

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (S) No. 4676 of 2018**

Smt. Sonali Mukharjee W/o Shri Mahesh Mukharjee, Occupation- Service, Presently Posted As- Assistant Teacher, Primary School, Guru Nanak Primary School, Mayapur, Ambikapur, District- Surguja, Chhattisgarh

---- Petitioner

Versus

1. State Of Chhattisgarh Through The Secretary, Department Of School Education, New Mantralaya, New Raipur, Chhattisgarh
2. The Collector, District- Surguja, Chhattisgarh
3. The District Education Officer, District- Surguja, Chhattisgarh
4. The Head Master, Primary School, Guru Nanak Primary School, Mayapur, Ambikapur, District- Surguja, Chhattisgarh

---- Respondents

For Petitioners	:	Mr. Rahul Tamaskar, Advocate
For State	:	Mr. Amit Buxy, P.L.

Hon'ble Shri Justice P. Sam Koshy**Order On Board****12.03.2021**

1. The challenge in the present writ petition is to the order Annexure P-1 dated 30.05.2017 whereby the claim of the petitioner for salary for 27 months stands rejected.
2. It is the second round of litigation. The earlier round of litigation was WPS 1247/2017 which stood disposed of on 01.05.2017. It would be relevant at this juncture to take note of the operative part of the order passed by this Court in WPS 1247/2017 which is reproduced hereinunder:

“Considering the entire facts situation of the case, the writ petition is disposed of with direction that in the event, the petitioner prefers fresh representation before the respondent no.1 within a period of one month from today, the said respondent shall consider and decide the petitioner’s representation claiming payment of salary for 27 months, in accordance with law, by a reasoned and speaking order, at the earliest, preferably within a period of 6 weeks from the date of submission of representation.”

3. Subsequent to the disposal of the said writ petition, the claim of the petitioner was duly considered by the authorities concerned under the State Government and the impugned order Annexure P-1 has been passed on 30.05.2017.
4. The facts of the case in brief are that the petitioner herein was appointed as a Shiksha Karmi Grade-III in the year 2010 by Mahila Mandal Bal Mandir, Ambikapur. The said Mahila Mandal Bal Mandir, Ambikapur was a private establishment with 100% grant in aid provided by the State Government in respect of the sanctioned strength. It is said that the school got closed down w.e.f. May, 2013. Subsequent to the closure of the establishment, the State authorities also did not take any step for accommodating/adjusting the teaching staffs of the closed school to any other school under the respondents which had led to the filing of the first round of litigation i.e. WPS No. 1247/2017 which got disposed of on 01.05.2017.
5. Before the impugned order Annexure P-1 dated 30.05.2017 was passed, the respondent authorities had passed an order on 28.06.2014 asking the petitioner to submit all relevant documents in respect of her service rendered at Mahila Mandal Bal Mandir, Ambikapur, NOC of the petitioner was also sought for accommodating her at a different school.

Pursuant to the correspondence dated 28.06.2014, the petitioner vide Annexure P-5 gave her consent following which on 18.08.2015 the service of the petitioner was absorbed to Guru Nanak Primary School, Ambikapur as Shiksha Karmi Grade-III. A formal order of absorption was passed by the District Education Officer on 24.08.2015 vide Annexure P-6 and since then the petitioner has been discharging her duties at Guru Nanak Primary School, Ambikapur.

6. The dispute now left is the salary for the intervening period of about 27 months from the time the school where the petitioner earlier was appointed got closed down till the petitioner was subsequently absorbed to the school at Guru Nanak Primary School, Ambikapur.
7. The contention of the counsel for the petitioner is that the petitioner cannot be denied the salary for the intervening period of 27 months for the reason that there is no fault on the part of the petitioner and that the petitioner was never unwilling to discharge her duties as Shiksha Karmi. According to the petitioner, even on closure of the said school it was the duty of the State authorities to ensure that the petitioner is accommodated promptly elsewhere. The further contention of the petitioner is that since the school was closed without proper sanction and approval of the authorities concerned, the Govt. should have continued releasing of the grant in aid to the school authorities ensuring that the teachers whose salary was being paid from the government aid should not be stopped.
8. Counsel for the petitioner referred to Rule 8 of the Chhattisgarh Ashaskiya Shikshan Sanstha (Adhyapakon Tatha Anya Karmachariyon Ki Bharti) Niyam, 1979 whereby the provisions of law, according to the petitioner, required that the State authorities should have taken prompt

steps in ensuring that the teachers of the related schools are not put to loss on account of the closure of the school leading to the termination of their services.

