

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5736 OF 2021

Jagdish Dattajirao Jadhav & Ors.

..... Petitioners

VERSUS

The State of Maharashtra & Ors.

..... Respondents

Mr.Prashant Bhavake for the Petitioners.

Mrs.P.J.Gavhane, A.G.P. for the State – Respondent nos. 1 and 2.

CORAM: R. D. DHANUKA AND

ABHAY AHUJA, JJ.

DATE : 27th SEPTEMBER, 2021

P.C:-

Mr.Bhavake, learned counsel for the petitioner seeks liberty to delete the name of the respondent nos. 4 and 5 since no reliefs are claimed against these respondents. Leave to amend is granted. Amendment to be carried out forthwith. Re-verification is dispensed with.

2. Rule. Learned A.G.P. waives service for the respondent nos. 1 and 2. By consent of parties, writ petition is heard finally.

3. By this petition filed under Article 226 of the Constitution of

India, the petitioner seeks an order and direction against the respondent nos. 1 to 3 to release the monthly salary of the petitioners and the arrears from May 2019 as per the bills submitted by the respondent no.5 within the stipulated period.

4. It is the case of the petitioner that one Smt.Lata Pandurang Kore who was working as Assistant Teacher appointed by the Shaleya Shikshan Prasarak Mandal in the New English School, Shirol. Her services were terminated by the management. She filed an appeal bearing no. 69 of 2020 before the School Tribunal, Kolhapur. By an order dated 26th June, 2003, the School Tribunal allowed the said appeal filed by the said Smt.Lata Pandurang Kore and directed the management to reinstate her to the original post with continuity of service and to pay her regular monthly salary since she joins on duty.

5. We are informed that the writ petition filed by the management bearing no. 6195 of 2003 came to be dismissed by this Court by an order and judgment dated 11th December, 2003. The Letters Patent Appeal No.16 of 2005 filed by the management came to be dismissed on 9th July, 2009.

6. The said Smt.Lata Pandurang Kore thereafter filed a writ petition bearing no. 7567 of 2018 in this Court *inter alia* praying for writ of mandamus against the Education Officer to recover a sum of Rs.15,81,736/- out of grant of the management and to be paid to the said Smt.Lata Pandurang Kore. The said writ petition is still pending.

7. Mr.Bhavake, learned counsel for the petitioner submits that the Education Officer however has withheld the salary of the petitioner and the salary grant since May 2019 and has also not paid the current salaries. He however on instruction states that recently the salary has been released for the months of April to July 2021.

8. Ms.Gavhane, learned A.G.P. on instruction states that the writ petition filed by the said Smt.Lata Pandurang Kore is still pending and there are hardly any amount available for enforcement of the said order passed by the School Tribunal as far as the non-salary grant is concerned and thus this Court may not direct the Education Officer to release the entire salary grant available.

9. Mr.Bhavake, learned counsel for the petitioner states that the salary grant withheld by the Education Officer would be around Rs.2

crores. Statement is accepted.

10. In our view, merely because the School Tribunal has directed the Education Officer to implement the said order dated 26th June, 2003 in Appeal No. 69 of 2000 which is around Rs.16 lacs as on date, Education Officer cannot withheld the entire salary grant of the school in which these petitioners are working, resultantly these petitioners not been paid salary since May 2019. We, accordingly pass the following order :-

(a) We direct respondent nos. 1 to 3 to release the monthly salary of the petitioner since the date of arrears i.e. from May 2019 and to release the salary grant in favour of the petitioner excluding the salary of two months i.e. for May 2019 and June 2019 within 12 weeks from today without fail.

(b) It is made clear that the amount which are allowed to be withheld by this order shall be subject to the outcome of the writ petition filed by Smt.Lata Pandurang Kore in Writ Petition No. 7567 of 2018.

(c) We grant liberty to the petitioner to apply for impleadment in the said Writ Petition No. 7567 of 2018 before the learned Single Judge in view of the fact that the amount allowed to be withheld by this order in favour of the Education Officer would be subject to the outcome of the said Writ Petition No. 7567 of 2018. If any such application for impleadment is made by these petitioners in that writ petition, the learned Single Judge to consider the said application for impleadment on its own merits.

(d) Rule is made absolute in the aforesaid terms.

(e) Writ petition is disposed of accordingly. No order as to costs.

(f) The parties to act on the authenticated copy of this order.

[ABHAY AHUJA, J.]

[R.D.DHANUKA, J.]