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

WRIT PETITION NO. 5352 OF 2007

Kazi Shamim Begum d/o Gulam
Mohiuddin, age 42 years,
occ: service as Incharge Headmistress,
Talat Urdu High School,
Shahnoorwadi Branch, Aurangabad,
Dist. Aurangabad.

..PETITIONER

VERSUS

1. The State of Maharashtra
through its Secretary to the
Education and Employment
Department Mantralaya,
Bombay.
2. The Deputy Director of
Education, Aurangabad Division,
Aurangabad.
3. The Education Officer (Secondary)
Zilla Parishad, Aurangabad.
4. The Superintendent of Pay and
P.F. Unit (Secondary), Chelipura
High School, Railway Station
Road, Aurangabad.
5. Talat Shikshan Prasarak Mandal
Aurangabad through its
President Mahamoodur Rehman
Siddiqui, r/o. Nawabpura,
Aurangabad.
6. Smt. Qureshi Nilofer Jabeen,
Assistant Teacher Talat High
School, Shahnoorwadi Branch,
Aurangabad.

..RESPONDENTS

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Mr Abhijeet Choudhari, Advocate h/f Mr M.S. Choudhari, Advocate for petitioner;
Mr C.S. Kulkarni, A.G.P. for respondent Nos.1 to 3;
Mr A.M. Karad, Advocate h/f Mr S.D. Karkare, Advocate for respondent Nos. 5 and 6

**CORAM : PRASANNA B. VARALE &
S. M. GAVHANE, JJ.**

DATE : 6th JUNE, 2018

ORAL ORDER :

The petition is filed in the year 2007 raising challenge to the order dated 15th June, 2007 thereby assigning the powers to respondent No.6 to discharge duties as head mistress in the school and to take necessary administrative steps, as well as, challenge is raised for non grant of approval to the petitioner, whereas the approval is granted to respondent No. 6.

2. Perusal of the record and order sheet show that notice was issued by Division Bench of this Court on 4th October, 2017, the matter was adjourned from time to time. Learned Counsel appearing for respective parties caused their

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appearance for those parties. On 11th April, 2008 Rule was granted by this Court.

3. It would be necessary to refer certain relevant dates. On 2nd February, 2018 as none appeared for the petitioner, the petition was adjourned with caution that if none appears on the next date, the petition will be dismissed. Again on 7th March, 2018, as none appeared for the petitioner, the Court was pleased to refer to non compliance as well as reliefs claimed in the petition, this Court was of the opinion that nothing survives in the petition and the petition was disposed of. The perusal of order sheet show that later on the matter was mentioned and same was restored and was adjourned to 21st March, 2018. On 21st March, 2018 the Counsel holding for Mr. M.R. Choudhari prayed for adjournment. At his request, the matter was adjourned to 3rd May, 2018. On 3rd May, 2018 learned A.G.P. was directed to call for information in view of submissions made by the Counsel for the petitioner that the salary of

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the petitioner is not paid from August-2007 to June-2016. The petition and Civil Application NO. 2692 of 2010 was adjourned to 6th June, 2018 in urgent category.

4. Mr. Abhijeet Choudhari, learned Counsel holding for Mr. M.R. Choudhari, learned Counsel for the petitioner fairly submits that as there was no interim relief granted by this Court and this Court was of the opinion that by passage of time, nothing survives in the petition.

5. Perusal of the record further shows that Civil Application No. 9712 of 2008 was filed before this Court at the instance of the petitioner with prayers for directions to respondent No.4 to sanction salary bill w.e.f. August 2007. The other interim relief was in the nature of restrain order against respondent Nos. 5 and 6. To this application namely Civil Application No. 9712 of 2008, an affidavit in reply was filed on behalf of respondent No. 5 i.e. management institute. A

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specific stand is taken by respondent No.5 that the petitioner was not assigned her duties regularly. It was also submitted in the reply that the institute being a minority institute could have appointed head mistress to see that there is smooth functioning of the school or institute. Mr. Karad, learned Counsel submitted that a stand was also taken in the reply that as the petitioner was not attending school regularly, respondent No.5 institute left with no choice to assign the duties of in charge head mistress to respondent No. 6. On 12th February, 2009 the Division Bench of this Court permitted the Counsel for the applicant to withdraw civil application with liberty to file similar application afresh. Civil Application No. 9712 of 2008 was accordingly disposed of as withdrawn with liberty to file fresh application.

6. Now, Civil Application No. 2692 of 2010 is filed with a specific prayer of directions to the Education Officer and respondent No. 5 management to pay salary of the applicant against her work

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w.e.f. August 2007 onwards and to pay regular salary of the applicant-petitioner. Considering the record above referred as well as the orders passed by this Court, we are of the clear opinion that nothing survives in the petition. The petition is disposed of accordingly.

7. It is only now civil application which needs consideration of this Court on the peculiar back drop of the assertion that respondent No. 5 till date as a teacher, the salary of the applicant – petitioner is not paid to her w.e.f. August 2007 onwards. In the present application, the applicant – petitioner alleges that the salary is not paid only because the petitioner had approached this Court by filing Writ Petition No. 5352 of 2007. It will not be out of place to mention to reiterate that on 3rd May, 2018 the Division Bench of this Court was pleased to direct learned A.G.P. to collect the information insofar as grievance raised by the applicant – petitioner for non payment of salary from August 2007 to June 2016. Thus, we are

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restricting our consideration only for the civil application.

8. We direct learned Counsel appearing for respective respondents and more particularly learned A.G.P. appearing for respondent Nos. 1 to 4. Mr. Karad, learned Counsel appearing for respondent Nos. 5 and 6 to file their affidavit in reply to the contention raised by the applicant in the application within two weeks from today.

9. Post the application for consideration/final disposal on 26th June, 2018.

(S. M. GAVHANE)
JUDGE

(PRASANNA B. VARALE)
JUDGE

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