

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

WRIT PETITION NO. 12756 OF 2016

1. Rajesh S/o Dagadu More,
Age : 44 Years, Occu. : Service
As Incharge Head Master,
Municipal Corporation Secondary
School, Railway Station,
Ahmednagar.
2. Ashok S/o Ramnath Dusang,
Age : 38 Years, Occu. : Service
As Assistant Teacher,
Municipal Corporation Secondary
School, Railway Station,
Ahmednagar.
3. Dnyaneshwar S/o Pralhad Chikane,
Age : 31 Years, Occu. : Service
As Assistant Teacher,
Municipal Corporation Secondary
School, Railway Station,
Ahmednagar.
4. Nalini Balu Rawate,
Age : 29 Years, Occu. : Service
As Assistant Teacher,
Municipal Corporation Secondary
School, Railway Station,
Ahmednagar.
5. Varsha Prabhakar Sonavane,
Age : 35 Years, Occu. : Service
As Assistant Teacher,
Municipal Corporation Secondary

School, Railway Station,
Ahmednagar.

6. Taushib Nabi Pathan,
Age : 25 Years, Occu. : Service
As a Peon,
Municipal Corporation Secondary
School, Railway Station,
Ahmednagar.

.. Petitioners

Versus

1. The State of Maharashtra,
Through its Secretary,
Education Department,
Mantralaya, Mumbai.
2. The Education Officer (Secondary)
Zilla Parishad, Ahmednagar.
3. The Commissioner,
Municipal Corporation,
Ahmednagar.
4. The Chairman,
Municipal Corporation,
School Board, Anandi Bazar,
Gauri Ghumat, Ahmednagar.

.. Respondents

Shri A. N. Kakade, Advocate for Petitioners.

Shri S. K. Tambe, A.G.P. for Respondent Nos. 1 and 2.

Shri V. S. Bedre, Advocate i/by K. N. Lokhande, Advocate for
Respondent Nos. 3 and 4.

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

CLOSED FOR JUDGMENT ON : 25.04.2019

JUDGMENT PRONOUNCED ON : 03.05.2019

JUDGMENT (*Per S. V. Gangapurwala, J*) :-

. Rule. Rule made returnable forthwith. With the consent of parties taken up for final hearing at the stage of admission.

2. The petitioners seek regularization of service as permanent employees with consequential benefits, so also payment of regular salary.

3. Mr. Kakade, the learned advocate for petitioners submits that, the respondent Nos. 3 and 4 started the secondary school on permanent no grant basis. The petitioner Nos. 1 to 5 are appointed as Assistant Teachers and the petitioner No. 6 is appointed as a peon by following due procedure in the year 2010. The petitioners initially had filed Writ Petition No. 7838 of 2014 for release of their salary from the date of appointment as admissible in law. This Court under order dated December, 07, 2015 considered objection of the respondent No. 3 that the petitioners never approached the Corporation with their grievances by filing representation. In view of that, the petitioners withdrew the writ petition with liberty to file representation/application for redressal of their grievance. The

writ petition was disposed of as withdrawn with the liberty to file representation and direction was given to the respondent No. 3 to decide it within a period of 10 weeks. The said representation is not favourably considered by respondents. The learned counsel submits that, as per the staff fixation, seven posts are available for teaching and non teaching staff. The petitioners' services are not confirmed, though probation period is complete and they are paid meager salary. The petitioners are entitled for regularization as their appointments are by following due selection process and also petitioners possess necessary qualification for the posts they are occupying. The petitioners are also entitled for the benefit of 6th Pay Commission. The learned counsel for petitioners relies on the judgment of the Apex Court in a case of State of Punjab Vs. Jagjit Singh reported in (2017) 1 SCC 148 and contends that the petitioners are entitled for the parity of pay scale as is paid to the regular employees. The petitioners also rely on the judgment of the Apex Court in a case of Sabha Shankar Dube Vs. Divisional Forest Officer and others in Civil Appeal No. 10956 of 2018 with connected appeals decided vide judgment dated **November, 14, 2018**. It is submitted that, even temporary employees are entitled to the minimum of the pay scale which is applicable to the regular employees holding the same post.

