

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.1200 OF 2017

SHASHIKALA DODHU SONAWANE

...PETITIONER

VERSUS

THE STATE OF MAHARASHTRA
AND OTHERS

...RESPONDENTS

Mr A.G. Talhar, Advocate for Petitioner
Mr S.S. Dande, AGP for Respondent Nos. 1 to 3
Mr R.H. Mewara, Advocate for Respondent Nos. 4 and 5

**CORAM : PRASANNA B. VARALE
AND
ANIL S. KILOR, JJ.**

DATE : 6th JANUARY, 2020

PER COURT :

1. Heard Mr Talhar, the learned Counsel for the petitioner.
2. Being aggrieved by communication dated 21.07.2016, whereby the Principal, Shikshanshastra Vidyalaya, Jalgaon is informed that the pay scale earlier granted to the petitioner by order dated 16.08.2005, and subsequently, the order dated 15.06.2016 is a proper scale granted to the petitioner.
3. Mr Talhar, learned Counsel for the petitioner invited our attention to the document placed on record at Exhibit "H" i.e. the order dated 20.03.2014/02.04.2014 issued by the Deputy Director of Education, Nashik Division, Nashik, whereby the

petitioner was placed in pay band of Rs. 15600/- to Rs. 39100/-. Mr Talhar then submitted that in the earlier round of litigation, petitioner was before this Court in Writ Petition No. 9033/2011 and during the pendency of the petition submitted that while disposing of the writ petition, the Division Bench of this Court referred to the submission of learned Assistant Government Pleader wherein, the learned Assistant Government Pleader admitted that petitioner was put in the pay band of Rs. 15600/- to Rs. 39100/- by order dated 02.04.2014. As such, by observing the challenge raised to the order impugned in the petition, no more survives, the petition was already disposed of. It was the submission of learned Counsel Mr Talhar that without giving any opportunity of hearing to the petitioner, the Accounts Officer of Education Department issued a certificate putting the petitioner in the earlier pay band of Rs. 9300/- to Rs. 34800/- giving go-bye to the earlier order dated 20.03.2014/02.04.2014. As such, the communication dated 21.07.2016 issued by the Accounts Officer, Education Department, Jalgaon is unsustainable.

4. In response to the notice by order dated 2nd February, 2017, an affidavit-in-reply is filed on behalf of respondent No. 3 through Mr S.W. Nikum, Accounts Officer, Education Department, Jalgaon. It may not be necessary to refer to the affidavit-in-reply in details and suffice to say that reasonable explanation is provided in the affidavit-in-reply and that is in the form of correcting the decision. It would be useful for our record to refer

to para Nos. 4, 6 and 7 and these paras read thus -

4. I say that, as such there is no such grade pay of Rs.5400/-. I say that, as per the G.R. dated 12.06.2009, the pay scale of the Petitioner in the college of Education has been prescribed. In the said G.R. in the annexures the pay for Principal for college of education is Rs.9300-34800/- and the pay grade shown as Rs.4800/-. The senior scale is Rs.15600-39100/- and grade pay is Rs.5700/-. I say that the said senior scale is applicable to the concerned principal after he completes 12 years continuous services on the said post. I say that, the Petitioner came to be appointed on 16.8.2005 and therefore, she is not entitled for higher scale and is only entitled for 9300-34800 and grade pay Rs.4800/- on the date of her appointment. I say that, in the approval dated 2.4.2014, the pay scale and the grade pay has been wrongly shown. I say that, the Petitioner cannot enure any benefits from said wrong pay scale and grade pay in the teeth of G.R. Dated 12.6.2009. The copy of the G.R. Dated 12.6.2009 and relevant page with respect to pay scale of Petitioners in college of Education. Hereto annexed and marked as **EXHIBIT-R-1** is the copy of G.R. Dated 12.6.2009.

6. I say and submit that, accordingly reverification of the Petitioner was done by the Task Force and by order dated 5.3.2016, the pay scale and the grade pay has been corrected by the Respondent authorities. The copy of the order dated 5.3.2016 is annexed along with the correction. I say and submit that, the order dated 11.2.2014 passed in Writ Petition No. 9033 of 2011 cannot help the Petitioner. I say and

submit that, the representation dated 23.6.2016 of the Petitioner was considered by the Respondent No. 3 and after considering the above said aspect the impugned order dated 21.07.2016 came to be passed. I say that, the order dated 21.7.2016 is legal and valid and does not suffer from any error. Hereto annexed and marked as **EXHIBIT-R-3** is the copy of order dated 5.3.2016.

7. I say and submit that the Petitioner has worked as Asstt. Teacher from 13.6.1997 to 22.12.1999. The basic pay of the Petitioner as Asst. Teacher at the relevant time was 5850/-. I say that, the Petitioner resigned as a Asst. teacher and thereafter joined as Lecturer in B.Ed college. The Petitioner joined the post of Lecturer on honorarium and not regular pay scale. The Petitioner worked on the said post of Lecturer on honorarium till 31.1.2005. I say and submit that, the Petitioner was not working from 23.12.1999 to 31.1.2005 on the same post as of Asst. Teacher nor on the same pay scale. I say that, therefore, this period of lecturership cannot be counted for annual increments. I say that, the Rule 11 (4) of the Maharashtra Civil Services (Pay) Rules, 1981 prescribed that, if the employees is holding same or another post but having same or identical pay scale/time scale then only that period can be counted for increments. I say that, the Petitioner was not working on the same post with the same pay scale or time scale and therefore, this period cannot be counted for annual increments.

5. It was the attempt of Mr Talhar, the learned Counsel for

the petitioner to submit before this Court that the respondents-authorities committed an error by not considering the continuous service of the petitioner. It was the submission of Mr Talhar, learned Counsel that the petitioner entered in the service as a Assistant Teacher in B.Ed College and since then, the petitioner was continuously rendering service. As such, the respondents-authorities ought to have considered this entire span of service of petitioner and could not have effected a change in pay band of the petitioner. Now, all these submissions are advanced before this Court orally and the respondents-authorities had no occasion to consider the stand of the petitioner because no such written submission or representation is submitted to the respondents-authorities in general and to the Deputy Director of Education, Nashik, in particular, who is the competent authority to consider the claim of the petitioner and then to pass appropriate order.

6. In view of this fact situation, we deem it appropriate to dispose of the petition with liberty to the petitioner to approach respondent No. 2 – Deputy Director of Education, Nashik Division, Nashik by submitting representation. In case the said representation is submitted within two weeks to the Deputy Director of Education, Nashik Division, Nashik, needless to state that the respondent No. 2 - Deputy Director of Education, to decide the representation as expeditiously as possible on its own merits.

7. It was submitted by the learned Counsel Mr Talhar that the petitioner was protected by the interim order. Considering these facts, we direct that the interim order of this Court would be in effect till the decision of the Deputy Director of Education, Nashik Division, Nashik on the representation being submitted by the petitioner.

[ANIL S. KILOR]
JUDGE

[PRASANNA B. VARALE]
JUDGE

mta