

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 718 OF 2021

Anup Dhannawat	...	Petitioners
Versus		
Society Of Jesus & Ors.	...	Respondents

Mr. C. R. Sadasivan, Advocate for the Petitioner.

Adv. Lancy D'Souza a/w. Ms. Deepika Agarwal and Adv. V. M. Parkar, Advocates for Respondent Nos.1 and 2.

Mr. Kedar Dighe, AGP for the Respondents/State.

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

DATED : OCTOBER 11, 2022

P.C.

1. We have heard learned Advocate for the petitioner and the learned Advocate for respondents.

2. The petitioner seeks payment of salary as per the proper pay scale as was advertised on website. The petitioner also seeks benefits of leave encashment and Defined Contributory Pension Scheme (**DCPS**). The learned Counsel for the petitioner submits that the petitioner had applied to the respondent Autonomus University pursuant to the advertisement. As per the advertisement, the pay scale that the petitioner was entitled to was in scale of Rs.8000-275-13500. However, while issuing the appointment, the respondent has shown the pay scale as

Rs.7400-10500. The same is not in consonance with the advertisement issued on website. The petitioner accepted the same under protest. The petitioner also wrote to the Joint Director of Technical Education. The Joint Director of Technical Education also called upon the institution to correct the pay-scale under which the petitioner was appointed. The learned Counsel submits that the petitioner is entitled for the applicable pay scale. It is further submitted that on the date the petitioner was appointed, the DCPS was in force. The 10% amount ought to have been contributed by the employer as per the scheme. The benefit of leave encashment is also not extended.

3. The learned AGP and the learned Advocate for the Institution submit that the appointment order issued to the petitioner prescribed the pay scale of Rs.7400-10500. The Joint Director of Technical Education has also granted approval to the appointment of the petitioner on that pay scale. The advertisement was issued on the website as well as in the newspaper. In the advertisement in the newspaper correct pay scale was mentioned, however, on the website, error was committed while mentioning the pay scale. It is further submitted that the petitioner has not completed his probation and before the probation is completed, he was terminated, as such, he is not entitled for leave encashment. So far as, DCPS benefit is concerned, the learned Counsel for the Institution submits that the petitioner would not be entitled for the same.

4. We have considered the submissions.

5. So far as the claim of the petitioner of the pay scale is

concerned, it would be too late to consider the same. The petitioner was appointed in the year 2010 and was terminated in the year 2011. After a long slumber of 10 years, the petition is filed before this Court. Moreover, the letter of appointment prescribed the pay scale of Rs.7400-10500. The Joint Director of Technical Education has also granted approval to the appointment of the petitioner in the same pay scale. After a long slumber of 10 years, we are not inclined to enter into the same.

6. So far as the leave encashment is concerned, it is stated by the State Authority that the petitioner would not be entitled for the same as the petitioner had not even completed the probation period.

7. As far as DCPS benefit is concerned, the same is statutory. On the ground of delay, the said right cannot be denied to the petitioner. Though it is stated in the affidavit of the respondents that no amount of DCPS has been deducted from the salary of the petitioner, still nothing is said about the 10% contribution of the employer.

8. In light of that, the respondents shall consider the grievance of the petitioner with regard to the amount under the DCPS Scheme. The Institution may forward the proposal to the Government with regard to the DCPS benefit that the petitioner may be entitled to within a period of four weeks from today. The State Authority shall consider the said proposal and take decision upon it preferably within three months from the date of receipt of said proposal.

9. Depending upon the decision taken, the parties shall take further steps immediately.

10. The writ petition is accordingly disposed of. No costs.

(R. N. LADDHA, J.)

(S.V. GANGAPURWALA, J.)

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