



Gitalaxmi

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 371 OF 2022**

**MAHATARBA ALIAS MADHUKAR
BHIKAJI JANRAO,**
Age: 54 years, Occ.Service, Residing at
Bhimashankar Niwas, Bajirao Nagar-B,
Paregaon Road, Yeola, Tal.-Yeola, Dist.-
Nashik-423 401.

...Petitioner

~ VERSUS ~

1. **STATE OF MAHARASHTRA**
through its Principal Secretary,
Department of School Education &
Sports, Madam Kama Road,
Mantralaya, Mumbai.
2. **THE CHAIRMAN,**
SAMATA SHIKSHAN PRASARAK
SANSTHA,
Yeole, 'Vidroh', Patel Colony, Vinchur
Road, Yeola, Tal.-Yeola, Dist.-Nashik-
423 401.
3. **THE SECRETARY,**
SAMATA SHIKSHAN PRASARAK
SANSTHA,
Yeole, 'Vidroh', Patel Colony, Vinchur
Road, Yeola, Tal.-Yeola, Dist.-Nashik-
423 401.

4. **HEAD MASTER,
KRANTIVIR MAHATMA PHULE
MADHYAMIK VIDYALAYA,
Kusur, At Post Kusur, Tal.-Yeola,
Dist.-Nashik-423 101.**
5. **EDUCATION OFFICER
(SECONDARY),
Department of Education, Zilla
Parishad, Nashik-422 001.**
6. **DEPUTY DIRECTOR,
Office of the Regional Deputy
Director (Education), Nashik Div.,
Divisional Commissionarate, Opp.
ISP, Nashik Road, Nashik-422 101.
Email:dd.nashik@mahedu.gov.in**
7. **THE DIRECTOR OF HIGHER
EDUCATION,
Government of Maharashtra, Central
Building, Pune-411 001.
Email:director.dhepune@nic.in**
8. **SECTION OFFICER,
Department of School Education and
Sports, Madam Kama Road,
Mantralaya Vistar Bhavan,
Mantralaya, Mumbai-400 032.**

...Respondents

APPEARANCES

FOR THE PETITIONER	Mr Eknath R Dhokale.
FOR RESPONDENT NO.	Mr VM Mali, AGP.
1-STATE	
FOR RESPONDENT NOS.	Mr NV Bandiwadekar, Senior
2 TO 4	Advocate, i/b AN Bandiwadekar.

**CORAM : G. S. Patel &
Neela Gokhale, JJ.**

DATED : 22nd August 2023

ORAL JUDGMENT (Per Neela Gokhale, J.):-

1. **Rule.** Rule made returnable forthwith. The Respondents have filed Affidavit in Reply. Heard finally with consent of the Parties.

2. This is a second round of litigation. The relief sought by the Petitioner in the present matter has already been granted to him by this Court in an earlier Writ Petition. The grievance of the Petitioner in the present proceeding is in respect of the failure of the Respondents to comply with the directions issued by this Court earlier. The writ remedy cannot be invoked to repeatedly grant reliefs already granted to the Petitioner by this Court itself in earlier proceedings under its writ jurisdiction. The Petition is misconceived.

3. Shorn of unnecessary details, the facts in the Petition briefly are these. Respondents No. 2, 3 and 4 are the Chairman and Secretary of the educational trust, namely, Samta Shikshan Prasarak Sanstha, Yeole respectively. The Trust runs Krantivir Mahatma Phule Madhyamik Vidyalaya of which Respondent No. 4 is the Headmaster. The Respondents No. 5 to 8 are the officials of the Education Department of Respondent No. 1, the State of

Maharashtra. The Petitioner was appointed as an Assistant Teacher in the School on 22nd June 1992.

4. The services of the Petitioner were orally terminated. He challenged the termination order in the School Tribunal, Nashik. The School Tribunal by its order dated 14th May 1997 set aside the termination order with directions to the 2nd and 3rd Respondents to reinstate him while rejecting his prayer for back wages. The Petitioner resumed his service on 21st July 1997. However, the approval for his services was wrongly given from the date of his reinstatement instead of the date of his initial appointment. He was also denied continuous service. Aggrieved by this, the Petitioner filed Writ Petition No.2862 of 1998 in this Court seeking back wages and continuity of service. This Court by its order dated 18th October 2007 declared the Petitioner's continuity of service from the date of his appointment and directed the Respondents to release back wages for the period prior to his reinstatement. The Respondents failed to comply with the order passed by this Court. The Petitioner thus, filed a Special Darkhast No.97 of 2008 before the Civil Judge, Senior Division, Nashik for recovery of back wages. A Court Commissioner was appointed to give his report and ultimately the Darkhast was closed in full satisfaction of the executable order on 2nd February 2013.

