

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

WRIT PETITION NO.4610 OF 2012

1. Ashok S/o Dattu Thitme
Age : 41 years, Occ : Service,
2. Sahebrao S/o Gangadhar Wakchaure
Age : 37 years, Occ : Service,
3. Asha W/o Bhaurao Malve
Age : 45 years, Occ : Service,
4. Ravindra S/o Pandharinath Sonawane
Age : 47 years, Occ : Service,
5. Nanda W/o Sahebrao Wakchaure
Age : 38 years, Occ : Service,
6. Anil S/o Dagdu Hase
Age : 37 years, Occ : Service,

All above R/o Sherankhel,
Tq. Akole, Dist. Ahmednagar.

PETITIONERS

VERSUS

1. The State of Maharashtra
Through its Principal Secretary,
Tribal Development Department,
Mantralaya, Mumbai-32.
2. The Commissioner,
Tribal Development,
Adivasi Vikas Bhavan,
Nasik.
3. The Additional Commissioner,
Tribal Development,
Adivasi Vikas Bhavan,
Nasik.

4. The Project Officer,
Integrated Tribal Development
Project Rajur, Tq. Akole,
District – Ahmednagar.
5. Adivasi Unnati Seva Mandal,
Rajur, Tq. Akole,
District Ahmednagar
Shri Mangaldas S/o Mahadu Bhavari
Age : 65 years, Occ : Agri.,
R/o Rajur, Tq. Akole,
District. Ahmednagar.
6. The Head Master,
Anudanit Prathamik Ashram School,
Sherankhel, Tq. Akole – 422601,
District : Ahmednagar
At present Adivasi Unnati Seva Mandal,
Rajur, Tq. Akole, District Ahmednagar.

..RESPONDENTS

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Mr. A.R. Rathod, Advocate for the petitioners
Mr.S.M. Ganachari, AGP for Respondent Nos.1
to 4.

Mr. R.D. Bhalerao, Advocate for Respondent
Nos.5 and 6.

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**CORAM: S.S.SHINDE &
S.M.GAVHANE, JJ.**

Reserved on : 06.04.2018
Pronounced on : 11.04.2018

ORDER (Per S.S.Shinde, J.):

This Petition is filed with the
following two substantive prayers :-

"B) By issue of writ of mandamus or any other appropriate writ, order or directions in the nature of writ of mandamus, direct the respondent No.1 to 5 to regularize the services of the petitioners as Assistant Teachers or Superintendent in the other granted Primary Tribal Ashram Schools run by the same Management and for that purpose issue necessary orders.

D) By issue of writ of mandamus or any other appropriate writ, order or direction kindly direct the respondent no.4 – Project Officer and the respondent no.5 – Management to release the salary of the petitioners from October, 2011 till the filing of the writ petition and for that purpose issue necessary orders."

2. So far as prayer clause "B" is concerned, pursuant to the notices issued to the Respondents, the Respondents have filed affidavit in reply. In the affidavit in reply filed on behalf of Respondent Nos.2 to 4, it is stated that, on an application made by Respondent No.5 – Management, the Government has permitted Respondent No.5 to transfer the Primary Ashram School, wherein the petitioners were serving, from village Sherankhal to village Rajur, by an order dated 19th June, 2012. In the said letter of transfer, there is a condition that on transfer the Management shall absorb all the staff working at the earlier primary ashram school at village Sherankhal, and accordingly, all the petitioners have been accommodated/absorbed in the school at Rajur.

3. This Court (Coram : S.S. SHINDE &

P.R. BORA, JJ) on 30th March, 2015 has taken a note of such transfer of the school and also recorded the statement of the Additional Government Pleader that, the petitioners have been absorbed at the transferred place and so far continuity of service is concerned, their services should be treated continuous in view of clause 2(1) of the Government Resolution dated 19th June, 2012 of which a reference has been made in the affidavit in reply of Respondent Nos.2 to 4. In that view of the matter, the relief claimed in the Petition in terms of prayer clause "B" stands satisfied.

4. So far prayer for salary of the petitioners from October, 2011 till the filing of the Writ Petition or till the petitioners were absorbed at transferred school is concerned, learned counsel appearing for the petitioners invites our attention to the grounds taken in the

Petition and also averments in the short affidavit filed on 4th March, 2018, and submits that, in view of Rule 25 of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 and also in view of the Government Resolution dated 29th April, 2017 issued by the Tribal Development Department, Government of Maharashtra, Mantralaya, Mumbai, the petitioners are entitled for salary for the aforesaid period from Respondent Nos.2 to 4. It is submitted that, in similar set of facts the benefit of aforesaid Government Resolution has been extended in favour of the employees, who were absorbed on transfer of the school at another place, and their grievances for the period for which they did not receive the salary, has been taken care of in view of the provisions made in the said Government Resolution. Learned counsel appearing for the petitioners submits that,

the Management took decision to close down the school at Sherankhel and the same was transferred at the request of the Management at Rajur, and therefore, no fault of the petitioners, they cannot be deprived from receiving the salary for the period October, 2011 till they were absorbed in the school at transferred place. Therefore, relying upon the pleadings in the Petition, grounds taken therein, averments in the short affidavit and also documents placed on record, learned counsel appearing for the petitioners prays for directions to the Respondents to pay salary to the petitioners for the aforesaid period.

