

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

88 WRIT PETITION NO.7151 OF 2022
WITH WP/801/2022 WITH WP/802/2022 WITH WP/1041/2022
WITH WP/2745/2022 WITH WP/7382/2021 WITH WP/7249/2022
WITH WP/7222/2022 WITH WP/7237/2022 WITH WP/9014/2022
WITH WP/9037/2022 WITH WP/9193/2022 WITH WP/12086/2021
WITH WP/12100/2021 WITH WP/14285/2021 WITH WP/14291/2021

PRASHANT ARUN FADAT AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA THROUGH ITS DEPUTY SECRETARY
AND OTHERS

Mr.P.R.Katneshwarkar h/f Mr.S.K.Mathpati, Advocate for the petitioners.
Mr.S.G.Karlekar, AGP for the respondent/State.

(CORAM : RAVINDRA V. GHUGE AND
SANJAY A. DESHMUKH, JJ.)

DATE : JANUARY 12, 2023

PER COURT :

1. The petitioners in all these petitions are identically placed having set forth identical prayer clauses. For the sake of clarity, we are reproducing the prayer clauses A to F from the first petition hereunder :-

"(A) To hold & declared that, the Govt. Rresolution dated 16.03.2021 issued by the Resp. No. 1 will not be applicable retrospectively to the petitioners & the petitioners are entitled to benefits of G.R. dated

19.08.1995 & reimburse the tuition fees paid by them for the M.B.B.S. course during (2016-2021) By issuing the writ of Certiorari, or any other appropriate writ or order as the case may be.

(B) To hold & declare that Circular dated 24.01.2003, 22.04.2020 & 21.09.2020 issued by the Resp. No. 3 are null & void to the extent of denial/exemption of benefit of free seat as the same are contrary to earlier existing G.R. dated 19th August, 1995 issued by the Resp. No. 1 & in view of the Judgment & order dated 11th April, 2018 passed by this Hon'ble High Court in W.P. No. 969 of 2017 By issuing the writ of Certiorari, Mandamus or any other appropriate writ or order as the case may be.

(C) The Resp. authority may kindly direct provide the benefits of G.R. dated 19th August, 1995 & reimburse the tuition fees paid by the petitioners for the M.B.B.S. course during (2016-2021) undergone by the petitioners on a free seat in the Resp. No. 7 college within stipulated period/ three months by issuing the writ of Mandamus or any other appropriate writ or order as the case may be.

(D) The Resp. No. 7 College may kindly be restrained from any recovery of the tuition fees from the petitioners for providing the required documents which are necessary to provide by the Resp. No. 7 & also which have submitted by the petitioner at the time of M.B.B.S. course (2016) By issuing the writ of Mandamus or any other appropriate writ or order as the case may be.

(E) By granting ad-interim relief the resp. No. 7 college may kindly be direct not to withheld any required documents including N.O.C., Leaving Certificate (T.C.), Internship Completion Certificate, Degree Certificate, Bond Release certificate, MCI recognition Certificate, Bonafide Certificate, Age, Nationality Domicile certificate, Character Certificate, Migration Certificate, Experience certificate & original documents which are submitted by the petitioners at the time of the admission & all those documents which are required for taking further education or counselling process for P.G. admission M.D./M.S./ Diploma/ DNB only on the ground of nonpayment of the tuition fees for M.B.B.S. course during (2016-2021) forthwith & for that purposes issue necessary orders.

(F) By way of granting add-interim relief the Resp. authority or their subordinate officers may kindly be restrained from implementation & execution of G.R. dated 16.03.2021 issued by the Resp. No. 1 retrospectively & further recovery of the tuition fees for the M.B.B.S. course during (2016-2021) from the petitioners during the pendency of this Writ Petition."

