

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

WRIT PETITION NO. 808 OF 2017

1. Vitthal Damodhar Mhaske
Age: 44 years, Occu.: Service,
R/o House No.809, Samata Chowk,
Mala Galli, Bhingar, Ahmednagar,
Tq. & Dist. Ahmednagar
2. Shaikh Tajmohammad Ayub
Age: 48 years, Occu.: Service,
R/o Mukund Nagar, Ahmednagar,
Tq. & Dist. Ahmednagar
3. Rekha Arun Bhingardive
Age: 32 years, Occu.: Service,
R/o Nityaseva Housing Society,
Vasant Tekadi, Sevedi, Ahmednagar,
Tq. & Dist. Ahmednagar
4. Rinaz Mohboob Shaikh
Age: 28 years, Occu.: Service,
R/o Shital Housing Society,
Room No.B-9, Govindpura, Ahmednagar,
Tq. & Dist. Ahmednagar
5. Shabana Ismile Sayyad
Age: 39 years, Occu. Service,
R/o Plot No.16/A, Ekra School Road,
Govindpura, Ahmednagar,
Tq. & Dist. Ahmednagar
6. Mukta Raghunath Wabale
Age: 42 years, Occu.: Service,
R/o Jeur (Bayajabai),
Tq. & Dist. Ahmednagar
7. Shobha Babasaheb Bhor
Age: 39 years, Occu.: Service,
R/o Housing No. 463, :Pipeline Hudco,
Savedi, Ahmednagar,
Tq. & Dist. Ahmednagar

8. Sajid Lalasaheb Pathan
Age: 26 years, Occu.: Service,
R/o Ukkadgaon,
Tq. & Dist. Ahmednagar
9. Shahjan Fakir Shaikh
Age: 44 years, Occu.: Service,
R/o Alangir, Kawade Nagar,
Near Water Tank, Bhingar, Ahmednagar,
Tq. & Dist. Ahmednagar

..PETITIONERS

VERSUS

1. State of Maharashtra
Through its Secretary
School Education and Sport Department,
Mantralaya, Mumbai
2. The Education Officer (Secondary),
Zilla Parishad, Ahmednagar
- 2A. The Education Officer (Primary)
Zilla Parishad, Ahmednagar
3. Padmashri Dr. Vitthalrao Vikhe Patil
Madhyamik Vidyalaya, Mukundnagar,
Ahmednagar Tq. & Dist. Ahmednagar
Through its Headmaster
4. Padmashri Dr. Vitthalrao Vikhe Patil Foundation
Viladghat, Ahmednagar,
Tq. & Dist. Ahmednagar
Through its Secretary
5. Shrigonda Taluka Krishi Seva Sangh
Chikhli, Tq. Shrigonda, Dist. Ahmednagar
Through its Secretary
6. Samta Bahuuddeshiya Sanstha
Mukundnagar, Ahmednagar,
Tq. & Dist. Ahmednagar
Through its President
Shaikh Auub Chand
Age: Major, Occu.: Business,

R/o Fakirwada, Darga-Dayara, Ahmednagar,
Tq. & Dist. Ahmednagar

..RESPONDENTS

....
Mr. S.S. Jadhavar, Advocate for petitioners
Mr. S.S. Dande, A.G.P. for respondent nos. 1 and 2
Mr. S.D. Katkar, Advocate for respondent no.3
Mr. A.V. Hon, Advocate for respondent no.4
Mr. R.B. Temak, Advocate for respondent no.5
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**CORAM : P.B. VARALE AND
R.G. AVACHAT, JJ.
DATED : 28th JANUARY, 2020**

PER COURT :

Heard Mr. Jadhavar, learned Counsel for the petitioners, Mr. Dande, learned A.G.P. for Respondent Nos. 1 and 2, Mr. Katkar, learned Counsel for Respondent No.3, Mr. Hon, learned Counsel for Respondent No.4 and Mr. Temak, learned Counsel for Respondent No.5. None appears for Respondent No.6 - Samta Bahuuddeshiya Sanstha, though by order dated 25th November, 2019 the said institute was permitted to be added as party respondent and notice issued to the said institute is duly served.

