

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

**WRIT PETITION NO. 11997 OF 2023
WITH
INTERIM APPLICATION NO. 15713 OF 2023
IN
WRIT PETITION NO. 11997 OF 2023**

Deepak T. Kaul,
Age 61 years, Indian Inhabitant,
Occ: Expecting Service,
residing at Flat No. 703,
Kapur Tower -III,
Jesal Park, Bhayandar (East),
Thane 401 105

... Petitioner

Versus

- (1) Smt. Shashi Thakar,
(Acting Chairperson),
Sanjeewan Vidyalaya Trust,
Panchgani, District :Satara
 - (2) Smt.Shashi Thakar,
(The Secretary),
Sanjeewan Vidyalaya Trust,
Panchgani, District: Satara
 - (3) The Education Officer,
Zilla Parishad, Satara.
 - (4) The Presiding Officer,
School Tribunal, Kolhapur Region,
Kolhapur, Maharashtra.
 - (5) The Director of Education,
Maharashtra State, Pune -1.
 - (6) The State of Maharashtra,
(Through the Secretary, Department of
Education, Government of Maharashtra,
through the Government Pleader,
Appellate Side, High Court, Bombay.
- ... Respondents

Dr.G.R.Dwivedi with Ms.Khushi Mishra for the Petitioner/
Applicant.

Dr.Abhinav Chandrachud with Mr.Pranit Kulkarni i/b. Mr.Jayant
Gaekwad for Respondent Nos. 1 and 2.

Mr.S.P.Kamble, AGP for Respondent Nos. 3 to 6, State

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

DATE : 17th February, 2025

ORAL JUDGMENT (Per : Ravindra V. Ghuge, J.)

1. **Rule.** Rule made returnable forthwith and heard finally
with the consent of the parties.

2. The Petitioner has put forth prayer clauses (a) and (b),
as under :

“(a) That this Hon’ble Court be pleased to direct the Respondent Nos. 1 and 2 to pay the backwages/ arrears of the salary, gratuity and other benefits to the Applicant w.e.f. 01.05.2000 to 30.09.2021 as computed/calculated as sum of Rs. 3,42,61,388/- to the senior citizen Applicant and migrant from Srinagar, Kashmir.

(b) That this Hon’ble Court be pleased to allow 12% interest to this computed / calculated backwages/ arrears, gratuity and other benefits above to the senior citizen Applicant interest being calculated from 01.10.2021 to 31.12.2022”.

3. On 10th January, 2025, this Court (Coram: Bharati Dangre & Ashwin D. Bhohe, JJ.), in Interim Application No. 15713 of 2023, had passed the following order :

“1. In the wake of the order dated 5/12/2022 passed in Contempt Petition filed by the petitioner, alleging disobedience of the judgment dated 9/1/2020 in Writ Petition No.2398/2007, when the respondent nos.1 and 2 were directed to pass appropriate orders in terms of Section 5(2) of the The Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977, the disobedience was alleged and in the Contempt Petition, the Court recorded thus :-

“Admittedly, in so far as reinstatement of the Petitioner is concerned, it would be out of question since the petitioner has now passed his retirement age and can no longer be employed/reinstated and is deemed to be retired.”

In so far as initiation of contempt proceedings against respondent nos.1 and 2 are concerned, from the evaluation of the material placed on record by respondent nos.1 and 2, it is seen that there is no willful disobedience whatsoever of the judgment dated 9.1.2020 passed by this Court as alleged by the petitioner. The said respondents have also tendered their unconditional apology in their affidavit-in-reply to this Court. In the order dated 27/09/2022 this Court has also heard the said respondents, considered their affidavit in reply and dispensed with theailable warrant issued

against them and have also exempted and dispensed with the presence of respondent no.1.”

4. Considering the controversy before us, we are not required to advert to the entire history of litigation involving the present Petitioner and the employer/ Management. Suffice it to say that the Petitioner was before the School Tribunal, Kolhapur for challenging his termination notice, dated 1st March, 2000. After considering the entire case, the learned Judge of the Tribunal delivered a judgment on 31st July, 2006 concluding that the termination of the Petitioner was legal and valid. The Petitioner approached the learned Single Judge of this Court in Writ Petition No. 2398 of 2007. By a judgment dated 9th January, 2020, the learned Single Judge allowed the Writ Petition by quashing the judgment and order dated 31st July, 2006 delivered by the Tribunal and further held that since the Petitioner had completed his probation period, the Management should pass an appropriate order in terms of Section 5 (2) of the Maharashtra Employees of Private Schools (Conditions of Services) Regulation Act, 1977 (the MEPS Act), within a period of 30 days.

5. We find from the judgment of the learned Single Judge that the conclusion of the Tribunal of dismissing the Appeal, was set aside. A specific direction for reinstatement with continuity and back wages has not been set out, though the learned Single Judge has observed in paragraph No. 22.3 that, because the Petitioner had completed his probation period of two years, on 30th April, 2000, after his termination on 1st March, 2000, it was held that he has successfully completed the probation period and his case would be covered by Section 5 (2) of the MEPS Act.