2. In these petitions, the petitioners have put forth, primarily, a prayer that the Government Resolution dated 16.03.2021 which is introduced in connection with the GR dated 19.08.1995 with certain modifications, should be made applicable prospectively and should not be made applicable, retrospectively. The further prayers seek a

declaration that the circulars dated 24.01.2003, 22.04.2020 and 21.09.2020, be declared as null and void.

3. The issue raised in these petitions is restricted to making the applicability of the GR dated 16.03.2021, prospectively. This issue is beyond debate. If any new rule, regulation, statute or GR introducing more beneficial service conditions are introduced, such amendment will be applicable with retrospective effect, unless specifically provided the otherwise, keeping in view that beneficial terms or favourable terms are being introduced. It is equally trite that a change introduced by an amendment or by introduction of a GR which is likely to take away certain benefits that were extended through an earlier GR, would always operate prospectively since it would cause prejudice to the beneficiaries of the earlier provisions. This has been interpreted in catena of judgments and does not call for any debate.

4. The learned Advocate for the petitioners relies upon the judgments delivered by this Court on 11.04.2018 in WP No.969/2017 filed by **Sarika Sanjay Vs State of Maharashtra and others**. For clarity, we are reproducing paragraph Nos. 4 to 12 of the said judgment

hereunder :-

"4. The learned A.G.P further submits that the Corrigendum dated 25.2.1997 prescribes Rs.6,000/- per annum as the tuition fees and the same is valid till date. The reimbursement of tuition fees is made at the rate of Rs.6,000/- per annum and the same is reimbursed to the petitioner which is legal and valid. In absence of any corrigendum or direction to reimburse the petitioner tuition fees at the rate of Rs.40,000/- per annum, the same cannot be sanctioned and or reimbursed to the petitioner.

5. We have considered the submissions canvassed by the learned counsel for respective parties.

6. The Government Resolution dated 19th August, 1995, is in a regional language. The Government Resolution provides that two wards of primary, secondary and higher secondary teachers in aided primary, secondary and higher secondary school will be provided with free education. The relevant clause reads thus -

२) व्याप्ती :

(अ) राज्यातील माध्यमिक व उच्च माध्यमिक शासकीय शाळेत अथवा स्थानिक संस्थेच्या (महानगरपालिका, नगरपालिका, नगरपरिषद, शिक्षणमंडळे, जिल्हापरिषद आणि कटक मंडळे) शाळेत अथवा मान्यताप्राप्त व अनुदानित शाळेत कार्यरत असलेले पूर्णवेळ शिक्षक व शिक्षकेतर कर्मचा—यांच्या पाल्यांना सर्व स्तरावर निःशुल्क शिक्षणाच्या सवलतीस पात्र समजण्यात यावे.

स्पष्टीकरण :

(१) सदर नियमाच्या प्रयोजनाचे ष्वाल्फ म्हणजे मूल (मुलगा / मुलगी) आणि दत्तक मूल असे समजण्यात यावे.

(२) नियमित वेतनश्रेणीत पूर्ण वेळेसाठी नियुक्त केलेले शिक्षक व शिक्षकेतर कर्मचारी हे पूर्णवेळ कर्मचारी समजण्यात यावेत.

(ब) शिक्षक व शिक्षकेतर कर्मचा—यांच्या फक्त दोन पाल्यांनाच सर्व स्तरावर (इ.१ ली ते पदव्युत्तर स्तर) निःशुल्क शिक्षणाच्या सवलतीस पात्र समजण्यात यावे.

स्पष्टीकरण :

जर दुस—या प्रसूतीच्या वेळी एकापेक्षा जास्त अपत्यांना जन्म दिला गेल्यास अशा अपत्यांना एकच अपत्य म्हणून या नियमासाठी समजण्यात येईल.

३) उत्पन्नाची मर्यादा :

पूर्णवेळ शिक्षक व शिक्षकेतर कर्मचारी यांचे उत्पन्न लक्षात न सदर नियमाखाली अनुज्ञेय असलेली शैक्षणिक सवलत त्यांचे पात्र पाल्यांना देय असेल.