2. The petitioners are before this Court with principal prayers i.e. prayer clauses (B), (B1), (C), (C1) and (C2). Prayer clauses (C3) and (C4) are the reiterations of prayer clauses (C1) and (C2). It is the specific submission of Mr. Jadhavar, learned Counsel for the petitioners that the petitioners were appointed as Assistant Teachers in Respondent No.3 – school and were possessing requisite qualifications. Till date of filing of the petition,

no appointment orders were issued in favour of the petitioners, nor salary is paid. Mr. Jadhavar submitted that though there is no order issued in favour of the petitioners, there is sufficient material to show that the petitioners were working in Respondent No.3 – school for a considerable length of period and the said material is placed on record collectively at Exhibit ‘A’. Our attention was invited to the various certificates issued in favour of the petitioners e.g. there is certificate placed on record dated 07th June, 2010 in favour of Petitioner No.1 stating that he is working in Respondent No.3 – school as an Assistant Teacher from June 2001 and is teaching subjects viz. English and Physical Education. Perusal of the certificate shows that this certificate refers to the teaching skill of Petitioner No.1 and the statement to that effect is that because of the teaching skill of Petitioner No.1, the result of the school in S.S.C. board examination is satisfactory and then it also refers to contribution of Petitioner No.1 in the sports field. It is stated that under the guidance of Petitioner No.1, two students of the school participated in the state level fencing competition. Then there is another certificate issued through Yashvantrao Chavan Vikas Prashasan Prabhodhini, Pune (for short “Yashada”) to state that Petitioner No.1 participated in a training programme conducted by Yashada.

3. An objection was raised by Mr. Hon, learned Counsel to these certificates referring to the affidavit-in-reply filed on behalf of Respondent

Nos. 3 and 4. It was submitted by Mr. Hon that the first certificate dated 07th June, 2010 is issued by the Headmaster and the same is not genuine certificate but is the fabricated document. Now, though there is objection to the said certificate, Respondent Nos. 3 and 4 are silent on the other certificates which are issued by Yashada and Vice-Principal of one New Arts, Commerce and Science College, Ahmednagar, wherein it is stated that Petitioner No.1, who is from Respondent No.3 - school, attended training programmes held on 19th January, 2013, 02nd February, 2013, 02nd March, 2013, 09th March, 2013 and 16th March, 2013.

4. There is another document placed on record by the petitioners which assumes an importance and this is in the form of the intimation to Petitioner No.1 through Chief Conductor, S.S.C. Examination that Petitioner No.1 is appointed as Invigilator for S.S.C. board examinations for March 2011, March 2012, March 2013, March 2014, March 2015 and March 2016. It can safely be said that Petitioner No.1 was discharging his duties as an Invigilator for S.S.C. board examination for consecutively five years as a teacher of Respondent No.3 – school and there is nothing placed on record on behalf of Respondent Nos. 3 and 4 to counter these certificates which are issued by the competent authority of S.S.C. Board.

5. Then there are other documents in respect of the other petitioners. It may not be necessary for us to refer to all these documents. Suffice it to

say that the other petitioners have also attended various training programmes and have worked as Invigilators for S.S.C. board examination for four to five years. We may state that there is another document i.e. certificate issued in favour of Petitioner No.9 – Shahjan Fakir Shaikh through the signatories viz. the Divisional Deputy Director of Education, Mumbai Division, the Director, State Science Education Institute, Nagpur and the Director, Maharashtra Rajya Shaikshanik Sanshodhan Va Prashikshan Parishad, Pune to state that Petitioner No.9, who is a teacher attached to Respondent No.3 – school, provided guidance to one student – Shaikh Adnan Ayub, who was the participant in the science examination conducted under Inspire Award Scheme for the year 2011-12. There are other certificates also placed on record in favour of Petitioner No.9. We may refer to an interesting feature and i.e. a communication addressed to Petitioner No.9 through a publisher dated 04th January, 2007. This communication shows that at the relevant time Petitioner No.9 was working in Respondent No.3 – school and was prompt enough to refer to an error occurred in respect of national flag published in the project book for standard 5th and 6th. The publisher states in the communication that this was an inadvertent error and assures Petitioner No.9 that in the next edition this mistake would be rectified. This fact referred by us only to show that Petitioner No.9 was not only discharging duties as teacher, but he was also sincere enough to show the mistakes occurred in a project book. These are the documents placed on record to

