

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

WRIT PETITION NO.2038 OF 2015

- 1] Shirin d/o Iliyas Mirza,
Age 34 Years, Occupation Head Mistress
Bhusawal Nagarparishad Sanchalit,
M.I. Teli Urdu High School,
Bhusawal Taluka Bhusawal, District Jalgaon,
Resident of Gift of God Department,
Millatnagar, Bhusawal, District Jalgaon.
- 2] Shahrenaz d/o Abid Ali,
Age 48 Years, Occupation Assistant Teacher
Bhusawal Nagarparishad Sanchalit,
M.I. Teli Urdu High School,
Bhusawal, Taluka Bhusawal, District Jalgaon,
Resident of Nasarwanji File
Near Mutton Market, Bhusawal,
District Jalgaon
- 3] Liyaquat Husain s/o Khadim Husain
Age 36 Years, Occupation Assistant Teacher
Bhusawal Nagarparishad Sanchalit,
M.I. Teli Urdu High School,
Bhusawal, Taluka Bhusawal, District Jalgaon,
Resident of Sikalkar Function Hall,
Syed Asrar Nagar, Jalgaon
- 4] Tarannum Parvin d/o Shaikh Rafique
Age 34 Years, Occupation Assistant Teacher
Bhusawal Nagarparishad Sanchalit,
M.I. Teli Urdu High School,
Bhusawal, Taluka Bhusawal, District Jalgaon,
Resident of Taj Nagar Nasarwanji File
Bhusawal, District Jalgaon
- 5] Shakil s/o Mansoor Husain Ansari
Age 41 Years, Occupation Junior Clerk
Bhusawal Nagarparishad Sanchalit,
M.I. Teli Urdu High School,
Bhusawal, Taluka Bhusawal, District Jalgaon,
Resident of Ansarulla Nagar Galli No.1
Khadka Road, Bhusawal, District Jalgaon

- 6] Tausif Khan s/o Khudayar Khan,
Age 34 Years, Occupation Peon
Bhusawal Nagarparishad Sanchalit,
M.I. Teli Urdu High School,
Bhusawal, Taluka Bhusawal, District Jalgaon,
Resident of 483/1, Hakimi Complex
Near Jam Mohalla, Near Zamzam Lodge
Bhusawal, District Jalgaon
- 7] Azharuddin s/o Aminuddin,
Age 28 Years, Occupation Peon
Bhusawal Nagarparishad Sanchalit,
M.I. Teli Urdu High School,
Bhusawal, Taluka Bhusawal, District Jalgaon,
Resident of Khadka Road, Aman Colony,
Near Junaid Kirana, Bhusawal,
District Jalgaon

PETITIONERS**VERSUS**

- 1] State of Maharashtra,
Through Secretary,
Technical and Higher Education Department,
Mantralaya, Mumbai – 400 032
Copy to be served on
Government Pleader,
High Court Aurangabad
- 2] The Deputy Director of Education
Nasik Division, Nasik.
- 3] The Education Officer [Secondary],
Zilla Parishad, Jalgaon
- 4] Nagar Parishad, Bhusawal,
Taluka Bhusawal, District Jalgaon
Through its Chief Officer

RESPONDENTS

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Mrs. A.N.Ansari, Advocate for the Petitioners
Mrs. S.G.Chincholkar, AGP for the Respondent – State
Mr. G.V.Wani, Advocate for the Respondent No.4.

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**CORAM: S.S.SHINDE &
A.M.BADAR, JJ.**

Reserved on : 28.09.2015
Pronounced on: 05.10.2015

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

- 1] Heard.
- 2] Rule. Rule made returnable forthwith, and heard with the consent of the parties.
- 3] This Petition is filed with following prayer:
 - B) The Respondent no.4 be directed to make the payment of salary to petitioners in prescribed pay scale of the posts from the dates of appointments by issuing any appropriate writ order or direction as the case may be.
 - C) To direct the Respondent no.4 to pay the difference of payment of salary of the petitioner in pay scale from the dates of their appointments onwards, with interest till the same is actually paid, by issuing any appropriate writ order or direction as the case may be.