४) शिक्षक व शिक्षकेतर कर्मचा—यांच्या पाल्यांना सर्व स्तरावर (इ.१ ली ते पदव्युत्तर स्तर)

निः शुल्क शिक्षण पुढील शैक्षणिक संस्थेत प्रदान करण्यात येईल :

(१) इयत्ता १ ली ते १० वी पर्यंत मान्यताप्राप्त प्राथमिक / माध्यमिक शाळा.

(२) इयत्ता ५ वी ते १० वी पर्यंत मान्यताप्राप्त तंत्रशाळा अथवा संस्था.

(३) इयत्ता १० ते १२ वी पर्यंत उच्च माध्यमिक मान्यताप्राप्त शाळा व तंत्रशाळा

(४) इयत्ता १२ वी नंतर पदव्युत्तर स्तरापर्यंतचे शिक्षण हे मान्यताप्राप्त महाविद्यालये, पदव्युत्तर संस्था व विद्यापीठ विभाग, औद्योगिक व व्यावसायिक शाळा / संस्था/ महाविद्यालये.

(५) इ.१२ वी / पदवीनंतर मान्यताप्राप्त शासकीय वैद्यकीय, अभियांत्रिकी व इतर व्यावसायिक अभ्यासक्रम.

(६) ज्या शिक्षणक्रमात शिकवणी कालावधी ३ तासांपेक्षा कमी आहे आणि अर्धवेळ आहे अशा शिक्षणास हया सवलतीचा लाभ अनुज्ञेय नाही.

7. *It is a matter of record that the petitioner is admitted in M.B.B.S. course and he is taking education at Government Medical College, Miraj and he is admitted through CET on a free seat. The tuition fees is Rs. 40,000/- per annum. The petitioner is denied reimbursement of tuition fees of Rs.40,000/- per annum on the ground that in the year 1997 tuition fees was Rs. 6,000/- per annum and the said Rs. 6,000/- per annum was directed to be reimbursed. The letter of the Director of the year – 2003 is also with regard to the tuition fees as prevailing then.*

8. *Reading the policy as is introduced under Government Resolution dated 19th August, 1995, it is manifest that the policy and the Government Resolution is a benevolent policy. The same is introduced with avowed object of providing free education to the wards of the full time teachers in private aided primary, secondary or higher secondary school. The scheme is a welfare scheme. The welfare scheme / policy has to be given a beneficial interpretation. The Government was well within its powers to introduce the said scheme by issuing executive instructions.*

9. *The intention of the Government is writ large from the recitals in the Government Resolution which in no uncertain and unambiguous words states that since the year 1995 - 1996 the State has decided to provide free education to the children of a full time teaching and non teaching employees in a private aided primary, secondary and higher secondary school from standard 1st till post graduation. The avowed*

object of the scheme cannot be allowed to be scuttled down by the authorities of the State. As and when the tuition fees of the free seat in the Government Medical College is increased, naturally the Government will have to bear the burden of the increased tuition fees so long the policy of providing free education to the children of a member of the teaching and non teaching staff of a private aided institution is in vogue.

10. Once the Government has taken a policy decision to provide free education to the wards of a full time teachers teaching in private aided primary, secondary or higher secondary school then the authorities implementing the scheme cannot turn around and say that the reimbursement of tuition fees would be restricted to Rs.6,000/- only because in the year when the policy was introduced, the tuition fees was Rs.6,000/- per annum for M.B.B.S. course. Such attitude would render the welfare policy of the Government of giving free education to the wards of full time employees of aided primary, secondary and higher secondary school nugatory.

11. It is not the case of the respondents that the Government has disbanded the policy introduced under Government Resolution dated 19th August, 1995. The said policy still exists. In that case, the respondents would be duty bound to reimburse the petitioner the full tuition fees applicable to the free seat in a Government Medical College.

