

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

Writ Petition No.1309 of 2009

* Hirachand s/o Kasturchand Mahajan,
Age 48 years,
Occupation: Assistant Teacher,
R/o Chausalkar Colony,
Opp. Bus Depot, Ambajogai,
District Beed. **.. Petitioner.**

Versus

- 1) The State of Maharashtra
Through its Secretary,
School Education Department,
Mantralaya, Mumbai.
- 2) The Deputy Director of Education,
Aurangabad Region, Aurangabad.
- 3) The Education Officer (Secondary)
Zilla Parishad, Parbhani.
- 4) The Deogiri Shikshan Prasarak
Mandal, Parbhani,
Through its Secretary. **.. Respondents.**

Smt. R.K. Ladda, Advocate, for petitioner.

Shri. S.D. Ghayal, Assistant Government Pleader, for
respondent Nos.1,2 and 3.

Shri. P.N. Sonpethkar, Advocate, for respondent No.4.

With

Writ Petition No.1331 of 2009

* Shankar Tukaram Kamble,
Age 56 years,
Occupation: Service,
R/o Bardapur, Taluka Ambajogai,
District Beed. .. **Petitioner.**

Versus

- 1) The State of Maharashtra
Through its Secretary,
School Education Department,
Mantralaya, Mumbai.
- 2) The Deputy Director of Education,
Aurangabad Region, Aurangabad.
- 3) The Education Officer (Secondary)
Zilla Parishad, Parbhani.
- 4) The Deogiri Shikshan Prasarak
Mandal, Parbhani,
Through its Secretary. .. **Respondents.**

Smt. R.K. Ladda, Advocate, for petitioner.

Shri. S.D. Ghayal, Assistant Government Pleader, for
respondent Nos.1,2 and 3.

Shri. P.N. Sonpethkar, Advocate, for respondent No.4.

**Coram: T.V. NALAWADE &
SUNIL K. KOTWAL, JJ.**

Date : 28 July 2017

JUDGMENT (Per T.V. Nalawade, J.):

- 1) Both the petitions are filed for giving directions
to the respondents, Government to pay arrears of salary to

the petitioners for the period from August 2004 to March 2005 and from August 2004 to June 2005 respectively with interest. Both the sides are heard.

2) It is the case of the petitioners that during the aforesaid period they were working in Yogeshwari Mahavidyalaya Ambejogai and in Renuka Higher Secondary School Bardapur respectively as they were declared as surplus staff of respondent No.4. It is contended that in respect of this period salary was not paid. It is secondary high school.

3) The Deputy Director of Education has filed reply affidavit and it is contended that the petitioners were in service till March 2004 in respondent No.4 institution but after that the institution was derecognised due to want of students and so the petitioners were declared as surplus. It is contended that subsequently the petitioners were absorbed and presently they are working with Renuka High School Bardapur and they are receiving regular salary there. It is contended that as for the aforesaid period the petitioners did not work in the

institution which was receiving grant, they are not entitled to get salary in respect of the said period. It is also contended that the petitions are filed after 4 years from the date of cause of action, no relief can be granted to them.

4) Learned counsel for the petitioners placed reliance on some correspondence made with the authority and also letters written by the authority to take action and give decision on the representations. The learned counsel for the petitioners submitted that at least direction needs to be given to respondent-authority to consider the representations and give decision. The learned Assistant Government Pleader opposed this prayer also by contending that when the institution was not in existence and when the petitioners did not work in such institution there is no point in giving such direction.

5) There are aforesaid circumstances and the decision given by this Court in **Writ Petition No.5219 of 2005** (Subodh Suryawanshi v. The State of Maharashtra & Others) to the effect that salary cannot be paid to such

employee for the period during which he was not absorbed. Other main contention of the respondent is that the proceeding is filed after more than four years from the date of cause of action. This circumstance does not give rise only to the ground of laches or delay but it involves point of limitation also. It can be said that for proving that the petitioners had worked during aforesaid period, the petitioners could have gone to Civil Court for getting the salary in respect of the said period. Thus there was a right if they had actually served and there was also remedy available to go to Civil Court. As present petitions are filed after more than four years from the date of cause of action it can be said that it was not possible to go to Civil Court to enforce the right. Thus due to law of limitation no relief was available. This Court cannot ignore that circumstance. Writ jurisdiction cannot be used when relief is not available under civil law. In the result, both petitions stand dismissed. Rule discharged.

Sd/-
(SUNIL K. KOTWAL, J.)

Sd/-
(T.V. NALAWADE, J.)

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