

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

915 WRIT PETITION NO.6504 OF 2016

1. Miyasab Shaikshanik Va Sevabhavi
Sanstha, Bori, Taluka and Dist. Latur
Through it's President
Abdul Jabar s/o Abdul Gafoor Sagre,
Age : 59 years, occ : agri.,
R/o Bori, Taluka and Dist. Latur.

2. Priyadarshani Primary School
New Khaja Nagar, Osmanabad,
Taluka and District Osmanabad
Through it's Head Master.

Petitioners

Versus

1. The State of Maharashtra
Through it's Secretary,
School Education and Sports
Department, Mantralaya,
Mumbai – 32.
2. The Director of Education (Primary),
Maharashtra State, Pune.
3. The Deputy Director of Education,
Latur Division, Latur.
4. The Education Officer (Primary),
Zilla Parishad, Osmanabad.

Respondents

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Mr. V.D. Gunale, Advocate for the petitioner.
Mr. S.R. Yadav, A.G.P. for respondent Nos. 1 to 3.
Mr. S.N. Rodge, Advocate for respondent No. 4.

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CORAM : **RAVINDRA V. GHUGE AND
S.G. MEHARE, JJ.**

DATE : 03-09-2021

JUDGMENT (Per Ravindra V. Ghuge) :

1. Rule. Rule made returnable forthwith and heard finally by the consent of the parties.
2. By this petition, the petitioner Management has put-forth prayer clauses [C] and [D] as under :-

“(C) By writ of mandamus or any other writ, order or direction, the respondents be directed to release 20% grants in aid to the divisions of 5th and 6th Std., from June 2010 and to the division of 6th and 7th Std., from June 2011 of the petitioner No. 2 School. By modifying the communication dated 7th February 2014 issued by the respondent No. 3.

(D) Pending hearing and final disposal of this writ petition, the respondents be directed to release 20% grant-in-aid to the 5th to 7th Std., divisions of petitioner school from June 2010 and June 2011 respectively and subsequent grants as per the policy i.e. 100% from 5th year after opening of additional divisions of the petitioner school”.

3. We have extensively heard the learned Advocate for the petitioner and the learned A.G.P. Though this hearing went on for quite some time, none appeared for respondent No. 4 – Education Officer.
4. The petitioner has primarily approached this Court on the foundation that other similarly situated schools have been granted 20% grant-in-aid from the academic year 2010-2011 after the District Evaluation Committee examined all these schools. The petitioner school scored higher marks and yet is granted 20% grant-in-aid only from the academic year 2012-2013. It is submitted that

the three schools namely Kailaswasi Raosaheb Patil Primary School, Paranda, Dr. Babasaheb Ambedkar Primary School, M.I.D.C. Kallamb, District Osmanabad and Saraswati Primary School, Paranda, District Osmanabad have been granted 20% grants for 5th to 7th Standards.

5. The learned Counsel for the petitioners has strenuously canvassed that all factors being equal in comparison to the petitioners vis-a-vis the three schools, the same treatment should have been meted out to the petitioner. Kailaswasi Raosaheb Patil School scored 94 marks and the petitioner Miyasab Shaikshanik Va Sevabhavi Sanstha which runs Priyadarshani Primary School, scored 81 marks. Saraswati Primary School, Paranda scored 94 marks. Dr. Babasaheb Ambedkar Primary School scored 75 marks. He, therefore, makes a grievance that the Government Resolution dated 08-11-2000 and not the Government Resolution dated 15-11-2011, would apply to the case of the petitioner.

6. The learned A.G.P. relies upon the affidavit-in-reply filed by Shri Sunil Ratansing Chauhan, Director of Education (Primary) dated 9th February 2018, the reply filed by Shri Sanjay Manikrao Yadgire, Deputy Director of Education dated 5th December 2018, also an additional affidavit filed by Smt. Swati Madhukar Nanal, dated 24th June 2019 and the additional affidavit filed by Shri Gajanan Sugdeo Susar dated 21st January 2020. He points out that the Department has followed the Government Resolution dated 15-11-2011, so also the Government Resolution dated 08-11-2000.

He refers to the order passed by this Court dated 11-03-2019 and the order dated 20-11-2019, which read as under :

Order dated 11-03-2019

"1. The State contends that 20% grant was released to the petitioner No.2-Institution from the year 20122013, whereas, contention of the petitioner is that the same was released in the year 2016. The State, in its additional affidavit, has stated that Dr. Babasaheb Ambedkar Prathamik Vidyamandir, Diksal, Kalamb was at serial No.3 and was considered for grantinaid in the year 20102011.

2. The State shall clarify the distinguishing factors for giving grantinaid to the other institution as referred above, from the year 20102011.

3. Stand over to 25.03.2019".

Order dated 20-11-2019

"1. This Court, by order dated 11.3.2019 directed to clarify the distinguishing factors for giving grant-in-aid to the other institutions, as referred to in the order from the year 2010-2011. On 25.3.2019, it was noticed by this Court that though the time was granted to clarify the said position, the reply was not filed. This Court, therefore, granted time with a condition that if the affidavit is not filed, the concerned officer shall personally remain present in the Court.

2 On the next date i.e. 24.4.2019, affidavit was not filed, however, the concerned officer was personally present in the Court and sought time to file affidavit. Accordingly time was granted by observing that if no affidavit is filed on the next date, the Court would impose costs upon the respondents.