Background facts for filing the Writ Petition stated by the petitioners are as under:

- 4] It is the case of the petitioners that, the

respondent No.4 was granted permission to start Urdu Medium High School by the Government of Maharashtra in the Year 2003. Initially, 8th standard was started in the Year 2003-04, and accordingly, advertisement was given by the respondent No.4, for filling in 4 posts i.e. one post of Head Mistress, one Assistant Teacher, one Clerk and one Peon. Accordingly, the petitioner No.2, petitioner No.5 and the petitioner No.6 and one another teacher, who has left the services, were appointed by issuing appointment order dated 24th June, 2003. It is further case of the petitioners that, the Education Officer has also given sanction to 4 posts, as per the staff schedule by letter dated 27.11.2006. According to the petitioners, their appointments were made in the prescribed pay scale. The petitioners have placed on record copy of the advertisement along with appointment orders dated 24th June, 2003, and the order dated 27.11.2006.

5] It is further case of the petitioners that, as per the natural growth for the next academic year 2004-05, the respondent No.4 was granted permission to start 9th Standard, by issuing letters dated 21st September, 2005 and 23rd September, 2005 by the respondent Nos. 2 and 3

respectively. Thereafter, one more post was to be filled in, as per the increase class, and the petitioner No.1 and petitioner No.3 were appointed by the appointment order dated 5th July, 2004 in the pay scale of Assistant Teacher i.e. Rs.5500-9000/-. The petitioners have placed on record the copies of the appointment order dated 5th July, 2004 and the copies of the staff approval dated 27.11.2006.

6] It is further the case of the petitioners that, as per natural growth, 10th standard was started from the academic year 2005-06, and accordingly, the said High School was recognized by the SSC Board by allotting the Index No.15-02-046, and by following procedure and by giving advertisement one more Assistant Teacher i.e. petitioner No.4 was appointed by giving appointment order dated 1st August, 2005, and one more peon i.e. petitioner No.7 came to be appointed by the order dated 1st September, 2005. It is further the case of the petitioners that, the appointments of all the petitioners are duly approved by the respondent No.3, by letter dated 31st January, 2009. The grievance of the petitioners is that, though they were appointed by following due procedure of law, and by issuing the appointment letters showing their

appointment in prescribed pay scale i.e. Head Mistress Assistant Teacher and peon. However, the petitioners are not being paid in the prescribed pay scale. The petitioners are given nominal salary i.e. Rs.4000/- p.m. to Head Mistress, Rs.4,000/- p.m. to Assistant Teacher, Rs.2000/- p.m. to Peon and Rs.3000/- p.m. to Junior Clerk. It is further the case of the petitioners that, the school is having sufficient strength, the result of 10th Standard of the school is outstanding. From last 3 years, the result of the School was 100% and thereafter also the result of the said School is 75-80%. As per the condition contained in the permission granted to respondent No.4 that, the employees will be paid prescribed pay scale is not fulfilled.

7] It is further the case of the petitioners that, apart from the fact that, the petitioners are not being paid in prescribed pay scale, though appointed in the pay scale, even the petitioners are not being paid regularly. At present, last payment was given to the petitioners in the month of August, 2013. By making payment in August 2013, the petitioners were paid salary of last preceding 11 months. It is further the case of the petitioners that, from the month of August, 2013, there is no payment to the

petitioners of any kind. The petitioners have made representations for the payment in the pay scale as well as regular payment also. However, the representations have no results at all. The representation was made on 16.08.2014 to respondent No.4. By that letter the information was called from the respondent No.3. Even the petitioner No.1 has also written to the District Collector, Jalgaon by letter dated 07.02.2015. It is further the case of the petitioners that, though the representation dated 06.02.2014 made to the respondent No.4, there was no redressal of the grievance raised by the petitioner.

