

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

MISC. CIVIL APPLICATION NO.1115/2014
IN
WRIT PETITION No.1949/2012.

1. The Principal,
Saint Joseph's English School,
Sundarkhed, Buldhana.
2. The Congregation of the Sisters
of Our Lady of Dolours, Bhadola
Road, Buldhana, through its
Secretary.
3. Servite Generalate,
41, 42, Tank Band Road,
Nungabakkam, Chennai – 600034
through its Secretary.
(Original Respondent Nos. 5 to 7)

....APPLICANTS.

VERSUS

1. Mahadeo s/o Pandurang More,
Aged about 31 years, Occ – Service.
2. Rekha Bhimrao Mhaske More,
Aged about 42 years, Occ – Service.
3. Pradip Shankarrao Deshmukh,

aged about 38 years, occ – Service.

4. Manoj Hiralal Nimbalkar,
aged about 38 years, occ – Service.
5. Santosh Bhimrao Deshmukh,
aged about 31 years, occ – Service.
6. Rajesh Shankarrao Wani,
aged about 37 years, occ – Service.
7. Nilkanth Saligram Ingale,
aged about 38 years, occ – Service.
8. Ku. Geeta Ramdeo Tiwari,
aged about 45 years, occ – Service.
9. Vijay Ravindra Pawar,
aged about 30 years, occ – Service.
10. Rama Tukaramji Patil,
aged about 45 years, occ – Service.
11. Ku. Rohini Shiwajirao Jadhav,
aged about 38 years, occ – Service.
12. Ku. Anjali Bhaskarrao Ware,
aged about 35 years, occ – Service.
13. Shobha Laxman Ingale,
aged about 40 years, occ – Service.
14. Sheshrao Sampat Jadhav,
aged about 35 years, occ – Service.
15. Ku. Vidya Ramdas Jangal,
aged about 32 years, occ – Service.
16. Ku. Archana Atmaram Bhutekar,
aged about 32 years, occ – Service.

17. Ku. Priti John Shende,
aged about 28 years, occ – Service.
18. Mohan Bhaurao Dhandar,
aged about 45 years, occ – Service.
19. Nana Sukhdeo Ingale,
aged about 50 years, occ – Service.
20. Ravindra Santosh Barde,
aged about 30 years, occ – Service.
21. Raju Narayan Jadhao,
aged about 40 years, occ – Service.
22. Vimal Pralhad Jadhao,
aged about 47 years, occ – Service.
23. Sunil Madhukar Sawale,
aged about 32 years, occ – Service.

Respondent Nos. 1 to 23, r/o. C/o. Manoj
Hiralal Nimbalkar, Mahavir Nagar, Buldhana.
(Original Petitioners).

24. The State of Maharashtra,
through its Secretary, Department of
School Education, Mantralaya,
Mumbai – 32.
25. The Director of Education (Secondary
and Higher Secondary) Central Building,
Pune – 1.
26. The Deputy Director of Education,
Amravati Division, Amravati.
27. The Education Officer (Secondary)
Zilla Parishad, Buldhana.
(Original Respondent Nos. 1 to 4).

....NON-APPLICANTS.

Mr. M.G. Bhangde, Senior Advocate with Shri R.M.
Bhangde, Advocate for the Applicants.
Mr. R.L. Khapre, Advocate for Respondent Nos. 1 to 23.
Mr. A.S. Fulzele, Addl. Govt. Pleader for Respondent No.24 to 27

CORAM : B.P. DHARMADHIKARI
& P.N. DESHMUKH , JJ.

Date of Reserving the Order : 22.04.2016.

Date of Pronouncement : 06.05.2016.

ORAL ORDER. (Per B.P. Dharmadhikari, J)

The applicants who were original respondent nos. 5 to 7 in Writ Petition No. 1949/2012, seek review of judgment and order dated 27.06.2014.

2. Shri M.G. Bhangde, learned Senior Counsel with Shri R.M. Bhandge, learned Counsel appearing on behalf of the applicants contends that in the impugned judgment, this Court has directed respondent no.1 State (in Writ Petition), to frame Rules as per Section 16 of the Maharashtra

Employees of Private Schools (Conditions of Services) Regulation Act, 1977 (hereinafter referred to as “the MEPS Act” for short), and there is also a further direction to frame those Rules in a particular manner and within prescribed time. According to him, this is encroachment on legislative power, and such an exercise could not have been undertaken under Article 226 of the Constitution of India. He has taken support from a judgment of the Hon'ble Apex Court reported at 1992 Supp (1) SCC 548 (State of Jammu & Kashmir .vrs. A.R.Zakki and others), particularly paragraph nos. 8, 9, 10 and 15.