4. Mr. Bedre, the learned advocate for respondents submits

that, the resolution was passed by the respondent No. 3 to run a secondary school on non grant basis as an experiment and then to pursue the Government for funds on 25.06.2008. The proposal of the respondent No. 6 was sanctioned on 11.06.2009 on condition, the respondent No. 3 should run the school from its own funds. According to the learned counsel the Chairman of the Municipal Corporation School Board though was not having power to appoint staff, had illegally appointed the petitioners without following due procedure of law. The appointments of the petitioners have been made by incompetent person. The respondent No. 3 has not given powers to the Municipal Corporation School Board to appoint the petitioners. The Municipal Corporation School Board is now dissolved by Government Resolution dated 24.06.2018. The respondent No. 3 has also not given sanction for the payment of honorarium to the petitioners. The respondent No. 3 is taking necessary steps for sanction from the Government Department for the post of teaching and non teaching staff. The petitioners are not entitled to claim regularization or permanency. The respondent No. 3 is paying honorarium of Rs. 8,000/- per month to the assistant teachers from the municipal corporation funds as no grants are received from the Government. It is further submitted that, it is open for the Municipal Corporation to run the secondary school as per Sec. 63(15) of the Maharashtra Municipal Corporation Act, 1949. There is no response to the school as at present only

103 students are taking education in the schools. The posts of petitioners are not sanctioned. As the petitioners' posts are not sanctioned, nor the selection procedure was followed, the petitioners cannot claim regularization in service. The pay scale also cannot be paid to the petitioners at par with the regular employees. The learned counsel also relies on the judgment of the Apex Court in a case of State of Punjab Vs. Jagjitsingh (supra) and submits that, the employee appointed on temporary basis and without following due procedure cannot claim to be placed in regular pay scale.

5. The petitioners are seeking dual reliefs (1) regularization in service (2) regular salary in prescribed pay scale.

6. It is a matter of fact that the petitioner Nos. 1 to 5 herein are appointed as Assistant Teachers and petitioner No. 6 as peon in the year 2010. The orders of appointments issued to petitioners are placed on record. The orders of appointments state that, the petitioner Nos. 1 to 5 are appointed as Assistant Teachers in the secondary school of Municipal Corporation on pay of Rs. 9,300/- per month in the scale of Rs. 9300 -34800 (Grade Pay Rs. 4,300/-) with effect from 14.06.2010 and the petitioner No. 6 is appointed as a peon on pay of Rs. 4,400/- per month in the scale of Rs. 4400-7400 (Grade Pay Rs. 1300/-) with effect from 14.06.2010. The said appointments were on probation

and that provisions of the Maharashtra Employees of Private School (Condition of Service) Regulation Act and Rules would apply. All the appointment orders issued to petitioners show that, they were appointed probation, however, there is no record to suggest that advertisement was issued in the news papers and proper procedure was followed. No such documents are placed on record to confirm that proper procedure was followed while appointing the petitioners. The staff sanction approval is placed on record. The staff approval has been granted regarding admissibility of posts which shows five teaching posts are sanctioned including Head Master. In absence of any material placed on record to show that the petitioners were appointed after following due selection process, it will not be possible to grant relief of regularization in service to the petitioners. It appears that, the petitioners are working for almost nine years as on date.

7. It is a fact that, petitioners are rendering their regular service with the respondents. The respondent Nos. 3 and 4 have not denied that the petitioner Nos. 1 to 5 are officiating as Assistant Teachers and the petitioner No. 6 as a peon continuously. Even today they are officiating on their posts and are performing their duties. The respondents have put forth the plea a that the strength of students is now less.

8. The question would be of payment to petitioners. The petitioner Nos. 1 to 5 are paid honorarium of Rs. 8,000/- per month. The same is not as per the pay scale. The Apex Court in a case of **State of Punjab Vs. Jagjitsingh** (supra) has taken stock of various judgments of the Apex Court and thereafter has summarized its views. The Apex Court in the said judgment in para Nos. 54, 55, 57 and 58 has observed thus :

54. There is no room for any doubt, that the principle of 'equal pay for equal work' has emerged from an interpretation of different provisions of the Constitution. The principle has been expounded through a large number of judgments rendered by this Court, and constitutes law declared by this Court. The same is binding on all the courts in India, under Article 141 of the Constitution of India. The parameters of the principle, have been summarized by us in paragraph 42 hereinabove. The principle of 'equal pay for equal work' has also been extended to temporary employees (differently described as work-charge, daily-wage, casual, ad-hoc, contractual, and the like). The legal position, relating to temporary employees, has been summarized by us, in paragraph 44 hereinabove. The above legal position which has been repeatedly declared, is being reiterated by us, yet again.

