

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

**WRIT PETITION NO.1288 OF 2020
PANDHARINATH MURLIDHAR SHINDE AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA THROUGH PRINCIPAL
SECRETARY AND OTHERS**

**WITH
CIVIL APPLICATION NO.11559 OF 2021
IN WP/1288/2020
SANTOSH SAHEBRAO THORAT
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS**

**WITH
CIVIL APPLICATION NO.11904 OF 2021
IN WP/1288/2020
SANT JANABAI MAHILA VIKAS MANDAL
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS**

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Advocate for the Petitioners : Shri Dhengle Babasaheb A
AGP for Respondents 1 to 3 : Shri S.B. Yawalkar
Advocate for Respondent 5 : Shri T.J. Poul
Advocate for the Applicant in CA 11559/2021 : Shri V.V.
Bhavthankar
Advocate for the Applicant in CA 11904/2021 : Shri Vitthal G.
Salgare
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**CORAM : RAVINDRA V. GHUGE
&
S.G. MEHARE, JJ.**

DATE :- 29th October, 2021

Per Court :-

1. By this petition, the petitioners, who claim to be the

teachers in the Swami Parmanandgiriji Maharaj Dnyanmandir Gurukul Madhyamik Vidyalaya, Padegaon, have put forth prayer clause B as under :-

“B) By issuing Writ, Order or Appropriate directions the respondent No.3 and 4 may be directed to release the payment of dues of salaries of the petitioners w.e.f. May, 2019 as per bills submitted by the Head Master, Swami Parmanandgiriji Maharaj Dnyanmandir Gurukul Madhyamik Vidyalaya, Padegaon, forthwith and also issue the direction to pay the monthly salary of the petitioners continuously for further period.”

2. We have considered the submissions of the learned counsel for the respective sides and with their assistance, we have perused the voluminous paper book.

3. Civil Application No.11904/2021 for intervention has been filed by Sant Janabai Mahila Vikas Mandal, Aurangabad which claims to be operating Swami Parmanandgiriji Maharaj Dnyan Mandir Gurukul Madhyumik Vidyalaya, Palphata, Taluka Phulambri, District Aurangabad.

4. The above stated school was transferred by the Government on 10.02.2014 along with the staff and students from Padegaon to Palphata, Taluka Phulambri under the Management of Respondent No.5/Jai Kisan Shikshan Prasarak

Mandal, Aurangabad. Pursuant to the said order, the school was shifted with teachers, non teaching staff and students to Palphata and the school was operated till 09.07.2019 when the Government cancelled the said transfer order dated 10.02.2014 and directed the return of the school from Palphata to Padegaon. The intervenor applicant Management/ Sant Janabai Mahila Vikas Mandal, which was operating the school at Palphata from 10.02.2014, preferred Writ Petition No.9990/2019 challenging the cancellation of transfer order dated 09.07.2019. This Court, by order dated 13.08.2019, stayed the cancellation order dated 09.07.2019. Needless to state, the school should have, therefore, continued at Palphata in view of the order of the High Court.

5. This petition filed by the petitioners (teaching and non teaching staff members) is for seeking payment of salary for the period May, 2019 onwards. They contend that the Headmaster is still working in the school at Padegaon and has forward the bills to the Education Officer. Respondent No.3/ Education Officer is not sanctioning the bills on the ground that the school should have been conducted at Palphata in view of the order of this Court dated 13.08.2019. The intervenor applicant / Sant Janabai Mahila Vikas Mandal, which is the management at

Palphata contends that the Headmaster has been terminated on 21.01.2019 and therefore, even after the purported transfer of the school to Padegaon, the said Headmaster could not have officiated in the said capacity.

6. It is submitted by the petitioners that the quarrel between the Management of respondent No.5/Jaikisan Shikshan Prasarak Mandal at Padegaon and Sant Janabai Mahila Vikas Mandal at Palphata has sandwiched the petitioners and they are unable to draw their salaries from May, 2019 onwards, though after performing their duties for about two years and five months.

