

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS.796-797 OF 2021
(Arising out of SLP (C) Nos.3893-3894 of 2021
Arising out of Diary No.12080 of 2020)

DR. GORLE RAGHAV DAS

...Appellant

VERSUS

BHUSAWAL ARTS SCIENCE AND P.O.
NAHATA COMMERCE COLLEGE, BHUSAWAL & ORS. ETC. ...Respondents

ORDER

1. Delay condoned.

Leave granted.

2. These appeals challenge (a) the order dated 12.07.2016 passed by the High Court¹ in Contempt Petition No.277 of 2015 in Writ Petition No.7733 of 2011; and, (b) the order dated 06.02.2020 passed by the High Court dismissing Civil Application No.7743 of 2017 seeking recall of said order dated 12.07.2016.

3. The contempt petition had sought enforcement of the order dated 25.11.2014 passed by the High Court while allowing Writ Petition No.7733 of 2011 preferred by the appellant.

¹ The High Court of Judicature at Bombay, Bench at Aurangabad

4. On the issue whether the services rendered with an unaided institution could be reckoned for the purposes of service benefits including the Provident Fund, the Higher and Technical Education Department, Government of Maharashtra, had issued Government Resolution dated 22.11.1993 (the GR, for short). Clause 3 of the GR stated as under:

“3) Now the government has decided that, the employee being retired from Non agricultural university and its affiliated Non government recognised aided colleges and who is eligible for pension scheme, the service of such person for the period in the same or another college at the time when it was fully or partly unaided be deemed as qualifying service for pensionary benefits subject to following conditions:

- A) The unaided colleges from which the services are to be held eligible for pensionary benefits as above should be fully aided on the date of retirement of concerned employee.
- B) The said recognised, unaided non government college should have been granted recognition by competent authority of Education Department or University.
- C) In case any teacher has served in the recognised unaided non government college and in case such service is from above stated unaided college then it would be necessary for such teacher to deposit the amount to the share of his service towards contributory provident fund along with interest in the government treasury. However in case where the management of concerned college as per relevant existing rules has not started the contributory provident fund account, in such case such teacher should deposit Contributory provident fund amount from such date since when the contributory provident fund amount should have been deposited. However interest will not be charged on such amount. In case the management share amount is paid to the said teacher then it would be necessary for the concerned teacher to pay per year interest at (3.1/2) three and half percent rate on said amount for the period from the date on which his provident fund account was reinstated till the date of deposit of management share amount in the government treasury.
- D) In case any employee has served in Recognised, unaided non government college and the said Service is from above stated unaided college then it would be necessary for such teachers to deposit the contributory provident fund amount

along with interest thereupon in the government treasury which has been deposited by the concerned recognised unaided non government college management in their contributory provident fund account."

5. The facts leading to the filing of the Contempt Petition were:-

a) The appellant had initially worked from 1991 till 22.01.2007 with respondent no.8 College whereafter he was appointed as a Lecturer in respondent no.1 College and his appointment was approved by the University vide order dated 08.03.2007.

b) Respondent no.8 College was and continues to be an unaided institution while respondent no.1 College is a fully aided institution.

c) Writ Petition No.7733 of 2011 was filed by the appellant claiming all service benefits including those under Clause 3 of the GR.

d) While allowing the writ petition by order dated 25.11.2014 the High Court had made following observations:

"6. The Government Resolution dated 22.11.1993 lays down that the services officiated in an unaided institution can be counted for the pecuniary benefits. It lays down that on the date when the petitioner retires, he should be working in an aided institution. The petitioner is still in service. He is working in aided institution is not a disputed fact. It is also a matter of record that the Commissioner/Tribunal of "The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, has passed an order directing to grant selection grade pay to the petitioner with all arrears. The said order was assailed by the Management before

this Court. This Court dismissed the Writ Petition No.1272 of 2006 and thereafter respondent No.8 granted selection grade pay to the petitioner. These facts are not disputed. Even State has not challenged the order passed by the Commissioner/Tribunal under the said Act wherein directions were given to grant Selection Grade Pay to the petitioner.

7. The Government Resolution dated 22.11.1993 prescribes the compliance of certain conditions. One of the conditions is with regard to the contribution of Provident Fund. The same is also required to be done.

8. Considering the aforesaid aspects of the matter, we pass the following order.

ORDER

i]. The services rendered by the petitioner since 23.01.1991 to 22.01.2007 with respondent No.8 shall be counted for the purpose of the selection grade pay and for all other purposes. As the petitioner is possessing the necessary qualification, the petitioner would be entitled for the benefit of the pay scale including Selection Grade considering his services from 23.01.1991 as continuous service.

ii). Needles to state that the petitioner will be entitled for all the benefits. The petitioner shall satisfy compliance of Clause 3-C of the Government Resolution dated 22.11.1993. The Respondents, on satisfaction of the same, will accord all monetary benefits so also pensionary benefits as the petitioner would be entitled.

iii). The respondents shall take action expeditiously and preferable within a period of six months from today.

