

4 September 2023.

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 7567 OF 2018

Smt. Lata Pandurang Kore

...Petitioner

V/s.

State of Maharashtra, through
the Govt. Pleader and Ors.

..Respondent

Mr. M.A. Khan a/w. Ms. Dipti Mehta, for the Petitioner.

Mr. P.P. Pujari, AGP for Respondents No.1 to 4.

Mr. Prashant Bhavake i/by. Mr. Utkarsh Desai, for Respondent No.5.

CORAM : SANDEEP V. MARNE, J.

Dated : 4 September 2023.

P.C. :

1. This petition is filed seeking a unique prayer of implementation of order dated 26 June 2023 passed by the Presiding Officer, School Tribunal, Kolhapur.

2. At the outset, a query was put to the learned counsel for Petitioner as to how a substantive Writ Petition would lie before this Court seeking execution of order passed by the School Tribunal. Mr. Bhavake, the learned counsel for the Management would place reliance on the judgment of this court in the case of

Mohammad Salam Anamul Haque Vs. S. A. Azmi 2001 (Supp.2)

Bom. C.R. 37, in which it is held that the orders passed by the School Tribunal are executable and that the aggrieved teachers have the remedy of approaching the Tribunal for getting its order executed. In para-14 of the judgment this Court has held as under :

“14. Thus, I find that the order made by the Tribunal in favour of the petitioner is an executable order and therefore it is open to the petitioner to approach the Tribunal which passed the order, for getting that order executed in accordance with the provisions of the Code of Civil Procedure. In the present case, the petitioner has approached this Court by filing the present Contempt Petition without making an attempt to get the Order executed as indicated above. I have also observed above that the question whether the petitioner had any other mode or forum available to him for enforcing the order and whether he has taken any steps in that direction is a relevant consideration for the Court for deciding whether to initiate proceedings under the Contempt of Courts Act.

In the present case, the petitioner has not as stated above taken any steps to get this order executed through the Tribunal, therefore, in my opinion, it would not be proper for this Court to entertain the present petition. It may be pointed out here that on behalf of the Respondent an objection is raised that the present contempt petition is barred by limitation, because the proceedings have not been initiated within one year of the alleged breach of the Order. However, it is to be seen that an order was made in Writ Petition No. 6096 of 1996, which until it was clarified by order dated July 2, 1999 stayed the order of reinstatement and backwages passed in favour of the petitioner. The position was clarified on July 2, 1999 and therefore to my mind the Respondents are not justified in saying that the present contempt petition is barred by [Section 20](#) of the Contempt of Courts Act. However, as I have held above that the present contempt

petition cannot be entertained for the reasons that have been indicated above, the contempt petition is disposed of. The Petitioner is at liberty to get the order of the School Tribunal executed in accordance with law.

3. In ordinary course therefore, this Petition could have been disposed of by granting liberty to Petitioner to approach the Tribunal to get it's order executed. However, during pendency of the present petition, much water has flown. This Court has taken cognizance of the present petition and passed following order on 31 March 2022:

The present case exhibits sorry state of affairs at the behest of officers from the Education Department i.e. Respondent Nos.3 & 4. Despite repeated Orders being passed by this Court since 13.08.2018 the said Authorities have not paid salary to the Petitioner and as of today the grievance of the Petitioner is not redressed.

2. Mr. Khan, learned Advocate for the Petitioner submitted that, the Order passed by the School Tribunal has been upheld upto the Hon'ble Supreme Court and despite the said fact Respondent Nos.5 and 6 are having courage in not following the said Orders.

3. In view thereof, the Principal Secretary, Education Department, Government of Maharashtra is directed to personally look into the matter and adopt remedial measures in that behalf. The Principal Secretary, Education Department is also directed to file his personal affidavit placing on record as to what steps it contemplates in execution of the Order dated 26.06.2003 passed by the learned Presiding Officer, School Tribunal, Kolhapur Region, Kolhapur. The Principal Secretary is

at liberty to adopt all appropriate remedial measures as may be permissible under the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 including closure of Respondent No.5 and absorbing its students in other schools, if circumstances so prevail.

The said affidavit be filed within a period of four weeks from today.

4. In pursuance of the order passed by this Court, the Principal Secretary, School Education and Sports Department has filed Affidavit dated 28 July 2023 stating as under :

8. I further submits that in pursuant to the order given by the Hon'ble High Court, this Respondent informed the Education Officer (Secondary) Zilla Parishad, Kolhapur vide letter dated 13/04/2022 to submit the detailed report regarding the factual position of the Petitioner claim.

9. I further submits that the Education Officer (Secondary). Zilla Parishad, Kolhapur has submitted information to the Government vide letters dated 18/4/2022 and 25/04/2022. According to the said information, Petitioner was reinstated on 26/11/2010 but from 12/7/2003 to 25/11/2010 Salary arrears for the said period of approximately Rs.15,81,736/- have not been paid to the petitioner.

Although the High Court has ordered the recovery of the non-salary grant admissible to the concerned school & the petitioner, the non-salary grant has not been disbursed to the school as the school has not submitted the required documents for the non-salary grant from the year 2012-13 (excluding the year 2020-21). The said Respondent school

receives approximately Rs. 60,000 is an unconscionable grant admissible.

10. I say that, in view of the order passed by the High Court, dated 31/03/2022 the State Government has taken a conscious decision, the amount of salary arrears of the petitioner for the period 12.07.2003 to 25.11.2010 is Rs.1581,736/- being revenue arrears. Assuming this. Sections 178 to 221 of the Maharashtra Revenue Act, 1966 and Maharashtra Land Revenue (Recovery of Land Revenue) Rules, 1967 rules 5 to 17 have given instructions regarding the procedure to be followed at the Taluka and District level regarding the recovery of the amount leviable as land revenue arrears.

