

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

**WRIT PETITION NO. 2489 OF 2009
WITH
CA/10470/2016 IN WP/2489/2009**

Ramesh S/o Rajaram Avachar
Age 34 years, Occ.Services,
R/o New Hanuman Nagar,
Lane No.6,Cidco,N-4,Aurangabad. ...**Petitioner**

Versus

- 1] The State of Maharashtra
through its Secretary,
School Education Department,
Mantralaya, Mumbai.
- 2] The Deputy Director of Education,
Aurangabad.
- 3] The Education Officer(Primary)
Zilla Parishad, Aurangabad.
- 4] Shri Swami Samarth Shikshan
Prasarak Sanstha, Chatrapati
Newas, Jayabhavani Nagar,
N-4,Cidco,Aurangabad.
Through its Secretary. ...**Respondents**

Shri V.D.Sapkal, Advocate for the Petitioner.
Ms.Rashmi Gour, AGP for the State.
Shri R.T.Nagargoje for Respondent No.4.

**CORAM: S.V. GANGAPURWALA &
K.L. WADANE, JJ.**

DATE : 07.12.2016

ORAL JUDGEMENT : (PER S.V.GANGAPURWALA, J.)

1. Heard the learned counsel for the parties.
2. Rule. Rule made returnable forthwith. With

consent of parties, the petition is taken up for final disposal.

3. Mr. Sapkal, the learned counsel for the petitioner submits that, the petitioner is appointed as Assistant Teacher in primary school by respondent No.4 on 14.06.1999. The learned counsel submits that, the proposal for approval to the appointment was not considered. As such the petitioner had filed Writ Petition before this court. The said writ petition was dismissed. Aggrieved thereby, the petitioner had filed Special Leave to Appeal before the Apex Court bearing Civil Appeal No.7468/2008. The Honorable Apex Court allowed the said appeal and directed the respondents to take further steps giving the appellant notional benefits with effect from the date he was appointed as Assistant Teacher and he shall be paid salary in the pay scale admissible to the Assistant Teachers who had obtained Diploma in Teaching from a recognized Institute/ University with effect from 03.06.2015. The learned counsel submits that payment of salary of the petitioner was not the subject matter in the earlier Writ Petition. The learned counsel submits that, the respondents have not disputed that the petitioner has

continuously officiated his duties as an Assistant teacher in the primary school. The learned counsel submits that under any circumstances, petitioner would be entitled for payment as per the scale applicable to the Un-trained primary teacher.

4. According to the learned counsel for the petitioner, primary duty lies with the respondent Management to pay the salary to the petitioner. The condition in the appointment order that only if the approval is granted by the Zilla Parishad then only the petitioner would be entitled to salary would not have any force. The learned counsel relies on the judgment of the Full Bench of this Court in the case of **St.Ulai High School Vs. Devendraprasad Jagannath Singh** reported in **2007 (1) Mh.L.J. 597**. The learned counsel further relies on the judgment of Apex Court in **Sushila Bhikaji Sawant Vs. State of Maharashtra, reported in 2006 (5) Bom.C.R.372** to contend that even if without approval of the Education Officer the services are continued, the said person is entitled for the salary. According to the learned counsel up to 2004, the petitioner is paid salary and from 2005 salary is not paid which is admitted by the respondent institution

in its Affidavit-in-reply also.

5. Mr. Nagargoje, the learned counsel for respondent No.4 Institution submits that the petitioner was given clear understanding in the appointment order itself that he would be paid salary only if approval is granted by the Zilla Parishad and if the approval is not granted, the petitioner will not be entitled for salary. With this clear understanding, the petitioner had accepted the employment. Now the petitioner cannot turn around. The learned counsel further submits that even in earlier Writ Petition filed by the Petitioner bearing Writ Petition No.2195/2005, the petitioner was not granted the relief of grant of salary. Prayer to that effect was also made in the said Writ Petition. In absence thereof, the Second Petition for the said prayer is not maintainable. The Learned Counsel submits that for the salary dues, the present writ petition would not be tenable. The learned counsel relies on the judgment of the Division Bench of this court in case of **Satish Namdeo Awghade Vs. Education Officer (Secondary)** reported in **2006 (3) Mh.L.J. 730**.

6. We have considered the submissions canvassed by the learned counsel for respective parties.

7. The fact that the petitioner has continuously performed his duties as an Assistant Teacher with respondent no.4 Institution right since the year 1999 is not disputed. It is also not disputed by respondent No.4 that since 2005, the petitioner has not been paid the salary as per the pay scale that may be applicable. The contention of respondent no.4 is that some amount has been paid as per the pay scale.

8. The condition in the appointment order that only if the approval is granted, the petitioner would be entitled for the salary and if approval is not granted petitioner would not be entitled for salary is an onerous condition. Such a condition does not have any legal sanctity. The petitioner having performed his duties and same not being disputed by the respondent Institution, the petitioner would be entitled for emoluments for the period he has worked.

9. The question would be the period for which, this Court would exercise its jurisdiction for granting relief to the petitioner. The Petitioner has filed Writ Petition in the year 2009. The claim even prior to three years would be barred by limitation. This Court would consider prayer for payment of salary to the

petitioner at the most from 2006 onwards i.e. three years prior to the filing of the Writ Petition.

10. As per Schedule "C" of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, the petitioner is required to be paid salary as per the pay scale admissible to an Un-trained primary teacher and the said pay scale, as per Schedule "C" (Item 3) is Rs.975-1660 per month. The petitioner as such would be entitled for the salary as per the pay scale of Rs.975-1660 per month. The said amount shall be adjusted. Considering the date of filing of the Writ Petition, we grant the petitioner relief from 01.04.2006. In the result, we pass following order.

O R D E R

- i. Respondent No.4 shall pay salary to the petitioner in the pay scale of Rs. 975-1660 per month from 01/04/2006 till 31/05/2015.
- ii. The payment already made by the respondent No.4 to the petitioner directly or deposited in this court for payment to the petitioner shall be adjusted.
- iii. Arrears shall be paid expeditiously preferably with 6 months from today.

11. Rule is made absolute in the above terms. No costs.

12. In view of disposal of the writ petition, Civil Application also stands disposed of.

(K. L. WADANE, J.)

(S. V. GANGAPURWALA, J.)

JPC