

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

WRIT PETITION NO. 6714 of 2004

1. Narendra S/o Nathu Chaudhary,
age 30 years occupation Clerk
R/o 16/17-D, Khotenagar
(Surakshanagar), Jalgaon.
2. Gopalkrushna S/o Digambar Marathe,
age 34 years occupation Peon
R/o 76, Mayur Colony, Pimprala, Jalgaon.

...PETITIONERS

VERSUS

1. Director of Education (Primary),
Maharashtra State, Central Building, Pune.
2. Dy. Director of Education,
Nashik Region, Nashik.
3. Superintendent, Pay Unit (Primary),
Zilla Parishad, Jalgaon.
4. Jalgaon City Municipal Corporation School Board,
through its Administrative Officer,
Sardar Vallabhbhai Patel Tower,

3-B. Navi Peth, Jalgaon.

5. State of Maharashtra
through its Joint Secretary,
School Education Department (Primary),
Mantralaya, Mumbai – 32.
6. Purva Khandesh Hindi Shikshan Sanstha,
through its Secretary, Jivanchand Bastimal Khivsara,
age 55 years, C/o late B.N. Jain Primary School,
Premnagar, Pimprala road, Pimprala, Jalgaon
7. Late B.N. Jain Primary School,
through its Head Master, Premnagar,
Pimprala road, Pimprala, Jalgaon.

... **RESPONDENTS.**

WITH

WRIT PETITION NO. 6715 OF 2004

1. Anil S/o Tryambak Nemade,
age 40 years occupation Clerk
R/o 546, Vitthal Peth, Nashirabad road, Jalgaon.
2. Sanjay S/o Kautik Khadke,
age 36 years occupation Peon
R/o 392, Vitthal Peth, Jalgaon.

...**PETITIONERS**

VERSUS

1. Director of Education (Primary),
Maharashtra State, Central Building, Pune.
2. Dy. Director of Education,
Nashik Region, Nashik.
3. Superintendent, Pay Unit (Primary),
Zilla Parishad, Jalgaon.
4. Jalgaon City Municipal Corporation School Board,
through its Administrative Officer,
Sardar Vallabhbhai Patel Tower,
3-B. Navi Peth, Jalgaon.
5. State of Maharashtra
through its Joint Secretary,
School Education Department (Primary),
Mantralaya, Mumbai – 32.
6. Lok Shikshan Mandal,
through its Secretary, Mr K.L. Sarode,
age 65 years R/o 492, Vitthal Peth, Jalgaon.
7. Swatantrya Sainik Janardhan Suka Khadake
Prathmik Vidya Mandir, Jalgaon,
through its Head Master, Vitthal Peth, Jalgaon.

... **RESPONDENTS.**

WITH
WRIT PETITION NO. 6716 OF 2004

1. Devendra S/o Subhash Chaudhary,
age 34 years occupation Clerk
R/o 25, Ramdas Colony, Zilla Peth, Jalgaon.
2. Sunil S/o Devidas Narkhede,
age 33 years occupation Peon
R/o Rameshwar Colony, Mehrun, Jalgaon.

...PETITIONERS

VERSUS

1. Director of Education (Primary),
Maharashtra State, Central Building, Pune.
2. Dy. Director of Education,
Nashik Region, Nashik.
3. Superintendent, Pay Unit (Primary),
Zilla Parishad, Jalgaon.
4. Jalgaon City Municipal Corporation School Board,
through its Administrative Officer,
Sardar Vallabhbhai Patel Tower,
3-B. Navi Peth, Jalgaon.

5. State of Maharashtra
through its Joint Secretary,
School Education Department (Primary),
Mantralaya, Mumbai – 32.
6. Khandesh Education Society
through its Secretary, Adv. V.V. Sarode,
age 65 years, approximately,
R/o Pratapnagar, near Anuvrat Bhuvan, Jalgaon.
7. Guruvarya Parshuram Vithoba Patil Primary School,
through its Head Mistress,
M.J. College Campus, Zilla Peth, Jalgaon.

