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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.13713 OF 2024

Shivaji Bhanudas Ghuge

...Petitioner

vs.

The State of Maharashtra

...Respondent

Adv Madhavi Ayyappan a/w Neha Lalgare i/b Talekar and Associates for the Petitioner.

Mr S B Kalel, AGP for the State.

Mr Kailas Salunke Dy. Secretary, Other Backward and Bahujan Welfare Department Mantralaya.

**CORAM : RAVINDRA V. GHUGE &
ASHWIN D. BHOBE, JJ.**

DATE : 12th NOVEMBER, 2024

P.C. :-

1. The prayer put forth by the Petitioner is with reference to the release of the unpaid salary, for the period 1st April, 2016 to 1st May 2019, when he was declared surplus. Considering the Government Resolution 17th October, 2016 and the order of this Court dated 1st April, 2019 in Writ Petition No. 6522 of 2017, he claims the unpaid amounts along with interest. The other prayers are pertaining to the impugned order dated 5th August, 2020 issued by

the headmaster and the impugned communication dated 10th May, 2021, issued by the Desk Officer to the Government of Maharashtra Social Justice and Special Assistance Department.

2. We have perused the view expressed by this Court vide the order dated 26th October, 2016 passed in Writ Petition No.9256 of 2016 and connected matters, wherein this Court recorded that the State Government has issued a notification dated 17th October, 2016 thereby taking a decision to continue to pay the salaries of surplus teachers until they are placed in a suitable position, meaning thereby that they are absorbed on permanent vacant posts. Considering this G. R., the petitions were disposed off.

3. The Petitioner before us had approached this Court in Writ Petition No.6522 of 2017. By oral judgment dated 1st April, 2019, this Court [Coram: B.R. Gavai (as His Lordship then was) and Dama Seshadri Naidu, JJ.] has concluded that the case of the present Petitioner would be considered for absorption as he is declared to be a surplus teacher and until such absorption, he is to be continuously paid salary by the concerned department. With this conclusion, prayer clause (b) was granted, which reads as under:

“B. By a writ of mandamus or any other appropriate writ or direction in the like nature, the respondent nos. 1 to 4 may please be directed to release the salary of the petitioner from April 2016 till today forthwith and further to continue to pay the salary of the petitioner till he is absorbed in any other school;”

4. Since this direction was not complied with, the Petitioner once again approach this Court by filing Contempt Petition No.136 of 2021. By order dated 23rd September, 2021, this Court recorded the disputed issue about the Petitioner being allegedly absent, as was stated in the letter of the Desk Officer dated 10th May 2021. The statement made by the Petitioner that he was absorbed in another school was also recorded and his period of surplusage was also noted as being 1st April, 2016 to 1st April, 2019.

5. Subsequently, when the Contempt Petition was heard by this Court on 22nd January, 2024, it was once again recorded that the petitioner was absorbed on 1st April, 2019. The contention of the Petitioner that he was entitled to the 7th Pay Commission pay-scale during the period of absorption, was also recorded. In paragraph No.5 of the order, this court noted that the dispute regarding whether, after the order passed by this Court on 1st April, 2019 and after the absorption of the Petitioner in a school in Aurangabad

District, he was absent and whether worked he was entitled to the unpaid salary of Rs.11,88,000/-?

6. This Court noted that it is not possible for the Court dealing with the Contempt Petition, to decide this disputed aspect. It was specifically recorded in paragraph No.6 of the order that the issue whether the Petitioner, after absorption, worked regularly or otherwise. Liberty was granted to the Petitioner to agitate in a substantive proceedings.

7. At this juncture, the learned AGP submits that he shall take appropriate instructions and make a statement at 2.30 p.m.

8. When this matter was called out at 4.30 p.m., the learned AGP for the Respondents submitted on the instructions from Mr. Kailas Salunke, Dy. Secretary, Other Backward and Bahun Welfare Department, Mantralaya that the amount will be paid to the Petitioner by 15th January 2025. This statement was strongly objected to by the learned Advocate for the Petitioner pointing out that the State Government cannot pretend that it does not have money and more so, when there are repeated orders of this Court

directing to pay money.

9. In view of the above, we are directing the Petitioner to ensure that the payment of the amount for the period of surplusage from 1st April, 2016 to 1st April, 2019 shall be paid to the Petitioner on or before 28th November 2024. Let the Authorities produce the demand draft to be handed over to the Petitioner on the said date in the Court.

10. List his Petition on **28th November 2024** for further orders.

(ASHWIN D. BHOBE, J.)

(RAVINDRA V. GHUGE, J.)