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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.3567 OF 2021

Dr.Arjun H.Musmade

...Petitioner

V/s.

State of Maharashtra & Ors.

...Respondents

Mr.A.V. Anturkar, Senior Counsel i/b Mr.Vaibhav Kulkarni for the
Petitioner.

Ms.Kavita N. Solunke,AGP for the State - Respondent Nos.1 to 3.

Mr.Shubham K. Kanade i/b Mr.S.R. Ganbavale for the Respondent
Nos.4 and 5.

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

DATE : 10TH AUGUST, 2021.

P.C. :-

1. Rule. Learned AGP waives service for respondent nos.1
to 3. Learned counsel for the respondent nos.4 and 5 waives service.

By consent of the parties, the petition is heard finally.

2. By this petition filed under Article 226 of the Constitution
of India, the petitioner inter-alia has prayed for a writ of certiorari
impugning the letters dated 28th January, 2020 and 7th February, 2020
thereby refusing to pay the salary to the petitioner for about 25
months. Some of the relevant facts for the purpose of deciding this

petition are as under :

3. The petitioner had applied for the post of Lecturer in the subject of Geography in the month of July, 1996 and was appointed by the respondent no.4 on 6th November, 1996. It is the case of the petitioner that since 1996 till the date of the impugned order, the petitioner was getting the salary from the respondent nos.4 and 5 who in turn was getting the grant-in-aid from the respondent nos.1 to 3 towards payments made by the management towards the salary paid to the petitioner.

4. The petitioner was getting increments in accordance with the 5th and 6th pay Commission . The service book of the petitioner was duly audited by the Joint Director, Higher Education, Pune while granting the payment of salary made by the management. In the month of August, 2019. The salary of the petitioner and other staff members was denied by the Director of Higher Education, Pune by raising certain objections. The petitioner and other staff members filed a writ petition bearing Writ Petition (Stamp) No.25718 of 2019 before this Court. By an order dated 28th November, 2019, the said writ petition was disposed of and the respondent nos.1 to 3 were directed to grant personal hearing to the petitioner and other petitioners in the said writ petition.

5. It is the case of the petitioner that hearing was granted to

the petitioner by the Deputy Director of Education but the impugned order is passed by the Director of Education.

6. By the impugned order letter dated 28th January, 2020, passed by the Director of Education and thereafter by the Deputy Director of Education by the letter dated 7th February, 2020, the salary of the petitioner was rejected on various grounds. The petitioner thus filed this writ petition.

7. Mr.Anturkar, learned senior counsel for the petitioner invited our attention to various documents annexed to the petition including the impugned order and would submit that no show cause notice was issued by the respondent nos.1 to 3 before calling the petitioner for hearing and did not furnish any documents which the respondent nos.1 to 3 were relying upon to stop the salary of the petitioner. He invited our attention to the impugned order and would submit that the reasons recorded in the impugned order is totally perverse and in violation of principles of natural justice.

8. It is submitted by the learned senior counsel that the salary of the petitioner is denied on the ground that the report of the Selection Committee for the appointment as a full time Lecturer on 15th December, 1986 was not available. He submits that this reason recorded in the impugned order is factually incorrect. The respondent nos.4 and 5 had produced a copy of such report before the authority.

He submits that the payment of salary is also rejected on the ground that the order appointing the petitioner on full time basis was not available. It is submitted that the fact that the petitioner was paid salary since July, 1996 for about 23 years without any objection by the respondent nos.4 to 5 and the respondent nos.1 to 3 having been issued grant-in-aid in respect thereof in favour of the respondent nos.4 and 5, the question of rejection of salary of the petitioner for the subsequent year did not arise on the said flimsy ground. Learned senior counsel placed reliance on the affidavit filed by the respondent nos.4 and 5 before the respondent nos.1 to 3 admitting the position that the petitioner was appointed pursuant to the report of the Selection Committee and was issued a full time appointment order.

9. The next reason rendered in the impugned order was that the petitioner was not appointed in the year 1988. Learned senior counsel submits that no record was available regarding reinstatement of the petitioner in the year 1998. He relied upon the report which clearly indicated that the services of the petitioner were never terminated and there was thus no question of any order of reinstatement. Fourth reason rendered by the respondent nos.1 to 3 in the impugned order is that there was no signature on the muster roll from the year 1996 to 1998. He submits that there was sufficient work load available during the said period which is sufficiently

established by the report of the Committee which rendered a finding that there was work load available during the said period. The respondent nos.2 and 3 however, did not consider the said report in the impugned order. He submits that in any event on the bare allegation of the respondent nos.2 and 3 that there was no work load in the year 1996 to 1998, the salary already paid during the said period, the present salary cannot be withheld.

10. Learned counsel for the respondent nos.4 and 5 supported the case of the petitioner and would submit that though the management has produced sufficient record before the respondent nos.1 to 3, the same has not been considered in the impugned order. Learned counsel agrees that the petitioner was appointed by following due procedure by the Selection Committee on the recommendation of the Selection Committee. His client does not dispute that the petitioner was issued a full time appointment order and his services were never terminated. The management has also admitted that there was work load during the period 1996 to 1998 and that the petitioner was accordingly paid the salary for the said period.