... **RESPONDENTS.**

Mr L.V. Sangit, Advocate holding for Mr V.J. Dixit, Advocate
for the petitioner, in all petitions.

Mr S.B. Joshi, Assistant Government Pleader for respondents
No.1 to 3 & 5, in all petitions.

**CORAM: R.D. DHANUKA &
SUNIL K. KOTWAL, JJ.**

RESERVED ON : 28th August, 2017.

PRONOUNCED ON : 19th September 2017

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

By these three Writ Petitions, the petitioners have prayed for Writ of Certiorari praying for quashing and setting aside the Government Resolution dated 12th July 2004 issued by the Joint Secretary, School Education Department (Primary), Mantralaya, Mumbai, and further communication dated 26th July 2004 issued by the Director of Education (Primary), Maharashtra State, Pune, and also seeks Writ of Mandamus directing the respondents to withdraw said Government Resolution dated 12th July 2004. Petitioners also seek Writ of Mandamus directing the respondents to pay and disburse the salary as per the pay scales and considering services rendered by the petitioners with respondent No.7 regularly, and also seek Writ of Certiorari quashing and setting aside the communication dated 4th October 2004 issued by respondent No.4 Administrative Officer, Jalgaon City Municipal Corporation School Board to respondent No.7.

2) The facts and issues involved in the aforesaid three petitions being identical, all the three petitions heard together and are being disposed of by a common order.

3) Some of the relevant facts for the purpose of deciding these three Writ petitions are as under:

Petitioner No.1 in **Writ Petition No. 6714 of 2004** was appointed by letter dated 1st October 1993 after following due process of selection and after issuance of advertisement by respondent No.7. He was appointed as a Clerk. Petitioner No.1 had completed his H.S.C. Examination. Petitioner No.2 was selected as a Peon and was appointed on 10th June 1991. He also passed his H.S.C. Examination and was appointed by following due process of selection pursuant to an advertisement. In its meeting held on 3rd February 1986, the School Committee granted permanency to the petitioners in Writ Petition No. 6714 of 2014 and communicated the said order to Municipal School Board.

4) By letter dated 28th August 1996, permanent approval to the appointment of the petitioner No.2 was granted. Petitioner No.1 was granted approval by the end of academic year 1997. The petitioners were granted permanent approval by the Administrative Officer of the Municipal School Board, who was authorised to grant such approval under the Bombay Primary Education Act. The School Committee had also passed resolution dated 3rd February 1996 for granting approval to the appointments of the petitioner.

5) It is the case of the petitioners that Deputy Director of Education, Nashik Region, Nashik, by communication dated 21st September 1995 approved staffing pattern of 12 persons, which includes two posts of non-teaching staff. Total strength of the students was 621 and nine divisions were noted. It is the case of the petitioners that for the academic year 1996-1997, strength of students was 625 and the total staff approved was 14. For the academic year 1997-1998, total strength of students was 591 and 15 persons were approved, which includes non-teaching staff also. It is the case of the petitioners that for academic year 1998-1999, total strength was found as 661 and staff of 14 persons was approved. For the academic year 1999-2000, the strength of students was found as 759 and the strength of the staff approved was 17. For the academic year 2000-2001, strength of students was found as 723 and staff of 15 persons was approved. The petitioner No.1 was drawing the salary of Rs. 6352/- for the post of Junior Clerk, whereas, petitioner No.2 was drawing salary of Rs. 5265/- for the post of Peon, at the relevant time.

6) On 16th June 1987, the State Government issued a resolution and imposed a ban from making direct appointments to any of the vacancies created either due to the superannuation of any

person or death of any person and the ban was made applicable to all the recognized aided educational institutions under the School Education Department. By another Government resolution dated 1st August 1995, earlier Government resolution dated 16th June 1987 was lifted and it was made open for institutions to make recruitments. In Govt. resolution dated 1st August 1995, it was made clear that if any of the appointments were made in between the period of imposing ban by Govt. resolution dated 16th June 1987 to 1st August 1995, the government may not sanction necessary pay bill for those appointments made during the period between 16th June 1987 and 1st August 1995.

