

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

WRIT PETITION NO. 3438 OF 2017

Manisha Ramkrushna Aher and others .. Petitioners
Versus
The State of Maharashtra and others .. Respondents

**WITH
WRIT PETITION NO. 4373 OF 2017**

Khan Abdul Raheman Taher and others .. Petitioners
Versus
The State of Maharashtra and others .. Respondents

Shri. P. B. Shirsath, Advocate for Petitioners.

Smt. A. V. Gondhalekar, Addl.G.P. for Respondent Nos. 1 and 2.

Shri. S.T. Shelke, Advocate for Respondent Nos. 3 and 4.

**CORAM : S.V. GANGAPURWALA AND
A. M. DHAVAL, JJ.**

DATED : 20th March, 2018

PER COURT:

. The petitioners seek direction against the respondents to release the monthly salary on the ground that they are not paid salary since September -

2016.

2. Mr. Shirsath, the learned advocate for the petitioners submits that these petitioners are appointed in the year 2005. In the year 2012 the petitioners were brought on 20% grant in aid. In April 2013 the petitioners were brought on 40% grant in aid and April 2014 they were brought on 60% grant in aid. Order of approval is also passed by the Education Officer (Primary) to that effect. Even, since April 2013 the Institutions are sanctioned 40% grant in aid for second division of 1st to 4th standard under orders dated 02.07.2014. The learned counsel submits that in April 2015 all these petitioners are brought on 80% grant in aid and in April 2016 these petitioners are brought on 100% grant in aid. The learned counsel submits that, even the second division of the respondent institutions of 1st to 4th standards are brought on 100% grant in aid from April - 2016. The learned counsel submits that the Government Resolution is issued on 30.11.2013 bringing the second division of Respondent-Institution on 20% grant in aid from the year 2012-2013 and periodically it is brought on 100% grant in aid. The learned counsel submits that the petitioners have received the salary as per their approval of 20%, 40%, 60% and 80% grant in aid, but after the second division of 1st to 4th standard is brought on 100% grant in aid the salary is not disbursed to the petitioners. The learned counsel submits that

the letters are issued to the institutions on 27.11.2017 by the Education Officer stating that though the grants were not sanctioned the salary is paid and from September 2016 and February 2017, 20% grant is sanctioned and the grant which is granted from initial orders is cancelled. Such communication is erroneous and against the facts on record.

2. Mr. Shelke, the learned advocate submits that though the Government Resolution is issued in favour of Respondents-Institutions of bringing them on 20% grant in aid from the year 2012-2013 still the release of salary depends upon grants being released by the Government. The funds were never released by the Government and the Education Officer erroneously made the payment of salary to these petitioners, the same is illegal. The grant in aid is not a right of the Institutions.

3. The learned A.G.P. also submits that as the funds were never released by the Government, the Education Officer could not have made the payment. The amount already paid is required to be adjusted.

4. We have considered the submissions.

5. It is the matter of record that under Government Resolution dated

30.11.2013, the second division of standard 1st to 4th were brought on 20% grant in aid from the academic year 2012-2013. The petitioners are working on the second division of standard 1st to 4th and the approvals are granted to them in tune with the Government Resolution dated 30.11.2013. The salary is also paid by the Government to them at the rate of 20% for the academic year 2012-2013, 40% for 2013-2014 and so on upto 100% and subsequently, the communication is issued that the Government did not release the grants and as such under the communication dated 27.11.2017 had cancelled the earlier approvals granted from time to time of 20%,40%,60%,80% and 100%.

6. It would appear that, it was nobodies fault. The Education Officer acted as per the orders of the Deputy Director of Education. The Deputy Director of Education in turn acted as per the Government Resolution dated 30.11.2013. It is also not disputed that the petitioners have worked during these periods. The disbursement of salary certainly depends upon the availability of the funds. The salary is also disbursed to these petitioners. It would not be appropriate for the respondents now to claim recovery of the salary already paid to the petitioners. Under the Government Resolution dated 19.09.2016, it is clarified that those Institutions which were initially granted permission on permanent non grant in aid and subsequently their permission has been removed, they will be brought on 20% grant in aid until

further orders.

7. Considering the fact that earlier no such direction were issued by the Government as are enshrined in the Government Resolution dated 19.09.2016 and the amount has been paid to these petitioners, considering the approvals granted and the order of the Deputy Director of Education vis-a-vis Government Resolution, we pass the following order.

8. The respondents shall not claim recovery of the amount which are already paid to these petitioners. However, as far as further future salary is concerned the same would be governed as per the Government Resolution dated 19.09.2016 and the petitioners will paid salary as per the decision taken by the respondents in tune with the subsequent Government Resolutions. The respondents may take steps to pay the salary of the petitioners as per the the Government Resolution with regard to 20% of the grant. The writ petition accordingly stands disposed of. No costs.

[A. M. DHAVAL, J.]

[S. V. GANGAPURWALA, J.]

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