

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 5805 OF 2018

Uzma Khanam Mirza Moin Ullah Baig ...Petitioner

Versus

Maulana Azad Educational Trust
Through its Chairman
Mrs. Fatma Zakaria and Ors. ...Respondents

Mr. S.V. Dixit, Advocate for Petitioner
Mr. A.B. Chate, Assistant Governmen Pleader
for Respondents/State
Mr. A.N. Kakade, Advocate for Respondent Nos. 1 and 2

**CORAM : S. V. GANGAPURWALA AND
A. M. DHAVAL, JJ.**

DATE : 11th APRIL, 2019

ORAL ORDER:

1. Mr. Dixit, the learned Counsel for the petitioner submits that the petitioner is appointed on 02.07.2012 as Assistant Teacher in the respondent No. 2 School. The petitioner possesses the necessary eligibility and qualification. On 04.08.2014, and thereafter, the petitioner was not allowed to sign the muster. The petitioner challenged the otherwise termination before the School Tribunal. The School Tribunal allowed the appeal and directed the respondents to reinstate the petitioner with continuity in service and consequential benefits with 30 % back wages.

2. The respondents assailed the said order before this Court. This Court dismissed the Writ Petition. The learned Counsel submits that for the difference of salary from 02.07.2012 to 03.08.2014, the petitioner had filed Writ Petition bearing No. 3658/2015. The same was allowed and the respondent was directed to pay the difference of the salary for the said period as per 4th Pay Commission. Subsequently, the amendment has been made by the State Government in Schedule 'C' of The Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1981 (for short M.E.P.S. Act). The amendment is brought into effect in the year 2016 with retrospective operation.

3. According to the learned Counsel, the respondents be directed to pay the salary and arrears along with other consequential benefits w.e.f. 08.07.2015 as per the applicable pay scale.

4. Mr. Kakade, the learned Counsel for the respondent Nos. 1 and 2 submits that the respondent is a minority Institution and it cannot be directed to pay the salary as per Schedule 'C' of the M.E.P.S. Act. The Writ Petition against the minority Institution for the said purpose is not maintainable. The petitioner earlier filed the Writ Petition and the directions to pay as per the 4th Pay Commission were issued.

5. We have considered the submissions. All the contentions

raised by Mr. Kakade, the learned Counsel for the respondent Nos. 1 and 2 were considered by this Court while deciding Writ Petition No.1451/2017 with connected Writ Petitions under the Judgment and order dated 04.04.2019.

6. Mr. Kakade, the learned Counsel for the respondent Nos. 1 and 2 relies on the Judgment of the Apex Court in the case of ***Satimbala Sharma Vs. St. Pauls Senior Secondary School, reported in 2011 AIR SCW 4643.***

7. It has been held by us in the said Judgment that the Judgment of the Apex Court relied by Mr. Kakade is not applicable to the cases where pay scale is prescribed by M.E.P.S. Act.

8. We have held that the payment of salary is governed by the M.E.P.S. Act and Rules, more particularly, Schedule 'C'. The M.E..P.S. Act does not make any distinction between the minority and non-minority Institution, by whom salary is required to be paid. So also, it does not make any distinction between aided and unaided Institution vis a vis the payment of salary. It is not disputed that the petitioner is discharging his duties as an Assistant Teacher with the respondents Institution. He possess the necessary qualification and eligibility.

9. In light of the above, the respondents shall pay the salary

as per the pay scale prescribed in Schedule 'C' and Rule 9 of the M.E.P.S. Rules to the petitioner from 08.07.2015. The difference shall be paid to the petitioner within a period of four months and regular salary shall be paid as per the said pay scale regularly.

10. The Writ Petition is accordingly allowed in above terms. No costs.

[A. M. DHAVAL]
JUDGE

[S. V. GANGAPURWALA]
JUDGE

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