



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
WRIT PETITION NO. 7947 OF 2021**

Quadri Sayyed Zaheeruddin s/o Gulamsaklain,
Age: 62 years, Occ: Nil,
R/o: Khwaja Nagar, Galli No. 15,
Osmanabad, District Osmanabad. ..Petitioner

Versus

1. The State of Maharashtra,
Through its Principal Secretary,
School Education and Sports Department,
Mantralaya, Mumbai 400032.
2. The Education Officer (Primary),
Zilla Parishad, Osmanabad,
District Osmanabad.
3. Sham's Education Society Osmanabad,
Through its Secretary, Khwaja Nagar,
Idgah Road, Osmanabad - 413 501.
4. Gulshan-A-Atfal Urdu Primary School,
Khwaja Nagar, Osmanabad,
District Osmanabad,
Through its Headmaster. ..Respondents

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Mr. S. S. Kazi, Advocate for the Petitioner.
Mr. S. K. Shirse, AGP for Respondent No.1.
Mr. P. P. More, Advocate for Respondent No.2.
Mr. V. D. Salunke, Advocate for Respondent Nos.3 and 4.

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

JUDGMENT RESERVED ON :- 08th MAY, 2024.

JUDGMENT PRONOUNCED ON :- 10th MAY, 2024.

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

1. Rule. Rule made returnable forthwith. With the consent of the parties, matter is taken up for final hearing at the stage of admission.

2. The petitioner has approached this Court under Article 226 of the Constitution of India with following prayers:

“B. By issuing writ of mandamus or any other appropriate writ or direction or order in like nature, the respondents be directed to pay suspension allowance for period from 26.08.2015 to 01.12.2015 and to pay regular salary from 01.12.2015 till the date of retirement on 31.05.2019 as Headmaster.

C. By issuing writ of mandamus or any other writ, order or direction in like nature, the Education Officer be directed to prepare the pension papers of the petitioner within time bound period and submit the same to the concerned authority.

D. By issuing writ of mandamus or any other writ, order or direction in like nature, the respondents be directed to give pensionary benefits to the petitioner including General Provident Fund (GPF), back-wages and all emoluments to which the petitioner is entitle.”

3. Mr. Kazi, learned Advocate appearing for the petitioner submits that the petitioner was appointed as an Assistant Teacher with respondent no.4-School in the year 1980, then he was promoted on the post of Headmaster in the year 1993. However, because of some conflicts with the Management, the petitioner was demoted in the rank from Headmaster to Assistant Teacher vide order dated 01.12.2015. The petitioner had assailed the said order before the School Tribunal in Appeal No.82/2015, The Tribunal allowed appeal and directed restoration of petitioner on post of Headmaster with consequential benefits. The Management challenged the order of the School Tribunal before this Court in Writ Petition No.7390/2018, which is pending adjudication. However, no interim orders are passed and order dated 31.03.2018 passed by the School Tribunal is intact and enforceable as on date. However, petitioner was not permitted to work as Headmaster by the Management. The petitioner made complaint to the Education Officer, so also filed Contempt Petition No.613/2018 against the

Management. However, interregnum the petitioner retired from service on attaining the age of superannuation on 31.05.2019. The respondent-Management deliberately failed to take necessary steps to release his salary dues, suspension allowance and terminal benefits. Even, the proposal for release of pension is not prepared. The petitioner is facing economic duress to maintain himself and his family. He would, therefore, urge to pass appropriate orders in exercise of Writ jurisdiction of this Court and grant reliefs as prayed for.

4. Mr. Salunke, learned Advocate appearing for respondent nos.3 and 4 submits that the petitioner failed to submit his service book, therefore, his pension proposal could not be prepared. He would further point out that the petitioner never attended the school during suspension period. He was removed from the post of Headmaster after holding due enquiry. The order of the School Tribunal is subject matter of pending Writ Petition No.7390/2018. The petitioner cannot claim reliefs as claimed in this petition. The petitioner is not entitled for the salary as claimed, since he was not on duty during during the period from 01.12.2015 to 31.05.2019.

5. Having considered submissions advanced on behalf of the learned Advocates appearing for the respective parties, it can be gathered that the petitioner was appointed as Headmaster in the year 1993 at respondent no.4-School. However, on 01.12.2015 the order of reduction in the rank was passed and the petitioner was brought down to the rank of Assistant Teacher from the post of Headmaster. The petitioner has successfully assailed action of the Management, before the School Tribunal. However, the decision of the Tribunal is subjected to challenge in Writ Petition No.7390/2018, which is pending for adjudication. It is not disputed

before us that no interim orders have been passed by this Court and the order of School Tribunal is operational. Interregnum, petitioner attained the age of superannuation on 31.05.2019. His pension papers could not be processed as Management disputes the availability of the original service book with them. However, the learned Advocate appearing for the petitioner has submitted before us that the petitioner's copy of service book is available and he is ready to furnish the same to the Management as well as Education Officer for preparing his pension papers.

6. The petitioner has made multiple prayers in the present Writ Petition. He claims the suspension allowance as well as regular salary w.e.f. 26.08.2015 till the date of his retirement. We find that there are many disputed questions of fact as regards to the entitlement of the petitioner to receive the salary and suspension allowance. Further, any such order in this regard would be dependent upon the orders to be passed in Writ Petition No.7390/2018, filed by the Management assailing order of School Tribunal. Therefore, we are not inclined to entertain those prayers at this stage. However, the petitioner would be at liberty to prosecute his remedy before the Education Officer or Competent authority subject to further orders or decision of this Court in pending Writ Petition No.7390/2018.

7. So far as petitioners prayer for release of terminal benefits, we find that only because of dispute between the petitioner and the respondent-Management, petitioner cannot be deprived of his rightful claims. The petitioner is alleging that his original service book is in the possession of the Management, whereas the respondent-Management is disputing the aforesaid fact. In this background, without going into controversy, we deem it

appropriate to direct Education Officer to exercise his powers in terms of Government Circular bearing No.1910/(349/10)/Primary Education-3 dated 09.08.2010, which deals with the situation emerging from the disputes between the Management and the Headmaster of the school. The Education Officer is empowered to deal with claims of retired Head master-employee and prepare pension proposal as well take necessary steps for release of admissible terminal benefits and process the same. The education officer can summon record pertaining to school employee from management. In case management fails to cooperate, he can compile such record and also rely copies of record in possession of concerned employee. Consequently, we proceed to pass following order:

ORDER

- a. Writ Petition is partly allowed.
- b. The respondent nos.3 and 4 are directed to provide service record of petitioner for verification of Education Officer-respondent no.2 for the purpose of preparing pension proposal and release of terminal benefits as admissible to petitioner within a period of four weeks from this order.
- c. The Education Officer-respondent no.2 shall take further steps and forward proposal to the Competent Authorities within a period of three months from date of this order
- d. In case of non-cooperation by respondent nos.3 and 4, Education Officer-respondent no.2 shall process the pension proposal and take steps for release of terminal dues admissible to petitioner on the basis of the documents supplied by petitioner (including copy of service book available with him) without insisting for originals.

e The petitioner's pension shall be provisionally fixed, as if he has been retired from the post of Headmaster subject to final decision that would be passed in Writ Petition No.7390/2018

f. The petitioner shall be at liberty to pursue his remedy in respect of the prayer Clause (B) regarding release of his salary dues and suspension allowance independently before the appropriate Authority/Forum.

g. Writ Petition is disposed of.

h. Rule is made absolute in above terms.

(S. G. CHAPALGAONKAR)
JUDGE

(SMT. VIBHA KANKANWADI)
JUDGE