



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 2243 OF 2023

Sunanda Wakhare

.. Petitioner

Versus

Jaiwant Bhaguji Gadekar & Ors.

.. Respondents

-
- Mr. Sachin Thorath a/w. Mr. Dhananjay Bhosale for Petitioner.
 - Mr. Alankar Kirpekar a/w. Mr. Susmit Phatale and Mr. Somanath Kale i/by Mr. Susmit Phatale for Respondent No.1.
 - Mr. Rahul S. Kadam a/w. Mr. Shardul R. Diwan for Respondent Nos.2 and 3.
 - Mr. P.G. Sawant, AGP for Respondent No.4 – State of Maharashtra.
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CORAM : MILIND N. JADHAV, J.

RESERVED ON : JUNE 28, 2024

PRONOUNCED ON : JULY 30, 2024

JUDGMENT:

1. While determining twin Applications filed below Exhibits – 119 and 123, by order dated 19.04.2022 substantive directions were given by Executing Court to Judgment Debtor Nos. 1, 2 and 3 which are reproduced herein below:-

“(1) Application at Exh. 119 is allowed.

(2) Judgment Debtor No. 3 i.e. educational officer is directed to process with the back wages bills as submitted to them and if such bills are not submitted, then, Judgment debtors No.1 and 2 are directed to submit requisite bills for release of the salary grant for payment of back wages to decree holder and Judgment debtor No. 3 to process the same as per rules within 15 days from today.

(3) Judgment debtor No. 3 is directed to appear in person or through his Advocate and to state on his affidavit who is

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liable to pay back wages as per government circular and what process they had taken.

(4) If Judgment debtors No. 1 to 3 failed to comply with the above direction, then order of arrest and detention will be passed on Exh.123 without any further reference.”

2. Admittedly, neither Petitioner nor the State have challenged the order dated 19.04.2022. Since the order was not complied, Decree Holder was compelled to file Application below Exhibit – 139.

3. Application below Exhibit – 139 is filed by Decree Holder i.e. Respondent No. 1 herein before the Executing Court. Decree Holder has prayed for issuance of arrest warrant against Judgment Debtor No. 3 for non- compliance of substantive directions passed by Court vide order dated 19.04.2022 passed by the Executing Court.

4. The present Writ Petition is filed by Petitioner who is the Judgment Debtor No. 3 to challenge the order dated 04.02.2023 passed by the Executing Court which has issued recovery warrant for Rs.58,38,481/- against her. Petitioner also challenges the common order dated 19.04.2022 passed in Applications filed below Exhibits – 119 and 123. Petitioner is an Education Officer of the State Government employed as Education Officer (Secondary) of Zilla Parishad, Pune.

5. Substantive directions are given by Executing Court to Judgment Debtor Nos. 1, 2 and 3 in the order dated 04.02.2023 which are reproduced below:-

“(1) Issue the recovery warrant against the Judgment debtor No.3 for recovery of amount of Rs. 58,38,481/- to be paid to the Decree Holder.

“(2) If the said amount is not paid by the Judgment debtor No.3 or is not recovered by the end of this month i.e. 28/02/2023, this Court shall proceed to issue arrest warrant against the Judgment debtor No.3.”

6. Briefly stated, facts necessary for adjudication of the present Petition are as follows:-

6.1. Petitioner – Judgment Debtor is an Education Officer, Respondent No.1 is the Decree Holder, Respondent Nos. 2 and 3 are Judgment Debtor Nos. 1 and 2 in the judgment dated 25.06.2002 delivered in Appeal No. 104 of 1998 by the School Tribunal, Pune.

6.2. Respondent No.1 worked as an Assistant Teacher in Respondent No. 3 School (herein after referred to as the “**Institution**” for brevity) run and managed by Respondent No. 2 Management. Respondent No. 2 terminated his service pursuant to which Appeal No. 104 of 1998 was filed before the School Tribunal, Pune by him to challenge his termination from service. There is no dispute on facts or merits which needs to be decided in this Petition.

6.3. Presiding Officer, School Tribunal, Pune vide judgment dated 16.08.2000 allowed the Appeal and directed Respondent Nos. 2 and 3 to reinstate Respondent No.1 with full back wages w.e.f. 01.09.1998 within a period of two months and directed the State Government to deduct the grant due and payable to the management and to pay the same directly to the Respondent No.1. This judgment appears to have been set aside by the High Court and Appeal No.104 of 1998 has been reheard by the School Tribunal though no record is available. It is in the pleadings of the Respondents that this judgment was set aside but no order is produced on record. Fresh judgment dated 25.06.2002 has been passed allowing the Appeal. Both the judgments dated 16.08.2000 and 25.06.2002 are identical. This is mentioned because at some places, reference to the judgment and decree in execution is with reference to judgment dated 16.08.2000 instead of 25.06.2002.

