

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 10213 OF 2018

Anuradha Madhavrao Jadhav
Age 38, Occu: At Present Nil.
R/o C/o Madhukarrao Deshpande,
Sonal Nagar, Near Railway Station,
Jalna, Tq. & Dist. Jalna.

...Petitioner

Versus

- 1) The State of Maharashtra,
Through : Secretary,
School & Education Department,
Mantralaya, Mumbai-32.
- 2) The Dy. Director of Education,
Aurangabad Division,
Aurangabad, Dist. Aurangabad.
- 3) The Education Officer, (Secondary)
Zilla Parishad, Jalna.
District Jalna.
- 4) Shri. Vardhaman Sansthanakwadi
Jain Shravak Sangh,
Through its Secretary,
R/o C/o Mahavir Secondary and
Higher Secondary School, Jalna,
Tq. & District Jalna.
- 5) Shri. Mahavir Jain Secondary &
Higher Secondary School,
Through Head Master,
Jalna. Tq. & Dist. Jalna.

...Respondents

Mr. N.L. Jadhav, Advocate for Petitioner
Mrs. V.N. Patil-Jadhav, Assistant Government pleader for
Respondent Nos. 1 to 3
Mr. Vivek Dhage, Advocate for Respondent Nos. 4 and 5

**CORAM : S. V. GANGAPURWALA &
A. M. DHAVALA, JJ.**

RESERVED ON : 20.02.2019

PRONOUNCED ON : 29.03.2019

JUDGMENT: (Per : A.M. Dhavale, J.)

1. Rule. Rule made returnable forthwith. Heard finally with the consent of the parties.

2. The petitioner worked in Higher Secondary School run by minority Institute and was terminated after four years. She seeks writ of mandamus to direct respondent Nos. 4 and 5 to pay her salary of Rs. 13,00,000/- as per the pay scale with interest @ 9 % per annum total Rs. 16,51,000/-. She also seeks direction to respondent Nos. 1 to 3 to withdraw the recommendation of respondent Nos. 4 and 5.

3. Respondent No. 5 is unaided Secondary and Higher Secondary School run by respondent No. 5, which is admittedly a minority Institute. Respondent Nos. 4 and 5 obtained permission of Education Officer (Secondary) dated 03.09.2013 issued advertisement and thereafter by order dated 15.10.2013 appointed the petitioner as Assistant Teacher on unaided basis. The petitioner has also given bond that she would have to complete T.E.T. and she would be serving on non-aided basis. Her appointment was approved by Education Officer (Secondary) on 17.12.2013 from open category in pay scale of Rs. 9300-34800/- with Grade Pay of Rs. 4300/- for probation period from 15.10.2013. The said appointment was approved with continuation from 15.10.2015 vide letter dated 18.05.2016.

4. Thereafter, on 28.06.2016, the Government issued Government Resolution authorizing and regularizing the procedure for transfer of teachers from unaided to aided post. Respondent Nos. 4 and 5 initiated recruitment process and filled up in August, 2016 the 8 post of Assistant Teachers from aided post without considering the claims of the teachers working on unaided post. That created dispute between the Management and the teachers. On 12.06.2017, Respondent Nos. 4 and 5 took a decision that it was financially not viable for them to continue the unaided divisions and they closed unaided divisions and terminated the services of many teachers including that of the petitioner. The other teachers have filed Petition for reinstatement. The petitioner herein went to the School Tribunal to challenge her termination. It is reported that the School Tribunal by Judgment dated 01.06.2018, dismissed the appeal No.20/2017. The petitioner has restricted her claim here to the salary for the service period 15.10.2013 to 12.06.2017 probably as per the pay scale. She claimed Rs. 13,00,000/- along with interest @ 9 % per annum total Rs. 16,51,000/- and also claimed de-recognition of respondent No. 5 in case, respondent Nos. 4 and 5 failed to pay the salary.

