Learned Counsel would submit that the Schedule 'C' to the Rules of 1981 prescribes the pay scales and therefore the pay scales as per report of 5th and 6th Pay Commissions unless made part of the Schedule 'C' of the Rules of 1981, the same cannot be applied to the private unaided school. It is further submitted that the respondent No. 6 – Trust works on a no profit basis and there is as such no extraordinary income generated by the trust out of which the respondent will be in a position to pay to petitioners the pay

scale and arrears demanded. It is submitted that respondent No.6 runs a private unaided school which does not receive any grant-in-aid from the State Government and the only mode of generating income is through the fee that is collected from the students. He would therefore submit that it is not possible to pay the arrears. It is further the contention that the petitioners have not provided detailed calculations as to on what basis they have arrived at the quantum of the arrears as claimed by them.

8. In brief, the sum and substance of the contention of learned Counsel is that as the petitioners fall within the purview of the Act of 1977 and the Rules of 1981 framed thereunder, therefore, they are entitled to receive their salary only as per the provisions of the Act of 1977 and the Rules of 1981 and the question of granting salary as per the 5th and 6th Pay Commission Reports does not arise.

9. Heard learned Counsel for the parties. We have gone through the Petition and the annexures thereto. We have also gone through the affidavit-in-reply filed on behalf of the

respondent No.6.

10. The respondent No. 5 – school is an unaided private secondary English medium school recognized by the Government of Maharashtra. The conditions of service of employees of the schools are governed by the provisions of the Act of 1977 and the Rules of 1981 framed thereunder. Rule 7 provides for scales of pay for full time teachers and non teaching staff in primary schools, secondary schools, etc. Rule 7 (1) provides that the scales of pay shall be as specified in Schedule 'C'. Thus Part (i) of Schedule 'C' provides for scales of pay for primary schools' headmaster and teachers. Part (iii) of Schedule 'C' provides for the pay scales of secondary teachers and academic teachers in technical, multipurpose and vocational high schools.

11. The respondent No.5 does not dispute that the 5th Pay Commission report is implemented by the State of Maharashtra with effect from 1/1/1996 and 6th Pay Commission

report is implemented from January, 2006. It is further not in dispute that in the year 2009, the State of Maharashtra issued a Government Resolution that all the schools should implement the 6th Pay Commission Report and pay the salary to the staff along with the difference in salary payable to them from January 2006. The respondent Nos. 5 and 6 have denied the benefit of the 5th and 6th Pay Commission recommendations only on the ground that as the conditions of service of the petitioners are governed by the provisions of the Act of 1977 and the Rules of 1981, the petitioners are entitled for the pay scales only as prescribed in Schedule 'C'. The stand of the respondents therefore is that unless Schedule 'C' is amended and the pay scales as prescribed by the 5th and 6th Pay Commission reports are incorporated in Schedule 'C', no liability can be foisted on respondent Nos. 5 and 6 to pay salary and arrears as per the recommendations of the 5th and 6th Pay Commission reports. Another ground urged by respondent Nos. 5 and 6 is their inability to raise finance to pay the arrears as the Trust is working on "no profit" basis.

12. No doubt, the conditions of service and the pay scales applicable to the teachers of secondary schools are prescribed by Schedule 'C' of the Rules of 1981. The State of Maharashtra by issuance of G.R. directed that all schools should implement the 6th Pay Commission Report and pay salary to the staff accordingly. The payment of salary and the arrears in accordance with the recommendations of 5th and 6th Pay Commission Reports are made applicable to the employees of the private schools irrespective of whether they are receiving grant-in-aid or not. In our opinion, merely because necessary amendments are not made in Schedule 'C' of the Rules of 1981 incorporating pay scales in terms prescribed by the Pay Commission reports would not be a ground to deny the benefit of the pay scales to the petitioners as per the 5th and 6th Pay Commission reports.