support the submissions that the petitioners were continuously working in Respondent No.3 – school. Then it is submitted by Mr. Jadhavar, learned Counsel that though the petitioners were working with Respondent No.3 – school for considerable period, no proposal was submitted to the Education Officer by Respondent No.3 - school for approval and no salary was paid to the petitioners. Then it was submitted before this Court by Mr. Jadhavar that in spite of repeated requests to Respondent Nos. 3 and 4 to submit the proposal and pay salary, no steps were taken and Respondent Nos. 3 and 4 were extracting works from these petitioners without paying any remuneration.

6. In response to the notice issued by this Court, affidavit-in-reply is filed by Respondent No.4 – trust on 03rd August, 2018. It would be necessary for this Court to refer certain statements made in the said affidavit-in-reply. A statement is made therein that Respondent No.4 - trust submitted proposal for starting primary and secondary school in the year 2000-01 and was permitted to run the school on permanent no grant basis. Then it is stated that in the said academic year, Respondent No.4 – trust could not run the school as there were inadequate number of students and trust was not having its own land/building to run the said school. Respondent No.4 – trust has decided to appoint teachers on clock hour basis on honorarium and to run the school.

7. On the contrary of these statements, Mr. Hon vehemently submitted before this Court that the petitioners were never appointed as permanent employees but they were working on clock hour basis. When the query was raised to learned Counsel for Respondent No.4 – trust as to this stand that the petitioners were appointed on clock hour basis, whether any supportive material is placed on record, learned Counsel prayed for sometime to place on record certain documents in respect of this statement. We refused to grant time to the learned Counsel for the reason that this reply is filed in the year 2018. The petition is pending in this Court for nearly a year after filing of reply and if Respondent No.4 – trust on its own will and wish made a statement in the affidavit-in-reply that these petitioners were appointed on clock hour basis, it was the duty of Respondent No.4 – trust to place on record that supportive documents and Respondent No.4 – trust now cannot take a leisure time to fill up the lacuna.

8. Now, there is another statement made in the affidavit-in-reply that in year 2003 Respondent No.6 – Samta Bahuuddeshiya Sanstha submitted a proposal to Respondent No.4 - trust for transfer of Respondent No.3 – school to Respondent No.6 - society. The proposal was placed before the trustee committee and both the trusts entered into an agreement and to that agreement all teachers had given consent letter. The copies of the proposal, agreement and consent letters are placed on record. Thereafter another

statement is made in the affidavit-in-reply that from the year 2004-05 Respondent No.4 - trust is not concerned with the said school and all the dealings regarding admission of students, collection of fees, etc. are being done by Respondent No.6 – society and also it is their liability to pay salary to the teachers and to submit the proposal to Zilla Parishad for their approval.

9. We must refer now to the interesting aspect of the matter and this reflects in our order dated 01st November, 2018. In paragraph no.3, we have referred to the affidavit-in-reply filed on behalf of the Education Officer (Secondary), Zilla Parishad, Ahmednagar. Then, in paragraph no.4 of the said order a reference is made to communication dated 19th April, 2018. This is the communication whereby Respondent No.4 – trust was directed to remove certain deficiencies and then another feature emerges from the affidavit-in-reply filed on behalf of Respondent No.2 - Education Officer (Secondary), Zilla Parishad, Ahmednagar by Mr. L.S. Pole dated 30th October, 2018. In this affidavit-in-reply at paragraph no.5, a reference is made to communication dated 19th April, 2018 forwarded to the Deputy Director of Education, whereby Respondent No.4 – trust makes a reference to the inability of Respondent No.6 – society for removal of deficiencies and in turn Respondent No.4 – trust seeks withdrawal of the proposal to transfer the school to Respondent No.6 - society on its own will and wish. Thus, two facts emerge from this communication. Firstly, there was no permission granted to

Respondent No.4 – trust by the Education Department to transfer Respondent No.3 - school in favour of Respondent No.6 – society. On the contrary, there was a communication for removal of certain deficiencies. Secondly, Respondent No.4 – trust at its own will and wish withdrew the proposal for transfer of Respondent No.3 - school to Respondent No.6 – society. So, only conclusion which can be drawn is Respondent No. 6 – society never took over Respondent No.3 - school for any purpose and it was only at the stage of some agreement. Even though the petitioners gave their consent for transfer of Respondent No.3 - school, the transfer was never effected and it was only a proposal on paper initially and subsequently withdrawn by Respondent No.4 – trust on its own will and wish.