7) On 3rd January 1996, Deputy Director of Education, Nashik Region, Nashik, informed all the Education Officers (Primary), Zilla Parishad, Jalgaon, that earlier ban imposed was lifted by the State Government and, therefore, respective Schools should take appropriate steps for seeking approval to all the appointments in pursuance of the Government criteria for getting necessary salary grants.

8) On 8th January 2001, the Desk Officer of the School Education Department, Mantralaya, Mumbai, issued communication

to the effect that since the Finance Department had imposed ban for making appointments by letter dated 30th May 2000, the approval should not be granted to the proposals submitted by the Educational Institutions with regard to non-teaching staff.

9) On 12th July, 2004, the State Government issued another Government resolution thereby resolving to grant necessary approvals to the posts of non-teaching staff, wherein it was resolved that if the strength of the primary School was more than 500 students, the said approval was to be granted and the amount to be disbursed by way of honorarium. It was resolved that Clerk appointed would be eligible to get Rs. 2000/-, per month, and the Peon would be eligible to get Rs. 1700/-, per month, by way of honorarium for the first three years services from the date of the appointment. In the said Government Resolution dated 12th July 2004 it was further resolved that all those persons would be eligible to get necessary pay scale in stages after the services of three years. It was directed that total posts of 333 Junior Clerks and 336 Peons were approved by the Officer of Director of Education and, therefore, separate orders with regard to each School should be issued by the concerned persons. It was directed by the said resolution that if any of the appointments were made earlier then all the Educational

Institutions should take further steps to give further appointments afresh pursuant to said Government Resolution dated 12th July 2004.

10) On 26th July, 2004, the Director of Education (Primary), Maharashtra State, Pune, issued a letter that the Govt. Resolution dated 12th July 2004 should be made applicable with effect from June 2004 and that the persons working on that date should be paid as per the Govt. Resolution dated 12th July 2004. Deputy Director of Education gave list of the persons, who were covered by the Govt. Resolution. The names of the petitioners appeared in the said list.

11) Administrative Officer of Jalgaon City Municipal Corporation Education Board, Jalgaon, instructed all the institutions to follow the Govt. Resolutions dated 12th July 2004 and 26th July 2004 as well as Communication dated 24th August 2004 issued by the School Board.

12) It is the case of the petitioners that in so far as grant of School and permission to open the School is concerned, respondent No.7 has started functioning after getting sanction on 26th October 1989. The Administrative Officer of the Municipal School Board, Jalgaon, had granted further approval.

13) On 6th July, 1996, the Deputy Director of Education, Nashik Region, Nashik, issued a letter to the Head Master of respondent No.6 School that the said School had been granted 100% grant with effect from academic year 1994-1995. Petitioners filed this petition for various reliefs.

14) In so far as petitioners in **Writ Petition No. 6715 of 2004** are concerned, the petitioner No.1 was appointed as Clerk in respondent No.6 School on 10th June 1996 after going through entire process of selection and pursuant to advertisement issued by respondent No.6 on 10th July 1996. Petitioner No.2 was appointed as Peon after going through the process of selection. On 31st March 1998 the School Committee of respondent No.7 passed a resolution granting permanency in favour of the petitioners. On 24th August 1998 Municipal School Board granted permanency approval in favour of both the petitioners. At the relevant time, Municipal Board was authorised to grant permanency under the provisions of the Bombay Primary Education Act. The staffing pattern was approved in respect of the School, which is subject matter of Writ Petition No. 6714 of 2004.

15) In so far as the other facts in **Writ Petition No. 6715 of 2004** are concerned, the same are identical in Writ Petition No. 6714 of 2004 and are, thus, not required to be repeated. The petitioners in Writ Petition No. 6715 of 2004 have also prayed for identical reliefs.