9. State counsel, on the other hand, opposing the petition, submits that the present writ petition has been preferred seeking relief only from the state authorities and also from the present school where the petitioner has been working after being absorbed in the year 2015. In fact, any claim, if any, of the petitioner, should have been made against the school where she was earlier granted appointment i.e. Mahila Mandal Bal Mandir, Ambikapur which has not deliberately been made a party to the present writ petition.
10. State counsel submits that admittedly Mahila Mandal Bal Mandir, Ambikapur was a private aided institution and that all the appointments etc. were made by the private establishment run by the School Management Committee in accordance to the regulations governing the field and the government instructions issued from time to time. As such the petitioner was in fact an employee directly under the Mahila Mandal Bal Mandir, Ambikapur and not under the State Govt. except for the grant in aid provided by the State. Therefore, any relief which the petitioner could claim is only against the said private school.
11. It was the further contention of the state counsel that from the admitted factual matrix of the pleadings it is evident that beyond May, 2013, the petitioner has not discharged her duties as Shiksha Karmi nor has she undertaken any classes and that the school where the petitioner was appointed was closed beyond May, 2013. According to the state counsel, when the school/establishment itself was closed, the Govt. could not be compelled to release salary for the establishment

which stood closed. As regards the government obligation, the State Govt. after due consideration of the eligibility and entitlement and after all the required formalities, the petitioner finally was absorbed under the respondent no.4 vide order dated 24.08.2015 and since then the petitioner has been discharging her duties under the respondent no.4 and the Govt. also has been paying the aid to the respondent no.4 inclusive of the salary payable to the petitioner under the respondent no.4. Thus no relief as can be claimed by the petitioner against the State.

12. Having heard the contentions put forth on either side and on perusal of the record what is culled out from the submissions and pleadings of the either side is that the petitioner undoubtedly was appointed by a private educational institution namely Mahila Mandal Bal Mandir, Ambikapur. The said school was receiving 100% grant in aid. The petitioner was working as a Shiksha Karmi Grade-III in the said institution which stood closed from May, 2013. The petitioner had filed a writ petition i.e. WPS No. 1247/2017 which got disposed of on 01.05.2017 with a direction to the state authorities to consider the claim of the petitioner for payment of salary for 27 months. The state authorities, on due verification of facts, vide order dated 30.05.2017 have rejected the claim of the petitioner considering the fact that the petitioner was in fact an employee of a private establishment receiving aid from the Govt. and the aid was supposed to be released as long as the establishment where the petitioner was appointed was functional/operational. The moment the establishment became defunct, the question of further releasing of grant in aid does not arise and the same was stopped.

13. Undisputedly, the petitioner had not discharged her duties during the intervening period from May, 2013 to August, 2015 when she was absorbed under the services of the respondent no.4. Since the petitioner has not discharged any work during the intervening period, the doctrine of "No Work No Pay" would come to play.
14. Moreover, the closure of Mahila Mandal Bal Mandir, Ambikapur is not under challenge either in this writ petition or in any other writ petition nor has it been questioned before any authorities including the state authorities. In the absence of which, the services of the petitioner would stand automatically discontinued the moment the private school i.e. Mahila Mandal Bal Mandir, Ambikapur stood closed by the said School Management Committee.
15. It is only after the closure of that school that the petitioner had approached the state authorities to ensure that she is accommodated in some other place which the State authorities have in due course of time examined and with the consent of the respondent no.4 the petitioner was absorbed under the services of the respondent no.4 and as such the obligation/responsibility of the state authorities stands discharged. However, since the grant in aid was being provided by the State authorities to Mahila Mandal Bal Mandir, Ambikapur as long as the school was functional, the state authorities would not be responsible for the payment of salary for the period that the school lies closed or for the intervening period till the staffs of the closed school are accommodated to a different establishment. Under the circumstances, this Court does not find any strong case made out calling for an interference with the impugned order Annexure P-1.
16. As regards the judgment of Madhya Pradesh High Court in the

case of Mohammad Salim Khan vs. School Education Department in WP 413/2017 decided along with other writ petitions on 15.03.2018, this Court is of the opinion that the principle laid down in the said judgment would not be applicable in the present case for the reason that in the said case there was a specific order for stopping of grant in aid by the District Education Officer leading to the non releasing of salary to the petitioners therein, where the school was operational but the services of the petitioners were discontinued unlike the present case where the school itself stood closed and as a consequence, the services of the petitioner stood discontinued. Thus, the said judgment is quite distinguishable on facts itself.

- 17.** Thus, the present writ petition being devoid of merits deserves to be and is accordingly dismissed.

**Sd/-
P. Sam Koshy
Judge**