

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

WRIT PETITION NO. 6501 OF 2016

Arun Ankush Kaledhele

.. Petitioner

Versus

The State of Maharashtra and others

.. Respondents

Shri Sachin S. Deshmukh, Advocate for the Petitioner.

Shri V. S. Badakh, A.G.P. for Respondent Nos. 1 to 3.

The Respondent No. 4 is served.

Shri Milind. M. Patil (Beedkar), Advocate for the Respondent No. 5.

**CORAM : S. V. GANGAPURWALA AND
R. G. AVACHAT, JJ.**

DATE : 13TH DECEMBER, 2018.

FINAL ORDER :

. Mr. Deshmukh, the learned counsel for the petitioner submits that, the petitioner on 01st July, 2003 was appointed with the Junior College as a higher secondary teacher in the pay scale of Rs. 9300 – 34000 with Grade Pay of Rs. 4600. The same was also approved by the authorities. Thereafter, the petitioner joined service of the respondent No. 5 as a secondary teacher. Initial service was approved as Shikshan Sevak. But realizing the mistake, the Education Officer approved the services of the petitioner as Assistant Teacher. According to the learned

counsel, the petitioner is entitled for pay protection as per Rule 11(4) of the Maharashtra Civil Service (Pay) Rules, 1981. The learned advocate submits that, the respondents have failed to consider the said rule in its correct perspective. According to the learned counsel, the respondents be directed to protect the pay of the petitioner that he was drawing while serving with the respondent No. 4 as a higher secondary teacher in junior college.

2. The learned Assistant Government Pleader relies on the Government Resolution dated 15th September, 2011 and submits that, the services rendered by the petitioner with the respondent No. 4 were on unaided division.

3. We have considered the submissions canvassed by the learned counsel for respective parties.

4. Undisputedly, the petitioner was working with the respondent No. 4 from 01st July, 2003 to 05th September, 2008 on an unaided post. The salary was not paid to the petitioner from Government grants. Thereafter, the petitioner was appointed with the respondent No. 5 as secondary teacher on 06th September, 2008 on an aided post. The petitioner claims pay protection as per rule 11 of the M. C. S. (Pay) Rules. Rule 11 of the M. C. S. (Pay) Rules would apply in case of a persons who is in a Government service. Rule 11 specifically says that, save as

provided in Rules 12, 13, 14, 17 and 20 where a Government servant holding a post in a substantive, temporary or officiating capacity, meaning thereby that the *prima dona* requirement would be that the person should be holding a Government service. If the petitioner would have been appointed on grant in aid post, then certainly the case of petitioner could have been considered. However, same is not the case here. The petitioner was working with the respondent No. 4 on unaided post. The Government Resolution applies to those persons, who were working on 100% grant in aid post or with the local bodies.

5. In the light of the above, no error is committed by the authorities. The writ petition is disposed of. No costs.

[R. G. AVACHAT, J.]

[S. V. GANGAPURWALA, J.]

bsb/Dec. 18