16) In so far as **Writ Petition No. 6716 of 2004** is concerned, the petitioner No.1 was appointed as a Junior Clerk on 1st January 1996 in pursuance of the advertisement dated 21st October 1995 issued by respondent No.6 after going through the process of interview. Petitioner No.1 had acquired qualification of M.Sc. in the year 1993-1994. The petitioner was given appointment with effect from 1st January 1996. The petitioner completed his probationary period successfully and was appointed in clear vacancy. Respondent No.6 passed a resolution on 18th June 1997 and granted continuity on permanent basis to petitioner No.1.

17) The Administrative Officer of then Municipal School Board, Jalgaon, by issuing Communication dated 24th June 1997 granted permanent approval to petitioner No.1 in the post of Junior Clerk.

18) In so far as petitioner No.2 in **Writ Petition No. 6716** of 2004 is concerned, he was appointed as a Peon by letter dated 1st December 1990 issued by respondents No. 6 and 7. The School Committee passed the resolution and continued the services of petitioner No.2. The Administrative Officer of the Municipal School Board granted permanent approval by letter dated 24th June 1997. The staffing pattern, which was applicable to the Schools in Writ Petitions No. 6714 of 2004 and 6715 of 2004, applies to respondent No.7 in Writ Petition No. 6716 of 2004. Rest of the facts, which are already highlighted in Writ Petition No. 6714 of 2004, are identical in Writ Petition No. 6716 of 2004 and, thus, are not set out to avoid any repetition. The petitioners in Writ Petition No. 6716 of 2004 have also prayed for similar reliefs, which are prayed by petitioners in Writ Petitions No. 6714 of 2004 and 6715 of 2004.

19) Mr Sangit, learned Counsel for the petitioners in these petitions, invited our attention to various annexures to the Writ Petitions including the approval granted by the Municipal Board granted by the Administrative Officer of the then Municipal School Board granting permanent approval to the petitioners, copies of the resolutions passed by the School Committee of the managements, copies of various Government Resolutions issued by the State

Government from time to time, and the communications issued by the Government Officers.

20) It is submitted by the learned Counsel that some of the petitioners out of these six petitioners in three Writ Petitions were appointed by the Schools after the Government Resolution dated 1st August 1995 by which the ban for making any recruitment came to be withdrawn. It is submitted that two of the petitioners, who are appointed prior to the date of said Government Resolution dated 1st August 1995, were granted approval for the period after the said Government Resolution dated 1st August 1995 came to the effect. He submits that the approvals were granted for permanent appointment of the petitioners by the Administrator of the Municipal Board, who are authorised to grant approval under the Bombay Primary Education Act. It is submitted that on passing of such approval from time to time, each of the petitioners was made permanent, who are appointed after following regular selection procedure and have been drawing salary and other benefits payable to such permanent employees. He submits that it was not open to the State Government to make any modification in respect of the service conditions and pay scales already granted to the petitioners prior to the date of such resolution and that also with retrospective effect. He

submits that the State Govt. Resolution dated 12th July 2004 is contrary to the rules prescribed under the Bombay Primary Education Rules 1949, and is illegal.

21) It is submitted by the learned Counsel that the petitioner No.1 was appointed on 1st October 1993 and petitioner No.2 was appointed on 10th June 1991 in so far as Writ Petition No. 6714 of 2004 is concerned i.e. much after the ban imposed by the State Government Resolution dated 10th June 1987. The Government Resolution dated 12th July 2004, therefore, was not even applicable in case of petitioners in Writ Petition No. 6714 of 2004. He submits that since the strength of the School for three years was found more than 500, there was no reason for not granting staffing pattern and, thus, the same was already granted. It is submitted by the learned Counsel that services of all the petitioners were permanently approved and have been paid regularly on the pay scales prescribed under the provisions of the law and cannot be modified and reduced by payment of honorarium. He submits that Government Resolution dated 12th July 2004 is, thus, arbitrary, unreasonable and there is no reasonable nexus in issuing such resolution. He submits that the employees were already made permanent much prior to said resolution dated 12th July 2004 and therefore, they cannot be

compelled to accept payment of honorarium.

