



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 8966 OF 2022
WITH
CIVIL APPLICATION NO. 3292 OF 2024

1. Shishuvihar Shaishanik Sanstha
Chalisingaon, Taluka Chalisingaon,
District Jalgaon,
Through its President/Secretary
Dr. Satyajit Subhash Purnapatre
Age. 47 years.
2. Headmaster, Dr. Kakasaheb Purnapatre
Madhyamik Vidyalay, Chalisingaon,
Tq. Chalisingaon, Dist. Jalgaon.
Avinash S/o. Gangadharrao Wable,
Age. 54 years.

....Petitioners

Versus

1. The State of Maharashtra
Through its Secretary,
School and Education Department,
Mantralaya, Mumbai – 32.
2. The Deputy Director of Education,
Nashik Division Nashik,
District Nashik.
3. The Education Officer (Secondary)
Zilla Parishad, Jalgaon.
4. Avinash S/o. Tulshiram Pawar,
Age. 30 years, Occu. Service,
R/o. Chalisingaon, Taluka Chalisingaon,
District Jalgaon.

....Respondents

Advocate for Petitioners : Mr. S.R. Barlinge
AGP for Respondent Nos. 1 to 3 : Mr. S.R. Yadav-Lonikar
Advocate for Respondent No. 4 : Mr. V.S. Panpatte

**CORAM : MANGESH S. PATIL &
SHAILESH P. BRAHME, JJ.**

**RESERVED ON : 11 OCTOBER 2024
PRONOUNCED ON : 21 OCTOBER 2024**

JUDGMENT [*Shailesh P. Brahme, J.*]:

1. Rule. Rule is made returnable forthwith. Heard finally with the consent of both sides.

2. The petitioner is challenging letter / order dated 04.08.2022 passed by respondent no. 3 – Education Officer, holding the respondent no. 4 entitled to receive salary from the date of appointment on unaided post and the direction issued to disburse the salary to him by adjusting the amount already paid.

3. The respondent no. 4 was appointed as ‘Assistant Teacher’ on unaided post by the petitioners on 21.06.2013. His services were approved by the respondent no. 3 – Education Officer, vide order dated 31.12.2013. As the Management failed to pay salary, the respondent no. 4 approached this Court in Writ Petition No. 1398/2021. It was disposed of by order dated 01.04.2022 by directing the Education Officer to consider the grievance of the petitioner. The respondent no. 4 approached the Education Officer with a claim of unpaid salary and the hearing was conducted in that regard. By impugned communication, the claim of respondent no. 4 was allowed which is a cause for the petitioners to file this petition.

4. Learned counsel Mr. S.R. Barlinge for the petitioners submits that the respondent no. 4 was not entitled to salary as his

appointment was on fixed pay. It is further submitted that the claim was barred by time and for that purpose reliance is placed on judgment of Supreme Court in the matter of *Union of India and Others Versus Tarsem Singh*, (2008) 8 SCC 648. It is contended that he was not qualified and entitled to be continued.

5. The submissions of the petitioners are contested by the respondent no. 4. He has filed Affidavit-in-reply. It is contended that respondent no. 4 was entitled to receive amount of Rs. 29,71,391/- and he was only paid Rs. 1,29,800/-. It is submitted that after extending opportunity of hearing, Education Officer passed the impugned order. It is submitted that the cause of action is recurring and the claim is not time barred.

6. It is contended by the respondent no. 4 that he was terminated from the services on 13.12.2022. He preferred Appeal No. 1 of 2023 challenging the termination and thus he is entitled to receive the arrears for the work rendered upto 13.12.2022.

7. The respondent no. 4 was terminated on 13.12.2022. Against termination, he has preferred appeal which is pending before School Tribunal, Nasik. Though there was interim order passed by the Tribunal, subsequently it was vacated by the High Court. His appeal is pending and he is out of service presently. While granting interim stay, the petitioners were directed to deposit amount of Rs. 10 Lakhs in this Court. Interim stay to the impugned order is operating and the petitioners have deposited the amount in this Court as per the direction.

8. The respondent no. 4 was appointed on 21.06.2013. His services were approved on unaided post by the Education

Officer vide order dated 31.12.2013. From 21.06.2013 till 13.12.2022, he worked with the petitioners. He was paid an amount of Rs. 1,29,800/- so far. There is nothing on the record to show that respondent no. 4 was being paid in accordance with law.

9. By the direction of High Court passed in Writ Petition No. 1398 of 2021 enquiry was conducted by the respondent no. 3 / Education Officer, for deciding claim of respondent no. 4 of unpaid salary. Petitioner no. 1 / Management was given opportunity of hearing and thereafter, impugned order was passed. There is no serious dispute about the fact that only an amount of Rs. 1,29,800/- was paid to respondent no. 4. Respondent no. 4 was held to be entitled to Rs. 27,61,553/- from June 2013 to 31.05.2020.

10. Respondent no. 4 submitted the breakup of his claim of arrears till his termination. The total claim is to the tune of Rs. 39,71,391/-. The issue which calls for our adjudication is as to whether respondent no. 4 is entitled to claim arrears from June 2013.

