IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.3332 OF 2012

Pagar Prakash Damu .... Petitioner
Vs.
State of Maharashtra & Others .... Respondents

WITH

WRIT PETITION NO.4593 OF 2012

Nikam Vishvas Manji .... Petitioner
Vs.
State of Maharashtra & Others .... Respondents

WITH

WRIT PETITION NO.5149 OF 2012

Nikam Sunil Punaji .... Petitioner
Vs.
State of Maharashtra & Others .... Respondents

WITH

WRIT PETITION NO.5150 OF 2012

Gaikwad Sanjay Eknath .... Petitioner
Vs.
State of Maharashtra & Others .... Respondents

WITH

WRIT PETITION NO.5151 OF 2012

Borase Anil Murlidhar .... Petitioner
Vs.
State of Maharashtra & Others .... Respondents

WITH

WRIT PETITION NO.5152 OF 2012

Somavanshi Vijay Balasaheb .... Petitioner
Vs.
State of Maharashtra & Others .... Respondents

WITH

WRIT PETITION NO.5153 OF 2012

Kakad Dnyaneshwar Vitthal .... Petitioner
Vs.
State of Maharashtra & Others .... Respondents

WITH

WRIT PETITION NO.5154 OF 2012

Nikumbh Shravan Chintaman .... Petitioner
Vs.
State of Maharashtra & Others .... Respondents

Mr. Nasir Masih Shaikh for the Petitioner in all petitions.

Mr. P.P. More, AGP, for Respondent Nos.1 to 3 in all petitions.

Mr. P.B. Shah for Respondent No.4 in all petitions.

CORAM: S.C. DHARMADHIKARI &
SMT. BHARATI H. DANGRE, JJ.

DATE : NOVEMBER 07, 2017

P.C:

1. On 23-2-2015, on these petitions, the following order was passed:-

> *"Heard.*
>
> *The Petitioners challenge their transfers from the secondary section of the school to the educational institution running the degree course. The petitioners also seek the regular salary and the arrears of salary, as payable to the other regular non-teaching employees as per Schedule "C".*
>
> *It is stated on behalf of the respondents that the petitioners were appointed temporarily and not on probation after compliance with the provisions of the Rules of 1981. It is stated that the petitioners have stopped working before filing of the writ petitions.*
>
> *We do not find any merit in the challenge to the transfer orders as the petitioners have readily accepted the transfer orders and had attended the duties in the school where they were transferred. The challenge to the transfer orders appears to be an afterthought. However, since the petitioners were admittedly working with the respondent management for a period of three years preceding the date of filing of the writ petitions and since the petitioners would be entitled to claim the arrears of salary as per the scales prescribed in Schedule "C", we hereby direct the respondent management to*

> *pay the arrears of difference of salary to each of the petitioners for a period of three years preceding the date of filing of the writ petition, within a period of four weeks. We direct the management to pay the arrears of salary to the petitioners as prescribed in Schedule "C".*
>
> *Stand over after five weeks for ensuring compliance of the order and for further consideration."*

2. Now it is stated on behalf of the petitioners that the amounts which have been paid by the Management are not as per the schedule and in fact they have reduced the pay and to the detriment of the petitioners. A grievance is also made with regard to the petitioners not being assigned any duties or work.

3. We do not think that these petitions need to be kept pending for in these petitions the challenge was to a transfer order dated 13-12-2011.

4. That challenge has, admittedly, failed and is covered by this order of 23-2-2015. That is a final order.

5. If the Management has not abided by the directions of this Court nor paid the amounts as per the petitioners' entitlement and if that claim of the petitioners is alive, so also

the petitioners' grievance that duties are not being assigned or no work is given, then, all grievances of this nature can be raised in substantive proceedings. That is a separate cause of action and unconnected with the writ petitions. Even if that is partially covered, still, we do not think that the petitioners' remedies are foreclosed. If they have accepted the amounts under protest or without prejudice to their rights and contentions, they can raise appropriate grievance in such proceedings as are permissible in law. We grant them liberty to institute such proceedings and dispose of these writ petitions.

6. We clarify that we have not expressed any opinion on the rival contentions as far as the aforesaid issues are concerned.

(SMT. BHARATI H. DANGRE, J.) (S.C. DHARMADHIKARI, J.)