22) It is submitted that the said Govt. Resolution dated 12th July 2004 is also discriminatory in nature. It is submitted by the learned Counsel that the Government has been paying the grant-in-aid to the Schools after lifting the ban. It is submitted by the learned Counsel for the petitioners that the petitioners in each of petitions are claiming the benefits only from the date of the Government Resolution dated 1st August 1995 lifting the ban. The respondents are, thus, not affected in any manner whatsoever. It is submitted that the order of approval of permanency granted by the Administrative Officer of the School Board Committee to the petitioners has not been revoked by the State Government till date.

23) Learned Counsel for the petitioners invited our attention to the order dated 1st November 2004 passed by this Court granting interim relief in favour of the petitioners to the effect that during the pendency of these petitions, the petitioners shall continue to receive their salary which they had been receiving as on the date of the said order including as per Government Resolution dated 26th July 2004. This Court had also directed to forward necessary proposals to respondent No.4 Board, without prejudice to the rights of the

petitioners, if the same was not forwarded so far.

24) It is submitted by the learned Counsel for the petitioners that each of the petitioners is in the employment of respective Schools, who are parties to these three Writ Petitions and have been drawing salary payable to them as permanent employees. He submits that said interim order is in force till date and has not been impugned by the respondents before the Supreme Court. The appointments made by the Schools and duly approved by the authorities in favour of the petitioners of permanent basis, thus, cannot be disturbed by the respondents and also by this Court.

25) Shri Joshi, learned Assistant Government Pleader for respondents No.1 to 3 and 5, on the other hand, submits that all the petitioners were appointed after Government Resolution dated 1st August 1995. He submits that for the period prior to the date of Government Resolution dated 1st August 1995, none of the Schools had claimed any grant from the Government for the past period. After lifting ban, grant is already paid to the Schools. Names of petitioners appeared in the list for 100% grant. He submits that there is no dispute that petitioners have been working on the sanctioned posts, however, as per Govt. resolution dated 12th July 2004 the

Peons and Clerks have to be paid on honorarium basis and they cannot claim any payment as per pay scales, which they were getting prior to the date of said resolution. He submits that the said resolution passed by the State Government is binding on the Schools as well as petitioners.

26) It is submitted by the learned Assistant Government Pleader that there was recruitment of non-teaching employees in recognized and aided private education institutions vide Government Resolution dated 16th June 1987. The said Government Resolution was, however, subsequently lifted by the Government Resolution dated 1st August 1995. He submits that, thus, appointment of non-teaching employees in aided private primary Schools made prior to 1st August 1995 was not eligible for grant in aid.

27) It is submitted that the Finance Department issued ban for creation and filling up of vacant posts vide Government Resolution dated 30th May 2000. The said ban was also extended to aided Private Primary Schools, vide letter dated 8th January 2001, issued by the Government. Though restriction was relaxed, 333 posts of Junior Clerks and 336 posts of Peons were sanctioned in 336 aided Private Primary Schools by the State Government, vide

Resolution dated 12th July 2004, subject to certain conditions prescribed in the said resolution.

28) It is submitted by the learned Assistant Government Pleader that as per directions of said Government Resolution dated 12th July 2004, the non-teaching employees in aided private primary Schools would be paid honorarium at the rate of Rs. 2000/- per month to the clerk and at the rate of Rs. 1700/- per month to the Peons. It was provided in the said resolution that those Peons and Clerks would receive the said honorarium for a period of three years and thereafter they would receive pay in the regular pay scale of the Clerk and Peon, as prescribed by the Government from time to time. He submits that due to financial constraints of the State Government, the Government was forced to introduce the scheme of filling up non-teaching staff on honorarium basis, which honorarium is decided in the apportionment with the honorarium of *Shikshan Sevak* i.e. 2/3rd of minimum pay scale of the posts.

29) It is submitted by the learned Counsel that the non-teaching staff appointed by the institutions, for which no grants are sanctioned nor any approval has been granted by the State Government or its authorities, are not entitled to receive any salary

or grant from the State Government. They are to be treated as employees of the concerned institutions as per the provisions under the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977, and Rules 1981. The concerned institution is supposed to pay salary to such of its employees.