5. Respondent Nos. 4 and 5 have filed affidavit-in-reply of the Secretary Mr. Lalwani assuming that it was petition for reinstatement. However, with respect to the salary, the reliance was placed on Apex Court Judgment in T.M. Pai Foundation and claimed that the petitioner was not entitled for salary as per the pay scale as it was unaided post in the minority Institute. No writ of mandamus can be issued against such minority Institute in this regard as it would affect its autonomy. The respondents claimed that in grant in

aid schools, the persons appointed have to work initially as Shikshan Sevak and they are entitled for honorarium as per the Government Resolution dated 17.09.2011. Respondent Nos. 4 and 5 stated that they would pay Rs. 8,000/- per month to the petitioner from the date of appointment till her termination, as per honorarium payable to Shikshan Sevak

6. Heard learned Counsel Mr. N.L. Jadhav for the petitioner and Mr. Vivek Dhage, the learned Counsel for respondent Nos. 4 and 5. Mr. Jadhav has relied on the approval orders of Education Officer (Secondary) dated 17.12.2013 and 18.05.2016 wherein the approval was granted in the pay scale of Rs. 9300-34800/- with Grade Pay of Rs.4300/-. He submitted that even private schools are bound to pay the salary to the teachers as per the pay scale prescribed for the teachers similarly situated from aided schools.

7. Per contra, Mr. Vivek Dhage, the learned Advocate for the respondent Nos. 4 and 5 submitted that respondent Nos. 4 and 5 are minority Institution and under Article 30 (1), they have autonomy. Their autonomy cannot be disturbed by issuing writ of mandamus.

8. The material questions for our consideration are -

(i) Whether the petitioner, who was teacher on unaided post in minority institute is entitled to get pay scale as prescribed under the M.E.P.S. Act or not ?

(ii) Whether this Court in writ jurisdiction can issue directions to minority institute to pay the salary ?

9. It is not disputed that the petitioner was appointed on 15.10.2013 and her appointment on non-grant basis was approved by the Education Officer (Secondary) from 17.12.2013 in the pay scale of Rs.9300-34800/- with Grade Pay Rs.4300/- from 15.10.2013. Later on, as per the recommendations of the school and the management by letter dated 18.05.2016, the petitioner was granted approval for continuity of service from 15.10.2015 in the same pay scale. The appointment order dated 15.10.2013 is not specifically with regard to the pay scale, but there are following terms. The relevant terms in vernacular read as under :-

७. विनाअनुदानित तत्वावर सहशिक्षक म्हणून आपणांस दरमहा वरील शासन निर्णय क्रमांक १ प्रमाणे मानधन दिले जाईल.

५. विनाअनुदानित तत्वावर सहशिक्षक या पदावर दोन वर्षे समाधानकारक काम केल्यानंतर आपणांस शिक्षकाच्या नियमित पदावर शासनाच्या नियमानुसार नियमित नियुक्ती देण्यास पात्र धरण्यात येईल. विनाअनुदानित तत्वावर सहशिक्षक म्हणून केलेली सेवा, सेवानिवृत्ती वेतन किंवा सेवानिवृत्तीनंतरचे देय फायदे यासाठी शासनाच्या नियमानुसार ग्राह्य धरली जाईल.

Rule 5 lays down that after satisfactory work for two years as Assistant Teacher, she would be eligible for appointment as a regular teacher as per the Government Rules and her service on non-grant basis as Assistant Teacher would be counted for the purpose of pensionable pay and pensionary benefits as per the Government Rules.

The Rule 7 indicates that as Assistant Teacher on non-grant basis, the petitioner was entitled for honorarium as per the Government Resolution dated 16th August, 2012.

10. The Government Resolution dated 16th August, 2012, shows that the Schools which were on permanent non-grant basis, were transferred to non-grant basis by deleting the word 'permanent' and as per the Government Resolution dated 15th November, 2011, those schools, which were eligible as per the assessment were entitled for grants @ 20%, 40 %, 60%, 80% and 100% every year from the date of eligibility. The grant was subject to availability of funds with the Government.

11. As per Government Resolution dated 17th September, 2011, the Shikshan Sevak appointed in medium school from 8th to 10th Std. were entitled for honorarium of Rs.8,000/- per month. The Assistant teachers were entitled for pay scale after a period of three years.

12. The reliance was placed on **Mrs. Satimbla Sharma Vs. St. Paul's Senior Secondary School**, wherein it has been held by Division Bench of the Apex Court in **2011 AIR SCW 4643** that the private unaided minority schools are not State and they are not under obligation to ensure equal pay for equal work. The employees of such schools are not entitled to claim pay parity with employees of the State Government, Government schools or Government aided schools. No mandamus can be issued to ensure pay parity.

