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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION NO.2817 OF 2014

Surendra Bhagwanrao Jagap Petitioner.

V/s

State of Maharashtra and Others Respondents.

Mr. A.V. Anturkar, Senior Counsel a/w Mr. Tanaji Mhatungade i/b
Mr.Sugandh B. Deshmukh for the Petitoiner.

Ms. Jyoti Chavan, Asstt. Govt. Pleader for Respondent Nos. 1 to 7 –
State.

**CORAM: B. R. GAVAI &
SANDEEP K. SHINDE, JJ.**

DATE: 5th October, 2017

P.C.:-

1] Rule. Rule is made returnable forthwith. Respondents waive service. Heard, by consent of parties.

2] Petitioner has approached this Court praying for direction to the Respondents to grant benefits to the Petitioner, which are already being granted to the teaching and non-teaching employees of the other aided Art Schools.

3] Petitioner has been working in the private aided school.

Petitioner, in pursuance to the order passed by this Court, is being paid salary, as is being paid to the teachers of the aided private schools. However, Petitioner is not being paid other benefits which are being paid to the teachers of other aided private schools, which are listed by the Petitioner at page 54 of the paper-book.

4] The issue is no more *res integra*. Writ Petition No.153 of 2002 was filed before this Court, challenging the action of the State Government, denying the Petitioner therein salary, as was being paid to the teachers of the aided private schools. It was the contention of the State Government that the teaching as well as non-teaching staff of the Art schools cannot be equated with other aided private schools. Division Bench of this Court vide Judgment and Order dated 13/12/2002 has observed thus :

“12. The learned counsel for the petitioner, in this connection, relied on the definition of 'school' in the Maharashtra Employees of Private Schools Regulation Act, 1977 (hereinafter referred to as “the Act”). Sub-section (24) of Section 2 defines 'school', and reads as under :-

“School' means a primary school, secondary school, higher secondary school, junior college of education or any other institution by whatever name

called, including technical, vocational or art institution or part of any such school, college or institution, which imparts general, technical, vocational art or as the case may be, special education or training in any faculty or discipline or subject below the degree level;

(emphasis supplied)”

(Underline ours)

“13. The counsel conceded that the Government Resolution does not include an employee of 'art institution', but when the legislature has defined 'school', and in its inclusive part, 'art institution' was expressly referred to, it is not open to the State Government to ignore the said class and deprive it of pensionary benefits. To that extent, therefore, the action of the authorities cannot be said to be legal or valid. 'School', thus would include an 'art institution'. All benefits, which are otherwise available to employees, who had served in any aided private school, must also be made available to employees of 'art institution' as well.” (Underline ours)

14. In our opinion, therefore, the petition deserves to be allowed and is, accordingly, allowed. The order passed by the State Government is declared illegal

and is hereby set aside. It is directed that the respondents will consider past services rendered by the petitioner in Mahavidyalay – 'art institution' – as defined in sub-section (24) of Section 2 of the Act and extend all benefits in accordance with law. Such benefits will be calculated and paid to the petitioner, as expeditiously as possible, preferably within three months from today.” (Under line ours)

It could thus be clearly seen that Division Bench of this Court has, in unequivocal terms, has held that teachers working in Art Schools would be entitled to the benefits, which are otherwise available to the employees, who are serving in other aided private schools.

5] No doubt that Ms. Jyoti Chavan, learned Counsel appearing on behalf of the Respondents, on the basis of affidavits filed by Rohidas Zombade and Rajiv Mishra, has vehemently opposed the Petition. She submits that on account of division of work in various Departments of Education, like Higher Education, Technical Education, Vocational Education/Industrial Training and Art, the Government is facing difficulties. It is therefore submitted that the Government has constituted a Committee under the Chairmanship of Commissioner (Education), Maharashtra State, Pune, so as to recommend the amendment in the Rules and Regulations.

6] We find that when Division Bench of this Court has specifically

taken a view that teachers working in Art schools are entitled to the benefits equivalent to the teachers working in the aided private schools, the exercise, as proposed by the State Government, is an exercise in futility. No doubt, the competent legislature would be entitled to enact law to carve out a special class of Art schools, if legislature so decides. However, as long as sub-section (24) of section (2) remains on the statute book of MEPS Regulation Act 1977, the State cannot run away from the position, as has been decided by Division Bench of this Court in Writ Petition No.153 of 2002. It further appears that a similar view is also taken by another Division Bench of this Court in Writ Petition No.420 of 2002 decided on 21/11/2009. It also appears that the State had attempted to review the said order by Review Petition No.27039 of 2009. The Court had passed an order in the said Review Petition, observing therein that the issue is already put to rest by the Judgment of the Court in Writ Petition No.153 of 2002 cited supra.

7] In that view of the matter, we find that the Petition deserves to be allowed. Rule is made absolute by directing the Respondents to make applicable all benefits to the Petitioner and similarly situated members of the teaching and non-teaching staff of the aided private Art schools, as are made applicable to the teaching and non-teaching staff of the aided private schools. The same shall be done within three months from today.

(SANDEEP K. SHINDE, J.)

(B. R. GAVAI, J.)