

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

WRIT PETITION NO. 3363 OF 2013

Vijaykumar s/o. Gulab Gedam,
Age: 51 Years, Occu: Service,
R/o. C/o. Dharmaraj Nagrale,
Plot No.159, Pethe Nagar,
Bhavsingpura, Aurangabad

PETITIONER

VERSUS

- 1] The State of Maharashtra
[The Department of Education,
Mantralaya, Mumbai-32
Through its Secretary]
[Copy to be served on the
Govt. Pleader, High Court at Bombay,
Bench at Aurangabad]
- 2] The Education Officer [Primary],
Zilla Parishad, Aurangabad
- 3] The Deputy Director of Education
[Primary], Aurangabad Division,
Aurangabad
- 4] The Directorate of Primary Education,
Central Building, Pune- 411 001.
- 5] Kranti Junior Adhyapak Mahavidyalaya,
Shantipura, Aurangabad
Through its Secretary
- 6] Smt. Bhimawati Laxman Rangari,
Aged: 62 Years, Occu. : Pensioner &
the President of Kranti Junior
Adhyapak Mahavidyalaya,
R/o. Plot No.40, Ward No.9,
Shantipura, Aurangabad

- 7] Miss. Sonia d/o. Dinesh Bagade,
Aged: 38 Years, Occu: Service &
Secretary, Kranti Junior Adhyapak
Mahavidyalaya, R/o. C/o. Kranti
Junior Adhyapak Mahavidyalaya,
Shantipura, Aurangabad
- 8] Nandanvan Vidya Mandir Primary
School, Shantipura, Aurangabad,
Through its Head Master
Venkat s/o. Ganpat Hire,
Aged: 43 Years, Occu. Service,
R/o. C/o. Kranti Junior Adhyapak
Mahavidyalaya, Shantipura,
Aurangabad

RESPONDENTS

...
Mr. A.G.Godhamgaonkar, Advocate for the Petitioner
Mrs.Manjusha Deshpande, Advocate for Respondent No.2
Mr. D.J.Chaudhari & Abhijit Chaudhari, Advocates for the
Respondent Nos.5 to 8
Mr. N.B.Patil, AGP for the Respondent – State
...

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

Reserved on : 20.04.2015
Pronounced on: 27.04.2015

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

1] By way of filing present Petition under Article
226 of the Constitution of India, the Petitioner seeks
multiple reliefs that the order dated 27.06.2012 passed by
the Respondent No.3 be quashed and set aside and instead
the order dated 13.06.2012 of the Education Committee as

communicated by the Respondent No.2, withdrawing the recognition of Respondent No.8 be restored, and the Respondent Nos. 1 to 4 be directed to ensure the closure of the Respondent No.8. Thereafter, the Respondent Nos. 2 and 8 be directed by issuing an appropriate direction to release the Provident Fund amount to the extent of 75% of the total amount accumulated in the Provident Fund Account of the Petitioner and pay the same to the Petitioner immediately. The Petitioner has also filed Civil Application No.1616/2014 in Writ Petition No.3363/2013, and seeks direction to the Respondent Nos. 2 and 3 to release the salary arrears of the Petitioner from March, 2013 till the date and further directions to release him monthly salary regularly. It is further prayed that, the Respondent No.4 be directed to give at the cost and expenses of the Respondent Nos. 1 to 4, Police protection to the Petitioner to facilitate him to attend the Respondent No.8 Primary School as member of the teaching staff regularly, so as to protect him from the harassment at the hands of the Management. Further direction is sought to the Respondent Nos. 1 to 4 to release salary arrears of the Petitioner after giving him proper placement in the pay scale as per 6th Pay Commission and so also the benefits

given because of implementation of *Chatopadhya Commission* Report on pay fixation.

2] The Petitioner has filed additional affidavit bringing to the notice of this Court that, due to the reduction in the strength of the students in the Respondent No.8 Primary School, the Petitioner came to be declared surplus, and subsequently on 1st January, 2015, the petitioner is absorbed in the Zilla Parishad Primary School, Koradgaon, Taluka Vaijapur, District Aurangabad, and he has joined the said School on 2nd January, 2015. It is further stated that, the Respondent Nos. 5 to 8 had withheld the salary arrears of the Petitioner and they were not paying monthly salary to the Petitioner in spite of the Respondent No.8 School receiving 100% grant in aid. It is further stated that, after joining the Zilla Parishad Primary School at Koradgaon, many months have passed, but the Petitioner is not getting his monthly salary for want of last pay certificate and the service book. The service book is in the custody of the Respondent Nos. 5 and 8, and they were not either sending the same to the Zilla Parishad Primary School at Koradgaon or handing over it to the Petitioner to submit it to the concerned Authorities, and this act of the

