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C.A. Nos. 5703-5706/2005 etc.

ITEM NO.103

COURT NO.6

SECTION IX

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS
CIVIL APPEAL NO(s). 5703-5706 OF 2005

SAINT GADGE BABA SHIKSHAN PRASAR. MANDAL

Appellant (s)

VERSUS

STATE OF MAHARASHTRA & ORS.

Respondent(s)

WITH Civil Appeal NO. 5707 of 2005

Date: 07/04/2010 These Appeals were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE MARKANDEY KATJU
HON'BLE MR. JUSTICE A.K. PATNAIK

For Appellant(s) Mr. Ravindra Keshvrao Adsure, Adv.
Dr. Kailash Chand, Adv.

For Respondent(s) Mr. Arun R. Pedneker, Adv.
For R-3 in Mr. T. Mahipal, Adv.
CA 5703-06/05
& R-1 in CA 5707/05

For State of Mah. Ms. Asha Gopalan Nair, Adv.
Mr. Sanjay Kharde, Adv.
Mr. Uday B. Dube, Adv.
Mr. Kuldip Singh, Adv.

UPON hearing counsel the Court made the following
O R D E R

C.A. Nos. 5703-5706/2005

For the reasons stated in the signed order, the direction contained in the common impugned judgment and order dated 7.3.2003 in Writ Petition Nos. 1042/2000, 1043/2000 and 1049/2000 that the Mandal is to bear the differential amount towards differential salary of Headmaster of Shri Rajaram Narharrao Gajbhare is set aside and the separate impugned judgment and order dated 7.3.2003 in Writ Petition No. 2984/2000 is also set aside and the matter remanded to the High Court for fresh consideration on the aforesaid points in accordance with law.

The High Court is requested to dispose of the matter expeditiously and preferably within a period of

six months from the date a copy of the order is produced before it. Appeals are allowed. No order as to the costs.

C.A. No. 5707/2005

The appeal stands disposed of in terms of the order passed in C.A. Nos. 5703-5706/2005. No order as to the costs.

(Indu Satija)
Court Master

(Ajay Kr. Jain)
AR-cum-PS

(Signed order is placed on the file)

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C.A. Nos. 5703-5706/2005 etc.

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 5703-5706 OF 2005

Saint Gadge Baba Shikshan Appellant
Prasarak Mandal

Versus

State of Maharashtra & Ors. Respondents

WITH

CIVIL APPEAL NO. 5707/2005

O R D E R

Civil Appeal Nos. 5703-5706/2005

These are appeals against the common judgment and order dated 7.3.2003 in W.P. Nos. 1042/2000, 1043/2000, 1049/2000 and a separate order of the same date in W.P. No. 2984/2000 passed by the Aurangabad Bench of the High Court of Bombay.

2. The facts briefly are that Assistant Teachers who were in different schools under the management of Saint Gadge Baba Shikshan Prasarak Mandal, appellant herein, were considered for promotion to the post of Headmaster.

Shri

Narsing Nagorao Hippargekar, Shri Arjun Marotirao Udgire and Shri Vithal Gangaram Jadhav were promoted to the post of Headmaster with the approval of the State Government.

Shri

Rajaram Narharrao Gajbhare, who claimed to be senior, moved

the Aurangabad Bench of the High Court in Writ Petition No.

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C.A. Nos. 5703-5706/2005 etc.

976/1985 and by order dated 21.10.1999, the High Court disposed of the writ petition directing the Education Officer, Zila Parishad, Nanded to inquire into the claim of Shri Rajaram Narharrao Gajbhare and, in case, in such inquiry Shri Gajbhare is held to be due for promotion to the post of Assistant Head Master and/or Head Master, he shall be given all consequential benefits including re-fixation of pension. This burden was to be borne by the Mandal (appellant herein). Pursuant to the said directions by the Bombay High Court, the Education Officer conducted an inquiry and held that as per his seniority Shri Rajaram Narharrao Gajbhare was eligible for the post of Headmaster from 22.5.1974 and accordingly communicated his order dated 20.01.2000 to the Secretary of the Mandal that he be given promotion from that date and that the differential amount in his salary payable to him because of his promotion should be paid by the institution (appellant herein) from its own funds. Simultaneously, the Education Officer directed recovery of the difference in salary paid to Shri Narsing Nagorao Hippargekar, Shri Arjun Marotirao Udgire and Shri Vithal Gangaram Jadhav.

