



IN THE JUDICATURE OF HIGH COURT AT BOMBAY
BENCH AT AURANGABAD

911 WRIT PETITION NO.4044 OF 2019

Smt. Nazema Begum Nisar Ahmed Sidiqui
age 44 years, Occ. Service as an Assistant
Teacher in Dr. Zakir Hussain Urdu Primary
School, Ambajogai Road, Ahmedpur,
Tq. Ahmedpur, District Latur.

Petitioner

Versus

1. The State Of Maharashtra,
Through it's Secretary,
School and Education Department,
Mantralaya, Mumbai – 400032.
2. The Education Officer,
(Primary), Zilla Parishad,
Latur, Tq. & Dist. Latur.
3. Dr. Zakir Hussain Education Society,
Ambajogai Road, Ahmedpur,
Tq. Ahmedpur, Dist. Latur.
Through it's Secretary.
4. The Head Master,
Dr. Zakir Husain Urdu Primary School,
Ambajogai Road, Ahmedpur,
Tq. Ahmedpur, District Latur.

Respondents.

...

Advocate for the Petitioner : Mr. R.S. Shinde
AGP for Respondent no.1 : Mr. S.K. Shirse
Advocate for Respondent no.2 : Mr. Bondar U.B.
Advocate for respondent nos.3 and 4 : Mr. M.S. Choudhary

.....

**CORAM : SMT. VIBHA KANKANWADI &
S. G. CHAPALGAONKAR, JJ.**

Dated : February 20, 2024

.....

JUDGMENT :- (Per S.G. Chapalgaonkar, J.)

1. Rule. Rule made returnable forthwith. Heard finally with consent of the parties at admission stage.

2. The petitioner approached this Court under Article 226 of the Constitution of India seeking issuance of writ of mandamus against respondent nos.2 to 4 to release her salary w.e.f. September, 2013 in accordance with Rules 7 of the Maharashtra Employees of Private School (C) of the (Conditions of service) Rules, 1981 (hereinafter called as MEPS Rules).

3. In nutshell, petitioner contends that she was selected and appointed as an Assistant Teacher w.e.f. 11.7.1993 at respondent no.4 school. However, respondent no.3 management had terminated her services w.e.f 15.6.1996. She assailed the termination order before the School Tribunal at Aurangabad in Appeal 205 of 1996. The Tribunal allowed the appeal vide judgment and order dated 7.3.2003 and set aside the termination order with further direction to reinstate her with effect from the date of termination with consequential benefits. The respondent nos.3 and 4 assailed Tribunal's order in Writ Petition no.4382 of 2003 before this Court. The said Writ Petition has been admitted, however, interim relief is refused. The order of rejection of interim relief was subjected to challenge by management in LPA no.35 of 2004 then, before Supreme Court of India in SLP No.19208 of 2004. However, the aforesaid proceeding resulted into dismissal.

4. Since Management failed to reinstate the petitioner, she filed Regular Darkhast No.232 of 2005 for execution of the order passed by the School Tribunal. Finally, in next round of litigation arising out of R.D., parties arrived at amicable settlement in LPA no.67 of 2007. The respondent nos.3 and 4 reinstated the petitioner w.e.f 16.10.2007 as per the order of the School Tribunal, however subject to outcome of final decision in writ petition no.4382 of 2003.

5. Perhaps, the dispute has been partially settled only to the extent of reinstatement of the petitioner pending the substantive writ petition.

6. Pursuant to settlement, although, Management issued an appointment order dated 16.10.2007 and she has been reinstated with respondent no. 3 school, she is placed in seniority list in terms of the aforesaid date of appointment. Hence, petitioner raised grievance regarding her seniority before the Education Officer. However, the same is not decided.

7. The petitioner contends that she was paid salary till September, 2013, however, abruptly, salary has been stopped for the reason that the petitioner has not filled in DCPS forms required for release of the salary through the 'Shalarth Pranali.' In this background, the present petition is filed with limited prayer that respondent nos.2 to 4 be directed to pay the salary w.e.f. 1.9.2013 in accordance with rule 7 of MEPS Rules, 1981 and continue to pay her regular salary.

8. Apparently petitioner is discharging her duties as an Assistant Teacher with respondent no.4 Dr. Zakir Husain Urdu Primary School run by respondent no.3-Society and she has been reinstated in the service in terms of the order passed by the School Tribunal and terms of settlement with the Management which are placed on record of LPA No.67 of 2007.