Respondent Nos. 5 and 8 is intentional and deliberate, because the Respondent Nos. 5 to 8 want that, Petitioner should be put to serious financial difficulties. It is further stated that, the Petitioner had worked as an Assistant Primary Teacher in the Respondent No.8 Primary School upto 31.12.2014, and therefore, it has become incumbent upon the respondent Nos. 5 and 8 to take into account his service upto 31.12.2014, in the Respondent No.8 School, and on that basis, they should fix his last pay commensurate to the salary, which Petitioner is entitled. The Respondents have to prepare the last pay, taking into consideration all the benefits till 31.12.2014 accrued and said certificate should be in the format which is prescribed as per Appendix XII Annexure. In the aforesaid background, the petitioner seeks direction to the respondent Nos. 5 and 8 to issue and hand over to the petitioner, the service book immediately since the petitioner is declared surplus in the Respondent No.8 Primary School and absorbed in the Zilla Parishad Primary School, Koradgaon, Taluka Vaijapur, District Aurangabad. It is further prayed that, the Respondent Nos. 5 to 8 be directed to issue and hand over to the petitioner the last pay certificate of the petitioner while the petitioner was working as Assistant Primary

Teacher in the Respondent No.8 Primary School, on the basis of the last pay drawn by the petitioner, wherein all the benefits which the petitioner is entitled to on the basis of the Pay Commission etc. are given and the Respondent Nos. 5 and 8 be directed to comply the same immediately without further delay to facilitate the petitioner to submit it to the Zilla Parishad Primary School, Koradgaon, to get his monthly salary regularly.

3] During the course of arguments the learned counsel appearing for the petitioner submits that, though multiple reliefs have been claimed by the petitioner in the original Petition, in view of the subsequent event i.e. absorption of the petitioner in the Zilla Parishad Primary School at Koradgaon, he is not interested in seeking relief in terms of prayers in the Petition, however, he is restricting his prayers, seeking directions to the Respondent Nos. 5 to 8 as stated in Prayer Clause BB and BC by way of filing an additional affidavit.

The learned counsel appearing for the petitioner submits that, the petitioner was not allowed by the respondent Management to enter in the School from

the Year 2013-14, he filed Civil Application, seeking direction to give Police protection to him, so as to enable him to attend the School.

4] The Respondent No.2 Deputy Education Officer [Primary], Zilla Parishad, Aurangabad has filed affidavit in reply. In para 2 of the said affidavit in reply, it is stated that, so far as the prayer of petitioner to release provident fund is concerned, the petitioner has not processed his application for the said relief through proper channel to the Pay Unit of the answering respondent. Therefore, no decision could be taken about the said prayer. In para No.3 of the said affidavit in reply, it is stated that, when the Right to Education Act, 2009 has come into force from April, 2010, at the same time the procedure of de-recognition of the School was undertaken by the answering respondent as per the provisions of the Bombay Primary Education Act, 1949, Rule 107 and 109. The School Committee has passed a Resolution on 8th May, 2012 resolving to cancel the recognition of the Respondent No.8 School. Accordingly, the Education Committee of the Zilla Parishad has given its approval to the same, and the answering Respondent has passed the appropriate order on

13.06.2012. It is further stated in the Affidavit in Reply that, the Right to Free and Compulsory Education Act, 2009, had come into force in the year 2010, however, the proceedings of de-recognition of the Respondent No.8 School were pending from 18th September, 2008 at Government level as well. The Government had granted the liberty to the Respondent No.8 School to remove the deficiencies within one year *vide* order dated 7th July, 2009. However, there was no improvement shown by the Respondent No.8 School. Therefore, enquiry was conducted and as per the report of Enquiry Officer dated 30.12.2011, the further action of de-recognition was taken by the respondent No.2. The said order was challenged by the Respondent School by way of filing an Appeal before the Deputy Director of Education, Aurangabad. The Deputy Director of Education allowed the Appeal on the ground that, after coming into force of the new Act [RTE-2009] the powers of de-recognition vests with the Government, and therefore, the order passed by the Deputy Director of Education was set aside. On 16.12.2014, the answering respondent i.e. the Respondent No.2 has constituted a Committee of three members to verify whether the School is being run in adherence to the Rules under Right to

Education Act, and submit a report within 15 days.

5] It appears that, though the Petition is pending for considerable period, the other respondents except respondent No.2 have not filed the affidavit in reply. However, the respondent Nos. 5 to 8 have filed affidavit in reply in the Civil Application No.1616/2014. It is stated in the said affidavit in reply that, the petitioner is seeking directions to the respondents for police protection and for payment of salary, the said Civil Application is not maintainable. It is further stated that, the petitioner in Writ Petition sought directions to the Deputy Director of Education, Aurangabad Division, Aurangabad for restoration of the recognition of the Respondent No.8 School, and also for other reliefs and the petitioner cannot seek totally new reliefs without amending the Petition. It is further stated that, in Writ Petition the challenge is to the order dated 27.06.2012 passed by the learned Deputy Director of Education, Aurangabad Division, Aurangabad. However, for the first time by way of filing Civil Application, the petitioner has raised several new grounds about entitlement of pay fixation as per the *Chatopadhyaya* Committee's reports recommendations, pay fixation as per the 6th Pay