10. In our order dated 01st November, 2018, we have referred to another feature of the matter i.e. introduction of a new player in the field i.e. Respondent No.5 - Shrigonda Taluka Krushi Seva Sangh, Chikhali. Now it would be useful for our purpose to refer to the reply filed on behalf of Respondent No.5 - Sangh. The president of Respondent No.5 - Sangh in his affidavit-in-reply referred to Government Resolution dated 20th June, 2019. Copy of the same is placed on record at Exhibit R-1. Perusal of this document shows that Respondent No.5 – Sangh submitted proposal sometime in the year 2018 to the State and by the said government resolution, State Government decided the proposal in favour of Respondent No.5 - Sangh,

subject to certain conditions. Condition No.3 of the resolution, in our opinion, is a reference process adopted by State. Condition No.3 states that the permission is already granted by State and it is now for Respondent No.4 – trust to submit the assurance in the form of consent of the teaching and non-teaching employees. Then by clause 2 of the decision, the Divisional Deputy Director of Education, Pune Region, Pune is directed to examine the compliance of all the necessary conditions and submit action taken report to the State Government within six weeks. Thus, there are other communication dated 04th July, 2019 addressed to Respondent No.2 - Education Officer (Secondary), Zilla Parishad, Ahmednagar and communication dated 06th July, 2019 to Respondent No.4 – trust, President of Respondent No.5 – Sangh and to Headmaster of Respondent No.3 – school. It was then submitted by learned Counsel for Respondent No.5 – Sangh that in view of the government notification, Respondent No.5 – Sangh forwarded communication to the petitioners so as to submit the communication to Respondent No.4 – trust to submit the documents of all its employees as per the list available with Respondent No.5 - Sangh. It was further submitted that the petitioners have not submitted the necessary documents to Respondent No.5 - Sangh. Our attention was invited to the communication dated 13th August, 2019 placed on record at Exhibit R-4. Perusal of this document shows that it is the stand taken by the petitioners that all the documents are already submitted to Respondent No.4 – trust and as the

petition filed by these petitioners is pending in this Court, the petitioners are unable to forward any reply communication to Respondent No.5 – Sangh. These are the necessary facts.

11. In opposition to the petition, Mr. Hon raised two objections. Firstly, it was the submission that Respondent No.3 – school, wherein the petitioners are working, is transferred to Respondent No.6 – society and now it is the burden of Respondent No.6 – society to pay the amount claimed as due and payable to the petitioners.

12. Now, there is a clear fallacy in this submission. At the cost of repetition, we state that the documents placed on record only show that there was an agreement between Respondent No.4 – trust and Respondent No.6 – society. But subsequently, Respondent No.6 – society expressed its inability to remove the deficiencies and in turn Respondent No.4 – trust informed the education authorities that at its own will and wish Respondent No.4 – trust is withdrawing the proposal for transfer. Then, again at the cost of repetition we state that it was an attempt of transfer only on papers and neither any relief is granted nor any effective order is passed by State for transfer. It was the submission advanced by Mr. Hon that the petitioners failed to place on record any document to submit that these petitioners were appointed in 2001 and were continued in service for considerable period of length. Again at the cost of repetition we state that the petitioners have placed on record a bunch

of documents in the form of certificates issued right from the year 2010 onwards till the year 2015 and more particularly the certificates issued by the competent authorities of S.S.C. board, Yashada and the certificate issued under the project of Inspire Award Scheme. On the contrary, though Respondent No.4 made a statement in the affidavit-in-reply that these petitioners were appointed on clock hour basis, there is no single document placed on record in support of this stand. It was the other submission of Mr. Hon that Respondent No.6 – society be called upon to place on record the documents in respect of transfer of Respondent No.3 – school. As stated above, in spite of granting an opportunity by issuing notice to Respondent No.6 – society and the notice being duly served, the choice exercised by Respondent No.6 – society is of not appearing before this Court either personally or by engaging of any counsel by its choice. If it is the choice of Respondent No.6 – society not to contest the petition, this Court is not expected to run behind the party only because the another respondent calls upon the party to support its stand.

