

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.1023 OF 2006

1. Nagesh s/o Sadashivrao Deshpande,
Age : 42 years, Occu.: Service,
Junior Clerk, Prabhavati Primary
School, Parbhani,
District Parbhani

2. Shrihari s/o Janardan Katkade,
Age : 38 years, Occu.: Service,
Peon, Prabhavati Primary School,
Parbhani, District Parbhani

PETITIONERS

VERSUS

1. Swami Vivekanand Shikshan Sanstha,
Vidyanagar, Parbhani, through its
Secretary/Fit Person

2. The Head Mistress,
Prabhavati Primary School,
Vidyanagar, Parbhani,
District Parbhani

3. The Education Officer (Primary),
Zilla Parishad, Parbhani,
District Parbhani

RESPONDENTS

Mr.S.B. Ghatol Patil, Advocate for the petitioners
None for respondent Nos.1 and 2, though served
Mr.B.A. Shinde, Advocate for respondent No.3

**CORAM : T.V.NALAWADE AND
SANGITRAO S.PATIL, JJ.**

DATE : 21st JUNE, 2017

JUDGMENT - (PER : SANGITRAO S. PATIL, J) :

The petitioners, who were appointed as Junior Clerk and Peon respectively, in respondent No.1 - School, have prayed for the following reliefs.

"[B] By a writ of mandamus, or any other appropriate writ, or order or direction in the like nature, the respondents may kindly be directed to correct the service records/service-books of the petitioners by taking into consideration their actual dates of appointment and approvals granted by the Education Officer to those appointments.

[C] By a writ of mandamus, or any other appropriate writ, or order or direction in the like nature, the respondent No. 3 may kindly be directed to grant benefit of senior scale to the petitioners by taking into consideration their twelve years' service from the actual dates of their respective appointments which are already approved by the Education Officer.

[D] By a writ of mandamus, or any other appropriate writ, or order or directions in the like nature, the Education Officer (Primary), Zilla Parishad, Parbhani – respondent No.3 may kindly be directed to take steps to absorb the petitioners in any other aided school or the school run by the Zilla Parishad as per the provisions of Rule 26 of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981.

[E] By a writ of certiorari, or any other appropriate writ or order or directions in the like nature, the orders of recovery from the salaries of the petitioners already effected on an erroneous assumption about the date of appointments of the petitioners may kindly be quashed as set aside."

2. Heard the learned counsel for the petitioners and the learned counsel for respondent No.3— Education Officer.

3. The petitioners have produced their appointment orders for the posts of Junior Clerk and Peon respectively, on which they actually resumed on 15th June, 1985 and 11th June, 1987 respectively. The then Education Officer (Primary) seems to have granted approval to the appointments of the petitioners as per the communication dated 14th January, 1992 with effect from the above mentioned dates of joining the duties. On the basis of these documents, the learned counsel for the petitioners submits that they are entitled to get reliefs claimed in prayer clauses "B" and "C" above.

4. On the other hand, the learned counsel for respondent No.3 produced the documents and particularly the letter dated 30th September, 1987 issued by the Government of Maharashtra, whereunder permission was granted to run respondent No.1 – School. On the strength of these documents, the learned counsel for respondent No. 3 submits that when respondent – school got recognition on 30th September, 1987, there was no question of appointing the petitioners as clerk and peon on 15th June, 1985 and

11th June, 1987 respectively. We find substance in this contention. There was a palpable mistake on the part of the then Education Officer (Primary) in giving approval to the appointments of the petitioners from 15th June, 1985 and 11th June, 1987 respectively, when respondent No.1- School itself had not got recognition from the Government of Maharashtra.

5. The learned counsel for respondent No.3 pointed out to Clause (b) of sub-rule (3) of Rule 115 of the Bombay Primary Education Rules, 1949, which reads as under:-

"Salaries of one Junior Clerk and one Class IV servant in the approved pay-scale applicable to similar employees in the service of the State Government in case of school having strength of 500 or more."

6. The learned counsel for respondent No.3 pointed out to the letter dated 4th October, 1991 issued by the then Education Officer (Primary) extending sanction to staffing pattern of respondent No.1-school for the year 1990-91. In that year, the strength of the students was 467 only and therefore, the posts of Junior Clerk and Peon were not

sanctioned. He further referred to the letter dated 14th January, 1992 showing that the strength of the respondent No.1 – School was 508 in that year and, therefore, one post of Junior Clerk and one post of Peon came to be sanctioned for the first time in the year 1991-92. He, therefore, submits that the approval to the appointments of the petitioners was rightly granted by respondent No.3 from the year 1991-92 and necessary entries in the service record of the petitioners have rightly been taken accordingly. He further submits that the benefit of the time bound promotion has also been rightly extended to the petitioners after completion of the service of twelve years from the year 1991-92, treating their appointments with effect from 1st June, 1991.

7. The learned counsel for the petitioners submits that the petitioner actually served with the respondent No.1-School from the years 1985 and 1987 respectively. However, they have not been paid salary till the year 1991-92 when respondent No.3 treated them on duty for the purpose of salary. As stated above, the appointments of the petitioners can be

considered to be valid for the purpose of payment of salary only after the posts of Junior Clerk and Peon were sanctioned as per the letter dated 14th January, 1992 for the academic year 1991-92. Therefore, the petitioners are not entitled to claim the salary from respondent No.3 in respect of the period prior to sanction of the said posts. If the petitioners have worked for respondent No.1-school, they would be at liberty to claim salary, if permissible under the law, in respect of the period prior to sanction of the posts. However, they are not entitled to get the salary or any other benefit in respect of the period prior to sanction of the posts to which were appointed.

8. In the circumstances, entries in the service record of the petitioners cannot be said to have been taken wrongly as claimed by the petitioners. There is absolutely no reason to direct the respondents to carry out any correction in the service record of the petitioners. The petitioners are not entitled to get the time bound promotional pay scale from the years 1985 and 1987 respectively as claimed by them.

9. The learned counsel for the petitioners submits that the petitioners have been appointed after following due procedure of law. Their appointments have been approved by respondent No.3. Therefore, in case respondent No.3 is of the opinion that the petitioners are surplus in respondent No.1-school, respondent No.3 may be directed to absorb them in some other aided school. Indeed, the appointments of the petitioners have been approved and they have been extended even the benefit of time bound promotional pay scale. In case they are found to be surplus, respondent No.3 would have to declare them as surplus and absorb them in some other aided school. To this extent, we accept the claim of the petitioners.

10. The learned counsel for the petitioners submits that respondent No.3 have wrongly recovered certain amounts from the salary of the petitioners on account of excessive payment made to them towards time bound promotional scale wrongly sanctioned to them. It is prayed that the amounts recovered from the salary of the petitioners may be directed to be repaid to

them. We are not inclined to accept this contention. The respondents have rightly recovered the excess payment of salary made to the petitioners, since the petitioners were not legitimately entitled to get that amount.

11. The writ petition is liable to be dismissed. However, we make it clear that if it is permissible under the law to claim past salary from the respondent -School, the petitioners would be at liberty to initiate appropriate proceedings for recovery of the same. We further make it clear that in case the petitioners are found to be surplus, respondent No.3 shall consider them for being absorbed in some other aided school as per the provisions of law. With these observations, we dismiss the writ petition. No costs. Rule is discharged accordingly.

Sd/-
[SANGITRAO S. PATIL]
JUDGE

Sd/-
[T.V. NALAWADE]
JUDGE