13. The observations made by the Apex Court in the case of **Mahatma Gandhi Mission** (*supra*), in our opinion, would squarely apply to the present fact situation also. Having regard

to the law laid down by the Apex Court, there is no justification in excluding the unaided private secondary schools from implementation of the Pay Commission reports. The Government Resolutions issued by the State of Maharashtra prescribes that all the schools should implement the 6th Pay Commission Report and pay salary to the staff along with the difference in salary payable to them from January, 2006. In view of the Government Resolutions issued by the State of Maharashtra, it is incumbent on the respondent Nos. 5 and 6 Management to implement the 5th and 6th Pay Commission reports in terms and in the manner as is provided in the Government Resolution issued by the State of Maharashtra. The Apex Court observed that the expression "Government Resolution" in the Maharashtra Administrative jargon means a decision taken either in exercise of the authority of the State under Article 162 of the Constitution of India or in exercise of the authority under some statutory provision. It would be profitable to quote paragraph Nos.70, 71, 72 and 74 of the Apex Court's decision in **Mahatma Gandhi Mission** (*supra*)

which read thus :

“70. We are now left only with the GR dated 12.08.2009 which laid down the policy of the Government of Maharashtra to adopt the pay-scales stipulated by the Government of India in its Scheme dated 31.12.2008 insofar as the teaching staff of the various affiliated colleges are concerned and the rules framed by the Government of Maharashtra dated 07.10.2009 in exercise of the power under Section 8(3) insofar as the non-teaching staff are concerned.

71. While the GR dated 12.08.2009 is specific in its declaration that the elaborate Rules contained therein dealing with the pay scales of the various cadres of the teaching staff of the educational institutions mentioned therein, it does not make any distinction between aided and un- aided colleges. However, the GR does not purport to be one made in exercise of the power under Section 8(3) of the Universities Act. It is agreed on all hands at the Bar that the expression “Government Resolution” in the Maharashtra Administrative jargon means a decision taken either in exercise of the authority of the State under Article 162 of the Constitution of India or in exercise of the authority under some statutory provision. No doubt the GR does not refer to the source which authorises the exercise of the power for revising the pay scales of the teaching staff of the various educational institutions mentioned therein. The mere absence of the recital of the source of power in our opinion cannot determine the legal status of the instrument or deprive the instrument of its efficacy.

72. The difference between the authority of the State flowing from Article 162 of the Constitution or Section 8(3) of the Maharashtra Universities Act is two-fold. Firstly, the statutory authority under Section 8(3) could be abrogated anytime by the legislature while the constitutional authority under Article 162 cannot be abrogated

by the State Legislature. Secondly, the procedural requirements for the exercise of the power vary depending upon the nature of the source of the power, but the existence of power itself cannot be doubted.

74. The colleges run by the appellants are admittedly colleges affiliated to the Universities functioning under the Act. Therefore, their teaching staff would be entitled to the revised pay scales in terms of the G.R. dated 12.08.2009.”

In the light of the law laid down by the Hon'ble Apex Court and the observations made, the State of Maharashtra was well within its right to issue a Government Resolution providing for the implementation of the 5th and 6th Pay Commission recommendations making it applicable to all the schools.

14. The petitioners therefore are entitled to the revised pay scale in terms of the 5th and 6th Pay Commission reports and as accepted by the State of Maharashtra by issuing the Government Resolutions in that regard. The argument of learned Counsel for the contesting respondents that it is only when Schedule 'C' of the Rules of 1981 is amended by incorporating the pay scales prescribed by 5th and 6th Pay

Commission, the liability to pay the scale as per the 5th and 6th Pay Commission reports would arise, is untenable and can only be stated to be rejected.

15. In the light of the law laid down by the Hon'ble Apex Court, the present Petition deserves to succeed. The petitioners are entitled for pay as per the pay scale prescribed by 5th and 6th Pay Commission reports and as accepted by the State of Maharashtra in Government Resolutions issued for this purpose. The petitioners are entitled to arrears in terms of revised pay scale as per the recommendations.

16. The petitioners have submitted a statement of the pay scales to which they are entitled to and the difference of salary and arrears. The same is disputed by learned Counsel for respondent Nos. 5 and 6. In these circumstances, we direct respondent No.4 – Education Officer (Secondary) Zilla Parishad, Thane, to determine the difference of arrears as per 5th and 6th Pay Commission recommendations to which the petitioners are

entitled after hearing the petitioners as well as respondent Nos. 5 and 6. Let this exercise of determination of arrears be done within a period of 12 weeks from today. The respondent Nos. 5 and 6 to pay to the petitioners the arrears as determined by respondent No.4 within a period of 6 months from the date of determination.

17. The respondent Nos. 5 and 6 are directed to forthwith pay to the petitioners salary and other allowances as per the recommendations presently in force.

18. The parties to appear before respondent No. 4 – Education Officer (Secondary), Zilla Parishad, Thane, on 8th July 2019, at 11.00 a.m.

19. The Writ Petition is allowed in the above terms.

20. Rule is made absolute with no order as to costs.

(M.S. KARNIK, J.)

(S.C. DHARMADHIKARI, J.)