30) It is submitted that if any such School, however, fulfills the criteria for getting post of 1 Clerk and 1 Peon as per the provisions of the Bombay Primary Education Rules 1989, in that event, the Government will sanction new posts and provide salary grant subject to availability of funds. He submits that persons appointed by the institutions on those 333 posts of Clerk and 336 posts of Peon in 336 primary Schools in the State, would receive salary grants as per the honorarium fixed by the State Government from June 2004 and those employees would not be entitled to get pay in regular pay scales.

31) Mr Sangit, learned Counsel for the petitioners in rejoinder submits that the rights vested in the petitioners prior to the date of Government Resolution dated 12th July 2004 cannot be reduced and/or taken away by the subsequent Government Resolution. He submits that each of the petitioners was duly

appointed after following proper process of selection and their appointments were duly approved by the authority. They have been paid the salary as per regular pay scale in last several years and thus, their salary could not be reduced by the State Government by issuing Government Resolution dated 12th July 2004 on the ground of financial constraints on the State Government or for any other ground. He submits that number of posts already sanctioned by the Government in past as per staffing pattern decided by the Government cannot be reduced by issuing said resolution.

32) Even if those employees earlier appointed were treated as surplus, they are bound to be absorbed in some Schools and would be entitled to be paid till such period of they being declared surplus and also after they have been absorbed. He submits that in this case, Government has already made submission before this Court that none of them were declared as surplus and have not been directed to be absorbed by any other School.

REASONS AND CONCLUSIONS :

33) In so far as petitioners in **Writ Petition No. 6714 of 2004** are concerned, petitioner No.1 was appointed by letter dated 1st

October 1993 by following due process of selection. Petitioner No.2 was selected as Peon by following due process of selection on 10th June 1991. The School Committee in its meeting held on 3rd February 1996 has granted permanency to the petitioner No.2. In so far as petitioner No.1 is concerned, he was granted approval for academic year 1997. The approval was also granted to the petitioners by Administrative Officer of Municipal School Board, who was authorised and competent to grant such approval when such approval was granted under the provisions of the Bombay Primary Education Act.

34) It is not in dispute that the petitioners in Writ Petition No. 6714 of 2004 are seeking all benefits of their appointment only from the date 1st August 1995 when the State Government lifted ban. It is not in dispute that the said approval granted initially by the School Committee and thereafter by the Administrative Officer of Municipal School Board were authorised to grant such approval at the relevant time and was binding on the Government. No such approval was subsequently recalled by respondents No. 1 to 3 and 5.

35) In so far as petitioners in **Writ Petition No. 6715 of 2004** are concerned, admittedly the petitioner No.1 was appointed by

appointment letter dated 10th June 1996 and was selected after following due procedure. The School Committee had passed resolution on 1st September 1998 granting permanency and continuity of petitioner No.1 in service. Municipal Corporation, Jalgaon, granted permanency approval vide letter dated 28th August 1996. In so far as petitioner No.2 is concerned, he was appointed as Peon by appointment letter dated 10th July 1996 and was granted continuity of service on permanent basis vide resolution passed by the School Committee on 31st March 1998.

36) It is not in dispute that the said two appointments were admittedly made after ban on recruitment of employees was lifted by the State Government vide resolution dated 1st August 1995. In our view, the Government Resolution dated 12th July 2004 issued by the State Government restricting the payment for services rendered on the basis of honorarium would clearly not apply to the petitioners in **Writ Petition No. 6715 of 2004**. Their appointments were not made during the ban period by the management.

37) In so far as the petitioners in **Writ Petition No. 6716 of 2004** are concerned, admittedly petitioner No.1 was appointed by letter dated 28th December 1995 in pursuance of advertisement dated

21st October 1995 and he had resumed his services in the School of respondent No.7 as a Clerk on 1st January 1996. So far as appointment of petitioner No.2 is concerned, his appointment was in clear vacancy of two years period on probation is concerned, and was appointed as Peon by letter dated 1st December 1990, issued by the President of Khandes Education Society, initially for a temporary period. His services, were, however, continued as Peon by respondents No. 6 and 7, without any break.

