

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

WRIT PETITION NO. 8285/2019

(LALAJI SAOJI BRAHMANKAR **VERSUS** THE DIVISIONAL COMMISSIONER, NAGPUR DIVISION,
NAGPUR & OTHERS)

*Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders.*

Court's or Judge's order

Shri A.R. Deshpande, counsel for the petitioner.
 Ms N.P. Mehta, Assistant Government Pleader for the R-1.
 Shri A.Y. Kapgate, counsel for the R-2 & 3.

CORAM : A. S. CHANDURKAR AND MRS.VRUSHALI V. JOSHI, JJ.

DATE : FEBRUARY 01, 2023.

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In view of notice for final disposal, we have heard the learned counsel for the parties at length.

The petitioner came to be appointed as an Assistant Teacher at a school run by Zilla Parishad, Gondia. On 05.09.2007 the petitioner received the District Award on the basis of which he was entitled to an additional increment. The petitioner came to be promoted on the post of Headmaster on 04.08.2017. The pay-scale admission on his promotion was Rs.9,300-34,800 with Grade Pay of Rs.4,800/-. Pursuant to the scheme for unification of husband and wife he was posted at the Zilla Parishad school at Arjuni Morgaon on 31.08.2017. The petitioner attained the age of superannuation on 30.11.2018. After his retirement the petitioner made a request for being granted Grade Pay of Rs.4,900/- since that Grade Pay was admissible when he was discharging duties at the Zilla Parishad school that was attached to higher secondary classes from 05.09.2017 to 30.11.2018. There being no consideration of the request made by the petitioner this writ petition was filed.

On 17.01.2020 while issuing notice in the writ petition a direction was issued to the Chief Executive Officer, Zilla Parishad, Gondia to take a decision on the petitioner's representation. Accordingly on 08.03.2021 such decision was taken by the Chief Executive Officer. Insofar as benefit of receiving the District

Award was concerned the petitioner was held entitled to the same in view of the Circular dated 12.12.2000. Insofar as the prayer for grant of Grade Pay of Rs.4,900/- was concerned that request was refused on the count that the said benefit was admissible only till the period duties were discharged at the school where higher secondary classes were attached. On his superannuation, the petitioner was entitled to receive pensionary benefits with Grade Pay of Rs.4,800/-. Being aggrieved by the refusal of Grade Pay of Rs.4,900/- the writ petition was amended and a challenge was raised to the adjudication dated 08.03.2021. In the light of aforesaid, we have heard the learned counsel for the parties.

The learned counsel for the petitioner submitted that the petitioner being entitled to Grade Pay of Rs.4,900/- while serving at the school that was attached to the higher secondary classes and the petitioner having thereafter superannuated, there was no justification in paying pensionary benefits to the petitioner with Grade Pay of Rs.4,800/-. The learned counsel referred to the fact that a similarly situated Headmaster had sought grant of Grade Pay of Rs.4,900/- and this Court in **Writ Petition No. 6538 of 2019** [*Dadaji Kisanji Maske Versus Divisional Commissioner, Nagpur Division, Nagpur*] granted such relief by observing that after retirement the Grade Pay could not have been reduced to Rs.4,800/-. It was thus urged that in view of the judgment of this Court in **Writ Petition No. 5419 of 2018** [*Grace George Pamoorickal Versus Municipal Corporation of Gr. Mumbai & Others*] the petitioner was entitled to the Grade Pay of Rs.4,900/- and his pensionary benefits ought to be released on that basis.

As regards the objection raised by the Zilla Parishad to the availability of an alternate remedy it was submitted that since cognizance of the grievance raised by the petitioner was taken by this Court while issuing notice and as there were no disputed questions of fact, the grievance of the petitioner could be considered since he had now retired. There was no bar to entertain the writ petition on the grounds urged by the Zilla Parishad. It was thus submitted that the reliefs prayed for be granted.

