

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

WRIT PETITION NO.3699 OF 2012

1. Dr.Zakir Hussain Shikshan Prasarak
Mandal, New Nanded,
Through its Joint Secretary
2. Noorjahan Urdu High School,
Naigaon Bazar, Tq. Naigaon,
District-Nanded,
Through its Headmaster.
3. Pathan Yousuf Khan Chand Khan,
Age-33 years, Occu. Service,
R/o.Workshop Road, Nanded,
Dist. Nanded.
4. Abdul Mogni Gulam Rasul,
Age-45 years, Occu. Service,
R/o.Vasant Nagar, Naigaon,
Tq. Naigaon, Dist. Nanded.
5. Mohd. Abdul Rahman Mohd. Abdul
Habib, Age-35 years, Occu. Service,
R/o. Vasant Nagar, Naigaon,
Tq. Naigaon, Dist. Nanded.
6. Shaikh Abdulla Shaikh Shabbir,
Age-32 years, Occu. Service,
R/o.Vasant Nagar, Naigaon,
Tq.Naigaon, Dist. Nanded.
7. Shaikh Shabnam Chand Khan,
Age-29 years, Occu. Service,
R/o.Vasant Nagar, Naigaon,
Tq. Naigaon, District-Nanded.
8. Gous Khan Babu Khan,
Age-28 years, Occu. Service,
R/o.Pansare Nagar, Naigaon,
Tq. Naigaon, Dist. Nanded.

9. Pathan Imroz Khan Noor Khan,
Age- 31 years, Occu. Service,
R/o. Pansare Nagar, Naigaon,
Tq. Naigaon, Dist. Nanded.

10. Shaikh Babu Yousufoddin,
Age-31 years, Occu. Service,
R/o. Near Telephone Office,
Naigaon, Tq. Naigaon,
Dist. Nanded.

PETITIONERS

VERSUS

1. The State of Maharashtra
Through the Secretary,
Education Department,
Mantralaya, Mumbai-32.

2. The Education Officer [Secondary],
Zilla Parishad, Nanded.

3. The Superintendent,
Pay Units [Secondary],
Nanded.

RESPONDENTS

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Mr.M.P.Tripathi, Advocate for the petitioners
Mrs.V.S.Chaudhari, AGP for respondent-State.

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

Reserved on : 10.04.2018
Pronounced on : 13.04.2018

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

1] Heard. Rule. Rule made returnable
forthwith, and heard finally with the consent
of the parties.

2] This Petition is filed praying therein to direct respondent nos.2 and 3 to sanction pay bills in favour of the petitioners from March, 2011 and release payment of salary according to the said pay bills.

3] It is the case of the petitioners that, petitioner no.1 is the trust, registered under the provisions of the Maharashtra Public Trusts Act. Petitioner no.2 is the school run by petitioner no.1. Petitioner nos.3 to 10 are the employees of petitioner no.2-school. Petitioner no.2 school is receiving grant-in-aid from the State of Maharashtra through respondent no.2. Petitioner no.2 school is run by petitioner no.1 since the year 2000. The respondents have granted approval to the services of petitioner nos.3 to 10, and they are still in service. On 04.08.2011 petitioner no.1 management has submitted the pay bills to

respondent no.3 for a period from March, 2011. Petitioner no.1 trust has forwarded proposal to the respondents with regards to transfer of petitioner no.2 school from Naigaon to Nanded. Petitioner no.1 trust has filed Writ Petition No.8704/2011. The said Writ Petition has been disposed of with direction to decide the proposal in respect of shifting of the school within a period of three months. Petitioner nos.3 to 10 are deprived of their salary since March, 2011. Hence this Petition.

4] Pursuant to the notices issued to the respondents, respondent nos.2 and 3 have filed affidavit-in-reply. Para nos.5 to 7 of the said affidavit-in-reply read thus:

05. With reference to para Nos.3 to 5 of the Writ Petition I say and submit that, on 26.7.2010 it was observed by the Chief Executive Officer at the

time of his visit that, there was no any single student present in the Nurjahan Urdu High School, Naigaon i.e. In the Petitioner's school and upon this observation he issued order through mobile for not issuing pay bills of said school on 25.3.2011.