Clause No.(i) and (ii) states as under :-

(i). The appellants (Management) agree to reinstate the respondent no.1 w.e.f 16.10.2007 as per the order of the School Tribunal dated 7.3.2003 in Appeal No.205 of 1996 in Appellants school and said reinstatement will be subject to the final judgment or Writ Petition no.4382 of 2003 which is pending before Single Bench of this Hon'ble Court and without prejudice to contentions to be raised by all parties.

(ii). It is agreed between parties that this compromise is only in respect of reinstatement of respondent no.1 and remaining execution of judgment and order of School Tribunal will depend on the final judgment of writ petition No.4382 of 2003 by the Single Bench of this Hon'ble Court and shall not be executed till the said decision.”

9. Plain reading of the aforesaid clauses depict that substantive writ petition no.4382 of 2003 filed by the Management against the order of the School Tribunal is pending before this Court and settlement between the petitioner and Management is by way of ad-hoc arrangement in sequel to rejection of interim relief i.e. stay to the order of the Tribunal.

9. Pertinently, in view of the reinstatement of the petitioner, she was continuously paid salary without

interruption till the year 2013. However, due new system of payment of salaries, introduced by the Government, petitioner has been deprived of the salary. The reason that is given before us is that the petitioner has not signed or submitted the requisite form for entering her name in the DCPS scheme. According to the petitioner, since her date of appointment is prior to 2005, old pension scheme would be applicable in her case, whereas, submission of the DCPS form would amount to loosing of her right to receive the pension as per old scheme. It is apparent that vide Government Resolution dated 31.10.2005 every appointment made after 2005 is considered under DCPS scheme. The respondents are interpreting the date of appointment of the petitioner to be 16.10.2007 i.e. her re-instatement in service in pursuance of the terms of the compromise and they are insisting her to submit the DCPS account number so that her pay bills can be processed.

11. It is not in dispute that petitioner was appointed on 11th July, 1993 against the clear and vacant post. Her services were terminated by the Respondent-Management w.e.f 15.6.1996. Her termination is set aside by the Tribunal in appeal no.205 of 1996 vide judgment and order dated 7th March, 2003 and said decision is subject matter of writ petition no.4382 of 2003. Therefore, at this stage, it would be improper to delve into the issue as regards to the actual date of appointment of the petitioner. Only issue that arises for consideration is as regards to the payment of salary to the petitioner which has been held up since 2013. Only reason canvassed before us is that, the petitioner has not submitted

DCPS number. In this background, this court had called upon Education Officer to come with the solution of peculiar problem so that payment of salary can be ensured to the petitioner.

12. The Education Officer, Latur presented herself before this Court and placed before us the road map to resolve the issue and undertook to perform her part at the earliest. We have taken on record a copy of written instructions dated 9.2.2024 given by the Education Officer (Primary) Zilla Parishad, Latur to the learned Advocate Mr. Bondar. It is marked as “X” for identification. Mr. Chaudhary, learned advocate appearing for respondent nos.3 and 4, on instructions, accept that the requisite modalities would be complied by them so that the Education Officer would be in the position to process the salary bills of the petitioner. In view of the aforesaid submissions, we dispose off this writ petition with following directions. Hence, the following order.

ORDER

- i. The respondent nos.3 and 4 shall forward a complete “**Shalarth Proposal**” to the office of respondent no.2-Education Officer (Primary), Zilla Parishad, Latur for release of regular salary and dues payable to petitioner within a period of Two (2) weeks from the date of this order.
- ii. The Respondent No.2-Education Officer shall forward the complete proposal with her/his recommendation to the office of Deputy Director of Education, Latur Division, Latur for sanction.

- iii. After receipt of the approval to “**Shalarth Proposal**” of petitioner, respondent No. 2 shall forward it to the Superintendent (Primary), Salary Division and the office of Provident Fund, Latur by choosing the **Tab** as – “**DCPS – non applicable.**”
- iv. Thereafter, respondent nos.3 and 4 shall forward the proposal for release of difference of pay scale (including 7th pay commission) payable to the petitioner for the period of 2013 to 2023 and forward the same to the office of Deputy Director (Primary), Maharashtra State and shall make endeavor to get it released within a period of Six (6) months from the date of this order.
- v. The aforesaid exercise and final decision as regards to applicability of DCPS shall be subject to final outcome of Writ Petition no.4382 of 2003.
- vi. With the aforesaid directions, writ petition stands disposed off. No costs.

(S. G. CHAPALGAONKAR, J.) (SMT. VIBHA KANKANWADI, J.)

...

aaa/- (f)