

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

77 CIVIL APPLICATION NO. 2994 OF 2024
IN CP/333/2015
WITH
CONT. PETITION NO. 333 OF 2015
WITH
CIVIL APPLICATION NO. 4346 OF 2018
IN CP/333/2015
WITH
CIVIL APPLICATION NO. 4655 OF 2024
IN CP/333/2015
WITH
CIVIL APPLICATION NO. 7627 OF 2018
IN CP/333/2015
WITH
CIVIL APPLICATION NO. 11610 OF 2017
IN CP/333/2015
WITH
CIVIL APPLICATION NO. 369 OF 2018
IN CP/333/2015

PUSHPA W/O. ARUN DIXIT
VERSUS
VITHABAI D/O. BHIKAN DESALE AND ORS

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Advocate for Applicant : Mr. Sachin G. Joshi
AGP for Respondent No. 4 n CP/State : Mr. A. S. Shinde
Advocate for Applicant in C.A. : Smt.Vithabai Bhikan Desale
Advocate for Respondent No. 3 in CP : Mr. D. K. Rajput

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CORAM : S. G. MEHARE, J.

DATE : 07th MAY, 2024.

PER COURT :

1. This Contempt Petition was filed in 2015 for not paying

the back wages. During the hearing, the Education Officer made the calculations. The Education Department, applied the pay scales applicable during the period of the tenure of the petitioner. Finally, the amount of Rs. 13,19,000/- has been deposited. The petitioner has been running pillar to poll to recover her back wages since 2015. She applied to withdraw the money deposited with this Court. By order dated 04.03.2024 passed in Civil Application No. 1840 of 2024, this Court allowed her to withdraw the amount. However, on that day, the learned Counsel for the respondent was absent. Thereafter, he filed the present application to recall the said order. The amount allowed to withdraw has not been disbursed.

2. The learned Counsel for original respondents argued that the petition was not maintainable. The impugned order is executable under Section 13 of the Maharashtra Employees of the Private School (Conditions of Service), Regulations Act, 1977 (the 'Act' for short). He also argued that the calculations of the Education Department were incorrect as the fifth and sixth pay is not applied to the employees of Private Schools. He relied on the judgment of the Hon'ble Division Bench in the case of

Ahmedi Siddiqui Abdul Majid Vs. The State of Maharashtra, in Writ Petition No. 2036 of 2022 dated 20.06.2022. In that case, it has been held that this Court cannot be converted into the Executing Court. This objection has been raised for the first time since 2015.

3. Agreeing with the observations in the case of Ahmedi (supra), in the peculiar circumstances and long waiting to get the fruits of the judgment, this Court is of the view that this a fit case to exercise the extra-ordinary jurisdiction under Article 226 of the Constitution of India, as an exceptional case.

4. The petitioner, the employee not in the service, has been coming to the Court since 2015 for back wages after succeeding on merit. After nine years, asking her to go to the School Tribunal to execute its order under Section 13 of the MEPS Act, 1977 would be a great injustice. It seems that respondents are objecting for the sake of objection. They object to the petition as they have to pay from their pocket. P Section 11 (3) of the MEPS Act provides that the ribunal may recommend the Government to pay the dues directed to be paid

to the employee. However, it is to be recovered or deducted from the grant due or payable in future. If the termination of the employee is at the instance of the management, and without the involvement of the Government, the management has to pay the back wages from its pocket.

5. Respondents are belatedly disputing the calculations made by the Education Officer. As against this, the petitioner is claiming the interest on the belated back wages.

6. In the peculiar circumstances, as observed above, it would be unjustifiable to recall the order allowing the petitioner to withdraw the back wages. The interest of respondents has already been protected by imposing certain conditions.

7. Except for this Contempt Petition, there is no proceeding pending before this Court. This Contempt Petition was simply for not paying the order of the School Tribunal. Therefore, the condition for furnishing undertaking imposed in the order dated 04.03.2024 stands deleted. Similarly, the petitioner's husband submits that Clause- 8 of the order may

also be deleted, as it does not match the figures for the money to be paid by the respondent. It is accordingly deleted.

8. The learned Counsel for the respondent submits that the calculations are incorrect as the Education Officer had wrongly applied the pay scale of the 5th and 6th Pay Commission, and it could be done before the Tribunal under Section 13 of the MEPS Act, 1977.

9. Considering the executability of the Order of the Tribunal before it, and few questions remained unsolved, liberty is granted to the original petitioner to file an application under Section 13 of the MEPS Act, 1977 for interest on the arrears of the back wages and the respondents will have the liberty to object the calculations based upon the application of 5th and 6th pay Commission.

10. If the application is filed, the Tribunal may decide it on merit. The time spent in prosecuting the proceeding in this Court shall be considered while condoning the delay if the application is filed.

11. In view of the above, the Contempt Petition No. 333 of 2015 stands disposed of.

12. All the Civil Applications are consequently disposed of.

13. It is clarified that both parties are bound by the calculations made by the Tribunal on hearing respective parties. If the applicant has received more money, she will re-deposit it to the Tribunal within the stipulated time granted by the Tribunal.

14. The respondent sought an unconditional apology, and the dispute has been resolved; therefore, the charge framed against him has been called back.

15. It clarified that the petition had been considered in peculiar circumstances. This decision should not be used as a precedent.

(S. G. MEHARE)
JUDGE