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

WRIT PETITION NO.6449 OF 2017

1. Anna s/o Ramprasad Kulwant,
Age: 46 years, Occu: Service
2. Aba s/o Bhanudas Khedekar,
Age: 46 years, Occu: Service,
R/o Shivni (Tanda), Tq. & Dist. Jalna
3. Rustum s/o Vithalrao Chavan,
Age: 42 years, Occu: Service
4. Raghunath s/o Shankar Chavan,
Age: 42 years, Occu: Service,
R/o Rathodnagar, Tq. & Dist. Jalna
5. Prakash s/o Indrasingh Rajput,
Age: 56 years, Occu: Service,
R/o. Rathodnagar, Tq. & Dist. Jalna

..PETITIONERS

VERSUS

1. The State of Maharashtra,
Through its Secretary,
Social Justice and Special Assistance
Department, Mantralaya,
Mumbai
2. The Director,
V.J., N.T., O.B.C. and S.B.C. Welfare,
Maharana State, Pune-1
3. The Regional Deputy Commissioner,
Social Welfare, Aurangabad Division,
Aurangabad
4. The Assistant Commissioner,
Social Welfare Department, Jalna

..RESPONDENTS

Mr V. A. Dhakne, Advocate for petitioners;
Mr G. O. Wattamwar, A.G.P. for respondents

(2)

**CORAM : PRASANNA B. VARALE
AND
MANISH PITALE, JJ.**

DATE : 28th September, 2018

ORAL ORDER:

Heard learned Counsel appearing on behalf of the petitioners.

2. The petitioners are before this Court mainly with a prayer, namely, prayer clause (B), which reads thus:

“To direct the respondents no.3 and 4 to pay the arrears of the salaries as trained teachers to the petitioners for the period during which the petitioners were treated as untrained teachers in pursuance to the orders dated 18.06.2015 and 19.06.2015 issued by respondent no.4 within two months, by issuing a writ of mandamus or any other appropriate writ, order or direction as the case may be”.

3. The Government Resolution dated 11th November, 2011 is placed on record at Exh.'A'. The said Resolution deals with appointment of the teachers for standards I to VII. The requisite qualifications are also referred to in the said Resolution.

4. The petitioners were before this Court in earlier round of litigation by way of Writ Petition No.7639 of 2014 and other connected petitions. It was submitted by the petitioners that they were appointed in the year 1993-94 and right from their date of appointment, they were possessing B.P. Ed. qualification. Subsequently, in the year 2002 and 2003 respectively, they

(3)

had acquired qualification of D.Ed. As such, they were entitled for the pay scale of trained primary teachers, however, the salary was not paid to them as trained primary teachers. The Government Resolution dated 11th November, 2011 was also placed on record. The petition was opposed on the ground that the petitioners were not possessing the requisite qualification at the time of their appointments. Considering the rival contentions, the Division Bench of this Court by an order dated 28th October, 2014 was pleased to direct the respondents authorities to take the decision upon the proposal received by them in view of Government Resolution dated 11th November, 2011, expeditiously and preferably within a period of four months from the date of the order.

5. The corrigendum issued by the Assistant Commissioner, Social Welfare, Jalna, dated 19th June, 2015 and 18th June, 2015 are placed on record at page Nos.23 and 25, respectively. It states that if the teachers are ready to submit an undertaking by way of an affidavit on bond paper that in case if the State Government files Special Leave Petitions in the Honourable the Apex Court and in case an interim order is passed in favour of the State Government or if these Special Leave Petitions are allowed in favour of the State Government or if the State Government frames a policy in that respect, the teacher would be liable to refund the amount of arrears of salary. Then the order is passed in favour of the petitioner, namely, Anna Ramprasad Kulwant, directing the Head Master to fix the salary amount of the petitioner and after obtaining necessary approval, the amount be paid to him. Similar

(4)

is the order in respect of other petitioner, namely, Rustum Vithal Chavan by a corrigendum dated 18th June, 2015.

6. Learned Counsel appearing on behalf of the petitioners submits that though the Head Master undertook the exercise of forwarding bills and requested authorities to release the amount, no steps were taken and the petitioners have also submitted the representation to the Assistant Commissioner, Social Welfare, Jalna on 13th March, 2016. He then submits that in spite of approaching the authorities time and again, and even in spite of submitting an undertaking by way of an affidavit, the necessary amount of the arrears of salary is not released in favour of the petitioners and the petitioners are only left to run from pillar to post.

7. The State Government has filed reply through respondent No.4 – the Assistant Commissioner, Social Welfare, Jalna. Interestingly in the reply the earlier stand of opposing the claim of the petitioners in Writ Petition No.7639 of 2014 is reiterated and then reference is made to the corrigendum dated 18th June, 2015 and 19th June, 2015. Then it is stated in para 7 of the said reply that the State Government is not having any policy decision in respect of granting the arrears of the salary between the untrained and trained teacher pay scale from the date of initial appointment and the reference is made to the letter dated 27th August, 2018 issued by the State Government. Then it is stated that the Government Resolution is issued on 3rd October, 2017. A copy of the communication dated 27th August, 2018 is

(5)

placed on record along with affidavit, at annexure R-2. This Communication is only a direction to the authorities issued by the Desk Officer of the State Government, that either the affidavit be filed in the matter pending before the Court and then it states that certain petitions are filed in the Court by the employees of Ashram schools in relation to their service, without approaching the State Government and such employees make the State Government or the authorities of the State Government party to the petitions.

8. We are unable to understand how this communication dated 27th August, 2018 helps the State Government in opposing the claim of the petitioners. Then there is Government Resolution dated 3rd October, 2017. This Resolution is providing a remedy for redressal of grievance in the nature of appeal or review before the quasi judicial authorities. Now, this Resolution is of 3rd October, 2017. The petition is filed by the petitioner i.e. Writ Petition No.7639 of 2014 is decided on 28th October, 2014. The corrigendum are issued in the year 2015. One again fails to understand as to how this Resolution would play any role, wherein the remedial measure is provided by way of appeal and review, subsequent to the order passed by this Court. Then the most interesting is the corrigendum which refers that the petitioners should submit an undertaking by way of affidavit. The affidavits submitted by these petitioners are also placed on record along with the affidavit-in-reply. The said affidavits are submitted by these petitioners on 19th June, 2015, i.e. just on the date of issuance of corrigendum in favour

(6)

of petitioner Anna Ramprasad Kulwant and a date subsequent to the corrigendum in favour of the petitioner Rustum Vithal Chavan.

9. The State Government refers to various contingencies. The State Government obtained affidavits from the petitioners referring to various contingencies right from the State Government in case if files Special Leave Petition before the Honourable the Apex Court. The corrigendum are issued in the year 2015. The affidavits are submitted to the State Government in the year 2015 and till date, there is nothing in the affidavit-in-reply as to whether the Special Leave Petition is filed challenging the order of this Court in Writ Petition No.7639 of 2014, wherein these petitioners were before this Court.

10. With the aforesaid material, least we can say that if opposition of the State Government is only for the sake of opposition without there being any substance and that such opposition denying the claim of the petitioners, this stand would be nothing but adding insult to the injury. Learned Counsel for the petitioners, thus, made out a case for allowing the petition. Thus, the petition is allowed in terms of prayer clause (B) and disposed of accordingly.

(MANISH PITALE, J.)

(PRASANNA B. VARALE, J.)