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

WRIT PETITION NO.9727 OF 2017

1. Dnyandeo s/o Pandharinath Patil,
Age: 45 years, Occu: Service as
Assistant Teacher in
Late Vilas Bhosale Primary School,
Udgir, Tq. Udgir, Dist. Latur
2. Sanjay s/o Pralhadrao Solunke,
Age: 44 years, Occu: Service as
Assistant Teacher in
Late Vilas Bhosale Primary School,
Udgir, Tq. Udgir, Dist. Latur
3. Angad s/o Kishanrao Patil,
Age: 42 years, Occu: Service as
Assistant Teacher in
Late Vilas Bhosale Primary School,
Udgir, Tq. Udgir, Dist. Latur
4. Bhivaji s/o Sugreev Kendre,
Age: 28 years, Occu: Service as
Assistant Teacher in
Late Vilas Bhosale Primary School,
Udgir, Tq. Udgir, Dist. Latur ..PETITIONERS

VERSUS

1. The State of Maharashtra,
Through its Secretary,
School Education Department,
Mantralaya, Mumbai-32
2. The Deputy Director of Education,
Latur Division, Latur
3. The Education Officer (Primary),
Zilla Parishad, Latur

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4. Shri Shambhu Shikshan Sanstha,
Shambhu Nagar, Latur, Dist. Latur,
through its Secretary
5. Late Vilas Bhosale Primary School,
Udgir, Tq. Udgir, Dist. Latur,
through its Head Master
6. Dattatraya Marotirao Ghodke,
Age: 74 years, Occ: Pensioner,
R/o. Anisha Niwas, Bhagirathraja
Nagar, Jalkot Road, Udgir.

(Respondent No.6 added as per
leave granted by the Hon'ble Court
dated 10.10.2018)

..RESPONDENTS

WITH

**CIVIL APPLICATION NO. 10830 OF 2017
IN
WRIT PETITION NO. 9727 OF 2017**

Dattatray Marotirao Ghodke,
Age: 74 years, Occu: Pensioner,
R/o Anisha Niwas, Bhagirathraja Nagar,
Jalkot Road, Udgir, Tq. Udgir,
Dist. Latur

..APPLICANT

VERSUS

The State of Maharashtra & ors.

..RESPONDENTS

Mr P. G. Rodge, Advocate for petitioners;
Mr A. R. Kale, A.G.P. for respondent Nos.1 & 2;
Mr V. B. Bondar, Advocate for respondent No.3;
Mr V. D. Salunke, Advocate a/w Mr G. D. Kale,
Advocate for respondent Nos.4 & 5;
Mr N. P. Patil Jamalpurkar with Mr R. D. Biradar,
Advocates for intervener (respondent No.6/applicant
in C.A. No.10830 of 2017

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

DATE : 10th OCTOBER, 2018

ORAL ORDER :

Heard Mr N.P. Patil Jamalpurkar, learned Counsel appearing on behalf of the applicant in Civil Application No.10830 of 2017.

2. As hearing took place on the complaint of the applicant, the application is allowed. The applicant is permitted to intervene in the petition as party respondent. Necessary amendment be carried out forthwith.

3. Heard Mr. Rodge, learned Counsel appearing for the petitioners, learned A.G.P. for respondent Nos. 1 and 2, Mr. Thombre, learned Counsel for respondent No.3, Mr. Salunke, learned Counsel holding for Mr. Kale, learned Counsel for respondent Nos.4 and 5 and Mr. Patil Jamalpurkar, learned Counsel for respondent No.6.

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4. The petitioners are before this Court challenging the order dated 5th June, 2017 passed by the Education Officer (Primary), Zilla Parishad, Latur.

5. Mr. Rodge, learned Counsel appearing for the petitioners submits that though the order refers to the hearing conducted by the Education Officer, ultimate decision is of withholding salary of teachers of secondary division i.e. 5th to 7th standard. He submitted that bare perusal of the order clearly shows that hearing was given only to the complainant Dattatraya Marotirao Ghodke, Suryakant Madhavrao Patil, head master of the school and Bharat Ambe Patil, Secretary of the institute.

6. Perusal of the order impugned in the petition shows that the Secretary was present before the Education Officer on the day of hearing. He submit that written submission is placed on record, he be granted further time and on that day,

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he was unable to make any submission. Recording this fact, the order is passed.

7. The Education Officer then states that Writ Petition No. 3285 of 2003 was filed and in view of certain directions issued by this Court, an inquiry was conducted and in the inquiry, it reveals that the management is running classes for secondary division i.e. 5th to 7th standard without there being any permission from the authorities. Then it is stated that salary grants are disbursed and as Writ Petition No.3285 of 2003 is disposed of and there is no reference in the order of this Court in respect of secondary division. The Education Officer on his own thought it fit to withhold the salary of the teachers teaching 5th to 7th standard classes.

8. Mr. Rodge, learned Counsel for the petitioners vehemently submitted that this order without hearing these petitioners who would be affected parties is clearly in breach of principle

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of natural justice, as such, is unsustainable. He then submits that during the pendency of the petition, certain communication is exchanged and as per communication forwarded to the Counsel appearing for Education Officer (Primary) Zilla Parishad states that Sanjay Pralhad Salunke and Angad Kishanrao Patil are senior most teachers and their appointment is for teaching 1st to 4th classes. These two persons are petitioner Nos. 2 and 3 respectively in the petition.

9. In view of communication and in view of the order impugned in the petition, it clearly reveals that petitioner Nos. 2 and 3 may not have any grievance against the order, as the order speaks of withholding salary of the secondary division teachers. Learned Counsel appearing for the petitioners fairly submits that as such, there is no grievance of these petitioner Nos. 2 and 3 in the petition survive. As such, no grievance of petitioner Nos. 2 and 3 survive.