11. Ms.Solunke, learned AGP for the respondent nos.1 to 3 on the other hand invited our attention to some of the objections to this petition raised by the respondent nos.1 to 3 in the affidavit in

reply. It is submitted by the learned AGP that the reasons rendered by the respondent nos.2 and 3 were proper and thus the impugned orders do not warrant any interference. She submits that no such details were furnished by the petitioner or by the management before the respondent nos.2 and 3 at the time of hearing. The respondent nos.2 and 3 after complying with the principles of natural justice have passed the impugned orders.

12. A perusal of the order passed by this Court on 28th November, 2019 in Writ Petition (Stamp) No.25718 of 2019 clearly indicated that the respondents had not complied with the principles of natural justice and had not passed the speaking order. This Court accordingly was pleased to quash and set aside the said impugned order, which was the subject matter of the said writ petition and was pleased to remand the matter back.

13. Learned AGP could not point out whether any show cause notice was issued by the respondent nos.1 to 3 or any documents which the respondent nos.1 to 3 wanted to rely upon against the petitioner during the course of hearing were disclosed to the petitioner before passing the impugned order of refusal of the payment of salary for last 25 months.

14. A perusal of the affidavit in reply filed by the respondent nos.1 to 3 indicates that it is the case of the respondent nos.1 to 3

that the first hearing was granted by the respondent no.2 and thereafter the respondent no.2 had forwarded the matter to the respondent no.3 for further compliance. It is not the case of the respondent nos.1 to 3 that any further hearing was granted by the respondent no.3 after the matter was forwarded by the respondent no.2 for further compliance. In our view, the impugned order is in gross violation of the principles of natural justice.

15. Be that as it may, a perusal of the impugned order indicates that the first reason rendered for refusal of the salary to the petitioner is that the report of the Selection Committee for the appointment of the petitioner as full time Lecturer with effect from 15th July, 1996 was not available. In our view, this finding of the respondent no.3 is factually incorrect. The respondent nos.4 and 5 had produced the report of the Selection Committee. Be that as it may, the appointment made by the respondent nos.4 and 5 as far back as on 15th July, 1996 of the petitioner in the said post was duly approved by the respondent nos.4 and 5 and based on such approval, the respondent nos.,1 to 3 had issued the grant-in-aid for payment of salary to the petitioner from 1996 onwards.

16. Insofar as the ground raised in the said order that the full work load was not available is concerned, in our view this ground is flimsy and contrary to the documents produced by the respondent

no.4 and 5 on record. If the petitioner would not have been appointed on the said post, the respondent nos.4 and 5 would not have paid the salary for last 23 years and the respondent nos.1 to 3 would not have issued grant-in-aid in favour of the respondent nos.4 and 5 by way of reimbursement of salary paid by the respondent nos.4 and 5.

17. Insofar as third reason rendered in the impugned order that no record was available regarding reinstatement of the petitioner in the year 1998 is concerned, our attention is invited to the enquiry committee report placed on record. The said report would clearly indicate and as is confirmed by the respondent nos.4 and 5 that the services of the petitioner were never terminated. There was no question of any letter of reinstatement. Be that as it may, the salary of the petitioner was paid even subsequent to the year 1998 for about 20 years thereafter which would clearly indicate that the ground raised in the impugned order is totally frivolous.

18. Insofar as the ground that there was no signature of the petitioner on the muster roll from 1996 to 1998 is concerned, the management had produced the said record before the respondent nos.1 to 3 to show the work load during the said period. Be that as it may, the petitioner having been already paid the salary for the said period and the respondent nos.4 and 5 already having been issued grant-in-aid in respect of such payment to the respondent nos.4 and

5 towards reimbursement of salary to the petitioner, there is no question of the respondent no.3 refusing to pay the payment of salary for the subsequent period on the basis of such absence of alleged signature on the muster roll. The said report submitted by the Committee which is forming part of record would clearly indicate that there was sufficient work load during the said period insofar as the appointment of the petitioner is concerned and accordingly the salary of the petitioner was paid during the said period.

19. In our view, the entire order passed by the respondent nos.2 and 3 is based on an incorrect factual premise and contrary to the documents on record. It is not the case of the respondent nos.1 to 3 that the salary of the petitioner was wrongly paid from the year 1996 i.e. for 23 years. There is no order of refund of the salary paid to the petitioner for all these years.

20. The respondent nos.1 to 3 thus could not have passed such arbitrary and perverse order after releasing the grant-in-aid for 23 years in favour of the respondent nos.4 and 5. In our view, the impugned order is totally vitiated on all these grounds and thus deserves to be set aside.

21. We accordingly pass the following order :-

a). The impugned letters dated 28th January, 2020 and 7th February, 2020 are quashed and set aside.

b). The respondents are directed to continue payment of salary to the petitioner as per the scale he was drawing prior to the date of passing the impugned order and further salary as may be due from the date of this order. Insofar arrears salary of the petitioner is concerned, the respondent nos.1 to 3 shall release grant-in-aid in respect of the salary of such payment in favour of the respondent nos.4 and 5 within two weeks from today. The respondent nos.4 and 5 shall release the salary to the petitioner within one week thereafter.

c). The writ petition is made absolute in aforesaid terms. Rule is made absolute. There shall be no order as to costs.

22. All parties to act on the authenticated copy of this order duly authenticated by the Sheristedar of this Court.

(R.I. CHAGLA, J.)

(R.D. DHANUKA, J.)