

Shephali

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 703 OF 2019**

Hashmi Sayyad Muddassar Ali	...Petitioner
<i>Versus</i>	
The Union of India & Ors	...Respondents

Mr Uday Warunjikar, *with Onkar Arun Mane, for the Petitioner.*
Mr PP Kakade, GP, *with Mrs AA Purav, AGP, for the Respondent No. 1-State.*
Mr Vijay Killedar, *for Respondent Nos. 2 & 3.*
Mr Narendra Bandiwadekar, *with Mr Ashok B Tajane, for Respondent Nos. 6 & 7.*
Mr Chintamani K Bhangoji, *with Mr Hamid D Mulla, for Respondent Nos. 5 & 8.*

**CORAM: S. C. Dharmadhikari &
G. S. Patel, JJ.**
DATED: 9th September 2019

PC:-

1. In this Petition under Article 226 of the Constitution of India the relief that the Petitioner seeks is of releasing the salaries/back wages and increments from June 2003 to May 2010 and October 2010 to November 2015. Another direction is to provide the Petitioner an updated service book. Finally, a communication of the Administrative Officer, Nagar Parishad, Mangalvedha, District

Solapur dated 30th August 2018 is sought to be quashed and set aside.

2. On the previous two occasions, we heard this matter and also allowed an impleadment of the Nagar Parishad. The Nagar Parishad has been impleaded. All parties concerned are thus before this Court.

3. The Petitioner claims that he completed his B.A. and B.Ed. and thereafter was appointed as Shikshan Sevak with Respondents Nos. 6 and 7. Since then his salary has not been paid. The Petitioner received an approval to the appointment on 2nd June 2006 but even thereafter there was no proposal to release his salary in terms of the applicable scale. In 2009-10 the Petitioner was declared as a surplus teacher. On 19th November 2015 he was absorbed in the school of the Nagar Parishad Mangalvedha, District Solapur, as an Assistant Teacher. Since his absorption in Nagar Parshiad School, the Petitioner could not submit his updated service book to Administrative Officer as that was withheld by Respondents Nos. 6 and 7. By the impugned communication, the Petitioner's salary is threatened to be stopped for non-compliance with the requirement of submission of the updated service book.

4. We have heard Mr Uday Warunjikar appearing for the Petitioner. He would submit that now as an after-thought everybody seems to be raising grievances, but the Petitioner has produced ample proof to show that he is a duly qualified employee/teacher, regularly appointed and still his salaries have not been paid.

5. The first Affidavit to this Petition in reply was filed by one Ishrat Jahan A Razzak Shaikh on behalf of Respondents Nos. 6 and 7. He says in the Affidavit that the date of joining the 7th Respondent-school as mentioned by the Petitioner is correct. However the Petitioner has suppressed the fact that after joining the services in June 2006 he received salary of Rs.4000/- from the Respondents Nos. 6 and 7 and thereafter from July 2006 to November 2006 a salary in the sum of Rs.11,876/- per month was paid. The receipts in that regard have been acknowledged.

6. Thereafter from December 2006 to April 2007 without any intimation to the Respondents Nos. 6 and 7, the Petitioner remained absent. Once he has not discharged duties there is no question of paying the salaries for this period. It is true that the Petitioner's appointment was approved in May 2007. Regular pay-scales were granted from May 2007 to June 2009. The Petitioner received a salary of Rs.15,238/- and after granting approval, from July 2009 the salary has been deposited in bank account in the sum of Rs.20,566/- per month. From November 2009 to 23rd August 2010 again without intimating the Respondents Nos. 6 and 7 the Petitioner remained absent. He resumed duties on 23rd August 2010 and worked until the end of September 2010 and his salary for that period also had been forwarded through the bank account to him. The Petitioner remained absent for nearly five years from 26th October 2010 to 20th November 2015.

7. Thus this fact can be corroborated by the inspection record maintained by the Education Officer who visited the school for carrying out an inspection. The allegation that the Petitioner's

service book has been kept or withheld illegally is denied. It is contended that despite receipt of the notice the 7th Respondent had not given any reply and not handed over the service book and back wages. That is said to be factually incorrect because the notice of 25th September 2017 was replied by the 7th Respondent on 4th October 2017 and all allegations were denied. The Petitioner was called upon to furnish his original educational qualification certificates, character certificate and health certificate. They have not been provided and therefore the service book remained without being updated. The Petitioner has been repeatedly informed and yet he makes allegations against the management.