6.4. The order dated 25.06.2002 was challenged by Respondent Nos. 2 and 3 in Writ Petition No. 6046 of 2002. By judgment dated 10.06.2003 this Court allowed the said Appeal and the order passed by the School Tribunal was set aside.

6.5. Respondent No. 1 challenged the order dated 10.06.2003 by way of Letters Patent Appeal No. 170 of 2005 in this Court which was rejected on the ground of non-maintainability. Subsequently,

Respondent No.1 filed Civil Appeal No. 472 of 2007 in the Supreme Court. By order dated 30.07.2008, Supreme Court set aside the order of High Court dated 10.06.2003 and remanded the Writ Petition back to this Court to be decided afresh in accordance with law.

6.6. On remand back of case to this Court, Respondent Nos.2 and 3 who were Petitioners before the High Court did not pursue the case which led to its dismissal on 11.03.2011 for non- prosecution.

6.7. After a lapse of about 7 years, Respondent Nos. 2 and 3 filed Civil Application No. 2049 of 2018 seeking restoration of Writ Petition No. 6046 of 2002, which was rejected by order dated 18.07.2019. This order of rejection is not challenged by Respondent Nos. 2 and 3 as also by Petitioner any further.

6.8. Respondent No. 1 in the meantime filed Special Civil Darkhast No. 6 of 2016 before the Civil Judge Senior Division, Khed-Rajgurunagar seeking execution of order dated 16.08.2000 passed by the School Tribunal, Pune. By order dated 11.07.2017 passed in Application filed below Exh- 36, the Executing Court directed Respondent Nos.2 and 3 to reinstate the Respondent No. 1 in service.

6.9. By letter dated 10.01.2018, predecessor of Petitioner Mr. Ganpat More - Education Officer, *inter alia*, directed that if Respondent Nos. 2 and 3 appoint Respondent No.1 as Assistant Teacher in compliance of order passed by the School Tribunal, then they would be

responsible for payment of his salary as the State Government would not pay the same since there was no vacant post available against the sanctioned post in the School.

6.10. Thereafter predecessor of Petitioner issued amended order dated 04.07.2019 which granted approval to Respondent No.1's appointment with a condition imposed that responsibility of payment of Respondent No.1's salary dues prior to 25.09.2017 shall be the liability of Respondent Nos. 2 and 3 and thereafter on 23.06.2019, a hearing was conducted and order dated 30.09.2019 was passed confirming the previous order dated 04.07.2019.

6.11. In the interregnum, predecessor of Petitioner made part-payment of dues to Respondent No.1 in compliance of order dated 16.08.2000. Respondent No. 1 filed application below Exh-53 for non-compliance of order dated 16.08.2000 and attachment of property for settlement of outstanding dues in reply to which predecessor of Petitioner stated that timely payment was made to Respondent No. 1 and hence the said application was rejected by order dated 05.08.2019 on the ground that contention of Respondent No.1 lacked footing and he was incorrect and it was held that the order dated 16.08.2000 is complied with by the Education Officer.

6.12. Being aggrieved Respondent No.1 filed twin applications below Exh-119 dated 10.08.2020 and Exh-123 dated 21.06.2021 in

Darkhast No. 06 of 2019 dated 10.08.2020 and 21.06.2021 respectively, *inter alia*, seeking direction to Petitioner (Judgment Debtor No. 3) for sanctioning the salary arrears, balance dues and issuance of warrant of arrest and detention of Judgment Debtors. By reply *vide* Exh-124 and 126 Petitioner stated the due compliance of the order and regular payment of dues and grants to Respondent No. 1 was made as per the decree. Civil Judge Senior Division Khed-Rajgurunagar allowed application below Exh-119 and deferred passing of order on Application below Exh-123 by common order dated 19.04.2022. Petitioner - Education Officer i.e. Judgment Debtor No.3 was directed to process the backwages bill as submitted and if not submitted Judgment Debtor Nos. 1 and 2 were directed to submit the requisite bills for release of salary grant for payment of back wages to Respondent No.1 (Decree Holder) and further Petitioner - Judgment Debtor No.3 was directed to process the same as per Rules within 15 days thereafter and it was directed that failure to comply with those directions would lead to passing of order under Exh-123 for arrest and detention without further reference.

6.13. Respondent No. 1 filed Application below Exh-139 in view of non-compliance of order dated 19.04.2022 by Education Officer and prayed for reliefs to be passed under Application below Exh-123 alongwith Exh-139. Respondent Nos. 2 and 3 denied liability for

payment of dues thereby rendering the Petitioner i.e. Education Officer solely liable for payment of arrears and back wages to Respondent No.1.

