IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.15046 OF 2023

Samprati Avachit Balsane,
age 62 years, Occ. Retired,
R/o Plot No.55, Samarth Nagar,
Sakri Road, Dhule, Tq. & Dist. Dhule Petitioner

VERSUS

1. The State Of Maharashtra
Through It's Secretary
Department of Education,
Mantralaya, Mumbai – 32.

2. The Director of Education,
Maharashtra State,
Central Building, Pune.

3. The Deputy Director of Education,
Nashik Division, Nashik.

4. The C.E.O. Officer,
Zilla Parishad, Dhule.
Tq. & Dist.Dhule.

5. The Education Officer (Secondary),
Zilla Parishad, Dhule,
Tq & Dist. Dhule.

6. The Nagaon Education Society,
Nagaon, Through its President,
Nagaon, Tq. & Dist. Dhule

7. The Principal,
Sau. S.D. Bhadane Secondary and
Higher Secondary School, Nimdale,
Tq. & Dist. Dhule.

8. The Superintendent,
Pay and PF Unit (Secondary)

Dhule. Respondents.

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Advocate for the Petitioner : Mr. A.D. Sonar
AGP for Respondents no.1 to 3 & 5 : Mr. P. S. Patil
R. Nos. 4 served.
Advocate for Respondents no.6 & 7 : Mr. D.S. Bagul

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

Reserved on : April 22, 2024

Pronounced on : May 08, 2024

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FINAL ORDER :- (Per S.G. Chapalgaonkar, J.)

1. The petitioner approached this Court under Article 226 of the Constitution of India, with following prayer :-

> "B. By issuing any appropriate writ, order or direction in the like nature, Respondent no.7 may kindly be directed to transfer the entire amount of Earned Leave and Difference of 7th pay commission which is already deposited by the Respondent no.8 to the Joint Bank account of Education Officer and the Respondent No.7 i.e. Headmaster as early as possible, within the period of 7 days from passing the order by this Hon'ble Court."

2. Mr. A.D. Sonar, learned advocate appearing for the petitioner submit that the petitioner served as Teacher with respondent nos.6 and 7 since 1.1.1991. Initially, he was appointed as an Assistant Teacher and retired on 31.12.2019 on attaining age of superannuation from the post of Head Master. The petitioner made request to respondent nos.6 and 7 to send the proposal for release of pensionary benefits, however, the respondents have deliberately delayed the

process. Finally, the petitioner started receiving pension since year 2022. However, benefit of Earned Leave and difference of 7^{th} pay Commission, deposited by respondent no.8 in the Joint bank account of the Education Officer and Head Master had been illegally withhold by respondent nos.6 and 7. Petitioner represented them orally as well as through written communications to forthwith release and transfer the amount to his personal account, however, they did not pay heed to such requests.

3. On 11.10.2023, the Superintendent of salary and Provident Fund Cell, Dhule directed respondent no.7 to release the benefit to the petitioner, but respondent no.7 failed to carry forward such directions. In this background, petitioner is constrained to approach this Court under Article 226 of the Constitution of India.

4. Mr. Bagul, learned advocate appearing for respondent nos.6 and 7 submit that, in fact, the petitioner was not entitled for the Earned Leave, however, with the help of Head Master of the School, he forwarded the proposal for release of such benefit. Therefore, respondent nos.6 and 7 did not transfer the amount. On our specific query, he submits that no departmental proceeding is pending against the petitioner nor respondent nos.6 and 7 made any attempt to repatriate the amount to the Government. He fairly concedes that the amount was lying in the joint account of the Education Officer and Head Master of S.D. Bhadane Madhyamik Vidyalaya.

5. Having considered the submissions advanced, it is apparent that, petitioner superannuated on 31.12.2019 from the pensionable establishment and entitled for the retiral benefits as per the rules and regulations.

6. Mr. Sonar, learned advocate appearing for the petitioner submits that all other Terminal benefits receivable to the petitioner are released to the petitioner except the amount of Earned Leave (EL). The documents submitted before us particularly bank account statement shows that the amount of Rs.9,69,267/- has been deposited in the account of school towards Earned Leave on 25.4.2023 to be released to the Petitioner.

7. Mr. Bagul, learned advocate appearing for respondent nos.6 and 7, during course of the hearing before us submitted a communication dated 20.4.2024, addressed to the petitioner stating that the aforesaid amount is transferred to his account. Apparently, respondent nos.6 and 7 have taken steps to release the amount of Earned Leave payable to petitioner only when this Court took cognizance of the present writ petition and, particularly, when this Court indicated stern action against the Management.

8. It is settled principal of law that the employee has a right to receive the retirement benefits without delay and it is the duty of the employer to take every possible step to ensure timely release of admissible benefits to retiring employee. In the present case, what we observe is that an amount of Rs.9,69,267/- was released from the Government and it was

laying in the joint account of the school from 25.4.2023. Apparently, no justifiable reason is given for withholding of the amount for the period of almost one year. The petitioner made several representations to the Head Master of the School for release of the amount of Earned Leave that has been received from the Government. None of the representation is responded by the Management. The petitioner made further representations to the Education Officer, Director of Education as well as Chief Executive Officer of Zilla Parishad, Dhule. The communication dated 11.10.2023 shows that directives were issued by the Superintendent of Pay Unit to respondent no.7. Unfortunately, such directives were also ignored. Although, Mr. Bagul, learned advocate appearing for the respondent nos.6 and 7 strenuously contend that the petitioner was not entitled to receive such amount; except said statement, no material is placed before us to support the contention. In fact, once the amount is received from the Government upholding entitlement of the petitioner, the Respondent-Management or Head Master has no right to withhold such amount for any reason. In fact, such an action on the part of the Management is as good as misappropriation of the amount. Therefore, we are of the firm view that illegal withholding of the pensionary benefit is not excusable and they are liable to pay the interest on delayed payment. We are of the opinion that present case is a clear example of inexcusable departmental delay. Hence, this is a fit case for awarding interest on delayed payment to the petitioner. We find that instead of directing the respondents to compute interest, lump-sum interest @ 9% p.a for the period from 25.4.2023 to 20.4.2024 needs to be awarded to the petitioner. Apart from that, some amount of costs is also admissible in favour of the petitioner. Resultantly, we proceed to pass the following order.

ORDER

i. Writ Petition is partly allowed.

ii. Respondent nos.6 and 7 are directed to deposit an amount of Rs.1,00,000/- (Rs. One Lakh) in the account of the petitioner within a period of two (2) weeks from the date of this Order and report the compliance to this Court within one week thereafter.

iii. In case of failure on the part of the respondent nos.6 and 7 to report the compliance, **issue bailable warrant against them, returnable on 12th June, 2024**.

iv. Writ Petition is accordingly disposed off in above terms.

(S. G. CHAPALGAONKAR) **(SMT. VIBHA KANKANWADI)**
JUDGE **JUDGE**

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