

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO.5365/2016

Shri Mahaveer Shikshan Prasarak Samiti, Wani, Distt. Yavatmal through its
President Jainendra Mulchand Jain and others

...Versus...

State of Maharashtra, through its Secretary, School Education Department,
Mantralaya, Mumbai – 32 and another

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri B.G. Kulkarni, Advocate for petitioners
Shri I.J. Damle, AGP for respondents

CORAM : SMT. VASANTI A NAIK AND
MRS. SWAPNA JOSHI, JJ.

DATE : 14.12.2016

By this writ petition, the petitioners seek a direction against the Education Officer (Secondary), Zilla Parishad, Chandrapur to release the salary to the petitioner nos.2 and 3 w.e.f. 1.8.2014, regularly.

The petitioner no.1 is an Educational Society that runs a school in which the petitioner nos.2 and 3 are appointed as Junior Clerks. It is the case of the petitioners that the appointment of the petitioner nos.2 and 3 is made after following the due procedure for selection. It is stated that permission was secured from the Education Officer to fill the posts of clerks and after issuance of an advertisement and interviewing the candidates, the petitioner nos.2 and 3 were selected and appointed on the posts of Junior Clerks. It is stated that since approval was not granted

to their appointment, a writ petition was filed and after this Court directed the Education Officer to consider the proposal for grant of approval to the appointment of the petitioner nos.2 and 3, the Education Officer vide order dated 25.5.2015 granted approval to the appointment of the petitioner nos.2 and 3 as Clerk - Sevaks from 1.8.2014 till 31.7.2017. According to the petitioners, though the approval to the appointment of the petitioner nos.2 and 3 is granted, the Education Officer has not released the salary - honorarium, payable to the petitioner nos.2 and 3.

Shri Damle, the learned Assistant Government Pleader appearing for the Education Officer has opposed the prayer made in the writ petition. It is stated that there was a vacancy for one post of Junior Clerk -Sevak and one post of Senior Clerk – Sevak in the school run by the petitioner no.1 – Society. It is stated that the petitioner no.1 has appointed both the Junior Clerks-Sevaks. It is stated that since the appointment of the petitioner nos.2 and 3 is not made in accordance with law, salary – honorarium is not released in their favour. It is stated that the Education Officer is ready to release stipend – honorarium only for one clerk and not for two.

We are surprised that the Education Officer is not releasing the stipend – honorarium for two Clerks – Sevaks, though the approval is granted to the appointment of two Lipik Sevaks/Clerks - Sevaks by the order dated 25.5.2015. It is apparent from the order, dated 25.5.2015 that the approval is granted to the appointment of the petitioner nos.2 and 3 as Lipik Sevaks w.e.f 1.8.2014 till 31.7.2017. If that is so, it would be necessary for the Education Officer to release the stipend –

honorarium for the petitioner nos.2 and 3. We do not find any propriety in the submission made on behalf of the Education Officer that only one Lipik Sevak's stipend – honorarium could be released. The release of the salary only for one Lipik-Sevak would not be in consonance with the approval order, dated 25.5.2015. If the Education Officer is of the view that two Lipik-Sevaks could not have been appointed, the Education Officer should not have granted approval to the appointment of both the petitioners i.e. petitioner nos.2 and 3 or steps should have been taken by the Education Officer for cancelling the approval to the appointment of one of them. However, without taking any such steps, the Education Officer has illegally refused to pay the stipend – honorarium to one of the Lipik-Sevaks, though approval is granted to the appointment of both Lipik – Sevaks w.e.f. 1.8.2014. In the circumstances of the case, it would be necessary to direct the respondents to release the stipend-honorarium for the petitioner nos.2 and 3 regularly and pay the arrears of stipend- honorarium to them, within two months.

Hence, for the reasons aforesaid, the writ petition is allowed. The respondents are directed to regularly pay the stipend – honorarium to the petitioner nos.2 and 3 and release the arrears of stipend- honorarium payable to them, within two months.

Order accordingly. No costs.

JUDGE

JUDGE