3. He invites attention to the provisions of Section 16 of the MEPS Act, to urge that it does not oblige the State Government to frame Rules, but, it is a discretion made available to it. While commenting on merits of the controversy, he has stated that in paragraph no.26, this Court has followed the judgment in case of Frank Anthony Public School Employees Association .vrs. Union of India (AIR 1987 SC 311) and in case of Ahmedabad St. Xavier's College Society .vrs. State of Gujarat (AIR 1974 SC 1389), however, the judgment of Larger Bench in case of T.M.A. Pai Foundation and others .vrs. State of Karnataka and others ((2002) 8 SCC 481), has been overlooked.

4. Judgment delivered by the Hon'ble Apex Court and reported at (2009) 2 SCC 630 (Committee of Management and another .vrs. Vice Chancellor and others), particularly paragraph no.27 is pressed into service by him to submit that the fact that there case of minority institute receiving aid from State Government was being considered.

5. Inviting attention to prayer clauses in Writ Petition, he submits that relief granted is in excess of prayer clauses and travels beyond it. Support is being drawn from the observations made by the Hon'ble Apex Court in judgment reported at (2010) 11 SCC 557 (Manohar Lal (dead) by L.rs. .vrs. Ugrasen (dead) by L.Rs.), particularly paragraph no.34.

6. Shri R.L. Khapre, learned Counsel argues the matter for original Petitioners, who are non-applicant nos. 1 to 23 in review petition, to urge that the review applicant is not a minority institution. He further submits that there is no direction to Legislate by this Court and Government Resolution dated 21.05.2010, filed along with the Writ Petition is issued in the name of Governor and it mandates release of revised wages even to employees who are working in un-aided schools. He draws support from Section 4[1][3] of the MEPS Act to argue that there is formal defect in this government resolution, but, otherwise, it is as good as Rule made in

discharge of obligation under Section 16 itself. He is also trying to draw support from Rule 18 of the State Rules framed under Right of Children to Free and Compulsory Education Act, 2009.

7. Shri Khapre, learned Counsel adds that this Court has issued only directions to the State Government to correct procedural lacunae in the government resolution dated 21.05.2010, so as to bring it in consonance with Section 16 of the MEPS Act.

8. He invites our attention to the order dated 17.08.1991, annexed as Annexure-A to the Writ Petition and issued by the State Government to submit that the applicants have already accepted obligation to pay salary to its employees and allowances at rate prescribed by the State Government. It cannot therefore defeat that obligation in such a mode and manner. He has invited our attention to paragraph no.14 of the judgment of Hon'ble Apex Court in case of *Frank Anthony Public School Employees Association .vrs. Union of India (supra)*, to buttress his submissions, that even management of minority institutions cannot prescribe salaries and allowances as they like.

9. In reply arguments, Shri Bhangde, learned Senior Counsel points out that this Court has found in paragraph no.46 of its judgment that the

government resolution dated 21.05.2010, cannot take place of a Rule, and therefore, has directed State Government to amend the same.

10. The jurisdiction to review can be exercised only to correct errors which are apparent on the face of record. Arguments supra do not make out any such case. This Court has in its judgment in paragraph no.35 considered the technical objection about pleadings in petition and negated it. There cannot be any appeal against that finding before this Court again.

11. The fact that pay scales are already extended to similarly situated teachers working in the aided schools, is not in dispute. That is only on the strength of a government resolution dated 21.05.2010 without formally amending Schedule-C of the M.E.P.S. Rules, 1981. The pay scales already extended are therefore directed to be incorporated in Schedule-C by this Court. The decision of Government to extend those pay scales is already on record in the shape of government resolution dated 21.05.2010. Hence, after due deliberations, to recognize in law, the fact that revised pay scales are already being paid, a direction has been given.

12. The judgment of Hon'ble Apex Court in case of *State of Jammu & Kashmir vrs. A.R.Zakki and others (supra)*, does not consider such a situation

there, as is apparent from paragraph no.10 of a judgment reported in case of **Namit Sharma .vrs. Union of India ((2013) 1 SCC 745)**, where directions contained in paragraph no.108.5 are reproduced, it can be seen that there was a direction to frame all practice and procedure related rules. We therefore, find that said judgment has no application here.

13. In view of above, no case is made out warranting interference in review jurisdiction. Misc. Civil Application is therefore, rejected. No costs.

JUDGE

JUDGE

Rgd.