

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.1541 OF 2020

NANDKISHOR PAPALAL MODI
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

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Advocate for the Petitioners : Shri Yashodeep D. Deshmukh h/f Shri
Kawre Anand D.

AGP for Respondents 1 to 3 : Shri S.B.Pulkundwar
Advocate for Respondent 5 : Shri R.D. Khadap

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CORAM : RAVINDRA V. GHUGE
&
S.G. MEHARE, JJ.

DATE :- 04th August, 2021

Per Court :-

1. The petitioner has put forth prayer clauses B and C
as under :-

- “B) *By issue of writ of mandamus or any other appropriate writ, order or direction of like nature to the respondent no.1 to 4 be directed to pay arrears of salary of the petitioner from the date of reinstatement till the date of retirement on superannuation and sanction the pay bills with the Education Officer within 1 month.*
- C) *By issue of writ of mandamus or any other appropriate writ, order or direction of like nature to the respondent no.3 & 4 be directed to prepare and forward the proposal of pension and retiral benefits to which the petitioner is entitled, within 1 month to the competent authority.”*

2. Having heard the learned counsel for the respective sides and having gone through the petition paper book with their assistance, it is apparent that, on the one hand, the disciplinary enquiry has not been initiated against the petitioner as there are two factions amongst the members of respondent No.4 Society and the present in-charge Headmaster is the Block Education Officer, Zilla Parishad, Beed. On the other hand, the petitioner is facing a criminal trial under the Prevention of Corruption Act. He has superannuated from employment as the Headmaster on 31.05.2019. The criminal case has been initiated prior to his retirement and even after his retirement, no disciplinary/departmental enquiry has been initiated.

3. The petitioner's salary for the month of May, 2019 is outstanding. So also, fixation of his pay scale as per the 7th Pay Commission's recommendations has yet not been done. Vide the order dated 27.07.2021, the Education Officer (Secondary) has fixed the provisional pension payable to the petitioner w.e.f. 01.06.2019 for a period of six months. Thereafter, no order continuing such provisional pension in blocks of six months has been passed.

4. Rule 130(1)(b) of the Maharashtra Civil Services (Pension) Rules, 1982 authorizes the head of office to sanction the provisional pension commencing from the date of retirement of the employee, who is facing the departmental or judicial proceedings, till such period of six months unless the period is extended by the Audit Officer and such provisional pension is continued up to the conclusion of the departmental or judicial proceedings or final orders are passed by the competent authority.

5. In view of the above and since the judicial proceedings are pending, it is a matter of speculation as to how long would such proceedings continue. The petitioner, who is superannuated, cannot be deprived of the provisional pension, which was already granted. Covid-19 pandemic has resulted in further delay in trials and it is a matter of speculation as to how much more time would be required for concluding judicial proceedings.

6. In view of the above, this Writ Petition is partly allowed with the following directions :-

(a) Respondent No.5 shall forward the pay bill of the month of May, 2019 to which the petitioner is entitled to, to

respondent No.3 within three weeks from today.

(b) So also, respondent No.5 shall forward the proposal to the head of the office for continuing the payment of provisional pension to the petitioner in blocks of six months from 01.10.2019 onwards. Such proposal would also be sent within three weeks from today.

(c) Needless to state, after the judicial proceedings culminate and/or departmental proceedings conclude, the petitioner would be at liberty to seek redressal of his grievance, if any.

(d) The proposal sent by the Education Officer dated 28.07.2021 at page 53 seeking clearance of the arrears of salary of the petitioner in view of the judgment of this Court in Writ Petition No.2786/2015 and Contempt Petition No.140/2016, shall be cleared by the Director of Education (Secondary) within four weeks from today.

kps

(S.G. MEHARE, J.)

(RAVINDRA V. GHUGE, J.)