

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 1022 OF 2004

1. Abdul Hamid s/o. Abdul Latif Mulla,
Age – 48 Years, Occu : Asstt. Teacher,
R/o. Darga Galli, Omerga,
District Osmanabad.
2. Shabbir Ahmed s/o. Ladlesahab Mallephari,
Age – 46 Years, Occu : Asstt. Teacher,
R/o. At Post Mainpargi, Tq. Akkalkot,
District Solapur.
3. Sow. Sayeda Shagufta Begum d/o.
Abdul Rahim,
Age – 32 Years, Occu : Asstt. Teacher,
R/o. C/o. A.F. Shaikh, A-1, Room No. 1,
Telecom Quarter, Hodgki Road,
Taluka & District Solapur. ... Petitioners

VERSUS

1. The State of Maharashtra
2. Omerga Education Society,
Omerga, Through its Secretary
3. Education Officer (Secondary)
Zilla Parishad, Osmanabad. ... Respondents

.....
Mr. R. J. Godbole, Advocate for the petitioners.
Mr. S. D. Kaldete, AGP for the respondent / State.
.....

**CORAM : A. V. NIRGUDE AND
V. K. JADHAV, JJ.**

DATE : 10th September, 2015

ORAL JUDGMENT (PER A. V. NIRGUDE, J.) :-

1. Heard learned counsel for the parties.

2. Although this petition was filed in 2002, it was registered in 2004. This petition is filed by three teachers of a private school run by respondent No. 2.

3. The petitioners were working in Urdu Medium High School Omerga since 1991-92 onwards, as Assistant Teachers and due to de-recognition of the school on 20.4.1999 and in view of the judgment and order passed by this Court in writ petition No. 4694 of 1999 and writ petition No. 5058 of 1999, they have been declared as surplus teachers and their names have been included in the waiting list of surplus teachers maintained by the Education Officer, Zilla Parishad, Osmanabad.

4. According to the petitioners, the school, where the petitioners were working, was recognized school and was receiving grants. However, it was de-recognised on 20.4.1999. Thus, till the date of recognition, it was the responsibility of respondent No.2 management to prepare the salary bills of the petitioners and forward the same to the Education Officer for realization. The petitioner No.2 failed to forward the bills of arrears of the salary of the petitioners to the Education Officer due to mismanagement in the school. The petitioner No.1 had not received arrears of salary amounting to

Rs.1,11,460/- for the year 1998-99. The petitioner No.2 had not received the arrears of salary amounting to Rs.2,41,311/- for the period from 1996-97 to 1998-99 and petitioner No.3 had not received the arrears of salary amounting to Rs.1,02,427/- for the year 1998-99.

5. The learned counsel for the petitioners submits that the petitioners are entitled to receive the arrears of salary from the respondents till the date of recognition of their school. The petitioners had worked as Assistant Teachers in aided school during the period from 1996 to 1999. Learned counsel further submits that the respondents management has failed to forward the petitioners salary bills to the Education Officer, Zilla Parishad, Osmanabad or not paid the salary despite extracting work from them. As such, necessary orders are required to be passed against the respondents for making payment of arrears of salary to the petitioners as detailed above.

6. In reply to the petition the Education Officer did not mention any reasons as to why the petitioners claim for salary should be refused. The reply is rather evasive. At one place in reply it is mentioned that the approval to the appointments were given on year to year basis and at some other place it is mentioned that from the beginning of a academic year of 1998-1999 the school was mis-

managed, and therefore, the Education Officer did not give approval to the appointments of the teachers.

7. Ultimately the school came to be de-recognized by the Deputy Director of Education on 20.04.1999. The question arises as to whether the teachers were entitled to salary from grants prior to 20.04.1999. The answer has to be in affirmative because the Education Officer or the State of Maharashtra does not state that the teachers did not work for the year 1998-1999 or that there were no students taking education in the school.

8. It can be therefore assumed that though on one hand the school was running due to mismanagement, the approval for appointments were not secured in time and bills for salary were not sent. For getting above things done, the teachers are not responsible and therefore, they cannot be penalized for Management's failure to send the proposal for approval and salary bills.

9. While submitting the reply to the petition we found that the draftsman of this reply did not take into account earlier orders passed by this Court in previous writ petition.

10. Since this petition was filed in the year 2002 the petitioners' claim for arrears of salary can be considered for the year 1998-99.

11. In view of above, we therefore partly allow this petition by passing the following order:-

ORDER

- I. We direct respondent No. 3 to pay the arrears of salary of the petitioners for the year 1998-1999, if the same has not been paid so far, alongwith interest at the rate of 6% p.a.
- II. The payment shall be paid through bank account.
- III. The writ petition stands disposed of in above terms. Rule is made absolute accordingly.

(V. K. JADHAV, J.)

(A. V. NIRGUDE, J.)

VishalK/