55. In our considered view, it is fallacious to determine artificial parameters to deny fruits of

labour. An employee engaged for the same work, cannot be paid less than another, who performs the same duties and responsibilities. Certainly not, in a welfare state. Such an action besides being demeaning, strikes at the very foundation of human dignity. Any one, who is compelled to work at a lesser wage, does not do so voluntarily. He does so, to provide food and shelter to his family, at the cost of his self respect and dignity, at the cost of his self worth, and at the cost of his integrity. For he knows, that his dependents would suffer immensely, if he does not accept the lesser wage. Any act, of paying less wages, as compared to others similarly situated, constitutes an act of exploitative enslavement, emerging out of a domineering position. Undoubtedly, the action is oppressive, suppressive and coercive, as it compels involuntary subjugation.

57. Having traversed the legal parameters with reference to the application of the principle of 'equal pay for equal work', in relation to temporary employees (daily-wage employees, ad-hoc appointees, employees appointed on casual basis, contractual employees and the like), the sole factor that requires our determination is, whether the concerned employees (before this Court), were rendering similar duties and responsibilities, as were being discharged by regular employees, holding the same/corresponding posts. This exercise would require the application of the parameters of the principle of 'equal pay for

equal work' summarized by us in paragraph 42 above. However, insofar as the instant aspect of the matter is concerned, it is not difficult for us to record the factual position. We say so, because it was fairly acknowledged by the learned counsel representing the State of Punjab, that all the temporary employees in the present bunch of appeals, were appointed against posts which were also available in the regular cadre/establishment. It was also accepted, that during the course of their employment, the concerned temporary employees were being randomly deputed to discharge duties and responsibilities, which at some point in time, were assigned to regular employees. Likewise, regular employees holding substantive posts, were also posted to discharge the same work, which was assigned to temporary employees, from time to time. There is, therefore, no room for any doubt, that the duties and responsibilities discharged by the temporary employees in the present set of appeals, were the same as were being discharged by regular employees. It is not the case of the appellants, that the respondent-employees did not possess the qualifications prescribed for appointment on regular basis. Furthermore, it is not the case of the State, that any of the temporary employees would not be entitled to pay parity, on any of the principles summarized by us in paragraph 42 hereina above. There can be no doubt, that the principle of 'equal pay for equal work' would be applicable to all the concerned temporary

employees, so as to vest in them the right to claim wages, at par with the minimum of the pay-scale of regularly engaged Government employees, holding the same post.

9. The Apex Court has observed that, the principle of equal pay for equal work also applies to temporary employees (daily-wage employees, ad-hoc appointees, employees appointed on casual basis, contractual employees and the like). It is further observed by the Apex Court that it is fallacious to determine artificial parameters to deny fruits of labour. An employee engaged for the same work, cannot be paid less than another, who performs the same duties and responsibilities. Certainly not in a welfare state. Such an action besides being demeaning, strikes at the very foundation of human dignity.

10. Considering the aforesaid, we observe and hold that the petitioners would be entitled to minimum of the regular pay scale payable to the assistant teachers and the peon.

11. The respondents have not been in a position to show that the petitioners are performing any less work than an assistant teacher or peon. The petitioners are working as full time assistant teacher and peon and discharging the duties as performed by regularly appointed assistant teachers and peon.

12. The petition is filed in the year 2016. We would give relief to the petitioners for payment and proper pay scale for three years prior to filing of writ petition that is 01.10.2013. The respondent No. 3 shall pay the petitioners minimum of the pay scale payable to the regular employees from 01.10.2013. The payment of honorarium already made to petitioners shall be adjusted. The arrears shall be paid within a period of six (06) months from today.

Rule accordingly is made absolute in above terms. No costs.

Sd/-

[A. M. DHAVAL, J.]

Sd/-

[S. V. GANGAPURWALA, J.]

bsb/May 19