REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

Special Leave Petition (C) No.21660-21661 of 2019

Keraleeya Samajam & Anr. ..Petitioner(S)

VERSUS

Pratibha Dattatray Kulkarni (Dead)
through LRs & Ors. ..Respondent(S)

J U D G M E N T

M.R. Shah, J.

1. Feeling aggrieved and dissatisfied with the impugned judgment and order dated 28.06.2019 in Writ Petition No.5311 of 2011 and Writ Petition No.5338 of 2000 passed by the High Court of Judicature at Bombay, the management has preferred the present special leave petitions. By the impugned common judgment and order the High Court has declared that the entitlement of the original petitioners is to receive wages in pay scales as per Schedule

– C to the Maharashtra Employees of Private Schools (Condition of Service) Regulation Rules, 1981. Thereafter, the Division Bench has disposed of the said writ petitions issuing a direction to the Deputy Director (Education) to see that the teachers working with the petitioners school are received their wages and salaries accordingly. The High Court has also not accepted the submissions on behalf of the petitioner to restrict arrears to three years preceding the filing of the writ petition.

2. At the outset, it is required to be noted that in the order dated 21.10.2019, this court recorded the submissions on behalf of the petitioners that the petitioners are ready to pay the arrears as per 6th Pay Commission for the preceding three years prior to the filing of the writ petition. Thereafter this court passed the following order on 04.11.2019:-

> "Being aggrieved by the impugned order of the High Court directing the petitioners-Institution to pay the arrears of salary as per the Fifth and Sixth Pay Commissions to the teaching and non-teaching staff of the second petitioner-School (said to be unaided school) the petitioners have filed these special leave petitions.
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> We have heard Mr. Shekhar Napahade, learned senior counsel, assisted by Ms. Bina

Madhavan, learned counsel appearing for the petitioners who has submitted that the petitioners are ready to pay arrears as per the Sixth Pay Commission for the preceding three years prior to the filing of the writ petition.

On the above submission, the petitioner to file the calculation memo as arrears of the amount payable to the teaching and non-teaching staff.

Accordingly, the petitioners have filed calculation memo as per which the amount towards the salary for three years preceding the filing of writ petition (Sixth Pay Commission), Rs.1,49,13,459/- is payable.

So far as the total arrears towards Fifth Pay Commission an amount of Rs.1,19,96,967/- is payable. Insofar as the Sixth Pay Commission an amount of Rs.5,34,50,719/- is stated to be the arrears payable. Thus the total arrear as per Fifth and Six Pay Commissions is Rs.6,54,47,686/- (Rs.1,19,96,967/- + Rs.5,34,50,719/-) and out of the said amount 50% works out to Rs.3,27,23,843/-.

Mr. Shekhar Napahde, learned senior counsel, has submitted that the second petitioner being unaided school may not be in a position to deposit the entire amount. Considering the submission made at the Bar, there shall be an interim stay of the operation of the impugned order on condition that the petitioner shall deposit 50% of the total amount which works out to Rs.3,27,23,843/- within a period of eight weeks failing which the interim stay granted by this Court shall be automatically

vacated. The deposit of the above amount shall be without prejudice to the contention of the petitioners in the matter.

On such deposit, the amount of Rs.3,27,23,843/- shall be disbursed to the teaching and non-teaching staff of the second petitioner-school and other employees who are held entitled to get arrears as per the orders of the High Court.

Issue notice."

That thereafter a further order dated 29.01.2020 came to be passed by this court, which reads as under:-

"In compliance of Order dated 04.11.2019 the petitioners - Institution has deposited the amount of Rs.3,27,23,843/- (Rupees three crore twenty seven lakhs twenty three thousand eight hundred forty three) in the Registry of the Supreme Court. As per the said order the amount is to be disbursed to the teaching & non-teaching staff and the other employees of the second petitioner-Model English School who are entitled to get the arrears as per Order of the High Court.

Ms. Bina Madhavan, learned counsel appearing for the petitioners and Mr. Akshay Girish Ringe & Mr. Bhaskar Y. Kulkarni, learned counsel appearing for the respondents, have agreed that the amount so deposited before this Court be disbursed to the teaching & non-teaching staff and the other employees of the second petitioner-Model English School through

Deputy Director of Education, Education Department, State of Maharashtra.

In view of above, the Registry is directed to transmit the amount of Rs.3,27,23,843/- (Rupees three crore twenty seven lakhs twenty three thousand eight hundred forty three) to Deputy Director of Education, Education Department, State of Maharashtra, either through RTGS or by Pay Order at the earliest.

Ms. Bina Madhavan, learned counsel appearing for the petitioners-Institution, shall furnish the details of the bank account of the Deputy Director of Education, Education Department, State of Maharashtra, to the Registry of this Court within a period of two days from today.

The Deputy Director of Education, Education Department, State of Maharashtra, is directed to identify the teaching, non-teaching staff and other employees of the second petitioner-Model English School who are entitled to receive the arrears as per order of the High Court and thereafter disburse the said amount proportionately as per arrears on proper receipt. The Deputy Director of Education, Education Department, State of Maharashtra, shall complete the exercise of disbursement of the said amount within four weeks from today.

We make it clear that the disbursement of the said amount shall be without prejudice to the contentions of the petitioners and the respondents. Matter be listed in the last week of April 2020."

3. Therefore the entitlement of the teacher's salaries as per the 5th and 6th Pay Commission to the teaching and non-teaching staff of the second petitioner – school is not required to gone into and only issue which is required to be considered is whether the arrears ought to have been restricted to three years preceding the filing of the writ petition?

4. 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 non-teaching staff as per the 4th Pay Commission and 5th Pay Commission ended in favour of the teaching and non-teaching staff working with the petitioners. Therefore as and when the 6th 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 non-teaching staff as per the applicable pay scale as per the 6th 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.

5. The respondents were compelled to approach the Deputy Director only when the petitioners though were required to pay the wages as per the applicable rules and as per the recommendation of 6th Pay Commission, failed to make the payment, the respondents were compelled to approach the Deputy Director (Education) thereafter. Therefore for the lapse and inaction on the part of the petitioners, the respondents cannot be made to suffer and deny the arrears of the salaries as per the 6th Pay Commission recommendation, which otherwise they are entitled to. Every time the teachers were not supposed to approach the appropriate authority for getting the benefit as and when there is a revision of pay as per the pay commission recommendations.

In view of the above and for the reasons stated above both these special leave petitions deserve to be dismissed and accordingly dismissed.

It is directed to the petitioners to clear the arrears within a period of eight weeks from today failing which it shall carry interest at 9 %. The Deputy Director (Education), Nasik Division is hereby directed to see that the present order is complied with by the petitioners and the amount is disbursed to the respective respondents by account payee cheques.

.....J.
(M. R. SHAH)

.....J.
(A. S. BOPANNA)

New Delhi,
October 1, 2021