11. The arrears of salary is a monetary claim. Respondent no. 4 was not being paid in accordance with law. There is no reason forthcoming as to why he waited till 2021 for claiming the arrears. He should have promptly approached the court of law when he was denied regular scale. In this regard, we are guided by law laid down in the matter of *Tarsem Singh* (supra). We reiterate the relevant paragraph no. 7 as follows :

“7. To summarise, normally, a belated service related claim will be rejected on the ground of delay and laches (where remedy is sought by filing a writ petition) or limitation (where remedy is sought by an application to the Administrative Tribunal). One of the exceptions to the said rule is cases relating to a continuing wrong. Where

a service related claim is based on a continuing wrong, relief can be granted even if there is a long delay in seeking remedy, with reference to the date on which the continuing wrong commenced, if such continuing wrong creates a continuing source of injury. But there is an exception to the exception. If the grievance is in respect of any order or administrative decision which related to or affected several others also, and if the re-opening of the issue would affect the settled rights of third parties, then the claim will not be entertained. For example, if the issue relates to payment or re-fixation of pay or pension, relief may be granted in spite of delay as it does not affect the rights of third parties. But if the claim involved issues relating to seniority or promotion etc., affecting others, delay would render the claim stale and doctrine of laches/limitation will be applied. In so far as the consequential relief of recovery of arrears for a past period is concerned, the principles relating to recurring/successive wrongs will apply. As a consequence, High Courts will restrict the consequential relief relating to arrears normally to a period of three years prior to the date of filing of the writ petition.”

12. Respondent no. 4 claimed the salary by filing Writ Petition No. 1398/2021 on 07.12.2020. The matter was relegated to Education Officer for conducting on inquiry. He is entitled to receive arrears of salary preceding three years of 07.12.2020. This is in accordance with law laid down by Supreme Court in the matter of *Tarsem Singh* (supra).

13. Learned counsel for the respondent relies on the judgment of *Keraleeya Samajam and Another Versus Pratibha Dattatray Kulkarni (Dead) Through Lrs and Others*, 2021 SCC OnLine SC 853. In that matter, the Management’s contention to restrict the arrears of salary to three years preceding the filing of the writ petition was not accepted by the High Court. Being aggrieved, Management had approached Supreme Court. Following is the relevant paragraph :

“5. Having heard Shri Shekhar Naphade, learned Senior Advocate appearing on behalf of the petitioners and learned counsel appearing on behalf of the respondents and considering orders passed in earlier round of litigations which ended up to this court the liability of the management to pay the salaries to the teaching and nonteaching staff as per the 4th Pay Commission and 5th Pay Commission ended in favour of the teaching and nonteaching staff working with the petitioners. Therefore as and when the 6 th Pay Commission recommendations was made applicable as such it was the duty cast upon the petitioners’ institution to pay the salary/wages to the teaching and nonteaching staff as per the applicable pay scale as per the 6 th Pay Commission recommendation and for which the staff

was not required to move before the Deputy Director (Education) again and again. Therefore, the submissions on behalf of the petitioners that as the respondents approached the Deputy Director (Education) subsequently and therefore the question with respect to the limitation will come into play and therefore the respondents shall be entitled to the arrears of last three years preceding the filing of the writ petitions cannot be accepted.”

14. In the above matter, earlier judgment of Supreme Court in the matter of *Tarsem Singh* (supra) was not cited. The entitlement of employee to receive scale as per the prevailing recommendations of pay commission was not debated. In the present case also, even the petitioner / Management is not disputing the entitlement of respondent no. 1. But when it comes to disbursement of arrears which is a monetary claim, the impediment of law of limitation cannot be overlooked. For the relief of entitlement, it can be said that cause of action is recurring. But that is not a case for monetary claim.

15. The respondent further relied on the judgment of *Sandeep Babasaheb Chate and Others Versus Shri Vardhaman Sthanakwasi Jain Shrawak Sangh and Others*, in Writ Petition 1451/2017 and group. In that case, a coordinate bench decided four issues stated in paragraph no. 17 of the judgment. One of them was pertaining to entitlement of teachers working on unaided post to receive salary at par with teachers working on aided post. The point of law which is posed in the present case has not been dealt with by the co-ordinate bench. Judgment of the Supreme Court in *Tarsem Singh* (supra) was also not considered. Therefore, the said judgment is not applicable to the present case.

16. For the reasons stated above, petition deserves to be allowed partly by restricting the claim to the extent of preceding

three years prior to the date of the petition. After calculating the arrears, the amount can be disbursed to respondent no. 4. The respondent no. 4 is entitled to receive the arrears from the amount deposited by petitioners in the High Court and the balance amount, if any, can be refunded to them. In case, some more amount is found to be due then the petitioners need to be ordered to pay it to the respondent no. 4. We, therefore, pass following order:

ORDER

- i. The impugned order is confirmed with following modifications :
 - (a) Respondent no. 4 shall receive arrears of salary from 07.12.2017 to 07.12.2020, which shall be disbursed to him from the amount already deposited by the petitioners in the High Court.
 - (b) Respondent no. 3 – Education Officer, shall calculate the above arrears within three weeks and submit the report to the office of this Court and thereafter, further payment shall be made.
 - (c) After disbursing the amount to respondent no. 4, the balance amount, if any, shall be refunded to the petitioners.
 - (d) In case, some more amount than Rs. 10 Lakhs is found to be payable to respondent no. 4, then the amount deposited in the High Court with accrued interest shall be disbursed to the respondent no. 4 and balance amount shall be paid by the petitioners to the

respondent no.4 within a period of four weeks from the receipt of the report of the Education Officer else it shall carry simple interest @ 6% per annum till realization.

ii. The Writ Petition is disposed of in above terms.

[SHAILESH P. BRAHME, J.]

[MANGESH S. PATIL, J.]

Thakur-Chauhan/-