

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.8418 OF 2012

Ms. Vahida Makbul Inamdar,
Age: 37 years, Occupation: Service,
Residing at Khatgun, Taluka Khatav,
District: Satara.

.... Petitioner

- Versus -

1. State of Maharashtra,
through its Secretary,
Department of School Education,
Mantralaya, Mumbai-400 032.
2. The Deputy Director of Education,
Kolhapur Division, Kolhapur.
3. Chandrahar Patil Gramin Shikshan
Sanstha, Khatav, Taluka Khatav,
Dist. Sangli.
4. Principal,
Shahajiraje Mahavidyalaya, Khatav,
Taluka Khatav, District-Satara.

.... Respondents

WITH

WRIT PETITION NO.8420 OF 2012

Jitendra Vilas Jagdale,
Age: 38 years, Occupation: Service,
residing at Kumathe,
Taluka Koregaon, District Satara.

.... Petitioner

- Versus -

1. State of Maharashtra,
through its Secretary,
Department of School Education,
Mantralaya, Mumbai-400 032.
2. Deputy Director of Education,
Kolhapur Division, Kolhapur.
3. Chatrapati Shivaji Shikshan Mandal,
Valuj, Tal. Khatav,
Dist. Satara.
4. Principal,
Chatrapati Shivaji Junior College,
Vaduj, Taluka Khatav,
District – Satara.

.... Respondents

Mr. Pratap Patil for the Petitioner in both petitions.
Ms S.D. Vyas, “B” Panel Counsel for Respondent Nos.1 &
2 in both petitions.
None present for Respondent Nos.3 & 4 in both petitions.

CORAM: S.C. DHARMADHIKARI &
M.S. KARNIK, JJ.

DATE : JANUARY 10, 2019

ORAL JUDGMENT (Per Shri S.C. DHARMADHIKARI, J.):

1. **Rule.** Respondent Nos.1 & 2 waive service. None present for respondent Nos.3 & 4 in both petitions though duly served. By consent, Rule is made returnable forthwith and the

petitions are taken up for final disposal. Heard.

2. By these petitions under Article 226 of the Constitution of India, the petitioners in their respective petitions have claimed the following relief:-

In Writ Petition No.8418 of 2012:

“(b) By issuing appropriate writ, order and/or directions this Hon'ble Court be pleased to direct the Respondent Nos.1 and 2 to release payment of remaining half salary of the post of full time Asst. Teacher payable to the Petitioner for the period from 16.07.2007 to 30.06.2010, and further be pleased to direct the Respondent No.3 & 4 to submit to the Respondent No.2 the salary bills of Petitioner for remaining half salary for the period from 16.07.2007 to 30.06.2010;”

In Writ Petition No.8420 of 2012:

“(b) By issuing appropriate writ, order and/or directions this Hon'ble Court be pleased to direct the Respondent Nos.1 and 2 to release payment of salary/monthly remuneration payable to the Petitioner from the date of appointment i.e. from 13th June 2005 to 30th June, 2010, and further be pleased to direct the Respondent No.3 & 4 to submit salary bills of Petitioner for period between 13th June 2005 and 30th June 2010 with the Respondent No.2;”

3. Since there is a common issue involved and common submissions canvassed, these petitions are being disposed of by this common Judgment.

4. For the sake of convenience, we take the facts from the memo of Writ Petition No.8420 of 2012.

5. The petitioner in this petition claims that he has been validly and legally appointed on the basis of his educational qualification as Shikshan Sevak and/or Assistant Teacher in High School and/or Junior College from the year 2005. The Management which has appointed the petitioner in this petition is Chatrapati Shivaji Shikshan Mandal and the Junior College is Chatrapati Shivaji Junior College. They are situated at Vaduj, Taluka Khatav, District Satara. The petitioner says that on 13-10-2000, the State promulgated a scheme of appointing teachers in aided and non-aided Primary, Secondary & Higher Secondary, Junior Colleges and education schools in Maharashtra State. The scheme is titled as “Shikshan Sevak Scheme”. A copy of the scheme is at Exhibit-A to the petition. The petitioner says that on 13-6-2005, an application was made for appointment as Shikshan Sevak. The Secretary of the School Committee appointed the petitioner on a clear

vacant full-time post of Shikshan Sevak in respondent No.4 Junior College for a period of three years with effect from 13-7-2005 till 12-6-2008. The appointment is in terms of the Government Resolution, copy of which is at Exhibit-A. The appointment was made on fixed monthly remuneration. Exhibit-B is a copy of the appointment letter.

6. On 13-6-2008, the petitioner completed three years of service as Shikshan Sevak on clear vacant full-time post and had become eligible for appointment on the regular post of Assistant Teacher in the Pay Scale of Rs.9300-34800-G.P. 4600. Accordingly, respondent No.3 appointed the petitioner on the post of Assistant Teacher by the appointment letter, copy of which is at Exhibit-C.