13. In the present case, the provisions of The Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 are applicable. These provisions apply to both aided as well as unaided schools. No distinction is made in this regard. It is also applicable to minority institutions.

14. Relevant provisions may be stated as follows :-

Section 3 - the provisions of this Act shall apply to all private schools in the State of Maharashtra, whether receiving any grant-in-aid from the State Government or not.

Sub-clause (2) notwithstanding anything contained in sub-section (1), the provisions of this Act shall not apply to the recruitment [of the Head of minority school and] any other persons (not exceeding three) who are employed in such school and whose names are notified by the Management to [the Director or, as the case may be,] the Deputy Director for this purpose.

15. Rule 7 - the scale of pay and allowance, full time as well as part time are as follows :-

R.7. Scales of Pay and Allowances:

(i) The scales of pay for full-time as well as part time Heads, Assistant Heads, Supervisors, Teachers and the non-teaching staff in the primary schools, secondary schools including night schools, Junior Colleges and Junior Colleges of Education, shall be as specified in Schedule "C".

(ii) The allowances such as dearness allowance, compensatory local allowance and house rent allowance admissible from time to time at the place of duty to the full-time employee of a school shall be payable at the rates and according to such rules as are sanctioned by Government specifically to the employees of private schools.

(iii) The rates of dearness allowance applicable to part-

time teaching and non-teaching staff in schools including night schools be such as may from time to time be determined by the Government by general or special order.

16. In the present case, the respondent management and school were bound to obtain approval of the Education Officer (Secondary) and the Education Officer while granting the approval has prescribed the pay scale. The same has not been challenged by the management. Nonetheless, the terms and conditions of the agreement indicate that during the first two years, the petitioner was entitled only for honorarium.

(i) In ***Perwez Kalal Vs. State of Maharashtra 2008 (5) Mh.L.J. 523*** – the petitioner was full time teacher in unaided institution of respondent No. 4 from 2003 to 2006. His services were approved by the Education Department. He left the service on 04.08.2006 with grievance of non-payment of full salary. It was held that petitioner was entitled for full salary as full time teacher. It is held that the provisions of The Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 and the Rules thereunder are applicable to even unaided institutions.

(ii) In ***Raskar Vidya Damodar Vs. The Maharashtra Aryogya Mandal 2000 (4) Mh.L.J. Page 129*** relying on Apex Court Judgment in ***A. Krishnammayacharya Vs. C. Venkateshwarya Hindu College of Engineering AIR 1998 SC 295***, in similar facts, it was observed in para No. 8 as follows :-

9. The claim of the petitioner, therefore, cannot be defeated on the contentions of the management and the said contentions create no hurdle whatsoever in the way of the petitioner to receive salary as per the pay

scale prescribed and applicable for trained secondary school teachers in Government aided private schools. The petitioner has given the details of arrears on the basis of the prescribed pay scales. It will be for the respondent No.1 to calculate the payment and we need not dwell upon the veracity of the said calculations at this stage.

(iii) In **Mrs. Satimbla Sharma Vs. St. Paul's Senior Secondary School, 2011 AIR SCW 4643**, it was held that unaided minority institute is not a State to claim parity in pay scales with the pay scales of teachers from grant in aid schools. However, the said can be distinguished in facts. The said case was from Himachal Pradesh wherein Section 10 of the Delhi School Education Act provided that the scales of pay and allowances, medical facilities, pension, gratuity, provident fund and other prescribed benefits of the employees of the recognized private schools shall not be less than those of the corresponding status in schools run by the appropriate authority. There was specific provision **U/s. 12** which **prescribes** that sections 8 to 11 including section 10 will **not** be applicable to **unaided minority institution**. In the light of these facts above referred ratio was laid down, but it was also observed -

11. Where a statutory provision casts a duty on a private unaided school to pay the same salary and allowances to its teachers as are being paid to teachers of Government aided schools, then a writ of mandamus to the school could be issued to enforce such statutory duty. But in the present case, there was no statutory provision requiring a private unaided school to pay to its teachers the same salary and allowances as were payable to teachers of Government schools and, therefore, a mandamus could not be issued to pay to the teachers of private recognized unaided schools the

same salary and allowances as were payable to Government Institutions.