According to the said procedure, this Respondent Govt. directed the Collector, Kolhapur to collect/attach the said amount from the properties of the concerned institution or in its absence from the private properties of the Directors / office bearers of the institution as per the provisions of the Maharashtra Land Revenue Act and to pay the said amount to Petitioner vide letter dated 28/07/2023. Hereto annexed and marked as Exhibit-R-1 is the copy of letter dated 28/07/2023.

11. I further say and submit that, the State Government had further directed that, "till the amount of salary arrears of the petitioners is not collected from the property of concern institution or from the private property of the concern Directors of the Institutions", and given to the petitioner by following due process, the Government grants will not be released, or will be withheld, till such period.

12. I say that as per the directions of the Hon'ble Court this Respondent has taken pro active steps to follow the directions of this Hon'ble Court. However, the delay in compliance of the order, dated 31/03/2022 is neither intentional nor

deliberate. The delay is purely on administrative delay. Hence, I tender unconditional apology for the same.

5. There appears to be another development. It appears that on account of failure on the part of the Management to pay arrears of salary to Petitioner during the period from 12 July 2003 till the date of reinstatement i.e. 25 November 2010, the Government had stopped salary grants, resulting in non-payment of salary to other teachers. Some of them have filed Writ Petition No. 5736/2021 before this Court in which order dated 27 September 2021 was passed giving following directions :

“10. In our view, merely because the School Tribunal has directed the Education Officer to implement the said order dated 26 June, 2003 in Appeal No. 69 of 2000 which is around Rs.16 lacs as on date, Education Officer cannot withheld the entire salary grant of the school in which these petitioners are working, resultantly these petitioners not been paid salary since May 2019. We, accordingly pass the following order :-

(a) We direct respondent nos. 1 to 3 to release the monthly salary of the petitioner since the date of arrears i.e. from May 2019 and to release the salary grant in favour of the petitioner excluding the salary of two months i.e. for May 2019 and June 2019 within 12 weeks from today without fail.

(b) It is made clear that the amount which are allowed to be withheld by this order shall be subject to the outcome of the writ petition filed by Smt.Lata Pandurang Kore in Writ Petition No. 7567 of 2018.

(c) We grant liberty to the petitioner to apply for impleadment in the said Writ Petition No. 7567 of 2018 before the learned Single Judge in view of the fact that the amount allowed to be withheld by this order in favour of the Education Officer would be subject to the outcome of the said Writ Petition No. 7567 of 2018. If any such application for impleadment is made by these petitioners in that writ petition, the learned Single Judge to consider the said application for impleadment on its own merits.

(d) Rule is made absolute in the aforesaid terms.

(e) Writ petition is disposed of accordingly. No order as to costs.

(f) The parties to act on the authenticated copy of this order.

6. Thus it appears that except the salary amounts for the months of May 2019 and June 2019, the State Government was directed to release the salary grant of other teachers. Two months salaries are apparently withheld so as to represent roughly the amount of Rs.15,81,736/- which Petitioner is claiming towards salary from 12 July 2003 to 25 November 2010. In my view, if Petitioner is directed to pay the said withheld amount of grant, the other teachers will suffer, whose salaries for month of May 2019 and June 2019 would be denied. Be that as it may, the Principal Secretary, School Education and Sports Department has filed Affidavit stating that an amount of Rs.15,81,736/- shall be recovered as arrears of land revenue under the provisions of the Maharashtra Land Revenue Code. For effecting such recovery, the Collector, Kolhapur would be authorised to attach the properties of

Respondent-Management and its Trustees. The Affidavit further states that till the amount of salary grant of Petitioner is not collected by recovering the same from the property of concerned persons, government grants will not be released and will be withheld. This course of action, in my view, will again put the other teachers in difficulty.

7. Considering the developments that have occurred in the Petition so far, this Petition is required to be disposed of granting liberty to the Collector to recover the due amount from the school management/its trustees. Since the Petitioner is denied the arrears of salary since 25 November 2010, the Respondent-Management shall be liable to pay interest at the rate of 6% on the same. Therefore, while making a recovery, the State Government shall recover the amount of Rs.15,81,736/- alongwith interest at the rate of 6% p.a. w.e.f. 25 November 2010 till realisation. The learned counsel for Petitioner would submit that she also has some grievance about seniority. In my view, the issue of seniority is not interconnected with the grievance of non-payment of arrears of salary and Petitioner needs to adopt appropriate remedies in respect of his grievance relating to seniority.

8. The Writ Petition is accordingly **disposed of** with following directions :

ORDER

(i) The State Government shall recover amount of Rs.15,81,736/- as arrears of land revenue from the Respondent-Management, its Directors, Trustees etc.

(ii) Respondent-Management shall pay interest at the rate @ 6% on Rs.15,81,736/- w.e.f. 25 November 2010 till realization and while making recovery, the amount of interest shall also be recovered.

(iii) Upon making recovery, the entire recovered amount shall be paid to the Petitioner forthwith.

(iv) The salary grants of the Respondent-Management shall not be withheld for such recovery.

(v) The State Government shall also release salaries of the other teachers withheld for the months of May 2019 and June 2019 forthwith.

(vi) The issue of seniority of the Petitioner is left open to be decided in appropriate proceedings before the appropriate forum.

4 September 2023.

(vii) The issue of maintainability of a Writ Petition before this Court seeking execution of order passed by the School Tribunal is left open to be decided in the appropriate case.

**NEETA
SHAILESH
SAWANT**

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NEETA SHAILESH
SAWANT

Date: 2023.09.07
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SANDEEP V. MARNE, J.