6. Section 5 (2) of the MEPS Act reads as under :

“5. Certain obligations of Management of private schools

(1).....

(2) Every person appointed to fill a permanent vacancy [except [Assistant Teacher (Probationary)] shall be on probation for a period of two years. Subject to the provisions of sub-sections (3) and (4), he shall, on completion of this probation period of two years, be deemed to have been confirmed :

[Provided that, every person appointed as [Assistant Teacher(Probationary)] shall be on probation for a period of three years.]

***.....
.....”***

7. Having considered the strenuous submissions of Dr.Dwivedi, the learned Advocate for the Petitioner, and Dr.Chandrachud, the learned Advocate for the Management, we find that the Management has also accepted the judgment of the learned Single Judge as regards the direction for reinstatement with continuity.

8. The Petitioner has not moved any review seeking a direction for back wages since it is settled law that back wages cannot be granted mechanically and without assigning reasons.

9. Recently, on 14th February, 2025, the Hon'ble Supreme Court has delivered a judgment in ***Maharashtra State Road Transport Corporation Versus Mahadeo Krishna Naik***¹ wherein it is recorded that back wages can be granted with specific reasons. However, this is no longer a matter of adjudication before us, in view of the circumstances adverted to in the paragraphs to follow.

10. The Petitioner approached this Court by preferring Contempt Petition No. 42 of 2021. The plea before the Court dealing with the contempt proceeding was that the order of the

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learned Single Judge of granting reinstatement to the Petitioner, was not obeyed and the non-implementation amounted to willful disobedience of the direction of this Court.

11. While dealing with the contempt proceeding, the learned Single Judge of this Court concluded in paragraph No. 3 of its order dated 27th September, 2022, as under :

“3. It is evident from the affidavit that, after the order dated 9th January, 2020 passed in Writ Petition No.2398/2007, appropriate order was passed in terms of Section 5(2) of the MEPS Act and posted it on 4th February, 2022 to the Petitioner by Registered Post A.D. on the address disclosed in the cause title of the Writ Petition. The postal envelop was returned on 10th April, 2022 with remark " कोई जानकारी नहीं "; may be for the reason that the addressee was not found at the given address. Thereafter, Petitioner issued a notice to the Respondent Nos. 1 and 2 on 14th June, 2022 alleging non-compliance of order in Writ Petition and threatened of proceedings under the Contempt of Courts Act. The said notice was replied by the manager of the Sanjeevani Vidhyalaya Trust on 13th July, 2022, whereby, Petitioner was informed, about implementation of order. Besides, compliance of the order was also intimated to Advocate representing the Petitioner, on his Whatsapp. Thus, the primary evaluation, the material placed with the affidavit shows the directions issued by this Court in Writ Petition No.2398/2007 vide dated 9th January, 2022 have been duly complied with. Thus, it is to be stated there is no willful disobedience of order of this

Court. Even otherwise, Smt. Shashi Thakkar has tendered unconditional apology to this Court. It is accepted. In consideration of above facts, the order dated 9th September, 2022 directing non-bailable warrant against Respondent Nos. 1 and 2 is hereby recalled and cancelled. In consideration of age of Smt. Shashi Thakkar and facts stated above, her presence in Contempt Petition is dispensed with”.

12. In the above backdrop, though the Contempt Petition has been dismissed by recording that the Management has not disobeyed the order of the learned Single Judge, the Petitioner has put forth prayer clauses (a) and (b) reproduced above. He now claims back wages and arrears of salary, gratuity and other benefits from 1st May, 2000 until 30th September, 2021 which is the date of his superannuation. The amount quantified towards back wages, arrears of salary, gratuity and other service benefits is Rs. 3,42,61,388/-. In prayer clause (b), Rs. 12% interest on the entire amount is sought for the period from 1st October, 2021 to 31st December, 2022.

13. The learned Advocate for the Petitioner has strenuously canvassed that he did not receive a communication from the employer directing him to join duties. Per contra, the learned Single

Judge dealing with the contempt proceeding has dealt with this issue by arriving at a finding on fact that the Management had issued a communication to the Petitioner on 4th February, 2020 (wrongly typed as 4th February, 2022) calling upon him for joining duties. The envelope has returned on 10th April, 2020 to the Management with the postal remark "कोई जानकारी नहीं". The Petitioner then issued a legal notice to the Management on 14th June, 2020 alleging non-compliance of the direction of the learned Single Judge. The notice was replied to by the Management with the communication dated 13th July, 2020 setting forth its stand that the order has been implemented and the Petitioner did not report for duties.

14. We called upon for the Petitioner to state as to whether he had tendered a joining report to the Management after the learned Single Judge delivered the judgment on 9th January, 2020 in his Writ Petition No. 2398 of 2007. The answer was in the negative with a clear admission that no such joining report was tendered by the Petitioner employee to the Management requesting to allow him to join duty.

