

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 1214 OF 2009

Prakash S/o Digambarrao Chidrawar
Age 41 years, Occu. : Teacher,
R/o Jambhla, Taluka Hadgaon,
District Nanded

.. Petitioner

Versus

- 1] The State of Maharashtra,
through Tribal Department,
through its Principal Secretary,
Mantralaya, Mumbai
- 2] The Additional Commissioner of
Tribal Development Department,
Amravati
- 3] The Prkalpa Adhikari
(Project Officer),
Ekatmic Adivasi Vikas Prkalpa,
At Kinwat, Tq. Kinwat,
Dist. Nanded
- 4] The Asstt. Prkalpa Adhikari
(Asstt. Project Officer),
Ekatmic Adivasi Vikas Prkalpa
At Kinwat, Tq. Kinwat,
Dist. Nanded
- 5] The Secretary, Ramji Metkar Andh
Adivashi Vidyarthi Vastigriha,
Tamsa, Tq. Hadgaon,
District Nanded
- 6] The Head Master,
Shri Gurusamarth Rambapu
Maharaj Adivashi Ashram Shala
Jambhla, Tq. Hadgaon,
District Nanded

.. Respondents

Mr. G.N. Chincholkar, Advocate for petitioner
Mr. S.N. Morampalle, AGP for respondent-State
None present for respondents 5 and 6 though served

CORAM : SUNIL P. DESHMUKH &
SANGITRAO S. PATIL, JJ.
DATE : 10-10-2017

ORAL JUDGMENT (PER - SUNIL P. DESHMUKH, J.) :

1. Learned counsel Mr. Vinesh Solshe states that he has communicated respondent no. 5 about him seeking discharge from appearance for respondent no. 5. He purports to tender across photocopies of the communication issued by him to respondent no. 5, which are collectively marked 'X' for identification.

2. Despite service, it appears that, no one has put in appearance on behalf of respondent no. 5. In the circumstances, Mr. Solshe seeks discharge from appearance on behalf of respondent no. 5. As such, Mr. Solshe, learned Advocate is discharged from appearance for respondent no. 5.

3. The grievance in the present petition is about the salary for period between May, 2003 to September, 2006.

4. Learned counsel for the petitioner submits that despite working during this period, salary has not been paid to him, which is legitimately due and payable. Petitioner has been working as Assistant Teacher in respondent no. 6 school since 1996. He has been appointed as Assistant Primary Teacher. Pay scale for the post was Rs. 3200 - 4900 in 1996. Petitioner refers to that his appointment has been duly approved by the concerned authorities. He is B.Com. B.P.Ed. and has also acquired D.Ed. subsequently. It is further submitted that his appointment was on a clear and vacant post from open category.

5. Learned counsel submits that subsequently, petitioner's appointment had purportedly not been given approval to under order dated 17th December, 2005. He submits that there had been turbulence in respect of the Assistant Primary Teachers across the State in the category of schools, wherein petitioner had been appointed. He emphasizes that although this was the situation, the petitioner had been continuously serving and was in employment. He submits that the refusal to approve services of the petitioner alongwith others under order dated 17th December, 2005, had been re-considered under order dated 7/10-10-2006, wherein services of the petitioner alongwith others came to be regularised with effect from the date of their initial appointment; however, with a rider that

said employees would be receiving salaries from 1st October, 2006 onwards and would not be entitled to backwages. He, therefore, submits that he is entitled to salary for the period during which he has worked and there is no dispute about him having worked in the interregnum and in-fact, the Headmaster, by issuing a certificate, had endorsed the same.

6. He contends that it is not a case that the petitioner can be said to have been illegally appointed. He had been appointed after following due procedure as envisaged in the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977, also applicable to Ashram Schools. In such a case, the petitioner was entitled to the salary for the period for which he has worked as Assistant Teacher and the order dated 17th December, 2005, refusing to approve his services, would not be legally sustainable. In such a case, the petitioner's claim for salary for the period he had been working before 1st October, 2006, is legitimately due and payable to him as Assistant Teacher.

7. Learned A.G.P. Mr. Morampalle submits that appointment of the petitioner being after following due procedure, may not be borne out from the documents annexed to the petition. His appointment not being regular, approval had been refused to him. He had not been aggrieved and as such, had not challenged said

order. Subsequently, the State Government, in larger interest of the similarly situated persons, had re-considered said decision and issued order dated 7/10-10-2006 and specifically referring to that as a special case the decision had been reconsidered and also to that backwages would not be payable. He submits that prayers made in the petition do show that even said part of the order is not under challenge. He submits that for the period prior to the date referred to in the decision, salary is not liable to be paid from the Government coffers. In other cases as well, liability of salary has not been fastened on to the State Government.

8. Learned A.G.P. for respondents 1 to 4 states that earlier appointment of the petitioner had been cancelled on 17-12-2005, since the appointment had not been in accordance with due procedure and further even the Government decision dated 25-09-2006 states that said concerned respondents are not liable to pay backwages and the wages would be payable only from 01-10-2006.

9. Having regard to the emerging position, the petitioner appears to have worked during the concerned period from 2003 to 2006, in the school run by respondent no. 5, in such a case, the primary responsibility of paying the salary, is that of the management - respondent no.5.

10. Petition has been pending since 2009. No reply has been filed nor any arrangement has been made despite communication by the counsel who was earlier appearing for respondent no. 5 for appearance on behalf of respondent no. 5.

11. In view of above and as primary liability of making payment of salary and other benefits being that of Management, as referred to in decision at Nagpur in Writ Petition no. 8176 of 2006 relied on by learned Assistant Government Pleader, we deem it appropriate to follow the order passed in Writ Petition No. 8176 of 2006 on 14th March, 2008.

12. In the circumstances, it appears that it would be expedient to grant the Petition directing respondents no. 5 and 6 to pay the salary for the period claimed by the petitioners.

13. Rule is made absolute accordingly.

[SANGITRAO S. PATIL]
JUDGE

[SUNIL P. DESHMUKH]
JUDGE

arp/