12. In the light of above, we direct the respondents to give the

benefit of the Government Resolution dated 19th August, 1995, and reimburse the tuition fees paid by the petitioner for the M.B.B.S. course undergone by the petitioner on a free seat in the Government Medical College, Miraj. The same shall be reimbursed expeditiously and preferably within three (3) months."

5. The learned AGP submits that the GR dated 19.08.1995 mandates that the moment a student gets admission to a particular course, he has to move an application for the reimbursement of the tuition fees within the prescribed limit as enumerated in Clause 6(2) set out in the Annexure 'A' to the GR. According to the learned AGP, this has been interpreted by this Court by judgment dated 08.11.2022 delivered in WP No.9164/2021 filed by **Prathamesh Mahesh Kulkarni and another Vs. the State of Maharashtra and others**, wherein the time factor and the consequences of the time limit within which the application is to be tendered by the College, has been interpreted. The consequences flowing under clause 7(a) of the 1995 GR, of Annexure A to the GR, have also been considered by this Court in Prathamesh (supra).

6. For clarity, we are reproducing paragraph Nos.6 to 10 from

Prathamesh (supra) as under :-

"6 *The petitioners have produced on record documents to show that petitioner No.2 was initially Part Time Librarian and then his approval on the post of Full Time Librarian has also been approved by the Government. The GR has been produced, which states specifically that the Government had decided to reimburse the tuition fees of the wards of teaching and non teaching staff of the aided schools. Such free reimbursement was to be given for the tuition fees from 1st standard to Post Graduation. The said Government Resolution, however, contains conditions as to how an application should be presented, when it should be presented. Condition Nos.6 and 7 are relevant, which are as follows -*

“ 6. या सवलतीसाठी अर्ज करण्याची कार्यपद्धती :

(१) या सवलतीसाठी माध्यमिक शिक्षक/शिक्षकेतर कर्मचारी यांनी दरवर्षी ज्या शैक्षणिक संस्थेत त्यांचा पाल्य शिकत असेल (किंवा ज्या संस्थेत प्रवेश घेण्यासाठी अर्ज केला असेल) त्या शैक्षणिक संस्थेच्या प्रमुखास अर्ज केला पाहिजे. विहित नमुन्यातील अर्ज ज्या शैक्षणिक संस्थेत पाल्य / विद्यार्थी शिकत असेल किंवा शिक्षण घेण्याचा विचार असेल त्या शैक्षणिक संस्थेत मिळेल. नियम १० प्रमाणे विहित नमुन्यातील सेवेचे प्रमाणपत्र अर्जासोबत न चुकता जोडणे.

(२) असे अर्ज पाल्याने अगोदरच शैक्षणिक संस्थेत प्रवेश घेतला असल्यास शैक्षणिक वर्ष सुरू झाल्यापासून ३० दिवसात आणि ज्यांनी नव्याने प्रवेश घेतला असेल त्यांनी प्रवेश घेतलेल्या दिनांकापासून ३० दिवसांच्या आत सादर करणे आवश्यक आहे.

(३) शैक्षणिक संस्थेच्या प्रमुखाने अर्ज संबंधित शिक्षणाधिकारी (माध्यमिक), जिल्हा परिषद किंवा शिक्षण निरीक्षक, बृहन्मुंबई यांच्याकडे नियम १ खाली

नमूद केल्याप्रमाणे प्रमाणपत्राच्या प्राप्तीनंतर सादर करावेत.

७) उशिरा आलेले अर्ज किंवा अपूर्ण अर्ज नाकारण्यात येतील :

(अ) नियम ६ खाली विहित केलेला कालावधी संपल्यानंतर प्राप्त झालेले अर्ज किंवा विशिष्ट माहिती असलेले अपूर्ण अर्ज किंवा विहित नमुन्यात नोकरीचे प्रमाणपत्र सोबत नसलेले सर्व अर्ज तडकाफडकी फेटाळण्यात येतील.