7. The 1st respondent by a Resolution accorded sanction to the posts of Assistant Teachers for the Academic Year 2005-2006. That was on the basis of the increased staff strength. It sanctioned 21 posts of full-time Assistant Teachers in Kolhapur Division, including the post of the petitioner.

8. Thereafter, on 9-6-2011, by Exhibit-D (collectively), the 2nd respondent accorded sanction to the appointment of the petitioner as full-time Shikshan Sevak from 13-6-2005 for the Academic Years 2005-2006, 2006-2007 and 2007-2008.

9. On 21-6-2011, sanction to the appointment as full-time Assistant Teacher was accorded for the Academic Years 2008-2009, 2009-2010 and 2010-2011. Though there was a rider or condition attached, presently we are not concerned with the same. Then, the petitioner relies upon the communication, copy of which is at Exhibit-F, dated 24-6-2011. By that, the 2nd respondent informed the 4th respondent that the grant-in-aid is being distributed to the posts of full-time/part-time Assistant Teachers created during the Academic Years 2004-2005 to 2007-2008 from July, 2010 to February, 2011. On 19-10-2011 and 11-11-2011, the petitioner made representations to respondent Nos.1 and 2 pointing out that he had rendered services from the Academic Year 2005-2006 and the payment was released only from the Academic Year 2010-2011. Thus, salary of 5-years from

the date of appointment has not been paid to the petitioner. He requested for release of the salary.

10. On 12-11-2011, an information was sought by the petitioner's wife from the office of the Director of Education, Pune regarding the payment of salary of the petitioner and she was provided with the information, copy of which is at Exhibit-I.

11. Despite all these representations, salary was not released. It is in these circumstances that request is made to release the 5-years' salary, namely, from 13-6-2005 to 30-6-2010.

12. The 1st respondent issued a Government Resolution dated 17-9-2010, a reference to which had been made earlier and despite the petitioner's appointment having been approved, the non-payment of salary has caused him great prejudice.

13. The writ petition is thus restricted to this aspect. But while such a petition was moved and notice was issued by this Court to the contesting parties, no reply has been filed in Writ

Petition No.8420 of 2012. So far so good. Insofar as Writ Petition No.8418 of 2012 is concerned, a reply has been filed by the Assistant Director, Deputy Director's office, Kolhapur.

14. In that a defence has been taken that during the period 1990 to 2006-2007, the petitioner in that petition was working as a part-time teacher in the 4th respondent/Junior College and approval was granted by the 2nd respondent to the said appointment. In the year 2007-2008, the post on which the petitioner was working, became full-time and approval was granted to the post of full-time teacher in the 4th respondent/College. Besides that, it is stated that on 14-10-2011 individual approval was granted to the appointment of the petitioner as a full-time teacher with effect from 16-7-2007. However, it is asserted that the Government issued a G.R. dated 15-2-2011 whereby guidelines are given for releasing grant-in-aid during the period 2010-2011. Copy of this G.R. is annexed as Exhibit-1.

15. Apart from that, we have been also shown a copy of

the affidavit stated to have been filed in Writ Petition No.8420 of 2012 and Ms Vyas, appearing in this petition as also the other petition for the State, relies upon para 2 of this affidavit which also mentions the date of individual approvals. That is the post of, according to the deponent, full-time Shikshan Sevak. Then, it is stated that by this G.R. that the case of this petitioner also has been dealt with accordingly.

16. As heavy reliance is placed on this G.R., it would be necessary to make a detailed reference to it.

17. This G.R. refers to the financial regulations of 2010 and how the amounts in the year 2010-2011 have to be disbursed. It says that for the year 2010-2011, the Department of School Education & Sports has proposed certain heads so as to allocate funds. After referring to the account heads, what is stated is that for the year 2010-2011, the amount disbursed is subject to the terms and conditions set out therein. The first term is that the amount is allowed to be disbursed for an allocated and specified purpose. It should not be diverted for

any other expenditure. It can also not be transferred under any other account and head.

18. Then a reference is made to the expenditure to be incurred by the Department of School Education & Sports. The amounts should be utilised for payment of salaries as far as two posts for the Academic Year 2004-2005 are concerned. Thereafter, for the Academic Year 2006-2007, there is an additional sanctioned strength of 143 teachers and the amount should be expended for paying salary to these teachers and for the period 1-7-2010 to 31-3-2011. Thereafter, for the Academic Year 2007-2008, the additional sanctioned strength of 466 teachers should be the focal point and the persons appointed against these posts can be paid the wages/salaries from the allocated or earmarked amounts. This is for the Academic Year 1-7-2010 to 28-2-2011. Then there is a reference made to the students' strength and sanctioned division.

