

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.10104 OF 2015
WITH
INTERIM APPLICATION NO.3856 OF 2021

Harishyam Pandey ... Petitioner / Applicant
Vs.
State of Maharashtra and others ... Respondents

Mr. Vagish Mishra with Mr. Varad Dubey i/b. Law Counsellors for
Petitioner / Applicant.

Mr. N. K. Rajpurohit, AGP for Respondent Nos.1 and 4-State.

Mr. Aseem Naphade a/w. Mr. Nikhil Mehta i/b. KMC Legal Venture for
Respondent Nos.2 and 3.

Mr. P. M. Palshikar for Respondent No.6.

**CORAM : R. D. DHANUKA &
R. N. LADDHA, JJ.**

DATE : DECEMBER 20, 2021

P.C. :-

Rule. Mr. Rajpurohit, learned AGP waives service for respondent Nos.1 and 4-State. Mr. Naphade, learned counsel waives service for respondent Nos.2 and 3. Mr. Palshikar, learned counsel waives service for respondent No.6. Learned counsel for respondent No.7 did not appear though served. By consent of parties, petition is heard finally.

2. By this petition filed under Article 226 of the Constitution of India, the petitioner has prayed for a writ of mandamus against the respondents to pay salary, D.A., gratuity, arrears and other legal benefits.

3. It is the case of the petitioner that he was appointed as a full time Lecturer in Mathematics though initially on ad-hoc basis *vide* letter of appointment dated 13.05.1997. The petitioner was then appointed on probation *vide* letter of appointment dated 07.07.1997 and thereafter as a Lecturer on permanent basis on a substantive sanctioned post.

4. Learned counsel for the petitioner invited our attention to various

documents which are referred by this Court in order dated 08.12.2021 in support of the submission that the petitioner was working as a Senior Lecturer and HOD in the Department of Applied Mathematics of College run by respondent Nos.2 and 3 with effect from 29.07.1997 and as an Assistant Professor with effect from the academic year 2011 to 27.02.2015 and thereafter retired on 28.02.2015.

5. *Per contra*, the case of respondent Nos.2 and 3 is that the petitioner was not appointed on permanent post but was appointed as ad-hoc appointment and all throughout the payment made to the petitioner was also on that basis.

6. After hearing the parties at length, this Court passed an order on 08.12.2021 and rendered a finding that the petitioner was appointed on regular basis as a Lecturer and subsequently as a Senior Lecturer which appointment continued till the date of his retirement. Respondent Nos.2 and 3 thus could not have calculated the amount of salary payable to the petitioner on the basis of ad-hoc appointment. This Court in paragraph 7 of the said order recorded that the learned counsel for respondent Nos.2 and 3 did not dispute that the payment to the petitioner has been made on the basis of ad-hoc appointment. This Court recorded a finding that the record produced by the parties in this petition however indicated a different position and not as ad-hoc appointment.

7. This Court accordingly directed the parties to prepare a chart showing the calculation. Pursuant to the said order, the learned counsel for the respondents prepared the chart. The chart submitted by the petitioner earlier was checked by respondent Nos.2 and 3. Mr. Naphade, learned counsel for respondent Nos.2 and 3 tenders a chart for consideration of this Court. He submits that though respondent No.2 had opposed the petition on the ground that the appointment of the petitioner was made on ad-hoc basis, in so far calculation submitted by the petitioner towards the differential amount in respect of salary, D.A., leave compensation and gratuity in the sum of Rs.59,33,575/- after

giving credit of the amount received in the sum of Rs.73,29,194/- is correct. The chart tendered by learned counsel for respondent Nos.2 and 3 is taken on record. The chart tendered by the petitioner earlier already forms part of the record.

8. The findings rendered by this Court on 08.12.2021 are not challenged by respondent Nos.2 and 3. We accordingly direct respondent Nos.2 and 3 to pay the differential amount of Rs.59,33,575/- to the petitioner within four weeks from today without fail. If the amount is not paid within four weeks from today, respondent Nos.2 and 3 would be liable to pay interest @ 10% p.a. to the petitioner till payment. In that event, the petitioner would also be at liberty to file proceedings under the provisions of Contempt of Courts Act, 1971 against respondent Nos.2 and 3 for non-compliance of the order passed by this Court.

9. It is made clear that the amount directed to be paid by this Court in favour of the petitioner would be paid by M/s. Lokmanya Tilak College of Engineering and not by the Principal or Chairman personally.

10. Writ Petition is allowed in the aforesaid terms. Rule is made absolute accordingly. There shall be no order as to costs.

11. Learned counsel for the petitioner at this stage states that in so far amount of gratuity in the sum of Rs.13,38,432/- is concerned, the said amount is the differential amount after giving credit of the amount already paid by respondent Nos.2 and 3, which is the subject matter of the separate proceedings before the Labour Court. Statement is accepted.

12. In view of this statement, nothing survives in Interim Application No.3856 of 2021 and the same is disposed of accordingly. Parties to act on the authenticated copy of this order.

(R. N. LADDHA, J.)

(R. D. DHANUKA, J.)