6.14. Application below Exhibit -139 was allowed by order dated 04.02.2023 and recovery warrant was issued against Judgment Debtor No. 3 for recovery of amount of Rs. 58,38,481/- and further directions were passed that on non-compliance of the same by 28.02.2023 would lead to issuance of arrest warrant against Petitioner - Judgment Debtor No. 3.

6.15. Hence, the present Writ Petition.

7. In the aforesaid background, pursuant to the order dated 30.07.2008 and dismissal of the Writ Petition No. 6046 of 2002, on 11.03.2011, Respondent No.1 filed Special Darkhast Application No. 6 of 2016 in the Executing Court. The Executing Court has passed the following five (5) orders in execution proceedings for execution of the judgment dated 16.08.2000 and 25.06.2002 passed by the School Tribunal stating that:-

- (i) Order dated 11.07.2017 – passed on Application below Exhibit 38 directing Judgment Debtor Nos.1 and 2 to comply with the directions given in order passed in Appeal No.104 of 1998 without any further delay;

- (ii) Order dated 12.07.2017 – passed on Application below Exhibit 39 directing recovery of amount of Rs.52,04,617/- from the Education Officer i.e. Judgment Debtor No.3 as on that date;
- (iii) Order dated 05.08.2019 – passed on Application below Exhibit 53 for attachment, seizure and confiscation of furniture of Judgment Debtor No. 3 for realisation of the outstanding amount and payment of the same to the Decree Holder came to be rejected as there was no order against Judgment Debtor No. 3 for payment of outstanding amount hence confiscation order would not be granted;
- (iv) Order dated 19.04.2022 - Common order passed on Applications below Exhibits 119 and 123 for sanctioning of salary arrears bill and issuance of arrest warrant and detention of Judgment Debtor No. 3 for non-compliance of orders of the School Tribunal. Application at Exhibit 119 came to be allowed and certain directions were given to Judgment Debtor No. 3 for processing the back wages bills and submission of the same and on non submission the Judgment debtor Nos. 1 and 2 were to submit the requisite bills for release of salary grant and same were to be processed by Judgment Debtor No.3 within 15 days and

further that non-compliance of the said directions by Judgment Debtor Nos. 1 - 3 would lead to an issuance of arrest warrant against them under Exhibit- 123;

- (v) Order dated 04.02.2023 – passed on Application below Exhibit – 139 was filed by the Decree Holder – Respondent No. 1 for issuance of arrest warrant against Judgment Debtor No.3 for recovery of outstanding amount was partly allowed by issuing a recovery warrant against the Judgment Debtor No.3 for recovery and payment of Rs. 58,38,481/- to the Decree Holder and non-compliance to the same would lead to issuance of arrest warrant against the Judgment Debtor No. 3.

8. Twin orders dated 19.04.2022 passed below Exhibits 119 and 123 and 04.02.2023 passed below Exhibit – 139 by the Executing Court are challenged in the present Petition by the then Education Officer against whom the decree is sought to be executed in person.

9. Mr. Thorat, learned Advocate for the Petitioner would submit that Petitioner is the Education Officer of the State. He would submit that she has performed her duties on behalf of the State and if orders dated 16.08.2000 and 25.06.2002 are to be executed, they will

have to be executed against the State and not against the Petitioner - Judgment Debtor No. 3 in-person.

9.1. He would submit that merely because Judgment Debtor No. 3 being the Education Officer was impleaded as a Respondent in original Appeal and a judgment and decree has been passed against the Respondents, execution of the decree cannot be made against the person i.e. Judgment Debtor No. 3 herself. He would submit that a literal interpretation cannot be attributed for seeking execution against the Judgment Debtor No.3. He would submit that whether it is the Institution or the State Government, either of them are responsible. He would submit that at present, there is a new Education Officer working in place of Judgment Debtor No. 3 and holding the same charge but by applying a literal interpretation, the decree is sought to be executed against the Petitioner. He would submit that this nature of execution is incorrect in law and therefore this Court needs to step in and pass suitable directions under its power of superintendence. He would submit that the Petitioner – Education Officer has no jurisdiction to effect and pay the outstanding salary dues of the Decree Holder as per the decree and therefore she has been constrained to file the present Petition.

9.2. He would submit that the Civil Judge Senior Division has failed to consider that the Presiding Officer vide order dated

16.08.2000 directed Respondent No. 2 & 3 to reinstate the Respondent No. 1 and on non compliance of the same it recommended the State Government to pay the back wages to the employee directly.