38) The School Committee also passed a resolution and continued services of the petitioner No.2. The Administrative Officer of the Municipal School Board had granted permanent approval to petitioner No.2 vide letter dated 24th June 1997. It is, thus, clear that in so far as petitioner No.1 is concerned, his appointment was made after the ban was lifted by the Government, vide resolution dated 12th July 2004. Though the petitioner No.2 was appointed earlier, the fact remains that his appointment was approved by the authority empowered and competent to grant such approval to the said petitioner. He is also seeking approval with effect from 1st August, 1995.

39) It is not in dispute that on 3rd January 1996, Deputy

Director of Education, Nashik Region, Nashik, informed the Education Officer (Primary), Zilla Parishad, Jalgaon, that earlier ban imposed was lifted by the State Government and directing that the respective Schools should take appropriate steps for seeking approval to the appointment in pursuance of the Government criteria for getting necessary salary grants. It is not in dispute that the approvals were already granted to the appointments of the petitioners in aforesaid three petitions for permanent appointment by the Administrator of the Municipal Board who was authorized to grant such approval by the concerned authority at the relevant time under the provisions of Bombay Primary Education Act, 1947.

40) In our view the State Government by its Resolution dated 12th July 2004 could not have made any modification in respect of the service conditions and pay scale already granted to the petitioners to the detrimental of such permanent employees and that also with retrospective effect. The salary and other benefits granted to such permanent employees could not have been converted into the honorarium and could not have been reduced than what was being paid to the petitioners and other such employees. In our view, the learned counsel for the petitioners is right in his submission that the State Government Resolution dated 12th July,

2004 is contrary to the provisions of the Bombay Primary Rules 1949.

41) In our view, since the petitioner No. 1 was appointed on 1st October 1993 as Clerk, and Petitioner No. 2 was appointed on 10th June 1991 as a Peon in so far as Writ Petition No. 6714 of 2004 is concerned, much after the ban imposed by the State Government Resolution on 16th June, 1987, the State Government Resolution dated 12th July, 2004, was not even applicable in case of these petitioners. Since the strength of the School for three years was found more 500, there was no reason for not granting staffing pattern as sought to be enforced by the State Government Resolution dated 12th July, 2004 by the Government. In our view by such resolution issued by the Government the existing pay-scale and benefit which was in force for last several years cannot be reduced by converting the same into the payment of honorarium even for three years.

42) The learned Counsel for the petitioners have made statement before this Court that each of petitions are claiming the benefits only from the date of the Government Resolution dated 1st August 1995 lifting the ban and not for the period prior to 1st

August,1995. No prejudice is thus even otherwise caused to the State Government in view of such statement made by the petitioners.

43) It is not in dispute that the orders of approval of permanency granted by the Administrative Officer of the School Board Committee to the petitioners have not been revoked by the State Government till date. By virtue of such Government Resolution dated 12th July 2004, the State Government cannot ignore such order of approval of permanency granted by the Administrative Officer of the School Board Committee who were at the relevant time authorized to grant such approval of permanency. In our view by such Government Resolution, the approval of permanency already granted by the Administrative Officer of the School Committee long back cannot be nullified .

44) Learned Counsel for the petitioners invited our attention to the interim order dated 24th November 2016 passed by the Division Bench in favour of the petitioners directing that the petitioners shall continue to receive their salary which they had been receiving as on the date of the impugned order and the impugned Government Resolution dated 26th July 2004 and also directed the

State Government to forward necessary proposals to the respondent No.4, Board. The petitioners have been drawing salary payable to them as permanent employees till date.

45) The learned Assistant Government Pleader could not point out whether State Government has forwarded the necessary proposals to the respondent No. 4, Board in terms of interim order dated 24th November 2016 passed by the Court or not.

46) In so far as the submission of the learned Assistant Government Pleader that all the petitioners were appointed after Government Resolution dated 1st August 1995 is concerned, the said submission of the learned Assistant Government Pleader is factually incorrect. The learned A.G.P. did not dispute that the petitioners have been working on the sanctioned posts since the date of appointment and are approved on permanent basis.

