IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 4393 OF 2017

Rekha Prakash Chaudhari,
Aged 58 years, Occupation: Retired Teacher, R/o E-204, Vasant Regency, Opposite DG Nagar-1, Diwanman, Vasai Road (W). ...**Petitioner**

~ **versus** ~

1. **The State of Maharashtra,**
Through the Principal Secretary, Rural Development Department, Mantralaya, Mumbai 400 032.
2. **The Chief Executive Officer,**
Zilla Parishad, Thane.
3. **The Education Officer (Madhyamik),**
Zilla Parishad, Thane.
4. **Secretary, Tulinj Education Trust,**
Tulinj, Nalasopara (E), District: Palghar.
5. **Head Master of Late KM Patil Deshmukh Vidyalaya,**
Marathi Secondary School, Tulinj,

Nalasopara, District: Palghar ...RESPONDENTS

APPEARANCES

FOR THE PETITIONER	**Ms Savita Suryawanshi.**
FOR RESPONDENT-STATE	**Mrs PJ Gavhane, AGP.**
FOR RESPONDENTS NOS 4 AND 5	**Mr Sachin S Punde.**

CORAM	:	**G.S.Patel & Neela Gokhale, JJ.**
RESERVED ON	:	**18th July 2023**
PRONOUNCED ON	:	**11th August 2023**

JUDGMENT (*Per Neela Gokhale, J*):-

1. **Rule**. Rule returnable forthwith. The Respondents have filed Affidavits in Reply. Heard finally by consent of the parties.

2. There is no substantial controversy in the present matter. Having admitted on affidavit its liability and responsibility to disburse 100% grant-in-aid to the 4th and 5th Respondents, it is surprising that the 3rd Respondent Education Officer has still failed to act on his own admission. It is in this context that we are called upon to deal with the issues arising in the present matter.

3. The Petitioner is an Assistant Teacher engaged in the 5th Respondent school run by the 4th Respondent Education Trust.

The Respondents No. 2 and 3 are the Chief Executive Officer and Education Officer (Madhyamik), Zilla Parishad, Thane respectively of the 1st Respondent, the State of Maharashtra. The Petitioner is teaching the 8th Std in the school (Second Division).

4. The facts giving rise to the Petition indicate that the Petitioner was appointed in the non-aided section of the school on a temporary basis from 27th August 1997. Her engagement was purely temporary and on contractual basis and her employment contract was annually renewed with a technical break of approximately two months between each tenure. Her contractual engagement ended finally on 30th April 2002. The employment contracts are placed on record.

5. By an order dated 10th February 2011, the Education Officer approved her services and has declared her eligibility for 100% grant-in-aid with effect from 1st June 2010. It is also an admitted position that grant-in-aid was sanctioned for 5th to 7th Std and second division of 8th Std from the Academic Year 2011–2012. There is also a Government Resolution (“**GR**”) dated 30th June 2014 to that effect and Annexure ‘A’ to the GR includes the name of the 5th Respondent, school appearing at serial number 8.

6. Despite the admitted fact that the school is granted 100% aid from 2011–2012, the salary of the Petitioner is not released from 2012. She has received her salary only up to November 2012. The Petitioner superannuated on 31st March 2016. She has not received the arrears of salary and her retiral benefits including pension and gratuity as applicable. It is this grievance which has led to the filing of the present Petition.

7. By order dated 20th June 2023 we had directed the Respondents No 4 and 5, the Trust and the school to prepare a statement of the amounts which have been paid to the Petitioner and other similarly placed teachers from 2012 onwards, according to them. The Petitioner was given an opportunity to verify such statement as was to be filed by the Respondents. However, no such clarification is forthcoming.

8. Ms Suryawanshi appearing for the Petitioner draws our attention to the admission given by the 3rd Respondent, the Education Officer, in the Affidavit in Reply clearly affirming that the 5th Respondent, school has commenced to receive 100% grant-in-aid from the year 2011–2012 to the 5th to 7th Std and the second division of 8th Std. She contends that in view of the clear concession of the Department, her claim is no longer disputed. She strenuously argues that not paying her salary till retirement is contrary to service law and violate her rights and also points to a circular of the State Finance Department of 1995 declaring that interest would accrued in the event of non-disbursement of salary. She thus seeks the arrears of her salary with compound interest of 12% per annum along with retiral benefits including pension and gratuity.

9. Ms Gavhane, learned AGP, appears for the Education Department of the State and contests the claim of the Petitioner despite their own affidavit to the contrary. When confronted with the statements in their own affidavit, she tries to explain it by referring to the date of the GR which is 30th June 2014 thereby portraying the date of grant-in-aid to be the date of the GR. Unfortunately, this completely overlooks the affirmed statements in the Affidavit in Reply. Mr Punde, learned Counsel for the Management, goes a step ahead. In addition to supporting the Petitioner, he now comes up with a case that the school started receiving 100% grant-in-aid from 2010 itself for all the divisions. He also says that some amounts were also disbursed to the school for releasing salaries of the teachers. His grievance now is that the Department is trying to recover the amounts allegedly wrongly released since, according to Department, the grant was approved only in the year 2012. He thus urges us to restrain the Department from effecting such recovery.

10. As we have observed at the outset the Petitioner's salary claim is admitted by the Respondent, Department. Admittedly, the 100% grant-in-aid is approved with effect from 2012 and the Petitioner is thus entitled to receive the arrears of salary from the year 2012 from the grant. The Department has apparently failed to disburse the approved grant. The name of the school appears in Annexure 'A' to the GR of 30th June 2014 as an institution approved for 100% aid. The contention of Mrs Gavhane that the grant is from the date of the GR and not from the year 2012 is only to be stated to be rejected for the reason that firstly, the GR itself is silent about the effective date and secondly, the Department's own affidavit clearly admits to granting aid from the year 2011–2012. To confound it further, the letter of 10th February 2011 at Exhibit 'C' indicates approval of 100% grant-in-aid to the services of the Petitioner with effect from 1st June 2010. This need not deter us from holding the effective date as 2011-2012 for 100% grant-in-aid for the reason that the Petitioner herself is seeking arrears of salary from December 2012 up to 31st March 2016, i.e., her date of superannuation.

11. Ms Suryawanshi also seeks interest compoundable at the rate of 12% on the arrears from December 2012. We are cognizant to the fact that the Petitioner is deprived of her rightful dues especially since she has diligently and regularly discharged her duties towards her pupils and her service record is unblemished. But compound interest at the claimed rate is unreasonable. In these circumstances, we deem it appropriate to allow 6% simple interest on the total arrears of salary from December 2012 till 31st March 2016 to be paid by the Respondent, Department.

12. The Respondent Department is directed to disburse the arrears of salary as per applicable scale along with the interest as directed to the Petitioner within a period of four weeks from the date of the order. The Department is also directed to calculate the retiral benefits of the Petitioner if found eligible having regard to completion of qualifying service and other criteria and pay the same to the Petitioner.

13. Rule is made partly absolute in terms of prayer clauses (b) and (c), set out below.

> "(b) This Hon'ble Court be pleased to issue a writ of mandamus or certiorari or any other appropriate writ/

direction/ order in the nature of Writ of mandamus or certiorari under Article 226 of the Constitution of India, 1950, be pleased to direct the Respondents to pay the salary alongwith due increments of the Petitioner from December, 2012 up to 31.03.2016 alongwith 12% compound interest;

(c) That the Respondent may please be directed to sanction the pension and pensionary benefits and gratuity alongwith 12% interest thereon."

14. No costs.

(Neela Gokhale, J) **(G. S. Patel, J)**