9. Writ Petition is accordingly disposed of. No costs.”

e) Submitting that the aforesaid directions issued by the High Court were not being complied with by the concerned

respondents, the aforementioned contempt petition was filed in the High Court.

6. In response, the very entitlement of the appellant was questioned. The submission was dealt with by the High Court in its order dated 12.07.2016 as under:

“4. On the other hand, the learned AGP appearing for respondent No.4, relying upon the affidavit-in-reply and Clause 3 of the said Government Resolution, submits that in case, the employee retires from the college, which is partly or fully aided at the time of his retirement, then only Clause 3C of the said Government Resolution can be invoked and pensionary benefits can be extended to the employee. It is submitted that the Clause 3 of the said Government Resolution will have to be read in its entirety and it is only on fulfillment of Clause 3A, the compliance of Clause 3C on the part of the petitioner and giving such account number, question of depositing the amount towards provident fund would arise. Since the petitioner is in service and the said college is on permanent 'no grant basis' no account number can be given to the petitioner so as to deposit the provident fund amount. Therefore, the learned AGP submits that there is no contempt as such and therefore, the contempt proceedings may be dropped thereby discharging the notice issued to respondent No.4.”

7. Thus, insofar as it pertained to the benefit of Provident Fund as claimed by the appellant the contempt petition was rejected by the High Court on 12.07.2016. The application for recall was also rejected on 06.02.2020.

8. The High Court took the view that the services rendered with an unaided College could be reckoned for the purposes of pensionary benefits including the Provident Fund, only if at the time of retirement of the concerned Teacher the institution was a fully aided institution; that the fact that the appellant had now been working with respondent no.1, a fully aided

institution, would not entitle him to have the period spent in respondent no.8 institution to be reckoned for the purposes of provident fund under Clause 3 of the GR; and that since respondent no.8 Institution continued to be an unaided institution, the appellant would not be entitled to any advantage under said Clause 3.

9. Without going into the correctness of the reasoning that weighed with the High Court, for the present purposes what is relevant to note is that in paragraph (ii) of the operative part of its order dated 25.11.2014, the High Court had found the appellant to be eligible for all the benefits and that upon compliance on his part of all the requirements of Clause 3C of the GR, the respondents were obliged to accord to him all monetary and pensionary benefits.

10. While dealing with the contempt petition, in our considered view, the High Court ought not to have gone into the correctness of the conclusions drawn by the High Court on the earlier occasion. That order having attained finality, the benefits in terms of said order ought to have been allowed in favour of the appellant.

11. We, therefore, allow these appeals, set-aside the orders under appeal and direct:

- a. the appellant shall be provided appropriate Account Number for the purposes of Provident Fund within four

weeks from today;

b. the appellant shall deposit the sums as indicated in Clause 3(C) of the GR within four weeks thereafter; and

c. upon such compliance, the appellant shall be held entitled to the benefits of the concerned Provident Fund Scheme.

12. With the aforesaid observations, these appeals are allowed. No costs.

.....J.
[UDAY UMESH LALIT]

.....J.
[INDIRA BANERJEE]

.....J.
[K.M. JOSEPH]

NEW DELHI;
MARCH 02, 2021.

ITEM NO.11

COURT NO.4
(HEARING THROUGH VIDEO CONFERENCING)

SECTION IX

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

SPECIAL LEAVE PETITION (CIVIL) Diary No.12080/2020

(Arising out of impugned final judgment and order dated 12-07-2016 in CP No.277/2015, 06-02-2020 in CA No.7743/2017 passed by the High Court Of Judicature At Bombay At Aurangabad)

GORLE RAGHAV DAS

Petitioner(s)

VERSUS

BHUSAWAL ARTS SCIENCE AND P.O.

NAHATA COMMERCE COLLEGE BHUSAWAL & ORS. ETC.

Respondent(s)

(IA No.82810/2020 - FOR CONDONATION OF DELAY IN FILING; IA No.82812/2020 - FOR EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT; IA No.82811/2020 - FOR EXEMPTION FROM FILING O.T.; and, IA No.82813/2020 - FOR EXEMPTION FROM FILING PAPER BOOKS)

Date : 02-03-2021 This petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE UDAY UMESH LALIT
HON'BLE MS. JUSTICE INDIRA BANERJEE
HON'BLE MR. JUSTICE K.M. JOSEPHFor Petitioner(s) Mr. Prashant S. Kenjale, Adv.
Mr. Sandeep Sudhakar Deshmukh, AORFor Respondent(s) Mr. Rahul Chitnis, Adv.
Mr. Sachin Patil, AOR
Mr. Aaditya A. Pande, Adv.
Mr. Geo Joseph, Adv.UPON hearing the counsel the Court made the following
O R D E R

Delay condoned.

Leave granted.

The Civil Appeals are allowed, in terms of the Signed Order.

Pending applications, if any, also stand disposed of.

(MUKESH NASA)
COURT MASTER(VIRENDER SINGH)
BRANCH OFFICER

(Signed Order is placed on the File)