

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

WRIT PETITION NO. 9957 OF 2017

Anuradha D/o Vasant Rao Kale,
Age : 50, Occu: Service,
R/o. Vikas Nagar, Degloor Road,
Udgir, Tal.Udgir, Dist. Latur.

...Petitioner

Versus

1. The State of Maharashtra,
Through its Principal Secretary,
Vocational Education and Training
Department, Mantralaya, Mumbai.
 2. The Director of Vocational Education
And Training, Maharashtra State, Pune.
 3. The Joint Director,
Vocational Education and Training,
Regional Office, Aurangabad.
 4. The District Vocational Education And
Training Officer, Beed, Tal. & District Beed.
 5. The District Vocational Education
And Training Officer, Latur,
Tal. & District Latur.
 6. The Principal,
Mauli Secondary and Higher Secondary,
M.C.V.C., Beed, Tal. & Dist. Beed.
 7. Lal Bahadur Shastri Madhyamik
Vidhyalaya, Udgir, (Through its Principal),
Krishnanand Chowk, Degloor Road,
Udgir.
- ...Respondents

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Mr. S.S. Thombre, Advocate for Petitioner
Mr. A.R. Kale, Assistant Government Pleader for Respondent Nos.
1 to 5
Mr. V.V. Bhavthankar, Advocate for Respondent No. 7

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

DATE: 10th OCTOBER, 2018

ORAL JUDGMENT (PER MANISH PITALE, J.)

1. Heard.
2. Rule. Rule is made returnable forthwith. With the consent of the parties, petition is taken up for final disposal at the stage of admission.
3. The petitioner has approached this Court by filing the instant writ petition making prayers for direction to the respondent Nos. 3 and 4 to take immediate steps to ensure that the respondent No. 6 allows her to join the respondent No. 6 - school and for release of arrears of salary for specific period. The learned Counsel for the petitioner at the outset submitted that after issuance of notice in the present writ petition, respondent No. 6 allowed the petitioner to join the said school and that therefore, grievance as regards the first prayer stood satisfied. The only issue raised on behalf of the petitioner was pertaining to salary for the periods 01.05.2015 to 10.03.2016 and 09.03.2017 to 26.10.2017.

4. The petitioner had earlier approached this Court by way of writ petition No. 9686/2015 challenging order dated 06.05.2015 whereby her service stood terminated from respondent No. 7 - school. The said writ petition was disposed of by order dated 04.04.2016 on the basis that since the order dated 06.05.2015 terminating her service stood withdrawn, her grievance was redressed. While disposing of the writ petition by the said order, this Court permitted the petitioner to make a representation as regards her claim towards arrears of the salary.

5. Thereafter, the petitioner filed contempt petition No. 493/2016 in respect of the non-compliance of the order dated 04.04.2016, whereby writ petition No.9686/2015 had been disposed of. The said contempt petition was disposed of by order dated 19.04.2017, wherein a direction was given to the respondent to take decision on the entitlement of the petitioner for arrears of salary upon verifying the record.

6. It was the contention of the petitioner that after being declared surplus, she had been directed to be absorbed in respondent No. 6 - school, but, the said school was not permitting her to join, despite repeated applications made by her and in spite of directions given by the respondent-State authorities to the respondent No. 6 - school. As noted above,

during the pendency of this writ petition, the petitioner was permitted to join respondent No. 6 - school. But, it was submitted on behalf of the petitioner that despite there being no fault on her part, she was deprived of salary for the period between 01.05.2015 to 10.03.2016 and 09.03.2017 to 26.10.2017.

7. Upon notice being issued in the writ petition, affidavit-in-reply was filed on behalf of the respondent Nos. 1 to 4. Although respondent No. 6 was served even for final disposal, none appeared on behalf of the said respondent, while there was representation through Counsel on behalf of respondent No.7. A perusal of the affidavit-in-reply filed on behalf of respondent Nos. 1 to 4 shows that inquiry was conducted by the said respondent as regards the entitlement of the petitioner towards arrears of salary. It was contended on behalf of the respondent Nos. 1 to 4 that no fault could be attributed to them, being State authorities, for the petitioner being deprived of salary for the periods mentioned above.

8. It was pointed out that for the period 01.05.2015 to 10.03.2016, it was the respondent No. 7 - school that was responsible for non-payment of salary to the petitioner as she was illegally relieved by the said school and procedure contemplated under the Maharashtra Employees of Private Schools (Condition of Service) Act, 1977 and the Rules framed

thereunder, was not followed by the said school. It was also pointed out that the attendance sheets did not show signatures of the petitioner for the relevant period, and that therefore, the respondent Nos. 1 to 4 could not be held liable for payment of salary for the said period. It was also pointed out by the learned Counsel appearing for the respondent Nos. 1 to 4 that even though the respondent No.6 - school was supposed to absorb the petitioner upon being declared surplus, the said school failed to abide by the said requirement, despite repeated directions given to the said respondent No. 6-school. On this basis, it was contended that even for the period between 09.03.2017 to 26.10.2017, the respondent Nos. 1 to 4 could not be held liable to pay arrears to the petitioner. It was contended that the respondent Nos. 6 and 7 schools had acted illegally and in defiance of law and directions specifically given to them and in such a situation, the respondent-authorities could not be held liable to pay arrears of salary to the petitioner.

9. The learned Counsel appearing for respondent No. 7 had no explanation for the act on the part of the said respondent of illegally relieving the petitioner and then, seeking to shift the burden on the respondent-State authorities for payment of arrears of salary to the petitioner for the period between 01.05.2015 to 10.03.2016. Although, respondent No. 6 was

served even for final disposal, there was no appearance on behalf of the said respondent. Therefore, there is no explanation on record as to why the respondent No. 6 - school failed to absorb the petitioner immediately and prevented the petitioner from joining the said school despite repeated directions given by the State authorities. It was eventually when the petitioner approached this Court by way of present writ petition that the respondent No. 6 - school permitted the petitioner to join. Therefore, for the period between 09.03.2017 to 26.10.2017, the State authorities cannot be held liable for payment of arrears of salary.

10. The learned Counsel appearing for the petitioner submitted that the petitioner had suffered loss of salary rightfully due to her, because of the misdeeds of respondent Nos. 6 and 7 and it was submitted that the petitioner was entitled to arrears of salary for the aforesaid two periods of time. It was submitted that the petitioner was interested in receiving arrears of salary for the said periods as it was rightfully due to her.

11. In this backdrop, it becomes clear that the respondent Nos. 6 and 7 have acted at their own whims and in defiance of law as well as directions given by the State authorities, thereby depriving the petitioner of salary for the aforesaid periods. In such a situation, it would be inappropriate to foist the liability of

payment of arrears of salary on the State Exchequer, when the respondent Nos. 6 and 7 were responsible for depriving the petitioner of the amount towards salary. In this situation, we are of the opinion that the said respondent Nos. 6 and 7 must bear the liability of payment of arrears to the petitioner for the defaults on their part. Accordingly, this writ petition is disposed of with the direction to respondent No. 7 to pay arrears of salary to the petitioner for the period between 01.05.2015 to 10.03.2016 and the respondent No. 6 to pay arrears of salary to the petitioner for the period between 09.03.2017 to 26.10.2017, as per the pay scales to which the petitioner is entitled under the law.

12. Rule is made absolute in above terms.

(MANISH PITALE)
JUDGE

(PRASANNA B. VARALE)
JUDGE

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