5. On the other hand, learned A.G.P. appearing for the Respondent/State, relying upon the averments in the affidavit in reply submits that, infact the strength of the students was reduced from the month of June,

2011, however, the Management in collusion with the petitioners suppressed the said fact and received the salary grants as well as other grants for the said period. It is submitted that, during the inspection of the school, it was found that, the strength of the students has been substantially reduced, and therefore, no salary grant or any other grants can be given to the said school. The Management applied for transfer of the said school and at the request of the Management, the school was transferred. The petitioners have been absorbed in the transferred school and they are receiving regular salary since then. It is submitted that, when the students were not available in the school and as a matter of fact, the petitioners have not rendered the services, they are not entitled for the salary. In the alternative, it is submitted that, if at all they are entitled, they can claim the salary from Respondent

No.5 – Management, and the State Government is not liable to pay the salary for the aforesaid period. It is submitted that, the Government Resolution dated 27th April, 2017 would apply from the date of issuance of said Government Resolution and it cannot be applied retrospectively to the cases of the petitioners, in as much as, the petitioners' grievance for non-payment of salary relates for the period October, 2011 till they were absorbed in the school at Rajur.

6. Learned counsel appearing for Respondent No.5, relying upon the affidavit in reply and also additional affidavit in reply, submits that, due to the petitioners' conduct of non-cooperation and not teaching properly, the strength of the students in the school was reduced, and therefore, the question of making of payment of back wages of the petitioners for nine months would not

arise. It is further submitted that, the question of making payment of back wages of petitioners of nine months is absolutely disputed questions of fact, as the closure of Ashram School itself arose due to poor service performance of petitioners as well as due to their misconduct, absenteeism insubordination, misbehaviour and negligence. It is therefore, submitted that, there is alternate remedy available to the petitioners, which they can avail of in accordance with law, as they can raise this issue before Respondent Nos.2 to 4 independently. It is further submitted that, irrespective of all these disputed questions of facts, the Respondent No.5 has already submitted the salary proposals of petitioners of disputed period in accordance with law as well as in its proper perspectives before Respondent Nos.3 and 4, but all in vain.

7. It is submitted that, the petitioners have not worked for the aforesaid period, and therefore, as per rule of "No Work No Pay", they are not entitled to receive any salary. It is submitted that, firstly, the Petition raises disputed questions of facts, secondly the petitioners have not worked for the aforesaid period, and closure of the school was due to the petitioners own poor service performance, and therefore, the petitioners are not entitled for the salary for the aforesaid period. In the alternative, it is submitted that, it is responsibility of Respondent Nos.2 to 4 to pay salary to the petitioners.

8. We have given careful consideration to the submissions advanced by learned counsel appearing for the parties. With their able assistance, we have carefully perused the pleadings in the Petition, additional

affidavit filed by the petitioners, and affidavit in replies filed by the respective Respondents.

9. Admittedly, in the aforesaid period, the school was not functioning and the Management made application for transfer of the said school, wherein the petitioners were serving, and accordingly the Management's request for transfer of the school was favourably considered by the State Government and with effect from 19th June, 2012, the school started functioning at Rajur. As already observed, so far grievance of the petitioners for absorption and continuity in service stands redressed. However, we find considerable force in the argument of learned counsel appearing for Respondent No.5 and learned A.G.P. that, for the aforesaid period, the petitioners have not worked, therefore, the petitioners are not entitled

for salary for the aforesaid period. The petitioners have not brought on record any Government policy, which was in force for the aforesaid period of October, 2011 till June, 2012, wherein Respondent Nos.2 to 4 were obliged to pay the salary of the petitioners, though they did not actually work for the said period. The reliance placed by learned counsel appearing for the petitioners on the Government Resolution dated 29th April, 2017 is misplaced in the facts of the present case, in as much as, the provisions of the said Government Resolution cannot be applied with retrospective effect to the cases of the petitioners. In that view of the matter, we are unable to persuade ourselves to grant relief in favour of the petitioners in terms of prayer clause "D".

As rightly contended by learned counsel appearing for Respondents that,

the Petition raises disputed questions of facts so far the claim of the petitioners for salary, for the aforesaid period, therefore, though we are not inclined to entertain the Petition, however, it will be open for the petitioners to avail of an alternate remedy as available in law for redressal of their grievances as aforesaid.

10. With the above observations, the Writ Petition stands rejected.

[S.M.GAVHANE]
JUDGE

[S.S.SHINDE]
JUDGE

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