5. The grievance of the Petitioner is that, despite the orders of this Court, the Respondents have failed to consider his service from the date of his appointment and have not appropriately fixed his seniority. It is this inaction on the part of the Respondents that he assails in the present Writ Petition.

6. Mr Eknath Dhokale, learned Counsel for the Petitioner, says that despite innumerable representations made by the Petitioner, Respondents No. 2 to 4 have failed to comply with the order of this Court and the School Tribunal and Respondents No.5 to 8 have failed to act against the Management for the non-compliance. He urges us to declare once again that the Petitioner is entitled to all service benefits as Assistant Teacher from the date of his initial appointment and further direct the Respondents to implement the orders of the School Tribunal. He further seeks imposition of heavy penalty upon the Respondents under Section 13 of The Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 (“**MEPS**”) in addition to action under Rule 97 (1)(2) of the Secondary School Code, 1981 (“**SSC**”).

7. Mr Bandiwadkar, learned Counsel for the Management, states that the Management has already complied with all the orders and there is no question of imposing any penalty on it. He further says that the Petitioner is governed by the provisions of the MEPS Act and Rules made thereunder and hence, there is no question of invoking the SSC. The Management also points out that since the Petitioner did not possess the qualification of B.Ed. at the time of his initial appointment but acquired it only at the time of his reinstatement, the Management had treated him as a trained graduate teacher only from the date of his reinstatement. He, agrees that full satisfaction has been marked and recorded in the Darkhast proceedings taken by the Petitioner. He also points out that the Petitioner has deliberately and mischievously suppressed the relevant facts from this Court: the Petitioner is being paid salary in revised pay scale under the 7th Pay Commission from the grant

sanctioned and released by the 4th Respondent, the Education Officer. He seeks dismissal of the Writ Petition.

8. Mr VM Mali, learned AGP for the State, says that in compliance with the orders of this Court and the School Tribunal, the State authorities directed the Management to submit a proposal regarding the Petitioner. No such proposal has been received by the Government till date. He further points out that the Petitioner has an option to lodge his complaint in the office of the Deputy Director of Education, Nashik or raise his grievance before the Regional Redressal Committee for Complaints of Secondary Staff formed under the chairmanship of the Deputy Director of Education as per Government Resolutions (“GR”) of 29th July 2019, 29th August 2019 and 1st October 2019. The proposal when submitted by the Management will be finalised by the Government at the earliest. He thus also prays that the Petition be dismissed.

9. It is clear from the relief sought in the present Petition that the Petitioner is re-agitating a relief already granted to him in the earlier Writ Petition by this Court. It is also an admitted fact that the Special Darkhast filed by him was satisfied and an amount of Rs.86,000/- was deposited by the Management. This Court by its order dated 18th October 2007 has specifically granted continuity of service and arrears of back wages. The Civil Court was also pleased to appoint a Court Commissioner in the Darkhast proceedings and recovered the arrears of back wages. The Petitioner made no complaint in this regard. Section 13 of the MEPS Act provides for penalty to the Management for failure to comply with the Tribunal’s directions. The relief sought by the Petitioner for imposition of

heavy penalty must thus be made before the School Tribunal and not before this Court. Similarly, Rule 97(1)(2) of the SSC provides for reduction in grants. It vests a discretion in the Education Department to reduce grants to the Management in case of any contravention of the provisions of the Rules in the SSC generally relating to deterioration in general efficiency and in cases of gross mismanagement, etc. The facts in the present case do not indicate any act of gross mismanagement to justify directing action under Rules 97(1) and (2) of the SSC. The grievance of the Petitioner is particular to him alone and does not emanate from any mismanagement. In any case, this Court has already declared his seniority from the date of his initial appointment and in addition to release of back wages. The case of the Petitioner relates only to enforcement of the orders of this Court.

10. We are of the considered view that this Court cannot be called upon to repeatedly grant the same relief especially since relief has already been granted to him in an independent and earlier Writ Petition over and above the directions of the School Tribunal. There is no violation of any fundamental rights of the Petitioner and neither has he pleaded the same.

11. In the light of the above, the Petition is misconceived. The Department has already indicated its willingness to approve the proposal whenever it is received from the Management. The Management has already been directed by this Court to grant continuity in service to the Petitioner in its earlier order. If the Petitioner is aggrieved by non-compliance of any order of this Court

or the Tribunal, he is at liberty to take necessary steps in appropriate proceedings in that regard and all contentions are left open.

12. Rule is discharged. No order as to costs.

(Neela Gokhale, J)

(G. S. Patel, J)