3. Aggrieved by the said direction of the Education Officer, Shri Narsing Nagorao Hippargekar, Shri Arjun Marotirao Udgire and Shri Vithal Gangaram Jadhav filed writ

petition Nos. 1042/2000, 1043/2000 and 1049/2000 and the Mandal filed writ petition No. 2984/2000 before the

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Aurangabad Bench of the Bombay High Court.

By the common

judgment order in Writ Petition Nos. 1042/200, 1043/2000 and 1049/2000, the High Court held that Shri Narsing Nagorao Hippargekar, Shri Arjun Marotirao Udgire and Shri Vithal Gangaram Jadhav had been wrongly given appointment to the

post of Headmaster. It further held that that does not automatically lead to the conclusion that they were required to refund the difference in salary because there is no dispute that they had performed the duties of Headmaster from the date they were so payable and their appointments were approved by the State Government. In the impugned common judgment and order, however, the High Court further held that Mandal is required to pay the difference in salary to Shri Rajaram Narharrao Gajbhare for the period stated in the order passed by the Education Officer and that the Mandal shall not claim the said amount from the Government as per the direction given by the High Court in Writ Petition No. 976/1985. In the separate impugned judgment

delivered by the High Court in Writ Petition No. 2984/2000 all that is stated by the High Court is that for the reasons stated in the common impugned judgment delivered in Writ Petition Nos. 1042/2000, 1043/2000 and 1049/2000, the writ petition is partly allowed and the rule is made absolute in terms of the directions therein.

4. After hearing learned counsel for the parties at length, we find that the High Court has not considered the grounds taken by the Mandal (appellant herein) in Writ Petition No. 2984/2000 challenging the order dated 20.1.2000 of the Education Officer. We are of the considered opinion that while no recovery of the differential amount should be made from Shri Narsing Nagorao Hippargekar, Shri Arjun Marotirao Udgire and Shri Vithal Gangaram Jadhav, as held by the High Court in the common impugned judgment and order, the High Court should have considered whether in the peculiar facts and circumstances of the case, the Education Officer was right in taking a view that Shri Rajaram Narharrao Gajbhare was entitled to promotion to the post of Headmaster w.e.f. 22.5.1974 and, in case, the High Court came to the conclusion that the view taken by the Education

Officer that Shri Rajaram Narharrao Gajbhare was entitled to his promotion from 22.5.1974 was correct, the High Court should have further considered whether the differential amount payable to Shri Rajaram Narharrao Gajbhare on account of denial of promotion w.e.f. 22.5.1974 should be borne by the State Government or the Mandal (appellant herein).

5. For the reasons stated above, we set aside the direction contained in the common impugned judgment and order dated 7.3.2003 in Writ Petition Nos. 1042/2000, 1043/2000 and 1049/2000 that the Mandal is to bear the differential amount towards differential salary of Headmaster of Shri Rajaram Narharrao Gajbhare and set aside the separate impugned judgment and order dated 7.3.2003 in 7 C.A. Nos. 5703-5706/2005 etc.

Writ Petition No. 2984/2000 and remand the matter to the High Court for fresh consideration on the aforesaid points in accordance with law. It will be open for the parties in

Writ Petition No. 2984/2000 to raise all contentions that are available to them in law. We make it clear that whatever payments have been made to Shri Rajaram Narharrao Gajbhare by the Government will not be recovered from him. Since the writ petitions pertain to the year 2000, we request the High Court to dispose the same expeditiously and preferably within a period of six months from the date a copy of the order is produced before it.

6. Appeals allowed. No order as to the costs.
Civil Appeal No. 5707/2005

7. This appeal stands disposed of in terms of the order passed in Civil Appeal Nos. 5703-5706/2005. No order as to the costs.

.....J.
(MARKANDEY KATJU)

.....J.
(A.K. PATNAIK)