10. *PER CONTRA*, Mr. Kirpekar, learned Advocate appearing for Respondent No. 1 would submit that the orders dated 16.08.2000 and 25.06.2002 passed by the School Tribunal have become absolute and final. That is borne out from the record. He would submit that neither the State Government nor Respondent Nos. 2 and 3 have challenged the orders dated 16.08.2000 and 25.06.2002. He would submit that the common order dated 19.04.2022 passed by the Executing Court below Exhibits - 119 and 123 has also not been challenged by the State. He would submit that a limited challenge is maintained by the Education Officer *per se* in respect of recovery warrant issued under the order dated 04.02.2023.

10.1. He would draw my attention to the order dated 11.07.2017 passed below Exhibit – 38, order dated 12.07.2017 passed below Exhibit - 39 order dated 05.08.2019 passed below Exhibit - 53, order dated 19.04.2022 passed below Exhibits - 119 and 123, and impugned order dated 04.02.2023 passed below Exhibit - 139 and would submit that the State Government is liable and responsible for payment of the full back wages, with effect from the year 1998 till the retirement of the Respondent No. 1 teacher amounting to Rs.

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58,00,000/- approximately. Hence, he would urge that repeated Applications on behalf of the officers of the State Government are made to merely protract and delay payment of back wages to Respondent No. 1.

10.2. He would submit that according to the State Government, liability to pay the outstanding amount to Respondent No. 1 teacher is that of the Respondent No. 2 Institution and therefore the Respondent No. 1 State has delayed payment of the said amount. In this regard, he would categorically submit that the directions contained in the orders dated 16.08.2000 and 25.06.2002, if seen and noted, put the liability of payment of the amount of backwages to the Respondent No. 1 teacher on the Respondents (*emphasis supplied*). Hence, the State Government cannot shy away from payment of the outstanding amount and put the liability on Respondent No. 2 Institution or be a silent spectator and allow the Petitioner to prosecute the present Petition. He would submit that once the orders dated 16.08.2000 and 25.06.2002 of the School Tribunal have become final and absolute they cannot be revisited in execution proceedings.

11. Mr. Kadam, learned Advocate appearing on behalf of Respondent Nos. 2 and 3 Institution would submit that the primary liability of payment of the outstanding amount to Respondent No.1 teacher under the orders dated 16.08.2000 and 25.06.2002 is that of

the State Government. He would submit that as held by the Supreme Court in the case of *Educational Society, Tumsar and Ors. Vs. State of Maharashtra and Ors.*¹, in such a situation the primary liability of payment of the outstanding amount of back wages directed by the Tribunal is that of the State Government and the State Government cannot shy away from its such primary responsibility. He would submit that Respondent No. 2 is a fully aided institution by the State Government and appointment of the Respondent No. 1 teacher pursuant to his completion of probation was against a fully aided sanctioned post of teacher in Respondent No. 2 Institution. He would submit that once this is the position, primary responsibility for payment of back wages as directed by the Tribunal to Respondent No.1 teacher is that of the State Government.

12. Both Mr. Kirpekar and Mr. Kadam jointly submit that out of the total outstanding liability amounting to Rs. 58,38,481/- approximately, the State Government has directly paid over an amount of Rs. 3,83,739/- to the Respondent No.1 teacher. According to them, the State Government has paid the said amount which is the grant due and payable to Respondent No.2 Institution. Both would contend that if the State Government's stance of paying the outstanding amount from the grant due to Respondent No. 2 Institution is countenanced, it

1 (2016) 3 SCC 512

will take another 50 to 60 years or even more for the Respondent No.1 to realise his full back wages. Both would submit that the stand adopted by the State Government is adamant, arbitrary and high handed, as it does not desire to comply with the orders dated 16.08.2000 and 25.06.2002 passed by the School Tribunal which have become absolute and final, without challenging the said orders.

13. Both would submit that the orders dated 11.07.2017, 12.07.2017, 19.04.2022 and 04.02.2023 passed in Special Darkhast No. 6 of 2016 clearly call for payment of the outstanding back wages to Respondent No.1 by the State Government.

14. Finally, both would submit that enormous delay has taken place in implementation of the orders dated 16.08.2000 and 25.06.2002 passed by the School Tribunal, Pune and therefore the Writ Petition be dismissed and in the interest of justice this Court give appropriate directions to the State Government.

