

THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.

WRIT PETITION NO. 10426 OF 2015

1. Uttam s/o Sandu Badak,
Age 43 Years, Occu: Service,
R/o. Honaji Nagar, Harsool,
Aurangabad, Dist. Aurangabad.
2. Pradip s/o Ankush Shisode,
Age 43 Years, Occu: Service,
R/o Garkheda, Aurangabad,
Dist. Aurangabad.
3. Smt. Vijaya Govindrao Karkhane,
Age 52 Years, Occu: Service,
R/o Plot No.17 "Ashish",
Nandigram Colony,
Opp. Gajanan Maharaj Temple,
Garkheda Parisar, Aurangabad,
Dist. Aurangabad.
4. Smt. Nanda Baburao Kale,
Age 54 Years, Occu: Service,
R/o N-2, CIDCO, Aurangabad,
Dist. Aurangabad.
5. Smt. Meera Himmatrao Chikte,
Age 38 Years, Occu: Service,
R/o Sillod, Tq. Sillod.
Dist. Aurangabad
6. Syed Rizwan Syed Dawood,
Age 39 Years, Occu: Service,
R/o Ajintha, Tq. Sillod,
Dist. Aurangabad. Deleted as per Hon'ble
Court order dt. 5/2/2019
7. Atul Balchand Bande,
Age 46 Years, Occu: Service,
R/o Werul, Tq. Khultabad,
Dist. Aurangabad.

8. Shaikh Surriya Abdul Karim,
Age 46 Years, Occu: Service,
R/o Roshan Gate, Aurangabad,
Dist. Aurangabad.

... PETITIONERS

VERSUS

1. The State of Maharashtra,
Through Secretary,
School Education Department,
Mantralaya, Mumbai-32.
2. The Director of Secondary and
Higher Secondary Education,
State of Maharashtra,
Central Building, Pune-1.
3. The Deputy Director of Education,
Aurangabad Division, Aurangabad,
Dist. Aurangabad.
4. The Education Officer (Secondary)
Zilla Parishad, Aurangabad,
Dist. Aurangabad.

**AMENDMENT CARRIED OUT AS PER ORDER DATED
29/01/2019 PASSED BY THIS HON'BLE COURT.**

5. The President/Secretary,
The Saraswati Bhuvn,
Shikshan Sanstha Aurangpura,
Aurangabad.
6. The President/Secretary,
The Chaitanyapuri, Shaishanik
Vikas Mandal, Garkheda Parisar,
Aurangabad.

7. The President/Secretary,
The Marathwada Shikshan Prasarak Mandal,
Deogiri Mahavidalaya Parisar Railway Station, Road,
Aurangabad, Tq. Dist. Aurangabad.
8. The President/Secretary,
The Shri. Prashwnath Brahmacharya Ashram Jain
Gurukul Verul Tq. Khultabad, Dist. Aurangabad.
9. The President/Secretary,
The Vivekanand Shikshan Sanstha,
Samarthnagar, Aurangabad.
10. The President/Secretary,
The Urdu Education Society,
Farooqui Manzil Opposite,
Head Post Office Juna Bazar,
Aurangabad-431001. Deleted as per Hon'ble
Court order dt. 5/2/2019
11. The President/Secretary,
The Urdu Education Society, Nagsen Colony,
Aurangabad, Dist. Aurangabad.
12. The President/Secretary,
The Bhartiya Shikshan Sanstha,
N-12 HUDCO, Aurangabad. ... **RESPONDENTS**

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Mrs. Surekha Mahajan, i/b Mr. G. K. Kshirsagar, Advocate for Petitioners.

Mr. P. N. Kutti, AGP for Respondent Nos.1 to 4.

Mr. V. P. Golewar, h/f Mr. A. R. Joshi, Advocate for Respondent No.5.

Mr. Abhijit Choudhary, Advocate for Respondent Nos.7 & 9.

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**CORAM : T. V. NALAWADE &
SUNIL K. KOTWAL, JJ.**

DATE : 22nd February, 2019.

ORAL JUDGMENT: (Per T. V. Nalawade, J.)

. Rule. Rule made returnable forthwith. By consent, heard both the sides for final disposal.

