IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

Writ Petition No.6054 of 2017
Gramin Shikshan Prasarak Mandal Vs. Vanita Anna Pophali

Office Notes, Office Memoranda of Coram, appearances, Court's orders of directions and Registrar's orders	Court's or Judge's orders

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Mr. R.S. Charpe, Advocate for petitioner
Mr. A.M. Quazi, Advocate for respondent

CORAM : MANISH PITALE, J.

DATED : DECEMBER 03, 2019

By this writ petition, the petitioner (original judgment debtor) has challenged order dated 22/1/2016, passed by the Court of Civil Judge (Senior Division), Warora, whereby application at Exh.28 filed by the petitioner was rejected.

2. The petitioner herein is a society running a school in which the respondent was an employee. The respondent had filed an appeal before the School Tribunal under the provisions of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act of 1977, raising a grievance regarding her supersession. By impugned judgment and order dated 05/11/2009, the School Tribunal allowed the appeal filed by the respondent and directed that difference in salary as well as pensionary benefits shall be paid to the respondent within a period of six months.

3. The respondent instituted a contempt petition in this Court raising grievance about the fact that the petitioner had not complied with order passed by the School Tribunal. During pendency of the contempt petition, an amount of Rs.40,000/- by way of demand draft was paid to the respondent by the petitioner. This fact was brought to the notice of this Court in the pending contempt petition and since there was no appearance on behalf of the respondent on two consecutive dates, the contempt proceedings were dropped by order dated 15/12/2011.

4. Thereafter, the respondent caused legal notice to be issued to the petitioner as well as the Education Officer raising grievance that difference in pension as per the order of the School Tribunal was not paid to her. Thereafter, execution proceedings were initiated before the Court below.

5. In the said execution proceedings, initially the petitioner raised preliminary objection to the effect that the decree stood already satisfied in terms of mutual settlement between the parties and that, therefore, the execution proceeding was liable to be rejected. In reply to the said preliminary objection raised on behalf of the petitioner, it was stated by the respondent that only difference in salary had been paid by the petitioner and that there was no settlement in

respect of pension claim awarded by the Tribunal. On 18/6/2014, the Executing Court rejected the preliminary objection raised by the petitioner.

6. The petitioner then filed an elaborate objection under Section 47 of the Code of Civil Procedure, referring to the payment of amount of Rs.40,000/- to the respondent and specifically stating in paragraph No.3 that liability to pay pension was that of the Government of Maharashtra as per the relevant Rules and that it was to be paid directly by the Government through its treasury. On this basis, it was contended that the liability to pay difference of pension could not be foisted on the petitioner. The said objection was opposed by the respondent. By the impugned order dated 22/1/2016, the Executing Court rejected the objection filed on behalf of the petitioner. The only reason for rejection of the said application was that the judgment debtor was seeking certification of the payment of amount of Rs.40,000/- made to the respondent as per receipt dated 01/12/2011 and that as per the Article 125 of the Limitation Act, such recording of adjustment or satisfaction of the decree ought to have been done within a period of 30 days. It was only on this basis that the Executing Court rejected the application by observing that the objection was preferred by the petitioner, as the judgment debtor, on 21/07/2014, which was after about 2½ years from the date of alleged payment and, therefore, it was barred

by limitation.

7. The said order is made subject of challenge in the present writ petition, wherein notice was issued on 29/09/2017 and further proceedings before the Executing Court were stayed.

8. Mr. Charpe, learned counsel appearing for the petitioner submitted that the Executing Court clearly misdirected itself by proceeding on the basis that the petitioner was seeking recording of satisfaction of the decree or adjustment of the amount paid to the respondent by way of objection raised on its behalf. It was submitted that although reference to Order XXII Rule 2 of the Code of Civil Procedure was made in the application filed on behalf of the petitioner, it was in the context of allegation that the respondent had suppressed receipt of such amount before the Executing Court while seeking to pursue the application for execution. It was submitted that objection was raised to the very liability of the petitioner to pay difference in pension and this aspect was not even adverted to by the Executing Court while passing the impugned order. It was submitted that the entire approach of the Executing Court was erroneous and the impugned order was liable to be set aside. Attention of this Court was also invited to reply filed by the respondent to the preliminary objection, wherein it was admitted that difference of salary was paid and

only grievance was regarding difference in pension to be paid to the respondent.

9. On the other hand, Mr. Quazi, the learned counsel for the respondent submitted that even after payment of Rs.40,000/- was made by the petitioner, there was nothing to show that the decree was entirely satisfied. Attention of this Court was invited to the operative order passed by the Tribunal wherein the entire liability was placed on the petitioner for relief of difference of salary and difference towards pensionary benefits to be paid to the respondent. On this basis, it was submitted that the petitioner alone was liable to satisfy the decree of which execution was sought by the respondent.

10. Heard learned counsel for rival parties and perused the material on record. Certain admitted facts in the present case are that during pendency of the contempt proceeding before this Court, the respondent received an amount of Rs.40,000/- by way of demand draft dated 04/11/2011 from the petitioner. In reply filed to the preliminary objection before the Executing Court, the respondent clearly stated that by such payment, only difference of salary was received and it was emphatically stated that difference in pensionary benefits and the claim towards pension awarded by the Tribunal was yet to be settled between the parties. It is also an admitted position that in the application filed

under Section 47 of the Civil Procedure Code in paragraph No.3, the petitioner had raised specific objection with regard to its liability to satisfy the claim towards pension as raised by the respondent, on the basis of the decree passed in her favour. It was contended on behalf of the petitioner that liability would be on the Government Treasury.

11. In this backdrop, when the impugned order passed by the Executing Court is perused, it becomes clear that the only point in controversy between the parties pertaining to the claim towards difference in pension raised by the respondent on the basis of decree passed in her favour, was not even discussed by the Executing Court. The entire emphasis in the impugned order was on whether the recording of satisfaction of the decree sought by the petitioner by relying upon payment of Rs.40,000/- made to the respondent, was within limitation or not. The Executing Court failed to refer to and address the point in controversy sought to be raised on behalf of the petitioner with regard to liability towards payment of pensionary benefits. The objection raised on behalf of the petitioner could not have been rejected without discussing and giving finding on the substantial contentions raised by the petitioner with regard to its liability towards difference in pensionary benefits.

12. The entire focus of the Executing Court was

misplaced, particularly in the backdrop that the respondent herself had stated in her reply to the preliminary objection that payment made by the petitioner was only towards difference in salary and claim of petitioner towards pension was yet to be settled. In this backdrop, it was all the more expected of the Executing Court to have dealt with the contention raised on behalf of the petitioner. In view of the above, it is found that the impugned order is erroneous. Accordingly, it is quashed and set aside.

13. But, at the same time, the objection regarding the liability to pay difference in pension needs to be decided on merits by the Executing Court. Accordingly, the matter is remanded to the Executing Court for deciding the application at Exh.28 afresh. It is made clear that this Court has not expressed any opinion on merits of the objection raised on behalf of the petitioner concerning its liability towards payment for difference of pensionary benefits. The Executing Court shall hear the contesting parties on the said objection and decide the same. The Executing Court shall dispose of application at Exh.128 afresh within a period of two months from today. It is further made clear that upon such objection being decided, the Executing Court may take further steps in pursuance of order dated 17/4/2017, passed by it below Exh.1, if required. The entire execution proceedings be disposed of expeditiously, considering the advanced age of the

respondent.

14. The writ petition is disposed of in above terms.

JUDGE

MP Deshpande