8] The learned counsel appearing for the petitioners submits that, the petitioners are entitled for full salary as per pay scale since the date, as per their respective appointments. The respondent No.4 is under bounded duty to pay salary to the petitioners under the prescribed pay scales, as one of the conditions of granting permission so also as the petitioners are serving as full time teachers, the respondent No.4 is extracting the work from the petitioners as full time teacher and liable to pay the petitioners, to pay in prescribed pay scale of the post, they are holding. Even the concerned Education Officer has

granted approval in the prescribed pay scale, but due to inaction of respondent No.4, the petitioners are not paid salary and they are also not paid regularly. In spite of representation made by the petitioners, they are without salary since last 20 months, hence, they are approaching this Hon'ble Court by filing the present Writ Petition.

9] It is further submitted that, the respondent No.4 is running Urdu High School as per permission / condition granted. It is submitted that, the petitioners are working with respondent No.4 against the sanctioned posts. The petitioners are appointed after following due procedure of law, and by giving appointment letters. The appointment letter shows that, they are appointed in prescribed pay scale for the post they are appointed. It is submitted that, though the petitioners are eligible and entitled to receive the salary in prescribed pay scale of Head Mistress teacher, clerk and peon, they are nominally paid Rs.4000/-, Rs. 3000/- and Rs.2000/- only and that too with intervals of years and not monthly regularly. The last payment made to the petitioners in August, 2013 for preceding 11 months. From August, 2013 onwards, the petitioners are not paid any thing even though they are working regularly in the

school. It is submitted that, the M.I. Teli Urdu High School is only a School run by Bhusawal Nagarparishad in the locality. The school is having sufficient strength, and the same School is recognized by the SSC Board by giving Index No.15-02-046. The result of 10th standard examination is also outstanding and sufficient. However, non-payment of teachers for years together may adversely affect the academic standard of school and the career of the student. It is further submitted that, the action of the respondent No.4 is not justifiable by any case, and the same is arbitrary, unreasonable and unjustifiable.

10] In pursuant to the notices issued to the respondents, the respondent No.4 has filed affidavit-in-reply. It is stated in para Nos.2 to 4 of the said affidavit in reply, which reads thus:

2) I say that, the contentions/averments which are not specifically denied are hereby denied in toto. I say that, the present petitioner have been appointed and working in the Urdu Medium High School of Municipal Council Bhusawal. I say that, it can be seen from the record annexed with the petition that the petitioners were given a clear understanding that they would be required to be work on an honorarium basis as the financial condition of the Municipal Council does not permit

for a full scale payment to the employees of the said institution.

3) I say that, the concerned authorities of the Municipal Council at the relevant time had issued appointment orders on honorarium basis only, and therefore payments have been done as per the agreement in between the parties. I say that, petitioner no.1 to 4 are paid @ 4000/- per month while as the petitioner no.5 is paid @ 3000/- and petitioner no.6 and 7 are paid @ 2000/- per month. I say that, whatever payments are made to the employees is infact an honorarium given to them and with a clear understanding the employees had accepted the same. I say that, this particular decision had been taken by the Municipal Council considering the financial burden and tried to achieve the social goal also. I say that, if the petitioners knowingly have accepted to work an honorarium and had paid accordingly they cannot now raise grievances that have been raised in the present petition.

4) I say that, submissions made in para 10 are partially true but so far as regular payment is concerned, the said depends on the income received by the Municipal council from the state government by way of funds so also from the collection of taxes from the residents. I say that, all the employees of Municipal Council are not able to receive the salary regularly and the salaries of all the employees of the Municipal Council are released as per the availability of the funds with the

Municipal council and is monitored. I say that, irregular payments are caused due to insufficiency of funds, however every effort is made to see that all the employees of the Municipal Council are regularly paid.