15. Considering the above, by order dated 17.02.2023, notice was issued to Education Department of State Government wherein the Petitioner is in service and the said Education Department was directed to be impleaded and appear through the learned AGP before me. Mr Sawant, learned AGP has appeared for the State Government and has filed Affidavit dated 29.04.2024 of one Dr. B.S. Karekar,

Education Officer on behalf of the Respondent No. 4. In the present case, Mr. Sawant has also addressed his objections. He has drawn my attention to the Affidavit dated 29.04.2024 and would contend that since the order of the School Tribunal is confirmed by the Supreme Court, Respondent No. 4 has started paying the backwages to Respondent No.1 by deducting the yearly non-salaried grant payable to Respondent Nos. 2 and 3 from the year 2017-2018 up to the year 2022-2023. He adopts and affirms the grounds challenging the orders passed by the Executing Court in the present Writ Petition and submits that the impugned orders are not proper and legal and the Executing Court has travelled beyond the original decree passed by the School Tribunal.

15.1. He would submit that the State Government is making regular payment to Respondent No. 1 thereby complying with the order dated 16.08.2000 and hence, the order dated 04.02.2023 is illegal and improper. He states that Respondent No. 4 by letters dated 16.06.2020 and 07.07.2021 informed Respondent No.3 that it is the sole responsibility of Respondent No. 2 & 3 for payment of back wages and to ensure compliance of the order passed by the School Tribunal. In view of the above, he would urge that the Writ Petition be allowed and the impugned orders dated 19.04.2022 and 04.02.2023 be quashed and set aside.

16. It is seen that judgment dated 25.06.2002 is absolutely identical to the judgment dated 16.08.2000, though in the Execution Application filed by Respondent No. 1 reference is to the earlier judgment. However that cannot be held against the Respondent No. 1 who is the Decree Holder. The operative part of the judgment dated 25.06.2002 giving specific directions to Respondents reads thus:-

“1. Appeal is allowed.

The impugned action of Respondent Nos. 1 & 2 of not allowing the Appellant to joint duties by the end of the August, 1998 is hereby set aside.

The Respondent Nos. 1 & 2 are hereby directed to reinstate the Appellant as an Assistant Teacher w.e.f. 1st September, 1998 with full backwages.

2. No order as to costs.

Respondents (emphasis supplied) to comply with the above directions within a period of two months from the receipt of this order. It is hereby recommended to the State Government that the backwages directed to be paid to the Appellant may be deducted from the grant due and payable to the management and be paid to the employee direct.”

17. The aforesaid order has admittedly become absolute in view of the decision of the Supreme Court dated 30.07.2008 and subsequently by virtue of the order dated 18.07.2019 (Coram: A.S. Gadkari, J.) passed by this Court and the Petition having not been restored to the record and file of the Court. Hence, the above order now has to be executed. The only question is who will implement it.

18. The order is clear and unambiguous, the word ‘Respondents’ on which emphasis is supplied and underlined will

include the management and Education Officer of the State Government. Even before me today it is argued on behalf of the Education Officer and on behalf of the State Government the State Government will not be liable to pay the backwages as directed and it shall be the liability of the Respondent Nos. 2 and 3 i.e. the Institution. Mr. P. G. Sawant, Learned AGP has appeared on behalf of the State Government on notice and has drawn my attention to the affidavit-in-reply dated 25.04.2024 filed by Dr. B.S. Karekar, which states that the State Government is infact implementing the judgment of the School Tribunal by relegating the grant due and payable to the Respondent Nos. 2 and 3 Institution directly in the bank account of Respondent No. 1 and upto now six payments have been made to the Respondent No.1 as reproduced below:-

शाळेला मिळणा-या वेतनेतर अनुदानातून श्री.जयवंत भागुजी माडेकर यांना खालीलप्रमाणे आजपर्यंत रक्कम देण्यात आलेली आहे.

अ.क्र.	तपशील	रक्कम	शेरा
१	सन २०१७-१८ मधील वेतनेतर अनुदान	७१२९४/-	
२	सन २०१८-१९ मधील वेतनेतर अनुदान	६७०६९/-	
३	सन २०१९-२० मधील वेतनेतर अनुदान	७८७५९/-	
४	सन २०२०-२१ मधील वेतनेतर अनुदान	८३७८६/-	
५	सन २०२१-२२ मधील वेतनेतर अनुदान	२३१२५/-	
६	सन २०२२-२३ मधील वेतनेतर अनुदान	५९७०६/-	
	एकूण	३८३७३९/-	True copy du

19. The aforesaid chart shows that the State Government while acknowledging the decree and liability has paid an amount of Rs.3,83,739/- between the years 2017 and 2023 to the Respondent No.1. At this rate the State Government will take at least another 65 years approximately to pay the decretal amount to the Respondent No. 1. Whether such a stance adopted by the State Government can be countenanced in the view of the judgment dated 25.06.2002 becoming absolute is to be decided by me.

