

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

WRIT PETITION NO.2852 OF 2014

1. Vilas s/o Wamanrao Gurav
Age: 43 years, Occu.: Assistant Teacher,
R/o. Vida Tq. Kaij, Dist. Beed.
2. Rajendra s/o Sahebrao Dongare,
Age:30 Years, Occu.: Service, Assistant Teacher,
R/o. Tagadgaon, Post Raymoha,
Tq. Shirur (Kasar), Dist.Beed.
3. Rekha Ramrao Sonwane,
Age : 29 years, Occu. Service, Assistant Teacher,
R/o. Padali, Tq. Shirur Kasar, Dist. Beed.

.. PETITIONERS

VERSUS

1. The State of Maharashtra,
Through Secretary,
Department of Education.
2. The Director of Education,
Pune.
3. The Deputy Director of Education,
Aurangabad.
4. The Education Officer (Secondary),
Education Department, Zilla Parishad,
Dist. Beed.
5. The Assistant Charity Commissioner,
Beed, Dist. Beed.
6. Kai. Subhadrabai Bahuddeshiy Mahila
Sevabhavi Sanstha through its President &
Secretary, Tagadgaon, Tq. Shirur Kasar,
Dist. Beed.
7. Kai. subhadrabai Madhyamik Vidhyalaya,
through its Headmaster,
Tagadgaon, Tq. Shirur Kasar,
Dist. Beed.

.. RESPONDENTS

Mr.K.D. Khade, Advocate for Petitioners;
Mr.V.H. Dighe, AGP for Respondent Nos. 1 to 4;
Mr. Amol S.Sawant, Advocate for Respondent No.5.

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

DATE OF RESERVING JUDGMENT : 01st April, 2015.
DATE OF PRONOUNCING JUDGMENT: 15th July,2015.

JUDGMENT (PER:-P.R.BORA,J.)

1) Heard. Rule. Rule made returnable forthwith with the consent of learned Counsel appearing for parties.

2) Petitioners have filed the present petition seeking directions for release of their unpaid salary. The Petitioners have also prayed for appointment of administrator on Respondent No.6 institution alleging that, the office bearer of the Respondent No.6 are attempting to illegally transfer the management so that all the existing employees can be terminated and fresh appointments can be made. The Petitioners have also prayed for directions to Assistant Charity Commissioner to inquire into the affairs of Respondents No.6.

3) Though the Petitioners have raised several issues, their main grievance appears to be regarding non payment of salary to them by Respondents No.6 and 7. It is the case of the Petitioners

that, since the date of their joining duties with Respondent No.7 School, they have not been paid any salary. Petitioners have contended that, their appointments have been duly approved by Education Officer (Secondary), Zilla Parishad, Beed. Petitioners have further contended that, though they made several representations to Respondents No. 6 and 7 for release of their unpaid salary, they have not taken cognizance of any of those representations. Petitioners have also contended that, they had also sought indulgence of the Education Officer (Secondary), Zilla Parishad, Beed by independently sending him request letters cum representations, but none of the said representations has been responded by the Education Officer. In the circumstances, according to the Petitioners, there was no other alternative for them except to approach this court.

4) The Respondent No.4 has filed affidavit in reply, which is sworn by one Nanabhau Ganpati Hajari working as Extension Officer in the office of Respondent No.4. Respondents No. 6 and 7 have not caused their appearance, though twice the notices have been served upon them, first before admission of the Petition and second for final disposal. The Petitioners have filed on record the letters of appointment issued in their favour. The petitioners have

also filed on record the copies of approvals received to their appointments from Respondent No.4. Petitioners have also filed on record certain other documents to evince that, they are still working with Respondent No.7 School. In absence of any contrary evidence on record, we do not find any reason to disbelieve the statements made on oath by the Petitioners as above, about their appointments in the Respondent No.7 School, approval to their appointments by Education Officer (Secondary), Zilla Parishad and their continuance in its employment till filing of the Petition.

5) The Petitioners have filed on record the copies of approvals received to their appointments by Respondent No.4. The letter dated 12.07.2011 issued by Respondent No.4 to Respondent No.6 reveals that, the Respondent No.4 has given post facto approval to the appointment of the Petitioner No.1 with effect from 16.06.2006 for the period of probation. The said order further reveals that, the approval to the appointment of Petitioner No.2 is also given post facto with effect from 20.06.2008 for the period of probation. Both the appointments have been approved on permanent no grant basis. From the aforesaid approval letter dated 12.07.2011, it is also revealed that, the approval was sought by Respondent No.6 to the appointments of Petitioner No.1 vide its

letter No. 07/2011-2012 dated 20.06.2011. The appointment of the Petitioner No.3 has been approved by Respondent No.4 with effect from 16.06.2009 on no grant basis for the period of probation and the same was communicated to Respondent No.6 by Respondent No.4 vide its letter dated 23.06.2011.

6) In its affidavit in reply, Respondent No.4 has confirmed the facts so stated by the Petitioners in their petition as about approval to their appointments by Respondent No.4. Respondent No.4 has however further contended that, the appointments of the Petitioners being on permanent no grant basis, no responsibility can be cast on the Education Officer for payment of their salary and that it is the matter between the management and the Petitioners.

7) In view of the documents filed on record by the Petitioners and in absence of any contrary evidence on record, we do not see any reason to disbelieve the contention raised by the Petitioners that, since their date of joining the Respondents have not paid them any salary. Undisputedly, the Respondent No.7 School is squarely covered by the definition of Clause 24 of Section 2 of the Maharashtra Employees of Private Schools (Conditions of Services) Regulation Act, 1977 (hereinafter referred as the Act of 1977). Sub Section 1 of Section 3 of the Act of 1977 unequivocally provides

that the provisions under the Act apply to private schools in the State of Maharashtra, whether receiving any grant-in-aid or not. It makes clear that the statutory obligation is to be carried by Respondent No.7 School irrespective of the fact whether it receives grant-in-aid or not. Furthermore, Clause 7 of the Maharashtra Employees of Private Schools (Condition of the Services) Regulation Rules, 1981 (hereinafter referred as the Rules of 1981) provides that the scale of pay for full time as well as part time teachers shall be as specified in Schedule-C. This makes it further clear that the private managements of the School irrespective of the fact of receiving grant or not are under statutory obligation to pay salary to the teachers as per the pay scale enumerated in Schedule-C. Since the statutory duty as envisaged by the Rules and Act is to be complied with by the management, for enforcing or implementing the same, as held by the Division Bench of this Court in the Case of **Mrs. Vaishali V. Chandekar & Ors. Vs. State of Maharashtra & Ors. reported in 1998 (1) Bom.C.R. 227**, the writ under article 226 can be issued by this Court.

8) In view of the above, we direct Respondents No. 6 and 7 to pay to the Petitioners their salary as prescribed for them by the Government which is included in Annexure "C" to the Rules of

1981, for the period of past three years preceding to the date of filing of the present Petition, within the period of six months from the date of this order. The other prayers, according to us don't deserve consideration in absence of any sufficient material on record. Rule is accordingly made absolute in the above terms. No order as to costs.

(P.R.BORA)
JUDGE

(S.S.SHINDE)
JUDGE

S.P. Rane