

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 5246 OF 2015

Jayshree D/o Gangadhar Padalwar
Age : 28 years, Occ : Service,
R/o C/o Ganpatrao Pandharinath Routwar
Pandharinath Niwas, Shantinagar,
College Road, Kannad, Dist. Aurangabad.

PETITIONER

VERSUS

1. The State of Maharashtra
Through the Secretary,
Department of School Education,
Mantralaya, Mumbai-32
2. The Scheduled Tribe Certificate
Scrutiny Committee,
Aurangabad Division, Aurangabad,
Through its Member Secretary,
3. The Chief Executive Officer,
Zilla Parishad, Aurangabad.

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Mr. Anerao Pandit S., Advocate for the petitioner
Mr. V.H. Dighe, AGP for respondent State
Mr. Bade Patil K.D., Advocate for respondent No.2
Mr. S.R. Dheple, Advocate for respondent No.3

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CORAM : S. S. SHINDE AND
A.M. BADAR, JJ.

DATE : 27th October, 2015

ORAL JUDGMENT (PER S. S.SHINDE, J.)

1. Rule. Rule made returnable forthwith. With consent of parties, taken up for hearing.

2. Mr. P.S. Anerao, learned advocate submits that the petitioner is appointed as *Shikshan Sevak*, vide order dated 15.12.2008 and the petitioner has joined the services. A proposal in respect of tribe claim of the petitioner is forwarded to the committee for validation. The same is pending, however, the petitioner is not being paid pay scale of Assistant Teacher, which is admissible to her after lapse of three years from the date of appointment as *Shikshan Sevak*. Learned advocate submits that this issue has already been considered by this Court in number of matters, one such order is passed in Writ petition No.3651 of 2013 dated 1st July, 2013.

3. Mr. Bade Patil, learned advocate for respondent no.2, on instructions submits that, already the Committee is hearing pending proceeding about the claim of the petitioner and the Committee is likely to take decision about tribe claim within four months from today.

4. Mr. Dheple, learned advocate for Zilla Parishad submits

that the petitioner is appointed as against a reserved post and as validity is not produced, she is not being paid pay scale of assistant teacher.

5. The issue is no longer *res integra*. The petitioner is a deemed assistant teacher on successful completion of three years' period as *Shikshan Sevak*. There is no impediment for respondent No. 3 to give pay scale of assistant teacher to the petitioner, in case the petitioner satisfies all other legal requirements. Said pay scale cannot be stalled only on the ground that validation proceedings are pending. Of course, appointment of the petitioner either as *Shikshan Sevak* or Assistant Teacher would always be subject to the decision of the committee in validation proceedings.

6. In the light of above, we pass following order:

ORDER

- i) Respondent No.2 committee shall decide tribe claim of the petitioner expeditiously and preferably within a period of nine months from today.
- ii) Respondent No. 3 shall not withhold payment of salary to the petitioner in the pay

scale of assistant teacher, along with arrears, only on the ground that validation proceedings in respect of tribe claim of the petitioner are pending, if the petitioner satisfies all other requirements.

iii) Respondent No.3 shall pay salary, as admissible to assistant teacher, to the petitioner along with arrears expeditiously and preferably within a period of six months from today.

iv) Writ petition accordingly stands disposed of. Rule is made absolute with no order as to costs.

[A.M. BADAR, J.]

[S. S. SHINDE, J.]