In fact, at the end, the Apex Court observed in para No. 14 as under :-

14. We, however, find that the 2009 Act has provisions in Section 23 regarding the qualifications for appointment and terms and conditions of service of teachers and sub-section (3) of Section 23 of the 2009 Act provides that the salary and allowances payable to, and the terms and conditions of service of, teachers shall be such as may be prescribed. Section 38 of the 2009 Act empowers the appropriate Government to make rules and Section 38(2) (1) of the 2009 Act provides that the appropriate Government, in particular, may make rules prescribing the salary and allowances payable to, and the terms and conditions of service of teachers, under sub-section (3) of Section 23. Section 2(a) defines "appropriate Government" as the State Government within whose territory the school is established. The State of Himachal Pradesh, respondent No.3 in this appeal, is thus empowered to make rules under sub-section (3) of Section 23 read with Section 38(2)(1) of the 2009 Act prescribing the salary and allowances payable to, and the terms and conditions of service of, teachers. Article 39(d) of the Constitution provides that the State shall, in particular, direct its policy towards securing that there is equal pay for equal work for both men and women. Respondent No. 3 should, therefore, consider making rules under Section 23 read with Section 38(2)(1) of the 2009 Act prescribing the salary and allowances of teachers keeping in mind Article 39(d) of the Constitution as early as possible.

(iv) In ***Mahadeo Pandurang More Vs. State of Maharashtra*** 2014 (5) ***Mh.L.J.*** 877, it is observed -

26. After perusal of these cases we find that any law intended to regulate the service conditions of employees of aided educational institutions equally applies to minority aided or unaided institutions also, provided that such law does not interfere with the overall administrative control of the management over the staff. Law or Rules prescribing the service conditions or their pay scales are only regulatory in nature and do not impinge upon the basic character of the minority institutions. Except for urging the inability to pay, the respondents have not shown how payment of revised wages prejudices its basic nature. Financial problems is also found not a valid defence to deny fair treatment to the staff in paragraph 23 of ***Frank Anthony Public School employees' Assn. Vs. Union of India AIR 1987 SC 311*** by the Hon'ble Apex Court.

28. Thus this precedent shows that where a statutory provision casts a duty on a private unaided school to pay the same salary and allowances to its teachers as are being paid to teachers of government-aided schools, then a writ of mandamus to the school could be issued to enforce such statutory duty. The writ jurisdiction of the High Court under Article 226 of the Constitution is wide enough to issue a writ for payment of pay on a par with government employees.

17. Therefore, the ratio in *Satimbla's* case would not be applicable to the State of Maharashtra where private schools both aided and unaided are governed by The Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 and section 9 specifically provides for equal pay scales to teachers from grant in aid as well as unaided schools. Section 3 makes it clear that

the MEPS Act is equally applicable to unaided schools.

18. In the light of these facts, we hold that when the statutory provisions under MEPS Act and Rules prescribed for similar pay scale teachers from aided and unaided schools, the petitioner is entitled for salary as per pay scale and when the Education Officer was having control over the school imparting education, the school would be a instrumentality of the State under Article 12 and directions can be issued.

19. However, we find that as per the terms of the contract, the petitioner was entitled for only honorarium for probation period for initial two years. This is akin to State Governments scheme of Shikshan Sevak which is for the period of three years. The contract provides that petitioner would be entitled for honorarium @ prescribed under Government Resolution dated 16th August, 2012, and thereafter, he shall be eligible for permanency and on satisfactory completion of probation period of two years, he was entitled to be posted as a teacher on regular basis as per the Government Rules. Thus, even the contract provides for regular pay scale. It is not disputed that the initial appointment as well as satisfactory completion of probation both in case of petitioner were approved by the Education Officer by letter dated 17.12.2013 and 18.05.2016 when both the approval letters quoted pay scale of Rs.9300-34800/- and grade pay Rs. 4300/-.

20. In the light of these facts, we hold that petitioner was entitled for honorarium of Rs. 8,000/- per month for two years, and thereafter, regular pay scale from 15.10.2015, the date from which her services as permanent were approved by the Education Officer, as per pay scale prescribed in Schedule C read with Rule 9 of M.E.P.S. Act.

We accordingly direct the respondents to pay the salary as referred above.

21. In view of the delay, we direct the respondent to pay interest @ 6% per annum on the above amounts from the date of petition.

22. The Rule is made absolute in above terms. No order as to costs.

[A. M. DHAVAL]
JUDGE

[S. V. GANGAPURWALA]
JUDGE

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