

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.2732 OF 2013

Sayed Khaled s/o. Sayed Abdul Hameed,
Age 54 Years, Occu. Service,
As Librarian at Moin-Ul-Uloom High School,
Abdul Hameed Marg., Silk Mills Colony,
Aurangabad, Dist. Aurangabad.
R/o. 8-12-235, Kaisar Colony,
Aurangabad, Dist. Aurangabad.

.. PETITIONER

VERSUS

- 1] The State of Maharashtra,
Through the Secretary,
School Education & Sports Department,
Mantralaya, Mumbai-32

[Copy to be served on the Govt.
Pleader, High Court of Bombay
Bench at Aurangabad]
- 2] The Director of Education,
Maharashtra State, Pune
- 3] The Deputy Director of Education [Sec.],
Aurangabad Division, Aurangabad
- 4] The Education Officer [Secondary],
Zilla Parishad, Aurangabad,
Dist. Aurangabad
- 5] The Headmistress,
Moin-Ul-Uloom High School,
Abdul Hameed Marg., Silk Mills Colony,
Aurangabad, Dist. Aurangabad

RESPONDENTS

...
Mr. Sujeet D. Joshi, Advocate for the Petitioner
Mr. S.K.Kadam, AGP for the Respondent – State
...

**CORAM : S.S. SHINDE &
P.R.BORA, JJ.
DATE: 01.04.2015**

ORAL JUDGMENT:- [Per S.S.Shinde, J.]

1] This Petition is filed with following prayers:

B] By issue of writ of certiorari or any other appropriate writ, order of direction in the like nature, the conditions No.1, 3, 4 of the G.R. dated 3.8.2006 may kindly be declared as unjust, improper, arbitrary, illegal and contrary to the policy decision dated 28.6.1994 and as such, may be struck down accordingly.

C] By issue of Writ of mandamus or any other appropriate writ, order or direction in the like nature, it be held that, the petitioner is entitled for appointment to the post of full time Librarian w.e.f. 12.12.1995 and be held entitled to be placed in the graduate pay scale from 12.12.1995 to 21.3.2007 along with all consequential benefits such as seniority, time scale promotion etc.

2] It is the case of the petitioner that, the petitioner came to be appointed on 12.12.1995 in the respondent No.5 – School as a part time Librarian but in the pay scale meant for Diploma holders. On 15th April, 1996,

his services came to be approved by the Education Officer, and thereafter, with effect from 12.12.1997 the petitioner came to be granted continuity of service. In fact, the petitioner was required to be appointed as full time Librarian in keeping with the guide lines of the Government Resolution dated 28.06.1994, however, the respondents did not act as per the provisions of the said Government Resolution. On 03.08.2006, the Government has issued the Resolution and created 924 posts of Librarian. By the said Government Resolution, the part time Librarians were to be upgraded to the post of full time Librarians. On the basis of the clause Nos. 1, 3 and 4 of the said Resolution, the appointment was given as if it is a fresh appointment on probation. The benefit of the service rendered earlier was swept away by insertion of this clause.

3] It is the further case of the petitioner that, if the clauses set out in the Resolution are permitted to be implemented, then it would cause serious prejudice to the services of the petitioner in so many ways i.e. the past service of the petitioner from 12.12.1995 to 31.03.2006 may not be counted towards pensionable service although he was appointed on the said post as per the Rules.

Secondly, the petitioner was made to suffer monetary loss for the said period due to sheer inaction on the part of the State. The conditions set out in the Resolution have no nexus with the object sought to be achieved. Restricting the benefit to those, who have been in service as part timers since last 5 years and the strength of the students for the preceding three years to the year 01.04.2006 in excess of 1000 as such conditions, which does not have any rational behind it, and therefore, the petitioner has challenged the said conditions in afore mentioned Government Resolution.

4] The learned counsel appearing for the petitioners submits that, though there is challenge to the conditions in the Government Resolution, in view of the fact that, there are more than 1000 students in the School, even condition in the said Government Resolution that, there should be more than 1000 students is fulfilled, therefore, relying upon the order passed by the Division Bench of this Court, at Nagpur, in Writ Petition No.6630 of 2013 with connected with Writ Petitions, dated 28th January, 2015, and also order passed by this Court in case of the **Ravindra Nana Patil Vs. The State of Maharashtra and others**

in Writ Petition No.7779/2012, the learned counsel appearing for the petitioners submits that, the petitioners are satisfied in case respondents are directed to consider the petitioners' case for full time Librarian from the date of initial appointment, in view of the fact that, the strength of the students was more than 1000.

5] The learned AGP, upon perusal of the orders passed by this Court in aforesaid mentioned Writ Petitions, which are disposed of, submits that, the case of the petitioners is covered by the reasons assigned in the said orders.

6] In the light of the discussion herein above and the reasons assigned by the Division Bench of this Court in the order dated 9th March, 2015 in case of **Ravindra Nana Patil Vs. The State of Maharashtra and others** in Writ Petition No. 7779/2012, and also the reasons assigned by the Division Bench of this Court, at Nagpur Bench in Writ Petition No.6630 of 2013 with connected with Writ Petitions, dated 28th January, 2015. We pass the following order:

- i] The Petitioners shall be considered as Full Time Librarian from the date of his initial appointment i.e. 12.12.1995, in view of the fact that, the strength of the students is increased and crossed more than one thousand. The said date shall be considered for notional pay fixation, so also for time bound promotion and other retiral and pensionary benefits. However, the Petitioners would not be entitled for the difference of salary from 12.12.1995 till 2006.
- ii] Accordingly, Writ Petition is disposed of. No costs.

Sd/-
[P.R.BORA, J.]

Sd/-
[S.S.SHINDE, J.]