13. Considering all these aspects, we are of the clear opinion that the petitioners made out a case for indulgence of this Court in the matter. Though the petitioners have prayed for payment of unpaid salary from the date of their appointment sometime in 2001, we are unable to issue such directions for the simple reason that such claim would be belated and any

claim for monetary benefits can be entertained by this Court preceding three years of the petition and not for preceding ten or fifteen years. It is also not possible for this Court to issue directions regarding salary for preceding last ten or fifteen years as there is no exercise of quantification of the amount, qua entitlement of the petitioners and we deem it appropriate to issue directions in this regard to the Education Officer (Primary) or (Secondary) to verify the claim of these petitioners from three years preceding the present writ petition, qua the post on which the petitioners were working. The Education Officer (Primary) or (Secondary), on completion of this exercise, to issue appropriate orders to Respondent No.4 – trust for recovery of this amount and in turn disburse the amount to these petitioners. The entire exercise as directed by this Court is to be completed by the Education Officer (Primary) or (Secondary) within twelve weeks from the date of receipt of this order.

14. A statement is made by Mr. Jadhavar, learned Counsel for the petitioners that in view of Government Resolution dated 20th June, 2019, the petitioners are continued and now Respondent No.3 – school is handed over to Respondent No.5 – Sangh. As such, Respondent No.5 – Sangh be directed to pay regular salary to these petitioners from July 2019. It was the counter submission made before this Court by Respondent No.5 – Sangh that the petitioners have not joined school nor they are attending the school from July 2019.

15. We are not inclined to dwell upon this disputed facts. As such, we direct the Education Officer (Primary) and (Secondary) to call upon the petitioners and Respondent No.5 – Sangh for hearing on a fix date. On such fixed date, the petitioners and Respondent No.5 – Sangh to attend the office of Education Officer (Primary) or (Secondary) and the petitioners and Respondent No.5 – Sangh may also submit the documents, if they wish, to the Education Officer (Primary) or (Secondary). On hearing of the parties and on considering the necessary documents, the Education Officer (Primary) and (Secondary) to pass appropriate order in respect of payment of salary of these petitioners from July 2019, as early as possible and not later than eight weeks therefrom.

16. Mr. Hon, at this stage, reiterates his submissions that the petitioners have not worked with Respondent No.4 – trust in Respondent No.3 – school post year 2004, as such, Respondent No.4 – trust may not be faced with the burden of payment of salary of the petitioners on undertaking exercise by the Education Officer (Primary) or (Secondary).

17. We are unable to accept the submissions of Mr. Hon. It is not necessary for us again to reiterate our observations which are already referred to in earlier part of our order. It was the submission that this Court directed Respondent No.4 – trust to deposit amount of Rs.1 lakh to show

bonafides and in view of disposal of the petition, the amount deposited by Respondent No.4 – trust be remitted back to Respondent No.4. We are unable to accept this submission because deposit of amount of Rs.1 lakh was on the backdrop of the facts referred in our order in paragraph nos. 5 and 6. Accordingly, we permit each of the petitioners to withdraw the amount of Rs.10,000/- out of the amount of Rs.1 lakh deposited in this Court by Respondent No.4 – trust i.e. in total Rs.90,000/- and remaining amount of Rs.10,000/- be paid back to Respondent No.4 – trust. We further make it clear that while undertaking the exercise of quantification of disbursement of amount to the petitioners, the Education Officer (Primary) and (Secondary) to consider this aspect of payment of Rs.10,000/- to each petitioner and then accordingly satisfy the respective claim of the petitioners. We further direct that after completing the exercise as directed by this Court, in the period stipulated, Respondent Nos. 3 and 5 to forward the proposal of the petitioners to the office of the Education Officer (Primary) or (Secondary), as the case may be, and on receipt of such proposal, Education Officer (Primary) and (Secondary) to take decision as early as possible. Writ Petition is disposed of accordingly.

(R.G. AVACHAT, J.)

(P.B. VARALE, J.)

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