8. It is stated that in the year 2011 one anonymous complaint was received containing a newspaper cutting. That alleged that the Petitioner obtained admission for Diploma in Education course (“D.Ed.”) in Khatoon Girls and Boys Junior College of Education, Malegaon by using a false and fabricated mark list. An offence under Section 465 and 471 of Indian Penal Code was registered. This newspaper cutting is published in daily Punyanagari, Aurangabad. After receipt of this letter the 6th Respondent obtained information from this Educational Institution in Malegaon. The information that was provided was that the Petitioner took admission for the above course in this college from September 2006 till 2007 but only an attested copy of the Higher Secondary Certificate Examination was supplied. Later, this was found to be a fake mark list and therefore that admission was cancelled and the offence was registered.

9. Even when the State Secondary and Higher Secondary Education Board, Aurangabad Division Office was contacted, the

Divisional Secretary informed that the Petitioner's HSC mark list of the year March 1996 and October 1996 have been confiscated permanently and he was restrained from appearing in the examination till October 1998. It is therefore alleged that a show cause notice was forwarded to the Petitioner as to why in the light of the above developments his appointment should not be terminated. The Petitioner has not given a satisfactory reply.

10. On such allegations and with reference of a FIR, connected documents and papers with copies annexed were sent to and received by the Petitioner. It was expected that the Petitioner would respond. Indeed there is an Affidavit in Rejoinder filed on 3rd September 2019 in which the Petitioner has said that he joined service in 2003 with 7th Respondent as a Shikshan Sevak on honorarium basis of Rs. 4000/- per month. The Petitioner alleges that 6th Respondent has prepared a false and bogus salary book. The salary was said to be paid in cash and a bogus signature of the Petitioner with revenue stamp was relied upon. The Petitioner was not allowed to join the school after the period namely December 2006 to April 2007. It is incorrect to allege that the Petitioner remained absent. There were five other teachers similarly placed. In the meanwhile in the year 2009-2010 the Petitioner was declared as surplus and the Petitioner pursued this grievance, though the Petitioner was thereafter absorbed in the Mangalvedha Nagar Parishad school. The other allegations are therefore denied.

11. We have also carefully perused the Sur-Rejoinder Affidavit filed on behalf of the Respondents Nos. 6 and 7, copies of which were duly served.

12. In the backdrop of all this and when there are serious allegations and counter-allegations, we brought to the notice of the State Government that it will not be in the public interest, given that the school where the Petitioner worked is now making such serious allegations, that he should continue to draw benefits including salaries as per applicable pay-scales from another public body, namely, the Nagar Parishad Taluka Mangalvedha, District Solapur. Even that Nagar Parishad had some doubts during the course of arguments and could not say for certain whether the documents it demanded had been supplied to it. We do not think that the Chief Executive Officer, Zilla Parishad, District Solapur or the Education Officer (Primary) of that Zilla Parishad should now get into all these allegations. Since the allegations are that aided schools have not paid the Petitioner's back wages but there is a doubt with regard to his appointment itself, we brought it to the notice of parties that in the interest of justice, and as an exception, it would be appropriate if this complaint is made over to the Secretary in the Department of School Education and Sports to consider the matter all over again. He must direct parties to remain present before him, produce the relevant documents, consider their oral submissions and should then pass a reasoned order. We do not wish to express any opinion given the factual nature of the dispute. We do not think that public bodies should be dragged into litigation any further. If a public body, despite knowing about the pendency of the criminal prosecution, has still continue to indulge the Petitioner, including by allowing him to report for duties and released his salaries, then equally its conduct would be blameworthy. To find out as to who was responsible for the induction of such an employee as the Petitioner

in the services and whether the Petitioner's grievances are genuine it would be better if this Secretary takes a final call.

13. All parties, including Shri Warunjikar appearing for the Petitioner, agree to appear before the Secretary and to have the matter decided by him.

14. Accordingly this Writ Petition is disposed with a direction that parties to this Writ Petition shall produce the relevant documents whenever called for by the Secretary as also to furnish their written explanations if they so desire. Should any of them seek an opportunity of making oral submissions let the Secretary grant that as well. At the end of all this he should pass a reasoned order and serve a copy of the same on all parties. We expect him to conclude this exercise as expeditiously as possible and in any event before the 30th November 2019. We do not express any opinion on the rival contentions particularly because of the seriousness of the allegations against the Petitioner.

15. The Petition is disposed of in these terms. No costs.

(S. C. DHARMADHIKARI, J)

(G. S. PATEL, J)