

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CONTEMPT PETITION NO. 136 OF 2021

Shivaji Bhanudas Ghuge ... Petitioner.
V/s.
J.P. Gupta, State of Maharashtra,
through Principal Secretary, Social
Justice & Special Assistance Department ... Respondents.

Mr. Mohan B. Gawade, for the Petitioner.
Mr. N.C. Walimbe, AGP, for the Respondent-State.
Mr. Jagdish G. Aradwad, for Respondent Nos. 5 & 6.

**CORAM : NITIN JAMDAR AND
AMIT BORKAR, JJ.**

**DATE : 24 JANUARY 2022.
(Through Video Conferencing)**

P.C. :

Heard learned Counsel for the parties.

2. Writ Petition No. 6522 of 2017 filed by the Contempt Petitioner was allowed by the Division Bench by order dated 1 April 2019 in terms of prayer clause (b). Prayer (b) of the writ petition is reproduced in this Contempt Petition. It reads thus:

“(b) By a writ of mandamus or any other appropriate writ or direction in the like nature, the Respondent No.

1 to 4 may please be directed to release the salary of the Petitioner from April 2016 till today forth with and further to continue to pay the salary of the Petitioner till he is absorbed in any other school;"

3. A reply affidavit has been filed on behalf of the Respondent – State taking a stand that the Petitioner was absorbed having been found surplus, however, thereafter since the Petitioner did not report to duty the Petitioner was not paid the salary. It is contended that as regards the payment due as per the order passed on 1 April 2019, according to the Respondents an amount of Rs. 2,08,503/- has been paid.

4. In the rejoinder filed by the Petitioner, the Petitioner has come up with a figure of Rs. 11,88,000/- as arrears to be paid by the Respondents. This figure is based on the premise that after the order was passed and after the Petitioner was absorbed the Petitioner has not been receiving regular salary along with applicable 7th Pay Commission.

5. The disputed question that arises before us, therefore, is whether after the order passed by this Court on 1 April 2019 and after absorption of the Petitioner in a school in Aurangabad District, whether the Petitioner has worked as contended by the Respondents to be entitled to the claim of Rs. 11,88,000/-. We have to be mindful of the fact that this issue has been raised before us in contempt jurisdiction. It is not possible for us in the contempt jurisdiction to

decide this factual issue which have not been decided by the Court when it passed the original order.

6. As to the issue whether the Petitioner after absorption worked or otherwise and whether the Petitioner is entitled to the amounts as claimed would be a matter for the Petitioner to agitate in a substantive proceedings.

7. With these observations, and with liberty to the Petitioner, the Contempt Petition is disposed of.

(AMIT BORKAR, J.)

(NITIN JAMDAR, J.)