(ब) शैक्षणिक संस्थेच्या प्रमुखाने सर्व अर्ज त्यावर्षी ३१ ऑगस्ट रोजी किंवा त्यापूर्वी शिक्षणाधिकारी (माध्यमिक), जिल्हा परिषद किंवा शिक्षण निरीक्षक, बृहन्मुंबई यांच्याकडे सादर करावेत. शिक्षणाधिकारी, जिल्हा परिषद किंवा शिक्षण निरीक्षक, बृहन्मुंबई हे सदर सवलत मंजूर करण्यास जबाबदार असून ते त्यांचा निर्णय शक्य तितक्या लवकर परंतु कोणत्याही परिस्थितीत १ ऑक्टोबरपूर्वी कळवतील.”

7 *The petitioners have further produced on record the Passing Certificate of petitioner No.1 of 10th standard, Higher Secondary Certificate i.e. 12th standard, then, B.E. Mark Sheet as well as Decree Certificate. He had appeared for CET Exam and he has received the admission to Shree C.E. Society's Indira Institute of Management, Pune for MBA course from free sheet. Therefore, all those conditions in the said GR dated 19.08.1995 in respect of educational qualifications and the eligibility appears to have been fulfilled. The respondent Nos.1 and 2 are also not disputing this fact.*

8 *The petitioners have produced application filed by petitioner No.1 to his institute stating that he wants to avail the facility as per GR dated 19.08.1995 and, therefore, the institute should take up the further steps. The copy that has been attached to the petition does not bear any signature nor the seal of the institute. Therefore, along*

with his re-joinder the petitioner No.2 has given a copy of the same. Said copy then gives the date as 08.02.2021 in hand, whereas the other contents are computer typed and printed. Then, it bears the seal of the institute and it has been stated -

“Dear Sir, Maam

We have received application and have issued Bonafide Certificate on 08.02.2021.

Sd/-

Pradeep Kharat,

Academic Coordinator MBA IIMP”

The Bonafide Certificate, which has been produced on record dated 08.02.2021 bears a signature and the seal of the institute, but it is stated that the said signature is by a person for Director but exactly who is the person, who issued the said Bonafide Certificate, his designation, is not stated. Thereafter, there is also signature and stamp of Headmistress of Shree Sharda Mandir Kanya Prashala, Aurangabad. For what purpose the Headmistress of the school has made signature on the Bonafide certificate issued by the another institute, is a question. However, then, we gathered that her signature appears to have been later on obtained for certifying that this is a true copy, but she has not made that kind of endorsement. We have every kind of doubt in respect of copy of the application that has been produced at Exh.R-1 along with re-joinder. Why an Academic Coordinator should acknowledge the said application, is a question and when that acknowledgment has been given to the student rather the applicant

(herein the petitioner No.1), then, why the Academic Coordinator should say, "Dear Sir/Maam". The fact remains from further document i.e. Exh.'E' that the said institute forwarded the application/proposal to the Accounts Officer, Education, Education Officer Secondary, Zilla Parishad, Aurangabad on 03.06.2021 and it was received by respondent No.4's office on 08.06.2021. Thus, it is to be noted that though it appears that the petitioners had deposited the tuition fees of the petitioner No.1 to the tune of Rs.2,20,000/- on 18.02.2022, it appears that the petitioners had not made application within 30 days of the admission taken by the petitioner No.1. At the cost of repetition, we say that we have every doubt about the document which has been produced at Exh.'R-1' alleged to be submitted by petitioners to the institute on 08.02.2021, as the copy thereof which has been annexed along with the petition does not bear any signature and the acknowledgment. Petitioner No.2 in his re-joinder has not given satisfactory clarification, as to why Exh.'R-1' was not annexed to the petition. The explanation tried to be submitted that copies of the application/proposal were in two sets and the second set inadvertently did not mention the date, is unacceptable. It has been produced only after the objection has been taken by the respondents and that too, the wordings in the acknowledgment are rather creating doubt. Another fact to be noted is that in the said proposal dated 03.06.2021 that was forwarded by the institute, where the petitioner No.1 has taken admission, there is absolutely no mention of reason as to why it has been forwarded belatedly. If at all the institute had received the proposal on 08.02.2021, then, why the institute was sitting over the file till 03.06.2021. There is also another certificate by the institute dated

