

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

WRIT PETITION NO.6118 OF 2004

Shri Eknath s/o Ramdas Patil,
Age 45 years, Occ. Service,
R/o Savkheda (Bk.),
Taluka and District Jalgaon

... PETITIONER

VERSUS

1. The State of Maharashtra
through the Secretary,
Education Department,
Government of Maharashtra
Mantralaya, Mumbai
(Copy to be served on Govt. Pleader,
High Court of Judicature of Bombay,
Bench at Aurangabad)
2. The Education Officer (Primary),
Zilla Parishad, Jalgaon
3. The President,
East Khandesh Education Society,
R.R. Vidyalaya Compound,
Jalgaon.
4. The Head Master,
New English Medium School,
R.R. Vidyalaya Compound,
Jalgaon.

... RESPONDENTS

.....
Shri G.V. Wani, Advocate for petitioner
Shri S.B. Joshi, A.G.P. for State
Shri A.G. Talhar, Advocate for respondents No.3 and 4
.....

CORAM: R.D. DHANUKA AND
 SUNIL K. KOTWAL, JJ.

DATED: 16th August, 2017.

ORAL JUDGMENT (PER R.D. DHANUKA, J.) :

1. By this writ petition filed under Article 226 of the Constitution of India, the petitioner has prayed for a writ of mandamus for directing the respondents to implement the Government Circular dated 13/5/1999 annexed at Exhibit A to the petition in respect of payment of salary and to implement the Vth Pay Commission and seeks further directions to the management to pay the retrenchment amount due to the present petitioner.

2. Some of the relevant facts for deciding this writ petition are as under.

3. It is the case of the petitioner that, the petitioner was appointed as a Peon in the year 1977-78 in respondent No.4 School and had been continuously working on the said post since the date of his appointment. The Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 read with the Rules framed in 1981 are applicable to the aided and

non-aided schools in the State of Maharashtra. The respondent No.4 school is run by respondent No.3 management which is an unaided recognized English medium school. On 13/5/1999, the Government of Maharashtra issued a Resolution, thereby making applicable the Vth Pay Commission to the employees working in the Government aided schools.

4. The petitioner made representations to the management on 7/1/2004, 6/3/2004 and 23/4/2004 for granting benefits to the petitioner under the said Circular dated 13/5/1999. Since there was no response from the management, the petitioner filed this writ petition inter alia praying for a writ of mandamus directing the respondents to implement the Government Resolution dated 13/5/1999 and for payment of the dues payable under the said Circular. The petition was resisted by the management by filing affidavit-in-reply.

5. Learned counsel for the petitioner submits that, the petitioner has now retired on 31/5/2015. He submits that, the petitioner would be entitled to the benefits under the said Government Resolution dated 13/5/1999 though the respondent No.3 was not getting any grant-in-aid from the Government. It is submitted by the learned counsel that, the petitioner would be

entitled to the benefit under the said Government Resolution w.e.f. 1/1/1996. In support of this submission, Mr. Wani, learned counsel for the petitioner placed reliance on the judgment delivered by the Division Bench in the case of **Sunanda Pandharinath Adhav & ors. Vs. State of Maharashtra & ors.** reported in **2001(1) Mh.L.J. 167** and more particularly on paras 7 to 14. He submits that, the said Government Resolution would equally apply to the schools not getting grant-in-aid from the Government. He submits that, the calculations submitted by the management before this Court are disputed by the petitioner and such calculation dispute can be adjudicated by the Education Officer. In support of this submission, the learned counsel invited our attention to the judgment delivered by Division Bench of this court in the case of Mrs. **Vaishali V. Chandekar & ors.** reported in **1998(1) Bom.C.R. 227** and in particular, para 7 thereof.

6. Mr. Talhar, learned counsel for respondents No.3 and 4, on the other hand, submits that, even if the petitioner would be entitled to the parity of pay scale in the school run by his client, based on the judgment of this Court in case of Sunanda Pandharinath Adhav (supra), the petitioner cannot be allowed such benefits for the period prior to three years of the date of the

petitioner filing this Writ Petition. In support of his submission, the learned counsel placed reliance on an unreported judgment of this Court, delivered on 11/7/2017 in case of Madhukar Shrawan Patil & others V/s State of Maharashtra & ors. (Writ Petition No.7410/2005 with other companion matters) and more particularly on paras 14 to 16 of the said judgment and would submit that, the claims for pay scale and other benefits made by the petitioner under the said Government Circular dated 13/5/1999 is barred by limitation for the period prior to three years from the date of filing of the writ petition. He submits that, the management has in fact made excess payment to the petitioner. The calculation of such payment already made to the petitioner is submitted by the management before this Court. He submits that, he has no objection if the calculation of the amount due and payable to the petitioner, if any, is determined by the Education Officer.

7. Learned counsel for the management also invited our attention to the averments made in the additional affidavit-in-reply filed by his client on 14/10/2015. He submits that, the respondent No.4 school has been running this school on non-grant basis. At the relevant time, the tuition fees of the students was Rs.40/- per month for the period 1994-95. At the relevant

time, the strength of the students was 170 and it was 140 in the year 1998-99. The strength of the students was ranging from 154 to 379 up to 2004-2005 and the fees was Rs.125/- per month, which was increased to Rs.150/- per month up to the academic year 2010-2011.

