

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3151 OF 2021

Sanjivani Gangaram Musale ... Petitioner

Versus

Sate of Maharashtra & Ors. ... Respondents

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Dr. Ramdas P. Sabban a/w Mr. Pravin Sabban for the Petitioner.  
Mr. N.K. Rajpurohit, A.G.P for the State-Respondent Nos.1, 3, 4 and 6.

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**CORAM : R.D. DHANUKA &  
R.I. CHAGLA, JJ.**

DATE : 28<sup>th</sup> JULY, 2021.  
(V.C.)

**P.C. :-**

1 Rule. Learned A.G.P. waives service for Respondent  
Nos.1, 3, 4 and 6. Respondent Nos.2 and 5 are formal parties  
according to the Petitioner and no reliefs are sought against them.

2           The learned Counsel for the Petitioner seeks liberty to delete their names from the cause title of the Petition. Leave to amend is granted. Amendment to be carried out within one week from today. Re-verification is dispensed with.

3           By order dated 26.07.2021, this Court had made it clear that the Petition would be heard finally at the admission stage, subject to time constraint. The Writ Petition is accordingly heard finally by the consent of parties.

4           By this petition filed under Article 226 of the Constitution of India, the Petitioner seeks writ of mandamus against the Respondents authorities to grant all the superannuation retirement benefits alongwith the arrears thereof, and all the monetary and other consequential benefits admissible to the Petitioner, with interest. The Petitioner has also prayed for quashing and setting aside the impugned order dated 04.02.2020 passed by Respondent No.3 - Education Officer and the impugned order dated 06.10.2020 passed by Respondent No.4 – Deputy Director of Education, declining to grant the withheld salary from December, 2016 to August, 2017 alongwith the consequential July, 2017 increment.

5           The Petitioner was appointed as an Assistant Teacher with Respondent No.5 on 01.01.1993. The salary grant of Respondent No.5 was stayed on 17.06.2013 due to non availability of students. The Petitioner and other teaching staff were declared surplus. The Petitioner thereafter, filed Writ Petition No.8301 of 2013 on

15.09.2013 interalia prayed for releasing the salary and adjust / accommodate their services in any other school. By an order dated 20.09.2013, this Court granted rule and interim relief in respect of the relief of the salary grant. It is the case of the Petitioner during the period between 27.12.2016 to 28.08.2017 the Petitioner continue to apply to the Respondent Authority to accommodate the services of the Petitioner in other school. About 28 to 29 applications were made by the Petitioner with Respondent No.3. On 30.08.2017, the Petitioner received a letter from the office of Respondent No.3 which was the letter dated 29.03.2016 thereby accommodated the Petitioner's services with Respondent No.2 school. The Petitioner accordingly reported on duty with Respondent No.2 School on 01.09.2017. On 31.01.2018 the Petitioner was retired from service as per her superannuation date.

6           It is the case of the Petitioner that from 15.03.2018 onwards the Petitioner made several applications to the Respondents Authority as well as Collector and Upa-Lok Ayukt for release of the salary of the Petitioner from December, 2016 to August, 2017 including the increment of salary from 01.07.2017 and pension with all retirement benefits. The Petitioner also submitted all the

documents for grant of pension and requested for release of the due payment, on 17.03.2018. On 04.02.2020, Respondent No.3 passed an order that the Petitioner has not reported her duty as per accommodation order within time and since had not carried any work during the period between December, 2016 to August, 2017, the Petitioner was not entitled for salary of the said period and also increment of 01.07.2017. On 06.10.2020 Respondent No.4 passed a fresh order rejecting the claim on the same ground on which the claim of the Petitioner was rejected by Respondent No.3. The Petitioner accordingly filed this Petition.

7           The learned Counsel for the Petitioner invited our attention to the various exhibits annexed to the Petition and would submit that the Petitioner was served with copy of the letter dated 29.03.2016 from Respondent No.5 only on 30.08.2017 and upon receipt of the said letter, the Petitioner reported for joining the duties with Respondent No.2 School. Though she addressed 29 letters requesting the Authority to issue letter of absorption to the Petitioner, there was no response to any of those letters. It is submitted by the learned Counsel that Respondent Authority could not withheld the salary of the Petitioner for the said period of nine months. The

Management of the School has however released the salary for a period of eight months prior to the claim period and stopped paying salary thereafter. Since the Petitioner could not report for her duties in Respondent No.2 School in view of the Petitioner not having received the letter of joining dated 29.03.2016, the Authority cannot withheld the salary of the Petitioner for the said period of nine months which is December, 2016 to August, 2017. It is submitted that since the Petitioner had completed services for more than six months, the Petitioner was entitled to increment as on 01.07.2017.

