

S.S.Kilaje

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 4526 OF 2009

President/Secretary- Dombivili Mitra Mandal
 and Anr.

.. Petitioners

Versus

Nita Ramesh Davane and Anr.

.. Respondents

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- Mr. Mandar V. Limaye for Petitioners
- Ms. Anu C. Kaladharan i/by Ms. Anjali Helekar for Respondent No.1
- Mr. P. P. Pujari, AGP for Respondent No.2 - State
- Ms. Nita R. Davane, Respondent No.1 present in person

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CORAM : MILIND N. JADHAV, J.

DATE : JANUARY 09, 2023.

P.C.:

1. Heard Mr. Limaye, learned Advocate for Petitioners, Ms. Kaladharan, learned Advocate for Respondent No.1, Mr. Pujari, learned AGP for Respondent No.2- State.

2. On 20.12.2022, this Court passed the following order:-

“1. Heard Mr. Limaye, learned Advocate for Petitioners, Ms. Helekar, learned Advocate for Respondent No.1 and Mr. Kankal, learned AGP for Respondent No.2.

2. Both the learned Advocates are ad-idem that the issue in the present case can be resolved by reconciliation and they shall make an earnest effort. It is clarified that if any clarification is required from the Education Officer, the same shall also be pointed out to the Court on the next date so that the Petition can be disposed of.

3. Both learned Advocates jointly submit that the subject post occupied by the Respondent is an aided post and in that view of the matter the Petitioner Institution has not claimed the increment amount qua this post for the subject period i.e. 1998 to 2013. Ms.Helekar, learned Advocate for Respondent No.1 submitted that post 2013 the Respondent was granted adhoc pay but it is an admitted position that prior to 2013 she was

denied the same. However, since the Institution has not claimed the increment from the Government since it is an aided post, Mr. Kankal, learned AGP is requested to obtain instructions, if any, with respect to the above issue and submit the same on the next date.

4. At the joint request of learned Advocates, Petition be kept for submitting Minutes of Order on 02.01.2023.

5. Stand over to 2nd January, 2023.”

3. Today parties have submitted Minutes of Order which is taken on record and marked “X” for identification.

4. Parties have reconciled and stated comprehensive procedure pursuant to which the Respondent No.1 shall be entitled to the impugned back wages which are the subject matter of the Petition.

5. Respondent No.2 is the Education Officer who is represented by Mr. Pujari, the learned AGP before me today. Undertakings given in the Minutes of Order are taken as undertaking given to this Court. It is clarified that for no reason whatsoever the Respondent No.2 or in that matter, the Petitioners shall delay submission of the proposal, issuance of certification and submission of the service book of the Respondent No.1 as stated in paragraph Nos. 6 and 7 of the Minutes of Order and they shall strictly adhere to the timeline.

6. The Minutes of Orders have been signed by the learned Advocate for Petitioners, Vice President of Petitioner No.1, learned Advocate for Respondent No.1 and Respondent No.1. They have urged the Court to pass the order in terms of Minutes of Order. Hence, the following order is passed:-

- (1) The Petitioner by way of present petition is challenging the judgment and order dated 06.01.2009 passed by the Presiding Officer, Additional School Tribunal, Navi Mumbai in Appeal No. 164 of 1997, by which the appeal preferred by the Respondent No.1 was allowed and the oral order of termination dated 23.02.1996 was set aside and the Respondent No.1 was directed to be reinstated on the post of Librarian and further the Petitioners were directed to pay the Respondent No.1 back wages for the period between 23.02.1996 till she was reinstated.
- (2) The Petitioner Management has forwarded the salary bills of the Respondent No.1 employee to the Respondent No.2 w.e.f. 30.06.1998 without inclusion of increments. The Respondent No.2 has sanctioned the salary bills forwarded by the Petitioner without inclusion of increments for the period from 30.06.1998 till 30.06.2013. The Petitioners state that they have not claimed the amount of said increments from the Respondent No.2 in any of the earlier salary bills.
- (3) The Petitioner shall pay an amount of Rs.50,000/- by way of demand draft towards full and final settlement of back wages as granted by the Learned Tribunal

pursuant to the order dated 06.01.2009 within one week from today. The Respondent No.1 shall have no monetary claim as regards the back wages w.e.f. 23.02.1996 to 30.06.1998 against the Petitioner Management.

- (4) The Respondent No.1 has agreed to accept the amount of back wages as stipulated in para 3 by way of full and final settlement, provided the Petitioner Management shall forward the salary bills for the arrears of increment from the date of reinstatement i.e. 30.06.1998 after giving the notional benefits of granting increments to which the Respondent No.1 is entitled till her reinstatement.
- (5) The Respondent No.1 has received her salary with inclusion of adhoc increments w.e.f. July 2013; however her salary w.e.f. July 2013 is fixed without taking into consideration the increments to which she was entitled from her date of Appointment, i.e. 06.10.1993.
- (6) The Petitioner Management shall forward the salary bills of Respondent No.2 from 30.06.1998 to 30.06.2013 regarding the increments for that period, which were not claimed by the Management, after

giving notional benefits with effect from her initial date of appointment i.e. 06.10.1993, within four weeks from today. The Respondent No.2 after receipt of the said salary bills would process the same in accordance with law within four weeks thereafter. The Petitioner and Respondents shall cooperate with the Respondent No.2 as regards the matter pertaining to the salary bills.

- (7) The Petitioner hereby agrees and undertakes to fix the salary of the Respondent No.1 w.e.f. 01.07.2013 by giving notional benefits of increments with effect from her initial date of appointment i.e. 06.10.1993 and accordingly update service book in that regard. The Petitioner Management after updating the service book, within four weeks of the date of present order, shall further submit the same for certification to the Education Department i.e. Respondent No.2 and the Respondent No.2 within four weeks thereafter shall process and certify the same in accordance with law. After receipt of certification from Respondent No.2, a copy of service book would be duly provided to the Respondent No.1 within one week thereof.
- (8) The Respondent No.1 undertakes and agreed that if the Respondent No.2 does not sanction/approve the

proposal forwarded by the Petitioners as regards the amount of increment w.e.f. 30.06.1998 to 30.06.2013, the Respondent No.1 will not claim any arrears of increments from the Petitioner Management and will have no claim against the Petitioner Management on the said amount of arrears of increments.

(9) The Petitioner Management shall continue to forward the upto date salary bills alongwith all increments due to the Respondent No.1 to the Respondent No.2 and the Respondent No.2 shall sanction the same in accordance with law. The Respondent No.1 undertakes and assures that she will not claim any monetary benefits from the Petitioner Management as regards arrears of increments and back wages in terms of the order passed by the Tribunal dated 06.01.2009.

(10) The impugned order dated 06.01.2009 is hereby modified to the aforesaid extent and in view thereof writ petition is disposed off in terms of the above Minutes of Order with no order as to costs.

[MILIND N. JADHAV, J.]

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