08.02.2021 produced along with Exh.'E' signed by Director of the institute stating that the first year tuition fees is Rs.2,20,000/- and the amount can be disbursed through online, RTGS/NEFT and the bank details have been given. There is one fee receipt which is a student's copy stating that tuition fee of Rs.30,000/- is paid on 30.01.2021. Further along with re-joinder, there is another fee receipt which is also a student's copy, which states that in all amount of Rs.1,90,000/- has been paid on 17.04.2021. If these two receipts are then considered, then, it can be seen that the entire payment was not made by the petitioners on 08.02.2021 on the day when the alleged application Exh.'R-1' was presented to the institute. The amounts of these two fee receipts dated 30.01.2021 and 17.04.2021 differ from the certificate that was issued by the Director on 08.02.2021. Under such circumstance, the respondents were justified in not granting the benefit under the GR dated 19.08.1995, as the direct conditions were not observed by the petitioners. As per clause-VII of the said GR, the respondents had right to reject the applications, which have been received belatedly or they are incomplete.

9 *It appears that still the respondents applied the recent GR dated 16.03.2021 and then granted amount of Rs.6,000/- per student, which appears to be a justified act.*

10 *The facts in Writ Petition No.5846 of 2020 were different. In that case the petitioner had complied with the strict conditions from the old GR dated 19.08.1995. No doubt, this Court had held that the earlier GR was the example of benevolent policy and once the Government had taken a policy decision to provide free education to*

the wards of a full time teachers teaching in private aided primary, secondary or higher secondary school, then, the authorities implementing the scheme cannot turn around and say that the reimbursement of tuition fees would be restricted to a particular amount. It was also taken a note of the fact that the Government has not disbanded the policy as introduced in GR dated 19.08.1995. As the said policy still exists and taking note of the petitioner therein that she had complied with the terms, the reimbursement was granted. Here, we take out that exception and even by considering the facts of the case on the conditions those were to be observed as per GR dated 19.08.1995; yet the case of the petitioner is not covered under the same. Therefore, the said decision of the Coordinate Bench of this Court will not be helpful to the petitioners herein."

7. The grievances brought to the notice of this Court by these petitioners, have not been addressed to the competent authorities. No order has passed by the said authorities. Since the petitioners apprehend that the authorities are not likely to entertain their claims, by citing the clause pertaining to the time frame within which the applications have to be made, that these petitioners are before this Court.

8. In view of the above, we deem it appropriate to relegate these

petitioners to the competent authority which is respondent No.3 i.e. the Director of Education (Secondary), Maharashtra State, Pune. The said authority can consider the request of the petitioners / Institutions.

9. In view of the above, these petitions are disposed off. The cases of each of these petitioners stands relegated to the office of respondent No.3. Since there is no dispute that the GR dated 19.08.1995 would be applicable to them and not the G R dated 16/03/2021, respondent No.3 would consider their cases by scrutinizing each case individually in the light of the 19.08.1995 GR and in the light of the judgment of this Court in Prathamesh (supra). If any adverse decision is to be arrived at by respondent No.5, in any case of an individual, a reasoned order would be passed and such order would be conveyed to the concerned individual including his College / Institution. Let such exercise be concluded on or before 31.05.2023.

10. Until such decision, let there be no recovery initiated against any petitioner. So also, if any petitioner has deposited fees with the authorities and is eventually held to be eligible or entitled for the benefits of 19.08.1995 GR, the said amount would be refunded to him

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within 4 weeks from the date of such decision.

(SANJAY A. DESHMUKH, J.)

(RAVINDRA V. GHUGE, J.)