15. Considering the insistence of the learned Advocate for

the Petitioner to revisit the record before us, for the purpose of verifying as to whether the Management had called upon the Petitioner to report for duties, we have adverted to his submissions for his satisfaction.

16. We find that when the Petitioner had approached this Court for challenging the dismissal of his Appeal by the Tribunal, his prayers for reinstatement in service and those set out in his Appeal were subjected to an adjudication. So also, his entire submissions were once again considered by the learned Single Judge in his Contempt Petition. Having concluded that there was no disobedience of the order of the learned Single Judge, we are not required to once again deal with his submissions on disobedience of the order.

17. Be that as it may, we find that the Petitioner had changed his permanent address and had started residing on a different address which is set out in this Petition for the first time. This address is, Flat No. 703, Kapur Tower -III, Jesal Park, Bhayandar (East), Thane 401 105. All along, his permanent address was J-87, AWHO Colony, Sector -29, Faridabad -121 008.

18. It is settled law that if an employee changes his permanent address, which is a part of the employer's record when he was in service, it is the duty of such employee to give a written intimation to the Management in order to enable the Management to record the new address in the service book or the service records, as the case may be.

19. Keeping this in mind, the learned Single Judge dealing with the Contempt Petition concluded that the Petitioner has failed to join duties, despite the Management having passed the order of his reinstatement. Moreover, the Petitioner has not even attempted to report for duties by tendering a joining report. Insofar as the national lock down and the restrictions imposed with effect from 24th March, 2020 due to the pandemic, the benefit could be extended to the Petitioner that he could not report for duties. However, it also cannot be ignored that after the judgment was delivered by the learned Single Judge on 9th January, 2020, the Petitioner could have reported for duties by immediately forwarding a joining report and by mentioning his new address.

20. The learned Single Judge had recorded in his judgment dated 09th January, 2020, that the Management should issue an appropriate order under Section 5 (2) of the MEPS Act, 1977 after receipt of an authenticated copy of the order. Accordingly, the notice to join duties was sent on the permanent address of the Petitioner recorded with the Management, on 4th February, 2020. The said envelop was returned to the sender since the Petitioner had changed his address without intimating the Management.

21. The Petitioner issued a contempt notice through the Advocate on 14th June, 2020, but did not tender a joining report. Having received the reply from the Management, dated 13th July, 2020, wherein the Management informed the learned Advocate for the Petitioner that the Petitioner has been reinstated in service, yet, the Petitioner apparently has neither reported for duties, nor tendered a joining report. It has merely entered into correspondence with the Management through his Advocate, not even addressing the Management personally, much less, reporting for duties.

22. Taking into account the peculiar facts and circumstances of this case and by adverting to the judgment delivered by the learned Single Judge, dated 9th January, 2020 (vide which the impugned judgment of the Tribunal, dated 31st July, 2006 was quashed and set aside) and the judgment delivered by the learned Single Judge in Contempt Petition No. 42 of 2021, dated 27th September, 2022, in the backdrop of the order passed by the Management dated 4th February, 2020 informing the Petitioner that he is deemed to be reinstated in service, we conclude that, as the Petitioner did not report for duties even for a single day, he naturally has been deprived of salary from the date of his reinstatement.

23. The Petitioner's last drawn net salary, after statutory deductions, would be Rs.10,619/-, which was his salary as on the date of his termination. He had worked for 2 years on probation and is out of employment for 21 years.

24. The Petitioner prays for Gratuity. Section 4 of the Payment of Gratuity Act, 1972 (the Act of 1972) will have to be applied and accordingly, the net salary inclusive of the allowances

would be divided by 26 and would be multiplied by 15 per year of service, for the purpose of calculating the gratuity amount in view of the explanation below Sub Section 2 of Section 4 of the Act of 1972.

25. In view of the above, having come to a conclusion that the Petitioner is deemed to be reinstated in service and is entitled for continuity from 1st May, 1998 until his superannuation on 30th September, 2021, his gratuity be calculated by the Management and the said amount be paid to the Petitioner, within a period of 45 days, on the address mentioned in the cause title of the present Petition, as per the statement of the learned Advocate for the Petitioner.

26. Insofar as pension is concerned, the learned Advocate for the Management submits that the Institution does not receive any salary grants from the State Government as it is self funded. Moreover, since the Petitioner did not report for duties even for a single day, there was no contribution of the employee's share as well the employer's share to the provident fund account.

27. In these circumstances, we leave this issue open for the Petitioner to deal with and in the event, he desires to raise a

grievance with regard to this aspect or with regard to the gratuity amount, all contentions of the litigating parties are kept open.

28. **This Writ Petition is partly allowed only to the extent of granting Gratuity.**

29. Rule is made partly absolute in the above terms.

30. Pending **Interim Application** stands disposed off.

(ASHWIN D. BHOBE, J.)

(RAVINDRA V. GHUGE, J.)