

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5204 OF 2017

WITH

INTERIM APPLICATION (ST) NO. 24445 OF 2022

Mrs. Monica Dias

Since deceased through LRs. ... **Petitioner**

Versus

Holy Cross Convent High School

Society of Holy Cross & Ors. ... **Respondents**

Mr. Mandar Limaye, Advocate for the Petitioner/Applicant.

Mrs. S. S. Bhende, AGP for the Respondents/State.

Ms. Neeta Karnik i/b. Mr. Ambadas Chatuphale, Advocate
for Respondent Nos.1 and 2.

**CORAM: S.V. GANGAPURWALA &
R. N. LADDHA, JJ.**

DATED : OCTOBER 13, 2022

P.C.

1. The original writ petitioner was working as "Librarian". The grievance is that the petitioner is not paid salary from 13th February 2004 to 25th November 2005. The order is passed by the Education Officer after hearing all the parties that the petitioner is entitled for the salary and all other benefits from 13th February 2004. According to learned Counsel, the arrears of salary are required to be paid by the respondents and the order dated 31st May 2011 passed by the Education Officer needs to be implemented.

2. The learned AGP submits that in view of Government

Resolution dated 25th November 2005, the petitioner is entitled for salary only after 25th November 2005.

3. We have heard learned Advocate for the Institution. The learned Counsel for the Institution submits that there does not appear to be dispute that the petitioner was appointed on 13th February 2004. Under order dated 15th May 2007, the Education Officer has also approved the same with effect from 13th February 2004.

4. It appears that the service of the petitioner was sought to be considered from 25th November 2005 relying upon Government Resolution dated 25th November 2005. The petitioner approached this Court by filing Writ Petition No. 1729 of 2011. This Court under order dated 28th April 2011 directed the Education Officer to hear the parties and take decision. Pursuant thereto, the Education Officer heard the parties and on 31st May 2011 passed an order thereby upholding the approval granted to the petitioner with effect from 13th February 2004 and further passed an order that the petitioner is entitled to salary from 13th February 2004 along with all further benefits such as provident fund and all consequential benefits. The said order has become final.

5. In light of decision taken by the Education Officer pursuant to the order of this Court, it is now not open for the respondents to contend otherwise.

6. We may not enter into debate in the present writ petition, as to whether the petitioner was paid salary by the Management from 13th February 2004 to 25th November 2005 as it appears to be disputed question and also because

of the fact that the petitioner is agitating the same after a long slumber of eight years. However, it needs to be considered that the petitioner is entitled for all the benefits considering his service from 13th February 2004. Considering the service from 13th February 2004, the petitioner would be governed by the old pension scheme and the service of the petitioner is to be counted from 13th February 2004 for all other purposes.

7. The Management shall forward the pension proposal of petitioner to the Education Officer within a period of four weeks from today. The Education Officer shall process it within six weeks from the date of receipt of pension proposal and forward it to the higher Authority and Accountant General. Upon decision being taken on the pension proposal, further steps shall be taken by all concerned preferably within four months.

8. As far as service book is concerned,, the petitioner may approach the Institution and the parties shall cooperate with each other in that regard.

9. The writ petition is accordingly disposed of.

10. In view of disposal of writ petition, interim application shall also stand disposed of.

(R. N. LADDHA, J.)

(S.V. GANGAPURWALA, J.)

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