Commission and non payment of salary with effect from March, 2013. It is stated that, the said grounds are the independent cause of action, and therefore, the applicant cannot agitate his grievance in the present Writ Petition. The petitioner has raised several disputed questions of fact and also suppressed the true and material facts, and therefore, the applicant is not entitled for the reliefs claimed in the Civil Application. The allegations made in the Petition and also Civil Application that, the management is a family trust are denied by the respondent Nos. 5 to 8. The other allegations are also denied. It is stated that, the petitioner has challenged the order dated 27.06.2012 passed by the Respondent No.3 cancelling the withdrawal of recognition. The petitioner is harassing the office bearers of the trust. It is denied that, the petitioner is deprived of his salary with effect from March 2013 due to the lapses on the part of the management. It is further stated that, the petitioner has beaten the Head Master on 09.02.2013 and one Kiran, and Kranti Bagade and Bhimawati Bagade, as he was accompanied with his son namely Abhishek and Akshay, and therefore, the offences were registered against them and since then the petitioner did not attend the School and remained absent. It is further

stated that, the muster roll maintained by the School in routine course, it reveals that, the applicant is absent in the School with effect from 11.02.2013 to till this date, and therefore, the School Authorities unable to submit his bills due to absence and in such circumstances, petitioner has rightly not received the wages. It is further stated that, the petitioner is in habit of remaining absent and file appeal alleging oral termination and get the back wages. He did not bother to attend the School.

6] The learned counsel appearing for the respondent Nos. 5 to 8 invited attention of this Court to the copy of FIR and the complaint, private complaint and muster roll of the School with effect from 11.02.2013 till 29.03.2014, and the letter of the staff seeking salary.

7] We have considered the submissions of the learned counsel appearing for the petitioner, learned counsel appearing for the Respondent No.2, and the learned counsel appearing for the Respondent Nos. 5 to 8 and also the learned AGP for the Respondent – State. With able assistance of the learned counsel appearing for the respective parties, we have carefully perused the pleadings

and the grounds taken in the Petition, annexure thereto, affidavit in reply filed by the respondent No.2, contents of the Civil Application No.1616/2014 and the affidavit in reply filed by the respondent Nos.2 to 5 to the said Civil Application. As already observed, the learned counsel appearing for the petitioners during the course of argument has restricted his prayers in terms of prayers mentioned in the additional affidavit and did not press the adjudication of the prayers in the Petition.

8] Upon careful perusal of the entire material placed on record, we are of the opinion that, the present Petition raises many disputed questions of fact, and it is not possible for this Court to grant reliefs to the petitioner in absence of adjudication of disputed questions of facts and reply filed by the respective respondents.

9] In that view of the matter, in our opinion, the ends of justice would meet if the Deputy Director of Education, Aurangabad Division, Aurangabad is directed to hear the petitioner and also the respondents and in particular respondent Nos. 5 to 8 on issues raised in the additional affidavit filed by the petitioners and the prayers

in the additional affidavit and take appropriate decision in accordance with law.

10] The parties will be at liberty to bring to the notice of respondent No.3 necessary documents in support of their contentions. The Deputy Director of Education to look into the service book of the petitioner maintained by the respondent No.8 Primary School, and also other necessary documents so as to give directions to the respondent Nos. 5 to 8 to issue and hand over to the petitioner the last pay certificate of the petitioner while petitioner was working as an Assistant Primary Teacher in the Respondent No.8 Primary School, on the basis of the last pay drawn by the petitioner. It will be open for the Deputy Director of Education to find out, till what time the petitioner attended the Respondent No.8 School, and all other relevant factors so as to redress the grievance of the petitioner that, he has not received the pay certificate and salary for the earlier period before his absorption in the Zilla Parishad Primary School, Koradgaon, Taluka Vaijapur, District Aurangabad.

11] The Deputy Director of Education [Primary],

Aurangabad Division, Aurangabad i.e. respondent No.3 herein, shall issue notices to the petitioner and also Respondent Nos. 5 to 8 calling upon them for hearing on particular date and if necessary, the hearing on subsequent dates and after enquiry is complete, give directions to the concerned to issue petitioner's last pay certificate and also his grievance about the earlier salary and also salary after joining the Zilla Parishad Primary School, Koradgaon, Taluka Vaijapur.

12] We make it clear that, we have not expressed any opinion on merits of the prayers / claim of the petitioner, and it is for the respondent No.3 to look into all relevant material and take appropriate decision and issue directions. We further make it clear that, the petitioner has given up prayers in the main Petition, and therefore, adjudication of the Deputy Director of Education in respect of said prayers is not necessary. The Deputy Director of Education to complete hearing / enquiry and take appropriate decision as expeditiously as possible, however, on or before 15th June, 2015, and accordingly communicate the said decision to the concerned Parties.

13] Petition stands disposed of in above terms. In view of disposal of the Petition, the Civil Application No. 1616/2014 is also stands disposed of. Parties to act upon an authenticated copy of this order.

Sd/-
[P.R.BORA]
JUDGE

Sd/-
[S.S.SHINDE]
JUDGE

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DDC