

(2015) 04 BOM CK 0110
In the Bombay High Court
Case No : Writ Petition No. 3785 of 2009

Padma Manwani

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 16-04-2015

Acts Referred:

Citation : (2015) 5 ALLMR 579 : (2015) 4 MhLj 175

Hon'ble Judges : Anoop V. Mohta, J;K.R. Shriram, J

Bench : Division Bench

Advocate : S.S. Bhende, AGP, Advocates for the Respondent

Final Decision : Disposed off

Judgement

Anoop V. Mohta, J.

1. Heard finally by consent of parties. Heard petitioner appearing in person.
2. This court on various occasions has passed orders and ultimately the respondents have filed reply and lastly on 4.4.2014 and 28.4.2014. We have to consider, in the background of the averments made in the petition and the prayers so raised, basically with regard to the salary and the interest on the salary of the period 1986-87 to 1989-90 as the petitioner admittedly worked as Assistant Head Mistress. No salary was paid as the respondent-concerned department refused to grant any approval at the relevant time stating that the post was reserved and therefore, the petitioner being open candidate ought not to have been appointed to the post of Assistant Head Mistress (single post). There is no denial on the part of her working as Assistant Head Mistress.
3. The petitioner made various representations from time to time to consider her request and prayed for the requisite salary and all pensionary benefits including interest on the due salary.
4. The respondent-management though served but never appeared. So far as the other respondents are concerned, initially though opposed the prayers even

with regard to the remaining salary and the interest thereon, ultimately, they have conceded to the position in following words. Paragraph nos.7, 8 and 9 of the additional affidavit in reply read as under :-

7. I say that the petitioner thereafter filed a Writ Petition being No. 3785 of 2009 in the Hon'ble High Court. Pursuant to the order dated 04/05/2012 passed by the Division Bench of this Hon'ble Court in the above Writ Petition, the Deputy Director of Education, Mumbai Region, Mumbai decided the representation of the Petitioner on 13/07/2012 by hearing the Petitioner and the School Authorities. While deciding the said representation, the Deputy Director of Education, Mumbai Region, Mumbai noticed that during the period from 1986-87 to 1989-90 the management appointed the petitioner as Assistant headmistress and that she worked as Assistant headmistress during the said period. Hence, the Education Inspector, West Zone was directed to pay to the petitioner all the benefits as payable to the post of Assistant Headmistress during the period from 1986-87 to 1989-90. The said directions were issued by taking a sympathetic view and inspite of the letter dated 09/08/2002 issued by the Respondent No. 3.

8. I say that pursuant to the said order dated 13/07/2012 passed by the Deputy Director of Education, Mumbai Region, Mumbai, the petitioner was paid all the pensionary benefits during the period she worked as Assistant Headmistress from 1986-87 to 1989-90.

9. Accordingly, the Education Inspector vide a letter dated 09/08/2012 informed the School Authorities that approval had been given to the appointment of the Petitioner as Assistant headmistress during the period from 13/06/1986 to 31/12/1990 and that she would be paid all benefits during the said period.

5. In view of the above admitted position and for the fact that department has already approved the appointment of the petitioner as Assistant Head Mistress even for the period from 13.6.1986 to 31.12.1990, her entitlement of all the benefits apart from salary needs to be granted in accordance with law. The statement is made that the petitioner has received the part salary in installments, without any interest. The petitioner has placed on record a chart showing the interest which she is entitled for such delayed payment. The prayer was of 12% interest. However, we are inclined to restrict it to 9%. The signed chart for balance amount with interest for the calculation purpose is placed on record marked "X". This will be however, subject to further calculation of department, if any. We are inclined to accept the petitioner's submission of entitlement of interest though no provision is pointed out with regard to the grant of interest on such delayed payment. The learned AGP has also contended that there is no such provision to grant such interest specifically when there is no default or negligence on their part for making such delayed payment.

6. We are not inclined to accept this submission of the respondents so far as non payment of interest on delayed payment of salary. Once no case is made out for non grant of approval at the relevant time and ultimately Government has

granted the approval even for the period so referred above, in our view, this clinches the issue so far as entitlement of the interest on due salary/amount as there was delayed payment as per the chart so placed. Where case is made out of delayed payment of salary and/or even of retirement benefits, we have already directed the State Government and/or concerned authorities to grant and/or pay interest on the delayed payment. Strikingly, in spite of repeated orders passed by this court referring to the reasons for delayed payment and the reason for not passing the order earlier and not making the payment in time, no specific averment and reason is placed on record. The affidavit shows that the defence with regard to the stated delay was to the extent "neither intentional nor deliberate or negligent". Once the petitioner has made out a case and as the respondent has granted the approval and a case is made out for the grant of interest not only because of making part payment from time to time but also for not considering the case at the appropriate time by the respondent firstly, so far as delayed approval is concerned and lastly making such delayed payment in part.

7. No intention and/or no deliberate or willful action loses its importance once the case is made out. The petitioner therefore, in the facts and circumstances of the case, is entitled for the interest on the delayed salary from the respective date @ 9% until payment as per the chart. The respondent is directed, in view of the age of the petitioner and as she is also unwell, to make the payment as early as possible preferably within two months.

8. Considering the background and as the petitioner has suffered and ultimately had to initiate the court proceedings, we are inclined to observe that the case is made out to impose cost also.

Writ petition is accordingly disposed of with cost of Rs.5000/-.