2 The petition is filed for giving direction to the Respondents to see that the Petitioners are upgraded as full time librarians with effective dates mentioned in the petition and as per Resolution of State Government dated 28th June, 1994 and give direction to the Respondents to give consequential benefits like pay fixation, arrears of salary, time bound promotion etc. Relief is also claimed for challenging Government Resolution dated 3rd October, 2006, which restricts upgradation as full time librarians from 1st April, 2006 and treating upgradation as fresh appointments by forfeiting the benefits of past services as part time librarians. The submissions made in this proceeding show that the Respondents have no grievance in respect of Petitioner Nos.2 to 5, 7 and 8 with regard to the contentions made by them in the petition and they are with regard to the date of first appointment as part time librarians. It is the contention of these Petitioners that the students strength crossed one thousand as per their contentions and so from that year they are entitled to pay scale

of full time librarian as per Government Resolution of 1994.

3 The learned AGP submitted that on the basis of record, particulars of date of joining, strength of students etc. are verified by the Respondents.

4 In Government Resolution dated 3rd August, 2006, the Government upgraded the post of part time librarian subject to condition that the students strength had crossed one thousand, but effect was to be given from 1st April, 2006. It was made clear that it would be fresh appointment and previous service will not be counted even for giving increment.

5 This Court had occasion to consider the aforesaid Government Resolution in **Writ Petition No.823 of 2004** (*Devidas Dhondiba Tekale Vs. State of Maharashtra and others*). After referring the decision given at Nagpur Bench in Writ Petition No.7779 of 2012, this Court held that it would not be appropriate to deny the other benefits to the Petitioners like counting their service and giving notional increments for fixation of pay. The observations can be

found in paragraph No.10, which are as follows:

“10. This court while deciding writ petition no. 7779 of 2012 has observed in paragraphs no. 3 and 4 thus;

“3. *We have considered the submissions. The order that such Petitioners would be considered Full Timer from 2006 itself was a matter of challenge in various writ petitions before the Division Bench of this Court, at Nagpur. This Court in the said writ petitions had held that the Petitioners would be entitled for the benefit of the post of Full Time Librarian from the date the strength of the students increased to one thousand or more and the said date would be counted for all purposes as such notional pay fixation, time bound promotion and pensionary benefits in accordance with Rules. However, the benefits of arrears of salary was not extended.*

4. *In light of the aforesaid decision, we pass the following order:*

I. *The Petitioner shall be considered as Full Time Librarian from the date of his initial appointment i.e. 1st March, 1998, in view of the fact that the strength of the students was more than one thousand. The said date shall*

be considered for notional pay fixation so also for time bound promotion and other retiral and pensionary benefits. However, the Petitioner would not be entitled for the difference of salary from 1998 till 2006.

II. Accordingly, the writ petition is disposed of. No costs."

6 In the present case also in respect of the Petitioners except Petitioner No.1, there is no dispute about the date of initial appointment and about the strength of the students that it was more than one thousand and so in accordance with aforesaid decision, this Court holds that in their favour relief can be given to see that the initial appointment date is considered for notional pay fixation, for time bound promotion and other retiral and pensionary benefits. However, they will not be entitled to get difference of salary from the initial date of appointment till the aforesaid date of the year 2006. So relief is granted to these Petitioners in aforesaid terms.

7 The case of Petitioner No.1 is little bit different. He came to be appointed in the year 1996-97, but he was transferred to a school, which had strength of more than one thousand students and

that year is also 2006. The submissions made by the learned counsel for this Petitioner that the Management was having 4 to 5 schools and in view of the seniority, he could have been given the school where there was strength of more than one thousand students and so the benefit of Government Resolution of 1994 can be given to him, cannot be accepted. He actually worked on a school, which had strength of less than one thousand and so such benefit cannot be given to him. Admittedly, he came to be upgraded on 1st April, 2006 and so the aforesaid Government Resolution would be applicable as it is as against Petitioner No.1. In those terms, the petition filed by him is decided. Rule is made absolute in those terms.

[SUNIL K. KOTWAL, J.]

[T. V. NALAWADE, J.]

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