

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

Writ Petition No. 1634 of 2022

Ashok Laxman Moily & others ... Petitioners.
V/s.

The Chairman,
K.M.E.S. English Medium High
School ... Respondents.

Mrs. Veena Thadani a/w. Ms. Bharti Nyaynirgune and Ms. Rutuja
Gaikwad for the Petitioners.

Mr. Arvind G. Kothari for Respondent Nos.1 to 4.
Ms. Ashwini A. Purav, AGP for Respondent Nos.5 and 6 – State.

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**CORAM : NITIN JAMDAR, AND
M.M. SATHAYE, JJ.**

DATE : 26 July 2024.

P.C. :

Heard learned counsel for the parties.

2. The Petitioners have sought the following reliefs:

(b) For a Writ of Mandamus, or a Writ in the nature of Mandamus, directing the Management I.e. Respondent Nos. 1 to 4 to pay the Petitioners the difference in salary and emoluments actually paid and the salaries and dues in accordance with the scales prescribed by the 5th 6th and 7th Pay Commission Scales, from the respective dates when each of them came into effect;

(c) Writ of Mandamus or a Writ in the nature of Mandamus, directing the Respondent No.1 to :

(i) implement Government scales and pay the Petitioners salaries and other emoluments, including dearness allowance and other allowances, in accordance with the 7th Commission Scales with effect from 2016, when it came into effect;

(ii) pay the arrears i.e. of the difference between salaries and other emoluments, including dearness allowance and other allowances, payable to the Petitioners in accordance with the 5th, 6th, and 7th Pay Commission Scales of Salary from the respective dates when each of them came into effect and the salaries and other emoluments, including dearness allowance and other allowances, actually paid to the Petitioners till date;

(iii) provide the Petitioners with all other benefits relating to leave, post retirement benefits, senior scales etc. forthwith;

3. The Petition had remained pending since the year 2022. On 18 February 2022 following order came to be passed:

“ Heard learned Counsel for the parties.

According to the Petitioners, they are entitled to receive pay and other allowances in accordance with the Fifth, Sixth and Seventh Pay Commission Scales of salary from the respective dates but, same have been denied to the Petitioners.

Issue notice for final disposal at admission stage to the Respondents returnable on 21 March 2022. Learned AGP waives service for Respondent No.7.”

4. Thereafter, on 17 November 2022 while disposing of the Interim Application No.9935/2022 further order came to be passed:

“ It is not disputed by the Respondents that 50% salary of the Petitioner is not paid from December 2020 till 21.10.2021. The Respondents shall pay the amount as admissible for the period December, 2020 till the end of October, 2021 within a period of four months from today.

Interim Application is disposed of.”

5. Then on 7 February 2024 the contention of the Petitioner that issue raised in the petition stands answered by the decision of the Full Bench was recorded and following order came to be passed:

“ The learned counsel for the Petitioners submits that issue raised in the present Writ Petitions stands answered by the judgment of the Full Bench of this Court in Original Side Writ Petition No.2324 of 2014 (Mr. Hanumant Mahadev Bhosale and Ors. vs. All India Council for Technical Education and Ors.) decided on 25th October 2023.

The learned counsel for the Respondents seeks time to verify the same.

Put up on 29/02/2024.”

6. The matter thereafter was adjourned on various dates. On 18 June 2024 the following order was passed:

“ This petition is filed in the year 2022. It has remained pending since the Respondent-Management had raised a legal issue regarding the

claim of the Petitioners of payment as per the Pay Commissions.

As noted in the earlier order, this issue is now settled by the decision of the Full Bench of this Court against the Respondent-Management. Question that remains now is of calculations.

The learned counsel for the Petitioner states that within a period of one week, the details of the amount payable to each of the Petitioners as on date, as per the applicable Pay Commissions, will be placed on record with copy to Respondent-Management. The response to the calculation furnished by the Petitioner be given to the learned counsel for the Respondent by 1 July 2024.

Place the petition on board on 9 July 2024 under the caption 'for Directions'. On that date, the concerned office bearer of Respondent-Institution will remain present in the Court to give instructions to the learned counsel for the Respondent-Management so that there should not be further delay for want of instructions."

7. Thereafter, on 9 July 2024, 23 July 2024 and 25 July 2024 petition was adjourned as the parties were attempting settlement. Settlement is not arrived at.

8. Rule. Respondents waive service.

9. The learned counsel for Respondent-Management states that the Respondent-Management has filed Writ Petition(L) No.20417/2024 and Writ Petition(L) No.20418/2024 challenging

the amendment to Schedule-C of the Maharashtra Employees of Private Schools (Condition of Service) Rules, 1981 dated 17 October 2023 as regards the retrospective effect to the applicability of 6th and 7th Pay Commissions. This may be so but we find no reason as to why the Respondent-Management should not pay the arrears to the Petitioners as far as from 17 October 2023 is concerned.

10. Therefore, we propose to issue two directions. Firstly, it is directed that the Respondent-Management will commence payment of salary as per the 7th Pay Commission to the Petitioners from 1 August 2024. Secondly, as regards the arrears from 17 October 2023 to 31 July 2024, the Respondent-Management shall pay the same to the Petitioner within a period of three months.

11. We have to set this time limit, as inspite of giving various opportunities to the Respondent-Management to come up with the timeline for payment of arrears on their own including installments, if any, no positive commitment is coming forth from the Respondent-Management.

(M.M. SATHAYE, J.)

(NITIN JAMDAR, J.)