11] One Mr.Subhas Tryambak Warade, presently working as Deputy Education Officer [Secondary] Zilla Parishad, Jalgaon, has also filed affidavit-in-reply. It is stated in para Nos.1 to 5 of the said affidavit in reply, which reads thus:

1. *I say and submit that the Government of Maharashtra vide its letter dt.07.06.2003 granted recognition to Co-Ordination Committee, Secondary Section, Municipal Council Bhusawal to start 8th Std. in Urdu Medium School, Khadaka Road, Bhusawal from the academic year 2003-2004 on permanent no grant in aid basis. The same Urdu Medium High School in the Year 2003 initially VIII standard was started.*

2. *I say and submit that the same decision of the government (Education Dept. Mantralaya Mumbai 32) was communicated by the Respondent No.2 and 3 to Co-ordination Committee, Secondary Section, Nagar Parishad Bhusawal meeting various term and conditions. The Coordination Committee, Secondary Section, Nagar Parishad Bhusawal was instructed that the recognition was granted on permanently no grant in basis and therefore, in*

future no any kind of grant in aid or financial help will be granted by the Government. The Respondent No.2 and 3 mentioned various terms and conditions in its letters dt.07.07.2003 and 30.12.2003.

3. I say and submit that all terms and conditions have been accepted by the Coordination Committee, Nagar parishad, Bhusawal and started 8th Std. from the year 2003-2004. For the academic year 2003-2004 accordingly advertisement was published for filling in 4 posts i.e. one Head Mistress, Assistant Teacher one post, one clerk and one peon. Accordingly, 4 posts were filled by giving appointment letter dt.24.06.2003. The Respondent No.3 has also sanctioned posts as per Staff Schedule by the letter dt.27.11.2006.

4. I say and submit that as per natural growth for the next academic year 2004-2005 for the academic year 2005-2006, IX and X standards were approved by the authority competent on permanent no grant in aid basis. Accordingly the petitioners were appointed in the pay scale of Assistant Teacher of Rs.5500-9000. The said High School (Urdu) was recognised by S.S.C. Board by allotting the Index No.15-02-046.

5. I say and submit that it is the responsibility of the Coordination Committee, Madhyamik Education Section Nagar Parishad, Bhusawal to pay the salary as per Government rule and regulation to the appointed teachers, since from the date of their

appointment. Even Respondent No.3 has granted approval in prescribed pay scale. From this writ petition it is seen that the Co-ordination Committee, Secondary Section, Municipal Council Bhusawal has not followed the terms and conditions prescribed at the time of recognition of said Urdu Secondary School at Bhusawal.

12] We have heard the learned counsel appearing for the petitioners, the learned AGP appearing for the Respondent – State and the Education Officer, and also the learned counsel appearing for the Respondent No.4. With their able assistance, we have perused the pleadings and the grounds taken in the Petition, annexure thereto, affidavit-in-replies filed by the respondent No.3 and the respondent No.4. Upon perusal of the documents placed on record, *prima facie* it appears that, the petitioners were appointed by issuing appointment letters in pursuant to the advertisement and the selection process undertaken by the respondent No.4. It further *prima facie* appears that, the petitioners were appointed in regular pay scale. It further *prima facie* appears that, the respondent State Authorities have granted permission to open Urdu High School from 8th Standard onwards, and by natural growth 9th and 10th standards were started, and the petitioners were appointed.

It further appears that, *prima facie* approvals are granted to the services of the petitioners by the Education Officer. However, while exercising the writ jurisdiction, it is not desirable for this Court to undertake the exercise to examine the case of each of the petitioners, in the light of the documents placed on record and the record maintained by the respondent No.4.

13] In the light of discussion herein above, we are of the view that, ends of justice would meet if the respondent No.2 is directed to look into the grievance of each of the petitioners, in the light of the documents placed on record, and also record maintained by the respondent No.4 about the appointments of the petitioners and also MEPS Act and Rules, and the entitlement of the petitioners and then issue necessary directions to the respondent No.4. Such exercise is to be done by the respondent No.2, as expeditiously as possible, however within 10 weeks from today and communicate the decision to the petitioners. If it is necessary, it will be open for the respondent No.2 to hear the respondent No.4 and the petitioners, however, will leave it to the respondent No.2, about the said aspect.

14] Rule made absolute in above terms. The
Petition is partly allowed, and same stands disposed of.

Sd/-
[A.M.BADAR]
JUDGE

Sd/-
[S.S.SHINDE]
JUDGE

DDC