

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 5400 OF 2018

Vd. Shridhar s/o. Jakhuji Darekar,
 Age 64 years, Occu. Pensioner,
 C/o. Prasad Pharmacy, Near Kinetic Chowk,
 Station Road, Ahmednagar. .. Petitioner

Versus

1. The State of Maharashtra,
 Through the Principal Secretary,
 Medical Education Dept. Mantralaya,
 Mumbai – 400 032.
2. The Director, Directorate of Ayush,
 St. George Compound D' mello road,
 Mumbai – 400 001.
3. Asstt. Director of Ayurved,
 4th Floor, New Administrative Building,
 Pune – 411 001,
 Through it's President and / or Secretary.
4. Ayurved Shastra Seva Mandal,
 Vishram Bag, Ahmednagar – 414 001,
 Through it's President and / or Secretar.
5. Gangadhar Shastri Gune Ayurved
 Mahavidyalay, Ahmednagar through
 It's Principal. .. Respondents

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Mr. Shivaji T. Shelke, Advocate for Petitioner
 Mr. S. G. Karlekar, A.G.P. for Respondents No. 1 to 3
 Mr. U. S. Bedre, Advocate for Respondents No. 4 and 5

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**CORAM : R. D. DHANUKA &
S. G. MEHARE, JJ.**

DATE : 21-03-2022

**ORAL JUDGMENT :-
(PER R. D. DHANUKA, J.)**

Rule. Rule is made returnable forthwith.

2. The learned A.G.P. waives notice of Rule for respondents No. 1 to 3. Learned counsel for the respondents waives notice for respondents No. 4 and 5.

3. By this petition filed under Article 226 of the Constitution of India, petitioner seeks Writ of Mandamus against the respondents in respect of unpaid salary of suspension period alongwith interest @ 18 % p.a. to the petitioner forthwith.

4. It is case of the petitioner that on 22.01.2015, the petitioner was directed to proceed on leave by respondents no. 4 and 5. On 15.04.2015, a show cause notice was issued to the petitioner by respondent No. 4 asking him to submit his explanation within fifteen days. On 17.04.2015, respondent no. 4 suspended the petitioner. Aggrieved by this order, the petitioner filed Writ Petition bearing No. 8572 of 2016 before this Court. The Division Bench of this Court by an order dated 04.12.2017 allowed the said

Writ Petition. In paragraph no. 5 of the said order, this court recorded factual matrix which was not in dispute i.e. -

- (i) Respondents No. 4 and 5 directed the petitioner to proceed on leave on 22nd January, 2015,
- (ii) The petitioner is suspended on 17.4.2015.
- (iii) The petitioner retired on attaining the age of superannuation on 31.5.2015.
- (iv) No enquiry was proceeded against the petitioner.

5. Learned Advocate for the petitioner submits that, though the said order was passed by this Court and directed the respondents no. 4 and 5 to pay the subsistence allowance, the respondents no. 4 and 5 did not pay the subsistence allowance till the contempt proceeding were filed against them. He submits that, no inquiry was initiated and conducted by the respondents no. 4 and 5 against the petitioner during the tenure of service of the petitioner. Respondents No. 4 and 5 have not submitted the salary bills, balance of salary and payment of subsistence allowance to the respondents no. 1 to 3 till the date the contempt petition is filed.

6. Learned Advocate for respondents no. 4 and 5 on the other hand submits that, this Court while disposing of Writ Petition

no. 8572 of 2016 had directed the respondents no. 4 and 5 to make payment of differential amount of salary and subsistence allowance. He further submits that if this court directs respondents No. 4 and 5 to submit salary bills of the petitioner to respondents No. 1 to 3, respondents no. 4 and 5 would submit such salary bills to the respondents no. 1 to 3.

7. A perusal of the order dated 4th December, 2017 passed by the Division Bench in earlier petition clearly indicates that this Court had directed respondents no. 4 and 5 to pay subsistence allowance as per the Direction No. 02/2012, issued by the Health University to the petitioner for the period the petitioner was under suspension expeditiously. This court had made it clear that if the petitioner is entitled for any other salary bills, monetary benefits, the petitioner may take up his grievance in accordance with law.

8. Though, the petitioner applied for balance salary, respondents no. 4 and 5 did not forward the bills to the respondents no. 1 to 3. Respondents no. 4 and 5 did not dispute that no inquiry was initiated by respondents no.4 and 5 against the petitioner during the tenure of service of petitioner. In our view, the petitioner would be thus entitled for full salary for the suspension period excluding the payment of suspension amount.

9. We accordingly direct the respondents no. 4 and 5 to submit such salary bills of petitioner within two weeks from today for payment to the respondents no.1 to 3 without fail, which copy of the proposal to be furnished to the petitioner.

10. Upon receipt of the salary bills of petitioner, respondents no. 1 to 3 shall clear the salary bills and shall pay the same to the petitioner within two weeks thereafter.

11. Writ petition is allowed in aforesaid terms. No order as to the costs.

12. Rule is accordingly made absolute in above terms.

13. Parties to act upon authenticated copy of this order.

(S. G. MEHARE)
JUDGE

(R. D. DHANUKA)
JUDGE

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