8           The learned Counsel for the Petitioner submits that the Respondents have not even released the payment of pension and the other retirement benefits for no fault of the Petitioner and thus, the Authority shall release the salary for nine months i.e. for the period of December, 2016 to August, 2017, increment salary of 01.07.2017 and all other retirement benefits including pension with interest of @18% p.a.

9           Mr. Rajpurohit, the learned A.G.P for the Authority on the other hand invited our attention to the letter dated 29.03.2016 annexed to the affidavit-in-reply and submits that the copy of the said letter was also marked to the Petitioner and would thus indicate that

the Petitioner was served with the said letter immediately after issuing the said letter. He submits that since the Petitioner has not completed six months period of service with Respondent No.2 School, the Petitioner would not be entitled to increment as on 01.07.2017. The learned Counsel for the Authority also invited our attention to the orders passed by the Authority and would submit that no interference is warranted with the impugned order.

10           Insofar as pension is concerned, the learned Counsel invited our attention to the averments made in paragraph 9 of the affidavit filed by Respondent No.4 notarized on 30.06.2021 and submits that since the Management has not submitted the proposal, pension papers could not be sent to the Accountant General. Respondent No.4 however is ready to forward pension papers of the Petitioner.

11           Perusal of the record indicates that there is no dispute that the Petitioner was declared as surplus in view of the Respondent No.5 School having been closed down due to non-availability of students. The learned A.G.P. could not produce any proof of delivery of service of the letter dated 29.03.2016 upon the Petitioner to report for the duties with Respondent No.2. Merely because a copy of the

letter was caused to the Petitioner it would not conclude that the said letter was actually served upon the Petitioner. The learned A.G.P could not dispute that the Petitioner had addressed 29 letters to the Authority during this period requesting for letter for joining duties with the Respondent No.2. There was no response at all in respect of any of those 29 letters. If the Petitioner would have received letter dated 29.03.2016, the Petitioner would not have addressed 29 letters requesting to issue letter for reporting to duty.

12           The Petitioner has also placed on record that the Respondent No.2 school did not receive any such appointment /accommodation letter dated 29.03.2016 from the office of Education Officer. Copy of the said letter as Annexure-1 to the affidavit in rejoinder.

13           In our view the authorities thus cannot withheld the salary of the Petitioner for the month of December, 2016 to August, 2017 on the flimsy ground that the Petitioner did not report for duty with Respondent No.2. We are inclined to accept the statements made by the Petitioner and also by Respondent No.2 that letter dated 29.03.2016 was not served on Petitioner and Respondent No.2. It is ordered accordingly.

14            Since the Petitioner was not at fault in not reporting to the Respondent No.2 pursuant to said letter dated 29.03.2016, the authorities cannot withheld the increment as of 01.07.2017. The Petitioner is thus entitled to seek such benefit also. It is ordered accordingly.

15            Admittedly, the Petitioner had retired from service by superannuation on 31.01.2018 and was entitled to all the retirement benefits including pension. Respondent No.4 had stated in paragraph 9 of the affidavit-in-reply that Respondent No.4 was and is ready to forward pension paper of the Petitioner however she has not signed the required papers.

16            The learned Counsel for the Petitioner undertakes to sign any such papers if required by the Respondent No.4 to process the pension papers of the Petitioner. The Management of the School is directed to forward the pension papers of the Petitioner to the Respondent No.4 duly signed within two weeks from today. Respondent No.4 shall thereafter forward the pension papers to the Accountant General within two weeks from the date of receipt of such papers from Respondent No.2. The Accountant General shall thereafter release the amounts due and payable to the Petitioner as

directed aforesaid within six weeks from the date of receipt of such papers without fail. The Petitioner will be entitled to payment of amount with interest @8% p.a. from the due date till the date of payment.

17 Rule is made absolute in aforesaid terms. Writ Petition is disposed of accordingly. There shall be no order as to costs. Parties to act on the authenticated copy of this order.

( R.I. CHAGLA, J. )

( R.D. DHANUKA, J. )