47) In so far as the submission made by the learned Assistant Government Pleader that in view of the Government Resolution dated 1st August 1995 lifting the ban for making any recruitment of non-teaching employees in recognized and aided Private Education Institutions and thus appointment of non-teaching

employees in aided private Primary Schools made prior to 1st August 1995 was not eligible for granting aid is concerned, there is no substance in his submissions, and the same is academic. The petitioners have made statement before this Court that they are not seeking any benefits of pay scale prior to 1st August 1995 and thus such argument of the learned Assistant Government Pleader would not hold good in this fact situation.

48) In so far as submission of the learned Assistant Government Pleader that the Government Resolution dated 12th July 2004 was issued due to financial constraints of the State Government is concerned, in our view the salary or other benefits payable to the employees which are already accrued and are being paid for last seven years could not be reduced by the State Government by issuance of Government Resolution under the guise of any financial constraints of the State Government.

49) In so far as the submission of the learned Assistant Government Pleader that if any School fulfills the criteria for getting a post of one Clerk and one Peon as per the Provisions of the Bombay Primary Education Rules 1989, then the Government will sanction new posts and provide Salary grant subject to availability of funds is

concerned, in our view, the State Government cannot propose such conditions with retrospective effect. We are thus, not inclined to accept the submission of the learned Assistant Government Pleader that the petitioners are governed by the Government Resolution dated 12th July, 2004. In our view, the stand of the State Government is ex-facie contrary to the provisions of Bombay Primary Education Rules, 1989 and also the provisions of Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 and the Rules 1981 framed under the said Act.

50) The number of posts were already sanctioned by the Government in past as per staffing pattern decided by the Government which cannot be reduced with retrospective effect by issuing such resolution dated 12th July, 2004. In our view, the learned Counsel for the petitioners is right in his submission that even if those employees appointed earlier were to be treated as surplus, they are bound to be absorbed in some Schools and would be entitled to pay scale for such period for which they have been declared surplus and also after they have been absorbed.

51) The learned Assistant Government Pleader has already made submission before this Court that none of these employees

had been declared as surplus and have not been directed to be absorbed by any other School.

52) The Division Bench of this Court has considered a similar issue in the order dated 22th November 2016 in Writ Petition No.3918/2016 in case of Deepak Devidas Bhoi Vs. State of Maharashtra and others. Similar view has been also taken by the Division Bench by order dated 3rd April 2017 in Writ Petition No. 10584 of 2016 in case of Harshal Vinayak Khairnar Vs. State of Maharashtra in companion matters and order dated 15th March, 2017 in Writ Petition No. 3719 of 2016 in the case of Khushal s/o Sadashiv Medhe and another Vs. State of Maharashtra and others. In our view those orders passed by this Court would assists the case of the petitioners.

53) In our view the impugned Resolution dated 12th July 2004 issued by the State Government is thus liable to be ignored as far as the petitioners are concerned and thus the petitioners would be continued to receive the regular pay scale and not honorarium. It is declared accordingly.

54) In our view, the petitioners have made out a case for

issuance of a Writ of Mandamus directing the respondents to pay and disburse the salary as per pay scale prescribed under the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 and other provisions of law. The order dated 4th October 2004 passed by the Administrative Officer, Jalgaon, Municipal Corporation School Board to respondent No. 7 also deserves to be quashed and set aside as illegal and without authority of law. The petitioners are also entitled to reliefs in terms of prayers (BB) and (BBB). It is ordered accordingly. We therefore, pass the following order :-

ORDER

- (i) Writ Petition No. 6714 of 2004, Writ Petition No. 6715 of 2004 and Writ Petition No. 6716 of 2004 are allowed and Rule is made absolute in terms of prayer Clauses (BB) and (BBB).
- (ii) The respondents are directed to act on the authenticated copy of this order.
- (iii) There shall be no order as to costs.

Sd/-
(**SUNIL K. KOTWAL**)
JUDGE.

Sd/-
(**R.D. DHANUKA**)
JUDGE.