

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD

**WRIT PETITION NO. 11314 OF 2017**

Jeevan S/o Dnyanoba Patil and five **Petitioners**  
others

**V E R S U S**

The State of Maharashtra, through its **Respondent**  
Secretary, School Education and Sports  
Department, Mantralaya, Mumbai and six  
others

Mr. V.S. Panpatte, Advocate for the petitioners  
Mr. A.R. Kale, A.G.P. for respondent/State  
Mr. U.B. Bondar, Advocate for respondent Nos.2 & 3  
Mr. S.R. Choukidar, Advocate, holding for  
Mr. I.D. Maniyar, Adv. for respondent Nos.4 to 7

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

**DATE : 22<sup>nd</sup> OCTOBER, 2018**

**ORAL ORDER :**

Heard Mr. V.S. Panpatte, learned counsel for the petitioners, Mr. A.R. Kale, learned A.G.P. for respondent No.1, Mr. U.B. Bondar, learned counsel for respondent Nos.2 and 3 and Mr. S.R. Choukidar, learned counsel for respondent Nos. 4 to 7.

2. The grievance of the petitioners is, they were appointed in the year 2012 till the year 2017 as 'Shikshan Sevak'. The appointment orders are also placed on record at Exhibit-B, collectively. It is then submitted that the petitioner No.1-Jeewan Patil was appointed in the year 2009 in the School, namely, Maulana Azad Marathi Primary School, Udgir. Petitioner No.2-Mithun Biradar was appointed on 30.06.2009 in the School, namely, Maulana Azad Marathi Primary School, Udgir, petitioner No.3-Nitin Patil was also appointed in Maulana Azad Marathi Primary School, Udgir, whereas petitioner Nos.4 and 5, namely, Sajit Chand Pasha Munjawar and Jafar Shaikh were appointed as "Shikshan Sevak" in the year 2009 and 2010, respectively. Petitioner No.6-Syd Saleha Kausar Syd Mustaq Ahmed was appointed on 30.07.2008 in Maulana Azad Urdu Primary School, Ahmedpur. These petitioners were then granted approval as "Assistant Teachers". Petitioner No.1 was approved by order dated 27.09.2012 w.e.f. 15.06.2012, petitioner No.2-Mithun Biradar was granted approval from 27.09.2012 w.e.f. 15.06.2012, petitioner No.3-Nitin Patil was granted approval on 08.10.2013 w.e.f. 01.09.2013, petitioner No.4-Sajit Chand Pasha was granted approval on 29.02.2012 w.e.f. 15.06.2012, petitioner No.5-Jafar Mainoddin Shaikh was granted approval on 08.08.2013 w.e.f. 25.07.2013, whereas petitioner No.6-S.S. Kausar was granted approval as Assistant Teacher w.e.f. 01.08.2012.

3. It is submitted by the learned counsel for the petitioners that from the date of their approval till date of filing of petition, these approvals are not cancelled. As such, the approval granted in favour of the petitioners is still in force and the grievance of the petitioners is, though the approvals are granted and there is no discontinuation in the approval, the petitioners are deprived of their salary benefits, as no orders are passed by the respondent-authorities.. Even though the salary bills are submitted to the authorities, no reason is assigned for such non-disbursement of the salary amount. The representations are presented before the Head Master from the year 2017.

4. Learned counsel Mr. Panpatte submits that inspite of various attempts being made by the petitioners by approaching the competent authorities, still then no salary amount is paid to them.

5. The reply is filed on behalf of respondent Nos.2 and 3 and interestingly, a general statement made in the affidavit-in-reply comes as a ground or reason supplemented in the reply for opposition to the progress of the petitioners. The reason reflected in the said paragraph No.4 reads that there were certain complaints received by the department in respect of

grant of illegal approvals to the illegal appointment of teachers and Inquiry Committee was set up under the Chairmanship of one Shri S.K. Ghonmode. It was found in the inquiry that one of the Education Officers, Shri Joshi was responsible and guilty. A general statement is again made in paragraph No.4 stating that as per the report of Ghonmode Committee, the petitioners were claimed to be working, have also been granted with the illegal divisions. It is then submitted that a Public Interest Litigation was filed in this Court and proceedings are initiated against the School Managements and Head Masters and it was found indulged in pursuance to the appointment of teachers on such illegal division and the criminal prosecution is pending as on today. Then a communication is also placed on record along with the affidavit-in-reply dated 26.03.2014.

6. It was submitted before us that in the inspection that was carried out, the petitioners were not found working in the Schools at the time of the said inspection. Now, firstly, there is nothing placed on record to submit that in the Ghonmode Committee report, either the name of the present Institute appears or there is any reference in the report of the Committee stating that the School or the Management played some mischief or irregularity. There is also nothing placed on record to show that any

criminal action is initiated against the Head Master of the respondent-Institute/School. Then, there is nothing placed on record to support the submission that an inspection was carried out and it is found that the petitioners were not either working in the School or the record of these petitioners' appointment was any time verified by the authority. On the contrary, interestingly, the respondent Nos.4 to 7 filed detailed reply before this Court by placing on record the Inspection reports from the year 2008-2009 to the year 2015-2016. Perusal of these reports shows that the inspection was carried out by a team consisting of Education Extension Officer and other Officer from the Primary Education Department of the Zilla Parishad.

7. In the year 2013-14, the inspection was carried out and approved under the signature of the Extension Officer, Education Department, Udgir. The Head Master of the school, namely, Maulana Azad Marathi Prathmik School, Udgir, clearly show the names of all these petitioners. Not only this, but the inspection report shows that the performance of these petitioners was assessed with the graphic details such as; the subject being taught by them and allotment of the marks under the assessment. Though it may not be necessary for our purposes, but as an additional feature, we state that in the inspection report there

is also reference to other aspects, such as, various activities undertaken by the School for general awareness in the students etc. Then there is also reference of the teachers making extra efforts by taking extra classes for the subjects like Mathematics and Science. Then there is also reference to the availability of infrastructure and facilities, and in most of these reports, the inspection team records its satisfaction about the progress of the School. On the back drop of these reports, we are unable to accept the general statement made in the affidavit-in-reply, which is made only to oust the petitioners who are claiming the monetary benefits in the nature of salary.

8. Learned counsel Mr. Bondar also invited our attention to the document placed on record, which is marked as 'X' for identification. This is a document submitted to the Education Officer [Primary], Zilla Parishad, Latur. It is stated in the said communication that services of all the petitioners are approved and continuity is also granted to them, and then it is stated that there is no record available with the concerned office. As such their names were not referred to the State Government and then it is stated that, the office is unable to express any opinion about the absorption of these petitioners. So far as the aspect reflected in the document placed on

record about the absorption of teachers is concerned, same is not an issue before us. We leave it to the competent authorities for its decision. So far as the issue of absorption is concerned, by declaring the petitioners surplus, the learned counsel Mr. Panpatte submits that the petitioners are not pressing prayer "C" which is in respect of directions to declare the petitioners as surplus and absorb them at present and they be permitted to raise this issue in an appropriate proceeding as and when occasion so arises.

9. Considering the above referred facts, we are of the opinion that the learned counsel for the petitioners made out a case for the petitioners. Resultantly, the petition is allowed in terms of prayer clauses "A" and "B". Needless to state that the authorities to undertake to execute the order as early as possible.

**[MANISH PITALE, J.]**

**[PRASANNA B. VARALE, J.]**