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10. Mr. Rodge, learned Counsel appearing for the petitioners invited our attention to the documents placed on record and submitted that on 3rd September, 2011 head master of the school was informed that the approval is granted to petitioner No.1 Dnyandeo Pandharinath Patil subject to certain conditions. Then by order 12th March, 2012 the Education Officer passed an order of further continuation in service subject to decision in the Appeal No. 216 of 2006 and order of this Court dated 21st February, 2012 in Writ Petition No.2295 of 2009.

11. Similarly, petitioner No.4 Bhivaji Sugreev Kendre was appointed on 9th June, 2011 and the order of appointment is placed on record at Exhibit-D. Petitioner No.4 was appointed as *Shikshan Sevak* on fixed honorarium and he was granted continuity in the service by order dated 22nd August, 2014, copy of the said order is also placed on record.

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12. Mr. Rodge, learned Counsel then submitted that in view of these facts, the petitioners would have certainly claimed before the authorities that there is no fault of these petitioners and the petitioners could not be punished for certain mischief or mistake committed by somebody else.

13. Mr. Salunke, learned Counsel appearing for respondent Nos.4 and 5 also vehemently submitted that in the impugned order, it is specifically stated that the Secretary expressed his inability to submit on the very day and sought for time and in view of this fact, the Education Officer (Primary) proceeded to pass an order, as such, Mr. Salunke, learned Counsel also takes very ground of breach of principle of natural justice namely no opportunity of hearing granted to respondent Nos. 4 and 5.

14. Mr. Patil, learned Counsel appearing for added respondent vehemently opposed the petition. He submits that there is mischief played by the

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institute and inquiry was also conducted. He invited our attention to the affidavit in reply filed on behalf of the Dy. Director of Education (Primary) by Vaijinath Kondibna Khadke on 27th August, 2018 in support of his submission.

15. On perusal of the affidavit in reply filed by Dy. Director of Education (Primary), it reveals that it was prima facie opinion of the authorities that there was some mischief played and inquiry was conducted. The Dy. Director of Education also refers to the order of this Court dated 3rd April, 2018, directs authorities to look into the matter and submit report before this Court after making inquiry. Mr. Patil, learned Counsel placed heavy reliance on the inquiry report.

16. Now, perusal of the inquiry report shows that it is opinion of the inquiry officer that the institute received certain amount for the salary grants and it is stated that the institute received Rs.1,02,110/- and then it is stated that there are

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certain irregularities committed while granting approval. It is prima facie opinion of the authority that the headmaster, president, certain officers of Zilla Parishad are responsible for these irregularities. The inquiry report also refers to the scrutiny of the record and certain teachers were found absent or were not discharging duties in the school and names of these teachers are also referred. None of these petitioners are in the list of such teachers. Then the report states that the institute was running classes 5th to 7th standard unauthorizedly and total amount to the tune of Rs.97,73,781/- was disbursed against the salary grants of teachers. As such, it would be necessary to recover the amount and close down these unauthorized classes and also to initiate the action against erring persons as per rules.

17. In the whole inquiry report, there is not a single statement that opportunity of hearing was granted to any of the teachers. The inquiry officer states that it is prima facie opinion that the head

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master, president and certain officers of the Zilla Parishad are responsible for irregularities. There is nothing in the report to state that these teachers are any way responsible for the irregularities or teachers themselves have committed some irregularities.

18. Considering all these factual aspects, we are of the clear opinion that there is substance in the submission of Mr. Rodge, learned Counsel that the order impugned in the petition causes serious prejudice to petitioner Nos.1 and 4 as salary of the petitioners is withhold and while passing such order the authority committed breach of principles of natural justice.

19. Mr. Rodge, learned Counsel was justified in submitting before us that on this count itself, the order impugned is unsustainable. At the cost of repetition, we state that insofar as petitioner Nos.2 and 3 are concerned, communication dated 23rd May, 2018 states that appointment of these

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petitioner Nos.2 and 3 namely Dnyandeo Pandharinath Patil and Sanjay Pralhadrao Salunke is for teaching of standard 1st to 4th classes and they are senior most teachers in the school.

20. As such, the impugned order dated 5th June, 2017 passed by the Education Officer (Primary) is in breach of principles of natural, requires to be quashed and set aside. As in view of the order of this Court, Director of Education conducted inquiry and submitted report to this Court, we direct the Director of Education, M.S. Pune to give an opportunity of hearing to the petitioner Nos 1 and 4, respondent Nos. 4 and 5 and added respondent-intervenor and to pass orders afresh as expeditiously and not later than eight weeks from the date of order of this Court. We further make it clear that directions of the Education Officer in the order dated 5th June, 2017 to withhold salary of the petitioners is set aside and the education authorities to take appropriate steps to release salary which is withhold under the

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orders of the Education Officer as early as possible and as in any event, not later than 3rd November, 2018.

21. Mr. Bondar, learned Counselk appearing for respondent No.3 opposes direction of releasing salary of the petitioners, we find no merit in the opposition for the simple reason that, without there being any material that the petitioners were party to any mischief Education Officer arrived at conclusion that salary of these teachers teaching 5th to 7th standard is to be withhold and without giving any opportunity to these persons who were to be affected by the order, the order is passed in such a case, opposition of the Counsel to submit before us that the salaries of these petitioners may not be released is clearly unacceptable.

22. The Director of Education after hearing the parties as we have referred to in our order may pass appropriate orders and needless to state that if any adverse orders are passed against the

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petitioners or any of the party in the petition, he is at liberty to challenge the said order.

23. With these directions, the petition is disposed of.

(MANISH PITALE)
JUDGE

(PRASANNA B. VARALE)
JUDGE

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