20. According to the State Government, it is contended that both impugned orders have travelled beyond the decree. It is contended that the State Government is paying the back wages to Respondent No. 1 as directed by deducting the yearly salary grant payable to the Institution and therefore has complied with the decree passed by the School Tribunal. Such a stance adopted by the State Government at least puts the issue of challenge to the decree at rest. This is because while addressing, the Petitioner Education officer and the State Government have vehemently relied upon the order dated 10.06.2003 (Coram : A.M. Khanwilkar, J.) of this Court in Writ Petition No. 6046 of 2022. However, in view of the said order dated 10.06.2003 having been set aside by the Supreme Court, I am not required to consider this argument at all and their submissions on this

are dismissed. Hence, all submissions made by the Petitioner and the State Government *qua* the above order stand rejected.

21. Mr. Sawant has agitated one more issue on behalf of the State Government. He would submit that in the present case the post left vacant by the Respondent No. 1 on his termination was filled up by the Institution. He would submit that the Institution is a fully aided Institution, receiving grant in aid and hence liability on the State Government cannot be foisted for the entire amount of full back wages. He would submit that if the said post had remained vacant and the Institution had not appointed any other employee against the vacancy caused due to termination of Respondent No. 1, only then the State could have been liable to pay the full backwages as per various decisions of this Court. Hence, he would vehemently argue that the liability of payment of full back wages is that of the Institution i.e., Respondent Nos. 2 and 3 only and not the State Government.

22. I have noted the submissions made by Mr. Thorat on behalf of the Institution, Mr. Kirpekar on behalf of the Respondent No. 1- Assistant Teacher. If the submissions of Mr. Sawant are to be accepted then it would lead to an anomalous situation. If the Respondent Nos .2 and 3 Institution does not have the wherewithal to pay the full back wages under the decree and if the State Government continues to pay the amount of grant payable to them directly to the

Respondent No. 1 in satisfaction of the decree, it will take more than 65 years to realise the decretal amount. Resultantly, the decree will stand frustrated. Whether this can be the object of passing the decree is therefore to be seen.

23. In this case it is an admitted position that the Respondent No. 1 was working against a sanctioned post and was a permanent employee. There is no ambiguity about the same. If the post is sanctioned by the State Government and the Education Department and if the said employee is terminated and subsequently the termination is set aside and he is reinstated, then the liability of payment of his salary and wages is that of the State Government. Learned Advocate for Respondent Nos.1, 2 and 3 including the Advocate for the Petitioner have drawn my attention to decision of the Supreme Court in the case of *Educational Society, Tumsar and Ors. Vs. State of Maharashtra and Ors.*². In that case the facts were that the services of the Respondent No. 4 were terminated by the Institution which was a fully aided institution to the extent of 100% by the State of Maharashtra. Such aid includes the element of salaries that are payable to the teacher and other staff employed by the School. The termination order was challenged by the Respondent No. 4 therein before the School Tribunal and it was set aside with a direction to

² (2016) 3 SCC 512

reinstate the Respondent No. 4 and with a direction of payment of wages. Thereafter the order of the School Tribunal was upheld by the High Court as the Institution and Respondent No. 4 entered into a settlement and the Institution agreed to abide by the terms of the settlement. The direction of the School Tribunal attained finality and the Respondent No. 4 was to be paid back wages. The issue before the Supreme Court was that who is to ultimately bear the financial burden, whether the institution is supposed to pay the back wages out of its own pocket or is it to be paid by the State Government from the grant which is granted to the school. The facts in the case are more or less similar to the present case except that in the present case there is no compromise, settlement or agreement by the Institution to pay the Respondent No. 1's back wages as per the decree of the School Tribunal. The judgment of the School Tribunal has undoubtedly attained finality as delineated herein above, the operative part of the judgment passed by the School Tribunal directs the Respondents (*emphasis supplied*) to pay, which means the Institution i.e. Respondent Nos. 2 and 3 and the Petitioner. The Petitioner Education Officer represents the Education Department i.e. the Respondent No. 4 State Government. Though in the aforementioned decision of the Supreme Court, it was ultimately decided and directed that the Supreme Court will not interfere with the decision of the High Court

which was arrived after a compromise between the parties, while arriving at that decision, the Supreme Court has made certain crucial observations and rendered certain findings which come to the aid of Respondent No. 1's case herein. Those findings are returned in paragraph No. 11 of that decision and are reproduced *verbatim* herein below:-

“11. We have considered the aforesaid submissions of the learned counsel for the parties and have gone through the statutory provisions. It cannot be denied that as per the normal principle, whenever a terminated employee of an aided school challenges the termination and termination is held to be illegal by a competent judicial forum/court and order is passed for payment of back wages, etc., the Government is supposed to bear the said burden. The reason for the same is that such back wages or any other payment are in the nature of salary for the intervening period or other compensation in lieu thereof which is to be paid to the employee who would have earned these benefits had he remained in service. In that eventuality, obviously, the Government/Education Department would have paid those benefits in terms of financial aid provided to such a school. However, if there is a specific provision contained in any statute which contains contrary position, then such provision would prevail upon the aforesaid general rule. Likewise, if there is any administrative order which is contrary to the aforesaid general rule, the said administrative order shall prevail as in that situation, it would be treated that the aid is given subject to the conditions contained in such administrative order.”