The learned counsel for the Zilla Parishad on the other hand opposed all aforesaid submissions. At the outset, it was submitted that remedy under Rule 14 of the Maharashtra Zilla Parishads (Discipline and Appeal) Rules, 1961 was available to the petitioner for seeking redressal of his grievance. Without invoking that remedy this writ petition had been filed. The petitioner ought to be relegated to invoke such remedy and in that regard the learned counsel sought to rely upon the decisions in *City and Industrial Development Corporation Versus Dosu Aardeshir Bhiwandiwalla & Others* [(2009) 1 SCC 168], *United Bank of India Versus Satyawati Tondon & Others* [(2010) 8 SCC 110]. The learned counsel invited attention to the documents placed on record alongwith pursis dated 21.10.2022 and 23.11.2022 to urge that when the petitioner was promoted on 04.08.2017 he was made aware of the position that Grade Pay of Rs.4,900/- would be admissible only till the period he worked as Headmaster at the school that was attached to higher secondary classes. On retirement he was entitled to pensionary benefits with Grade Pay of Rs.4,800/-. The petitioner accepted said promotion without any grievance and thereafter gave an undertaking on 10.06.2018 that he was willing to have his pay fixation with Grade Pay of Rs.4,800/-. It was thus submitted that the writ petition is liable to be dismissed.

Since the impugned order has been passed pursuant to the cognizance taken by this Court, we have entertained the writ petition. On hearing the learned counsel for the parties and on perusing the documents on record we find that when the petitioner came to be posted as Headmaster at the school that was attached to higher secondary classes he was given benefit of Grade Pay of Rs.4,900/- in the light of the Government Resolution dated 20.05.2009. One of the conditions in the order dated 11.07.2018 is that the benefit of that Government Resolution would be available only till the time the petitioner served at the school attached to higher secondary classes and on superannuation he would receive the pensionary benefits at the earlier Grade Pay of Rs.4,800/-. The petitioner accepted the said order of promotion alongwith the conditions

attached. It can also be seen from the revised order dated 28.05.2018 that an undertaking was sought from the petitioner that he would be entitled to Grade Pay of Rs.4,900/- only during the period of service as Headmaster at a school attached to higher secondary classes and thereafter Grade Pay of Rs.4,800/- would be applicable. The petitioner gave such undertaking on 10.06.2018. There are various other documents on record which indicate that the petitioner unequivocally accepted the applicability of Grade Pay of Rs.4,900/- only till the time he was Headmaster at the school that was attached with higher secondary classes. It is therefore not permissible now for the petitioner to turn around and contend that his retiral benefits also ought to be granted with Grade Pay of Rs.4,900/-. There is no justification for this conduct of the petitioner and in our view the same precludes the petitioner from seeking such relief in the present writ petition.

The decision relied upon by the petitioner in *Dadaji Kisanji Maske* (supra) is justifiable for the reason that reduction of Grade Pay post retirement was held to be not permissible in the light of the decision in *Grace George Pampoorickal* (supra). We find from paragraph 1 of the aforesaid decision that the Zilla Parishad remained absent in the said proceedings and hence the stand raised by it in the present proceedings was not before the Court while deciding those proceedings. As stated above, in the light of the unequivocal stand taken by the petitioner consciously on various occasions of accepting the grant of Grade Pay of Rs.4,900/- only till the time he was in service in the school that was attached to higher secondary classes and that he would accept Grade Pay of Rs.4,800/- after his superannuation the same precludes grant of any relief to him. Moreover it is not a case of recovering any amount from the petitioner for the reason that provisional pension at the rate of Rs.4,800/- is being received by him as pleaded in paragraph 13 of the writ petition. There is no case of any recovery post retirement but it is only a case of applicability of appropriate Grade Pay for being paid pension. The decisions relied upon by the learned counsel for the petitioner do not assist him in these facts.

Hence, for aforesaid reasons, the writ petition stands dismissed with no order as to costs.

(MRS. VRUSHALI V. JOSHI, J.)

(A. S. CHANDURKAR, J.)

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