06. It is further submitted that the Petitioner school was directed to produce attendance register of the student on 30.3.2011. But neither the Petitioner school nor any of its employees i.e. Petitioner has not complied the same. So also it is important to note here that, if pay bills from March, 2011 to February, 2012 were submitted on dt.27.7.2012 and pay bills of March, 2012 were submitted on 5.3.2012.

07. It is submitted that the Petitioner school has not submitted attendance register being proof of attendance of

student during the academic year 2011-12. It is submitted that, as per the provisions of schedule 22 of S.S.Code it is required for a minority grant in aid institution for receiving respective grants and benefits to have regular attendance of minimum 12 students. However, as per the inspection of attendance register in the year 2011-12 conducted, it was found that in Patpadtalni cases there were only 2 students present in the school out of 98 student.

5] Respondent nos.2 and 3 have filed further affidavit on 14.02.2018. It is stated in the said affidavit that, as directed by the High Court vide order dated 13.11.2017, report of functioning of the petitioner's school for the period from 2011 to 2014 is prepared, and the same is placed on record along with the said affidavit.

6] We have carefully perused the

pleadings and grounds taken in the Petition, annexures thereto, replies filed by respondent nos.2 and 3 and also rejoinder affidavit filed by the petitioners. On one hand the petitioners have contended that, petitioner nos.3 to 10 are permanent employees, and they are rendering services in petitioner no.2-school. For no reason the salary of petitioner nos.3 to 10 is withheld by the respondents, and therefore, the direction is sought to respondent nos.2 and 3 to sanction pay bills in favour of the petitioners from March 2011 and release payment of salary.

7] On the other hand, upon perusal of the affidavit-in-reply filed by respondent nos.2 and 3, *prima facie* it appears that, when the Chief Executive Officer visited petitioner no.2-school on 26th July, 2010, the said Officer noticed that, there was no single students in the said school, and

accordingly, he instructed respondent nos.2 and 3 not to sanction pay bills. It further appears that, petitioner no.2-school was directed to produce attendance register of the student on 30.03.2011. However, the said directions were not complied with. It is stated in the affidavit that, requisite strength of the students is needed to release grant towards salary. There is also detail report placed on record along with the affidavit in the month of February, 2018 by respondent nos.2 and 3 wherein the strength of the students and functioning of the school has been highlighted in the said report.

8] Upon careful perusal of the entire material placed on record, *prima facie* it appears that, the Petition raises disputed questions of facts, and therefore, unless there is fact finding enquiry, no relief can be granted in favour of the petitioners. In that view of the matter, we direct the Deputy

Director of Education, Latur to hear the representatives of petitioner no.2-school, and also respondent nos.2 and 3 after allowing them to place on record necessary documents, and also after inspection of the record maintained by the office of petitioner no.2-school and also respondent nos.2 and 3, prepare report, and if the petitioners' claim is found genuine; inform the Chief Executive Officer, Zilla Parshad to take further steps for the redressal of the grievance of the petitioners. The entire exercise is to be done, as expeditiously as possible, however, within three months from today.

9] The representatives of petitioner no.2-school and respondent nos.2 and 3 to appear before the Deputy Director of Education, Latur Region, Latur on 19th April, 2018. In case the Deputy Director of Education has any difficulty to hear the parties on the said date; he may fix the next

date for hearing. The Deputy Director of Education shall allow the parties to place on record documents in respect of their contentions.

10] Rule is made absolute in above terms. The Writ Petition stands disposed of accordingly.

11] The parties to act upon authenticated copy of this order.

12] The office of the Government Pleader to communicate this order to respondent no.2 by fastest mode of communication.

[S . M . GAVHANE]
JUDGE

[S . S . SHINDE]
JUDGE