8. It is submitted that, the management was charging the fees from the students considering the strength of the students and was paying the salary to the employees based on such fees collected by the management from the students. The post occupied by the petitioner was not even sanctioned by the Education Department. It is submitted that, the petitioner, thus, cannot make a demand for payment of pay scale and other benefits based on the said Government Circular dated 13/5/1999 w.e.f. 1/1/1996. He submits that, if this Court comes to the conclusion that the petitioner would be entitled to the pay scale and other benefits under the said Government Circular dated 13/5/1999, the petitioner be awarded such pay scale and other benefits only from 1/1/2001 and not from 1/1/1996.

9. Learned counsel for the petitioner, in rejoinder, submits that, since the management has refused to implement the Government Circular dated 13/5/1999, the management

cannot be allowed to raise the issue of limitation as sought to be raised before this Court.

10. This Court, in case of Sunanda Pandharinath Adhav (supra), has considered the validity of the Government Circular dated 13/5/1999. The petitioners in that case had contended that the teachers in unaided private schools are entitled to the parity of pay scale in school run by the private institution and are entitled to such benefits in toto w.e.f. 1/1/1996. After considering various judgments of Supreme Court, this Court, in the said judgment has held that, the parity in the pay-scale has to be maintained between the teachers engaged in unaided schools and aided schools. This Court accepted the contentions raised by the management that in the State of Maharashtra, the private unaided schools do not have the freedom to enhance the tuition fees chargeable to the students and have to approach the State of Government making out a specific case for revision. It is the only State Government who has powers to finally fix the tuition fees for such schools as well. The private managements are at the mercy of the State Government for enhancement of tuition fees as well as its effective dates. This Court accepted the plea of the management not to make the Vth Pay Commission recommendations effective from 1/1/1996 favourably.

11. In our view, the petitioner though was working in the respondent No.4 school which is an unaided school, he would be entitled to the parity of pay scales under the Government Circular dated 13/5/1999 under the provisions of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 as payable to the employees of the aided school.

12. The Division Bench of this Court in the judgment of Sunanda Pandharinath Adhav (supra), has adverted to the judgment of the Supreme Court in case of **State of Uttar Pradesh & anr. Vs. U.P. Polytechnic Diploma Shikshak Sanstha & anr.**, reported in **JT 2000 (10) SC 469**, holding that the claim for revision in salary though was accepted, was not accepted with retrospective effect. The Supreme Court, in the said judgment, had directed to implement the resolution from the date the petitioners had approached the High Court. In our view, the principles laid down by the Supreme Court in case of State of Uttar Pradesh & anr. Vs. U.P. Polytechnic (supra) would apply to the facts of this case. However, since the management has opposed the grant of parity of pay scale to the petitioner only for the period of three years prior to the date of filing petition, we

are not inclined to pass any order directing the management to pay the pay scale to the petitioner from the date of filing the writ petition. The petitioner also had raised a demand under the Government Resolution dated 13th May 1999 for the first time by letter dated 7th January 2004.

13. Division Bench of this Court, in case of Madhukar Shrawan Patil & ors. (supra), has considered the issue of limitation in paras 15 and 16 of the judgment. It is held by the Division Bench of this Court that the petitioners cannot claim arrears of pay and allowances for a period of more than three years preceding the respective dates of filing the writ petition on the ground that the claim beyond the three years would be barred by law of limitation. The said judgment applies to the facts of this case. We are respectfully bound by the said judgment delivered by this Court in case of Madhukar Shrawan Patil & ors. (supra).

14. We are, however, inclined to accept the submissions made by Mr. Talhar, learned counsel for the management that the petitioner cannot be allowed the benefit of pay scale for the period prior to the period of three years of filing the Writ Petition. In our view, the management cannot be directed to recover the

additional fees from the students, who have already passed those standards during the period when the petitioner was working in the respondent No.4 school with retrospective effect. The respondent No.4 school has been collecting the fees from the students based on the strength of the students in the respondent No.4 school and out of such fees collected by the management, salary of the teachers and other non-teaching staff was being paid.

15. The learned counsel for the management has no objection if the dispute in respect of the calculation made by the petitioner and the management is referred to the Education Officer (Primary), Zilla Parishad, Jalgaon for determination. The statement is accepted.

16. In our view, the Government Resolution dated 13/5/1999 would apply to the petitioner as well as respondents No.3 and 4. The petitioner would be entitled to the benefits under the said Government Resolution, however, w.e.f. 1/1/2001. The petitioner would also be entitled to the benefits under the subsequent resolutions, if any, issued by the State Government which are applicable to the petitioner and the respondents No.3 and 4 till the date of his retirement, and the

retirement benefits based on such Circular, however, w.e.f. 1/1/2001. We, therefore, pass the following order :

ORDER

- (i) The petitioner would be entitled to the parity of pay-scale under the Government Resolution dated 13/5/1999, however, w.e.f. 1/1/2001 and also under the subsequent Government Resolution, if any, applicable to the petitioner and the respondents No.3 and 4, including the retirement benefits based on such Circular, however, considering the applicability of the resolution w.e.f. 1st January 2001 in this case.
- (ii) The Education Officer (Primary) is directed to work out the arrears and payment to the petitioner w.e.f. 1/1/2001. The Education Officer shall consider the calculations, which shall be submitted by both the parties before the Education Officer within three weeks from today. The Education Officer shall work out the arrears and payment within three months from the date of the parties filing their respective calculations to the Education Officer and shall communicate the decision to the petitioner as well as

to the management simultaneously. The management is directed to pay the arrears and payment, if any, based on such calculations, to the petitioner within three months from the date of such determination by the Education Officer.

- (iii) Rule is made absolute in aforesaid terms. No order as to costs.
- (iv) Parties as well as the Education Officer to act on authenticated copy of this order.

(SUNIL K. KOTWAL)
JUDGE

(R.D. DHANUKA)
JUDGE

fmp/