19. Mr. Patil, appearing on behalf of the petitioners, would submit that the salaries of the petitioners could not have

been withheld for there is no valid reason to do the same. He says that once the approval has been granted to the petitioners' appointments and which is individual in nature, then, so long that approval stands, there is no question of depriving the petitioners of their salary and the other legitimate benefits. The very fact that they have been denied by relying upon Clause (a) of this G.R., to which we have made a reference above, means that the power is exercised arbitrarily, unreasonably, unfairly, and the mandate of Articles 14 and 16 of the Constitution of India is thus violated. On the other hand, Ms Vyas, relying upon this affidavit submits that the Government has full authority to put an end to the issue of payment of salary to such of those teachers whose appointment does not fit-in within the process indicated in this clause. Therefore, separate individual action need not be initiated. The Government has full authority to rely on this G.R. and withhold the salaries.

20. We are not impressed by the arguments of Ms Vyas and for more than one reason. It is stated that though a sanction was granted to 466 additional posts of full-time teachers during

the year 2007-2008, the salary of the additional posts is to be given for the period 1-7-2010 to 28-2-2011 only. Since the petitioner's appointment as full-time Shikshan Sevak is with effect from 13-6-2005, the petitioner is entitled to the salary from 1-7-2010 only.

21. These arguments of the State are based on a G.R. which has nothing to do with the manner and mode of appointment or the legality and validity of the same. Once the petitioners' appointments are in accordance with law and there is an individual approval granted, then, there was no question of withholding the salary by relying upon the instant G.R.. That G.R. may curtail the budgetary allocation or direct allocation of funds to specified uses and purpose, but that will not by itself and without anything more permit or authorise the Government not to pay the salaries of the petitioners for the past five years. We are of the firm opinion that in the event the Government or the concerned Department was of the opinion that the petitioners' appointments, though approved, but for payment of salaries they should be reckoned from the date specified in this

G.R. or the entitlement to the salary is frozen in terms of what is specified in the G.R., then, they should have passed individual orders to that effect. They could not have relied upon the G.R. to withhold the salary. Eventually, they are teachers and they have to be treated with respect and dignity if it is expecting quality education. Once the procedure prescribed by law envisages appointment to be made by issuing an advertisement and appointments to permanent vacancies should be by inviting applications from eligible candidates, interviewing them and thereafter issue an appointment letter in their favour, then, that procedure is validly concluded. Further, the requirement of approved appointment has also been fulfilled in the facts and circumstances of the present case. To then visit the petitioners with adverse consequence of not releasing or withholding their salaries by limiting entitlement to salary to a specified duration only, then, the Government could not have resorted to this short-cut and by relying on the G.R.. It should have issued individual notices seeking to place reliance on the conditions in the appointment letter or letters of approval. The petitioners

should have been called upon to show cause before any adverse order is passed. There is no doubt in our mind that depriving a person of his salary and emoluments for the services rendered and particularly after a valid appointment, is indeed an adverse civil consequence. The principles of natural justice demand that such a person should be put to notice, his explanation be called for, duly considered and thereafter a drastic action of this nature be taken. Nothing of this kind has been done in the instant case.

22. Ms Vyas then submits that she has been instructed to rely upon the foot-note to the letters of approval. Firstly, the proposal seeking approvals to the individual appointments of the petitioners have been and are necessarily to be forwarded by the Management. The Management of the educational institutions/schools where the petitioners are employed having forwarded this proposal in January, 2011, were informed by a letter of 14-10-2011 that approval is granted to the petitioner in Writ Petition No.8418 of 2012 – Smt. Inamdar Vahida Makbul. She has been appointed as an Assistant Teacher. Her educational qualifications and particularly her pay scale have been indicated.

With all the details, including the pay-scale, the appointment is approved. There are terms and conditions imposed by the Education Department through the Deputy Director of Education, Kolhapur Region, Kolhapur but the foot-note, by no stretch of imagination, can affect the legality and validity of the approval. At best it could have been relied upon to make a certain assessment for payment of salaries based on receipts of funds from the public exchequer. However, this communication to the Management does not mean that the petitioners should be deprived of their salaries. Apportionment of the salary or the liability to pay the salary in terms of such apportionment is a distinct matter and that could have been dealt with after the approval by a manner or process known to law. Having not in any manner relied upon this foot-note so as to make aforesaid adjustment or apportionment, now, in the petitioners' petitions with request for release of salary, the Government or the Education Department cannot seek to deprive the petitioners of their legitimate dues by merely relying on this G.R.. It is this declaration of the legal position which allows us to turn down

this contention of Ms Vyas.

23. In the light of the above discussion, the writ petitions succeed. Rule is made absolute in each of these petitions in terms of prayer clause (b). The amounts be released in terms of our direction as expeditiously as possible and within a period of three months from the date of communication of this order. There will be no order as to costs in these petitions.

(M.S. KARNIK, J.)

(S.C. DHARMADHIKARI, J.)