24. It is held by the Supreme Court that whenever the terminated employee of the aided school challenges termination and the said termination is held to be illegal by the competent judicial forum / Court and order is passed for payment of backwages, etc., the Government is supposed to bear the said burden. It is clarified by the Supreme Court that such backwages or any other payment are in the

nature of salary for the intervening period or other compensation in lieu thereof which is to be paid to the employee who would have earned these benefits had he remained in service. Thus, it is clear that had Respondent No. 1 continued in service, he would have got his salary from the State Government and not from the management considering that Respondent No. 2 Institution is a fully aided Institution. By virtue of the order of the School Tribunal of Respondent No. 1's reinstatement and his entitlement to full backwages having attained finality, it cannot be argued by the State Government that the liability of salary and back wages is that of the Institution. If that is to be argued now then Petitioner - Education Officer and the State Government should have challenged the judgment of the School Tribunal. Neither the Petitioner nor the State Government have challenged the judgment of the School Tribunal. Challenge to the judgment of the School Tribunal has been dismissed. The State Government has not filed any appeal against the said dismissal. Hence this particular argument is further not available to the State Government and the Petitioner because the State Government and Petitioner has paid an amount of Rs. 3,83,739/- to the Respondent No. 1 against the outstanding decretal amount of Rs. 58,38,481/- as on 06.06.2022.

25. What is seen in the present case is that Petitioner and the State Government including the Respondent Nos. 2 and 3 Institution have protracted the inevitable. Every attempt in the law book has been employed by these parties to frustrate the execution of the decree by resorting to filing Applications, Appeals, Writ Petition etc. and seeking interpretation of the judgment of the Tribunal. If the record and pleadings are perused, the State Government and Petitioner have gone one step further by resorting to unrelenting and unprecedented correspondence, by addressing innumerable letters and taking a position that it is not the liability of the State Government, but of the Institution to pay the decretal amount and has been successful in protracting the execution of the decree.

26. The argument of the State Government that the salary of the teacher appointed against the vacancy created due to termination of Respondent No. 1 also stands defeated. During the years between 1998 and 2003, the Institution appointed a temporary teacher against that vacancy. This was necessitated because the school syllabus had to be completed. During these years, the salary of the temporary teacher was borne entirely by the management. He was regularised much subsequently by the Petitioner - Education Officer. At that time petitioner and State Government were clearly aware about the

judgment dated 16.08.2000 as also the subsequent judgment dated 25.06.2002.

27. In the above facts, it cannot lie in the mouth of the Petitioner and State Government to now state that they shall not pay the backwages to Respondent No. 1 and the liability is that of the Institution. To the detriment and prejudice of the Respondent No. 1, the other parties have taken undue advantage of the legal system which is seen in the present case. Once the judgment dated 16.08.2000 and judgment dated 25.06.2002 has become absolute and attained finality, Respondent No. 1 is entitled to be paid the entire decretal amount by the Respondent No. 4 - State Government. The judgment may be directed against Judgment – Debtor No. 3, who is the Petitioner before me but that does not mean that the State Government is absolved from its liability. Judgment Debtor No.3 is a mere Officer of the State Government. The judgment also cannot be read as if the recovery has to be made from Judgment Debtor No. 3 that is Education Officer in person because the said Education Officer was made a party before the School Tribunal. The judgment has to be construed as the liability to be paid by the State Government i.e. the Education Department which is represented by the Petitioner – Education Officer.

28. Hence in view of the above, the common order dated 19.04.2022 which is impugned herein and appended at Exhibit 'R' at page No. 104 is upheld. Similarly, the second impugned order dated 04.02.2023 which is appended at Exhibit 'W' at page No. 131 is also sustained and upheld. Both the impugned orders are upheld, however by issuing the following directions and to that extent the same stands amended:-

- (i) Respondent No. 4 - State Government on behalf of the Petitioner - Education Officer is directed to pay the entire amount of full backwages as directed under the judgment dated 16.08.2000 and or judgment dated 25.06.2002, as determined in the operative part of the said judgments which have been reproduced hereinabove as the operative parts are absolutely identical;
- (ii) As on 06.06.2022, according to the Petitioner the outstanding amount due and payable to Respondent No.1 is Rs. 58,38,481/-. Hence, Petitioner and Respondent No. 4 - State Government are directed to calculate and compute the balance decretal amount due and payable to Respondent No. 1 thereafter upto the date of payment within a period of one week from today and inform the Respondent No.1 accordingly; Respondent No. 1 shall also

compute and inform the same to Petitioner and Respondent No. 4;