7. We find from the above narrated facts that the case has become complicated only on account of the inaction of the Education Officer (Secondary), Zilla Parishad, Aurangabad, who was incharge from August, 2019. The Education Officer since August, 2019 was Shri Bhausahab Bhikanrao Chavan. It does not call for any debate that the order of cancellation of the earlier transfer order dated 10.02.2014, by the subsequent order dated 09.07.2019, was stayed by this Court on 13.08.2019 and that would revive and restore the order dated 10.02.2014. As such, the school should have continued to function at Palphata in view of the orders of the High Court. The management of respondent

No.5/ Jaikisan Shikshan Prasarak Mandal had no reason to hijack the school and retain it at Padegaon. It is contended before us that the said school is still functioning at Padegaon.

8. Since we noticed discrepancies in this matter, we had directed the Education Officer (Secondary) vide our order dated 11.02.2021 to get the latest information about the functioning of the school and it's staff. Vide order dated 22.10.2021, we recorded the statement of the Education Officer that the school is operating at Padegaon under the management of respondent No.5. The intervenor applicant/ Management contends that this report prepared by the Deputy Education Officer is false and is a fraud played on the Court.

9. In view of the above, we called upon the learned AGP to address us on this aspect. We find it glaring that the Education Officer did not move from his chair to come to the Court to give proper instructions to the learned AGP. He sent the Deputy Education Officer. We, therefore, granted a pass-over and directed the learned AGP to ensure that the Education Officer would remain present in the Court. The present Education Officer is said to be Shri Madhukar Kisanrao Deshmukh. Earlier Education Officer Shri Bhausahab Bhikanrao Chavan is now said

to be the Assistant Director of Education, Aurangabad division.

10. It is quite apparent before us that inspite of the order of this Court dated 11.02.2021, the Education Officer did not visit the premises to check whether, the school is functioning at Padegaon or Palphata. He directed the Deputy Education Officer to do so. Both these Education Officers have led to this confusion and have created a mess. It is only on account of their inaction from August, 2019 that the school functioned at Padegaon. Despite the order of this Court dated 13.08.2019, the then Education Officer Shri Chavan watched the school functioning at Padegaon with eyes wide open. Refusing to clear the salary bills is not a remedial action expected from the Education Officer during the pendency of the litigation before the Court. The Education Officer should have immediately filed an affidavit in Writ Petition No.9990/2019 bringing it to the notice of this Court that the Management at Padegaon i.e. respondent No.5, has hijacked the school despite the order of this Court dated 13.08.2019. He did not choose to follow this course and just watched the mockery being made by the two Managements and turned a blind eye to the order of this Court. The succeeding Education Officer Shri Deshmukh has played no better role than

the earlier Education Officer. To say the least, he also found it convenient to watch the mess from a distance.

11. In view of the above, we direct the Commissioner of Education, Pune, to initiate appropriate disciplinary action against both these Education Officers by following the due process of law and ensure that the disciplinary proceedings are concluded on or before 31.05.2022. A report shall, therefore, be filed in this Court.

12. The learned advocate for the petitioners submits that they are employees, who have been exploited by two managements. Had they refused to work at Padegaon, they would have been marked absent and disciplinary action would have been initiated against them. They were helpless as they had no bargaining power. As they were dragged to Padegaon, they proceeded to Padegaon and have been imparting education since July, 2019 onwards, to earn a livelihood.

13. We do find that such teaching and non teaching staff have little bargaining power and they are always under a threat of retaliatory action by the management if they disobey the management. They are rendered helpless. The only person who could have controlled the situation, was the Education Officer.

Either of these two Education Officers could have immediately brought this aspect to the notice of this Court in Writ Petition No.9990/2019, so as to ensure that further orders could have been passed by the Court. However, they were indifferent.

14. As such, this Writ Petition is partly allowed. We direct the Education Officer to sanction the salary bills already submitted and release the payment to the teaching and non teaching staff from June, 2019 onwards. The bills from October, 2021 shall be tendered online by the Headmaster. This would be, of course, subject to the decision in Writ Petition No.9990/2019.

15. We leave it open to the litigating parties to bring this order to the notice of the learned Bench dealing with Writ Petition No.9990/2019 so that the learned Bench could be apprised of the disobedience of it's order and complicity of the two Education Officers in such disobedience. All contentions of the parties in this premise are kept open.

16. The pending Civil Applications do not survive and stand disposed off.