

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.7931 OF 2021

DHANU TRAMBAK SWAMI
VERSUS
THE STATE OF MAHARASHTRA THR ITS PRINCIPAL
SECRETARY AND OTHERS

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Advocate for the Petitioner : Shri G.J. Karne
AGP for Respondents 1 to 3 : Mrs.R.P. Gaur
Advocate for Respondent 4 : Shri G.A. Gadhe

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CORAM : RAVINDRA V. GHUGE
&
S.G. DIGE, JJ.

DATE :- 02nd May, 2022

Per Court :-

1. On 11.04.2022, we had passed the following order :-

- “1. We have considered the submissions put forth by the petitioner and have noted his vehement arguments. We have also considered the submissions of the learned AGP and the learned Advocate for the respondents.
2. The petitioner claims the outstanding salary from June 2009 till July 2010, which is unpaid as per the 6th pay commission Recommendations, as well as the difference in the salary in between the 5th Pay Commission Recommendations and the 6th Pay Commission Recommendations for the period 01.01.2006 till 31.05.2009.
3. We are informed that the petitioner was terminated from employment in 2010 on account of his failure in tendering the caste validity certificate. The petitioner contends that he was never appointed on a post reserved for a particular backward class. On

behalf of the school, it is specifically contended that the petitioner was appointed as an Assistant Teacher on a post which was reserved for the backward class. Since he did not tender his validity certificate, his services came to be terminated. He succeeded before the Tribunal and the judgment is now subjudice before the learned Single Judge in WP No.40/2014. The judgment of the School Tribunal has been stayed and the petitioner is out of employment.

4. *Considering the above, we do not wish to deal with the issue which is a subject matter of WP No.40/2014. The parties would be at liberty to address the learned Single Bench in the said matter and may even request for an early hearing. In so far as the proceedings pending before us are concerned, as the issue of whether the petitioner was appointed on a post reserved for a backward category or not would depend upon the decision of the learned Single Judge, that we are not inclined to direct the payment of his outstanding salary as per the 6th Pay Commission Recommendations.*
5. *In so far as his unpaid salary from June 2009 till July 2010 as per the 5th Pay Commission Recommendations is concerned, we direct respondent No.4 / Head Mistress to immediately forward the bills of the petitioner to respondent No.3 on or before 22.04.2022, if not already forwarded. The bills must be complete in all respects and if there is any deficiency, we will hold the Head Mistress personally responsible.*
6. *Once these bills are submitted to respondent No.3, the said Authority shall clear the bills as expeditiously as possible and in any case on or before 30.04.2022.*
7. *List this petition on 02.05.2022 for "passing orders on disposal subject to compliance".*

2. We are informed by all that there is no such provision that unless a caste validity certificate is not tendered, the 6th Pay Commission recommendations would not be

applicable to the extent of such employees. So also, the petitioner has placed before us the compilation of 20 pages, which are taken on record and collectively marked as “X-1” for identification. Page No.1 is his appointment order dated 14.07.2002. Page No.3 is the approval chart indicating his name at Sr.No.2 and his category as being “Open”. He was thus, appointed from open category and the issue of tendering the caste validity certificate so as to continue in employment on the post which was for the open category, would not arise.

3. The learned counsel for the Management has placed before us the compilation of 05 pages, which are taken on record and collectively marked as “X-2” for identification. He submits that the Headmistress has forwarded the bills of unpaid salary of the petitioner upto the date of his termination as per the 5th Pay Commission recommendations. If the salary bills as per the 6th Pay Commission recommendations have to be forwarded, the pay scale has to be fixed and only thereafter, the bills can be prepared.

4. Considering the above, this Writ Petition is disposed off with the following directions :-

(a) The Headmistress of respondent No.4 School shall

reach the office of the Education Officer (Secondary), Zilla Parishad, Nanded, on 10.05.2022 at 12:00 noon along with the service book and necessary papers of the petitioner.

(b) In consultation with the Education Officer, the pay of the petitioner till the date of his termination as per the 6th Pay Commission recommendations shall be fixed.

(c) Thereafter, the Headmistress would prepare the salary pay bills of the petitioner as per the fixation of the pay scale done on 10.05.2022 and such bills would be forwarded through a special messenger of the school to the Education Officer on 17.05.2022.

(d) Thereafter, the Education Officer would clear the bills on or before 31.05.2022 by complying with the necessary provisions as per the procedure applicable.

(e) We expect the arrears of unpaid salary of the petitioner till the date of his termination, as per the 6th pay commission, to be cleared and paid in accordance with the procedure applicable, on or before 15.06.2022.

5. At this stage, the learned counsel for the petitioner has prayed for heavy costs of Rs.1 lac to be imposed on the Headmistress, so as to be paid to the petitioner, from her salary

account. We are not inclined to pass this order as we find that the Headmistress, though belatedly, has taken a positive approach in this matter.

kps (S.G. DIGE, J.)

(RAVINDRA V. GHUGE, J.)