- (iii) The Respondent No. 4 - State Government is directed to pay the aforesaid entire outstanding amount due and payable to Respondent No. 1 for and on behalf of the Petitioner – Education Officer and the Education Department within a period of two weeks thereafter without any delay whatsoever. The said amount shall be deposited in the bank account of the Respondent No. 1. Bank details of Respondent No.1 are already there with the Petitioner and the State Government. Recovery of the said amount by the State Government if so desired shall be effected against the yearly grant due and payable to Respondent Nos. 2 and 3 Institution in future;
- (iv) If the State Government desires to recover the full backwages which have been directed to be deposited with the Respondent No.1 from the Respondent Nos. 2 and 3 Institution, liberty to do so is given to the State Government, but under no circumstance the State Government shall not deposit the full amount of backwages as calculated till the date of payment in the

bank account of the Respondent No. 1 as directed by this order.

29. In view of the above, to the extent of the above directions, the impugned orders dated 19.04.2022 and 04.02.2023 stand modified and nothing more. The State Government has taken advantage of the fact that the Judgment Debtor No. 3 is the Education Officer and she is the Debtor and there is no order against the State Government. This can never be allowed to happen. The State Government is warned by this Court that once having failed to challenge the judgment passed by the School Tribunal, it cannot indulge in any further protraction of the said judgment by adopting to issuance of correspondence which is seen in the present case.

30. Though the State Government is not a direct party before the School Tribunal, it is infact represented by the Judgment Debtor No. 3 being the Education Officer of the State Government. Hence, under the directions and observations of the Supreme Court in the case of *Educational Society, Tumsar and Ors (supra)*, it is the primary liability of the State Government to pay the entire and full backwages of the Respondent No. 1, which shall be done by the State Government as directed in this judgment. The Secretary, Education Department under whom the Judgment Debtor No.3 is working as Education

Officer shall take cognizance of this order and is directed to act immediately and accordingly.

31. The amplitude of this Court of superintendence under Article 227 of the Constitution of India while considering the impugned orders passed in Executing proceedings is very wide and this Court has the power to even vary the directions contained in the orders passed by the Executing Court in the interest of justice. Once this Court has concluded that the judgment passed by the School Tribunal refers to Respondents which shall include the Education Officer, then it is the primary liability and duty of the State Government to comply with the same.

32. It is seen that the Decree Holder – Respondent No. 1 in the present case has been languishing at the mercy of the Judgment Debtors for the past 16 years after the decision of the Supreme Court in the present case. The Decree Holder – Respondent No. 1 in the present case has suffered immensely and hence the aforesaid directions have been passed.

33. It is seen that the Supreme Court in the opening remark in its judgment dated 30.10.2023 in the case of *Pradeep Mehra Vs. Harijivan J. Jethwa (since deceased thr. lrs.) and Ors.*³ has observed as follows in paragraph No. 1:-

³ 2023 INSC 958

“1. This appeal before us shows how the execution proceedings under order XXI of the Code of Civil Procedure, 1908 (hereinafter referred to as ‘CPC’), are being delayed, and the process is being abused in the execution proceedings, to the peril of the helpless decree holder.

As long back as in 1872 (when the CPC of 1859 was in operation), it was observed by the Privy Council that, “the difficulties of a litigant in India begin when he has obtained a decree”⁴. The situation, we are afraid, is no better even today.”

34. I dare say, the situation is no better even after 152 years after the aforesaid judgment of the Privy Council delivered in 1872 and the observations made therein are considered.

35. The Writ Petition stands disposed of with the above directions.

[MILIND N. JADHAV, J.]

36. After the Judgment is pronounced in Court, Mr. Sawant, learned AGP seeks stay of the Judgment. Considering the demeanour, conduct and stand adopted by the State Government which is exemplified in this Judgment, I am not inclined to stay this Judgment. One of the reasons which compelled me to take this harsh stand is that the State Government has been responsible for the delay throughout despite there being a decree passed against the officer of the State Government representing the State Government before the School

⁴ Raj Durbhunga Vs. Maharajha Coomar Ramaput Sing, 1872 SCC Online PC 16 : (1871-72) 14 Moo IA 605 at page 612

Tribunal as far back as in 2002. In view thereof, the request made by Mr. Sawant is rejected.

[MILIND N. JADHAV, J.]

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