



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO.3028 OF 2020

Shri Bharat S/o Maroti Tonchar
Aged about 45 years,
Occ. Service, R/o Kalburga,
at Post Kanergaon (Naka),
Tq. & Dist. Hingoli

... Petitioner

-vs-

1. State of Maharashtra,
Department of Education,
Mantralaya, Mumbai,
Through its Secretary
2. Deputy Director of Education
Amravati Division, Amravati
3. Education Officer (Secondary)
Zilla Parishad, Tal. & Dist. Washim
4. Ahilyadevi Shikshan Prasarak Va
Bahuuddeshiya Mandal, Ukalipen,
Tq. & Dist. Washim, Through its President
5. The Headmaster,
Vidya Prabodhini Kanishtha Mahavidyalaya,
Ukalipen, Tq. And Dist. Washim

... Respondents

Ms Radhika Bajaj, Advocate for petitioner.
Ms Deepali Sapkal, Assistant Government Pleader for respondent Nos.1 to 3.
Shri Kalyan Chiwarkar, Advocate h/f Shri Anand Parchure, Advocate for respondent
Nos.4 and 5.

CORAM : NITIN W. SAMBRE AND ABHAY J. MANTRI, JJ.

DATE : January 11, 2024

Oral Judgment (Per : Nitin W. Sambre, J.)

1. Rule. By consent Rule is made returnable forthwith. Rule is heard finally with consent of the parties.

The petitioner came to be appointed as Assistant Teacher. His

services were approved for the subjects of History and Social Sciences vide order dated 29/08/2017. The approval order speaks of granting approval to the appointment of petitioner in the pay-scale of Rs.9300-34800 with Grade Pay of Rs.4600/- with effect from 15/12/2015.

2. It appears that respondent Nos.4 and 5 terminated the services of the petitioner vide order dated 21/01/2020 on the ground that the petitioner failed to acquire the requisite qualification i.e. Post Graduation degree in the subject of Social Science.

3. Against the termination order dated 21/01/2020 the appeal carried before the School Tribunal has suffered fate of dismissal and we are informed that the petitioner is before the learned Single Judge in writ petition questioning the issuance of order of termination.

4. In the aforesaid backdrop, Ms Radhika Bajaj, learned counsel for the petitioner would invite our attention to an admitted position that as per the approval order the appointment of the petitioner was approved from 15/12/2015 in the pay-scale of Rs.9300-34800 with Grade Pay of Rs.4600/- by the Deputy Director of Education. According to her even if the petitioner has alleged that he was in service of respondent Nos.4 and 5 since August 2003, without prejudice the claim is restricted to the extent of payment of salary for the aforesaid period that is from 15/12/2015 till 21/01/2020 that is till the date of his termination.

5. According to her, the respondent Nos.4 and 5 inspite of there being approval and the fact that the petitioner has discharged his duties as Assistant Teacher, the salary as per the pay-scale is not released or paid.

6. As against above, Shri Kalyan Chiwarkar, learned counsel for respondent Nos.4 and 5 would urge that the respondent-School was not admitted to the grant-in-aid, to be more specific to the post against which the petitioner was working, the grants were not admissible. According to him, even if the approval was granted to the appointment of the petitioner as reflected in the approval order dated 29/08/2017, the respondent Nos.4 and 5 are disputing that the petitioner has discharged his duties lawfully for the said period. He would urge that once the termination order is effected, the remedy including that of recovery of arrears/amounts of salary can be looked into in pending petition wherein the order of dismissal of the appeal of the petitioner against his termination dated 21/01/2020 is under consideration. Apart from above, his contentions are that the petitioner in any case cannot be held to be entitled for pay-scale of Rs.9300-34800 with Grade Pay of Rs.4600/- with effect from 15/12/2015 particularly when the respondent Nos.4 and 5 were not admitted to grant-in-aid.

7. Ms Deepali Sapkal, learned Assistant Government Pleader for respondent Nos.1 to 3 would urge that it is the duty of the Management to pay the salary to the candidates like the petitioner once an approval in favour of the qualified candidate like petitioner is granted. According to

her, pursuant to the order of this Court already calculations are placed on record and as such the claim of the petitioner to the extent of Rs.33,24,350/- is quite justified.

As such she would urge that the Court may pass appropriate orders.

8. As against above, the learned counsel for respondent Nos.4 and 5 would urge that the calculations are incorrect as the petitioner was terminated on 21/01/2020 and not on 21/01/2021 and as such he is not entitled for the salary from 21/01/2020 till 21/01/2021.

9. We have appreciated the aforesaid submissions. The admitted fact on record is about issuance of the approval order in favour of the petitioner pursuant to the proposal submitted by respondent Nos.4 and 5 for grant of approval to the appointment of the petitioner on the post of Assistant Teacher in the subject of History and Social Science with effect from 15/12/2015. As such, it has to be inferred that the petitioner was in employment of respondent Nos.4 and 5 with effect from 15/12/2015 till his date of termination i.e. 21/01/2020. The respondent Nos.4 and 5 are not disputing the said fact on record.

10. Once the services of the petitioner were approved in accordance with the provisions of the Maharashtra Employees of Private Schools (conditions of Service) Regulation Act, 1977 (for short, the Act of 1977) and the Rules of 1981 framed thereunder, the primary liability of payment of

salary and other benefits lies with the respondent-Management and it is for the respondent-Management to demonstrate that the petitioner is paid salary in accordance with law, if not so paid to demonstrate that he was not entitled for such salary.

11. True it is that the petitioner was served with termination order dated 21/01/2020 against which the petitioner's appeal is unsuccessful before the School Tribunal and the issue is now subjudiced before the learned Single Judge of this court in writ petition.

12. Approval to the service of the petitioner was granted by the Education Authority based on the proposal to that effect submitted by the respondent Nos.4 and 5 along with appointment order and its recommendation. However, once it is demonstrated based on the record that the services of the petitioner were approved vide order dated 29/08/2017 from 15/12/2015 by the respondent-Deputy Director of Education thereby stating that (a) services were approved with effect from 15/12/2015 and (b) the pay-scale for the services of the petitioner is approved in the pay-scale of Rs.9300-34800 with Grade Pay of Rs.4600/-. In this context it is respondent Nos.4 and 5 who was duty bound to pay the salary to the petitioner and if so paid, they have to demonstrate before this Court by producing on record acknowledgment of the same. It is borne out of the record and even respondent Nos.4 and 5 have failed to demonstrate that after grant of approval to the appointment of the petitioner, the petitioner has not been

paid the salary from the date of approval to his appointment that is 15/12/2015.

13. The fact about termination of services of the petitioner on 21/01/2020 is not in dispute. In such an eventuality, merely because the respondent-Management is not getting grant-in-aid that by itself would not entail it to shirk its responsibility of paying salary to the petitioner. The respondent-Management is rather duty bound in law particularly having regard to the conditions of service of an employee whose services are governed by the provisions of the Act of 1977 and Rules of 1981 framed thereunder to pay such salary to the petitioner as is prescribed therein. Apart from above, grant of permission to run and manage a secondary school itself incorporates a condition that the Management shall be conducting itself in accordance with law.

The provisions of the Act of 1977 apply to all private schools such as the respondent No.5-School run by the respondent No.4-Education Society as could be noticed from the provisions of Section of the said Act. The scheme of the said Statute itself implies that it is the primary responsibility of the Management to pay the salary to its teaching and non-teaching staff. As such, it is the obligation of the Management to pay regular salary to its employees like the petitioner as per the pay-scale admissible to them once their services are approved by the Education Authorities.

14. As observed hereinabove, the services of the petitioner were approved based on the proposal submitted by the respondent No.4-Society and the respondent No.5-School after following the due procedure and having noticed that the petitioner was possessing appropriate qualification.

15. In the aforesaid backdrop merely because the respondent No.4-Management is running respondent No.5-School which is not admitted to grant-in-aid by itself would not entitle it to claim before this Court that since they are not receiving grant-in-aid, they are not liable to pay the salary to the employee like teachers who have already discharged their duties.

16. In this backdrop, we deem it appropriate to allow the present petition thereby directing respondent Nos.4 and 5 to release the salary of the petitioner pursuant to the fact that approval to the appointment of the petitioner was granted from 15/12/2015 till the date of termination that is 21/01/2020.

17. The fact remains that the respondent No.4-Management has brought to our notice that the calculation made by the respondent Education Authority are up to 21/01/2021 and not upto 21/01/2020. As such, we deem it appropriate to direct respondent No.2-Deputy Director of Education to calculate the amount of salary entitled to the petitioner with effect from 15/12/2015 till 21/01/2020 as per pay-scale admissible to him. Such calculation be forwarded to respondent Nos.4 and 5 within a period of four

weeks from receipt of copy of this judgment. Once such calculations are received, respondent No.4-Management shall release the said amount within a period of two weeks thereafter in favour of the petitioner.

However, considering the fact that the petitioner's salary was due and payable since last more than eight years, we deem it appropriate to direct respondent Nos.4 and 5 to deposit an amount of Rs.5 lakhs in this Court in addition to the amount of Rs.2 lakhs which has already been deposited within a period of one week from today. The petitioner shall be entitled to withdraw the same. This amount which is directed to be deposited and withdrawn by the petitioner shall be adjusted against the final amount to be paid by the respondent No.4-Management which is directed to be determined by respondent No.2-Deputy Director of Education.

18. Rule is made absolute in aforesaid terms. The writ petition is disposed of with no order as to costs.

(Abhay J. Mantri, J.)

(Nitin W. Sambre, J.)