3 Thereafter on 24.6.2019, an affidavit was filed on behalf of respondent No.1 by one Swati Madhukarrao Nanal, Deputy Secretary, School Education & Sports Department, Mantralaya, Mumbai. On perusal of the said affidavit and the affidavit earlier filed at page No.123, we are not satisfied with both the affidavits. The clarification which was sought by this Court is not yet given by the respondent State.

4 Today Mr Sonpawale, learned AGP again requested for time to bring the necessary facts on record and to clarify the distinguishing factors for giving grant-in-aid to the other institutions. Time of three weeks is granted as sought by the learned AGP. It is made clear that, on the issue regarding clarifying distinguishing factor for giving grant-in-aid, no

further time will be granted and the matter would be decided on merit.

5 *Stand over to 11.12.2019”.*

7. He further submits that the subsequent Government Resolution dated 15-11-2011 is not contrary to the Government Resolution dated 08-11-2000, inasmuch as, the earlier Government Resolution has not been nullified by the subsequent Government Resolution. In both these Resolutions, the Government has insisted on an education institution being in order and achieving higher norms of education. The Evaluation Committee is constituted of experts in the field of education and as these grants-in-aid to the institutions would lead to the payment of salaries to the extent of the percentage of grants, the Education Department of the State of Maharashtra was justified in legitimately expecting the best schools to be considered for such grants. Mr. Yadav further submits that distribution / allotment of grants is not a bounty. These grants originate from the tax payers' money. The law is crystalized that only approved teachers can be granted salaries through the grants and the teachers who are not approved, cannot be paid their salaries through the grants of the Government. If a teacher, who is not approved, is continued by the Management as a matter of choice, the Management has to pay the salaries of such teachers.

8. We find that the bone of contention put-forth by the petitioner is limited to the aspect as to whether the Education Department has unethically given differential treatment to the

petitioner causing prejudice to it. If three institutions are granted the aid, the Education Department has to justify the reason for refusing to grant such aid to the petitioner from the academic year 2010-2011. It is undisputed that the petitioner was eventually granted 20% aid, which is the beginning point of such grants, for the academic year 2012-2013.

9. The learned A.G.P. clarifies that the decision to grant 20% aid has been announced through a Resolution published on 13th November 2013. This is not an issue for debate in this proceeding.

10. We find from a document placed before us dated 31.12.2012 which is the order passed by the Education Officer (Primary) granting approval to the four Assistant Teachers appointed by the petitioner for the 5th to 7th Standards after it was granted these divisions as a part of the natural growth of the school. Though these teachers were granted approval with retrospective effect from 15.06.2009, the Management had tendered its proposal for approval on 17-10-2012.

11. It is noteworthy that the Evaluation Committee evaluated the three Standards of the petitioner school in 2011 and the said evaluation was considered in its meeting dated 31-10-2011. In this meeting, admittedly all the four teachers were working without approval. A further evaluation was also conducted which was tabled in the meeting dated 24-05-2012. Even then there was no approval granted. The Education Department has put-forth a specific

contention that the other schools, which were granted 20% aid from the academic year 2010-2011, have produced approvals of their teachers during the evaluation.

12. We find from the record and especially from Clause-5 of the Government Resolution dated 08-11-2000 that the State Government was generating funds for aiding the primary schools based on the availability of the funds that could be allotted. It is provided that if in a particular financial year, the Department is short of funds and the aid could not be provided for that year, the school would not be entitled to claim the arrears of the unpaid aid amount in the subsequent financial year. The salaries of the approved teachers and the expenditure of the school in the absence of aid due to paucity of funds, would be the responsibility of the school. It would not be a matter of legitimate expectation, much less a right of such school, that if the aid is not provided in a particular academic year, the school would demand such arrears in the subsequent academic year.

13. It calls for no debate as regards the sanctity of an approval granted by the Education Officer to the appointment of a teacher. The approval order reflects the following aspects :

- (a) prior permission of the Education Officer for recruitment is taken;
- (b) surplus teachers are not available when such recruitment is made;

- (c) the reservation roster is followed;
- (d) there is a sanctioned post which was advertised;
- (e) an approved selection process was followed while making recruitment;
- (f) the selected candidate is possessing the requisite educational qualification;
- (g) only an approved teacher is entitled for salary through grants;
- (h) an approval would render a placement to the approved teacher in the seniority list and besides being eligible for salary through the grants, he would also be eligible for further service benefits based on his seniority.

14. The record reveals that the petitioner invited the attention of the Evaluation Committee in 2011 when these four teachers, though appointed, were not approved. An approval, as noted above, would be the ultimate test or the litmus test for establishing a legally made appointment. In fact, the petitioner Management submitted its proposal to the Education Officer for seeking approval on 17-10-2012, by which time, two meetings of the Evaluation Committee were conducted on 31.10.2011 and 25.04.2012. The proposal for approval was accepted by the Education Officer on 31.12.2012. Clause-5 of the Government Resolution dated 08-11-2000 precludes the petitioner from seeking grants with retrospective effect when, on the date of evaluation, it was apparently not eligible. A further evaluation after the approval of

the teachers made them eligible for the grant in aid which was provided for the academic year 2012-2013.

15. Taking a overall view of the factors discussed above and the provisions of the Government Resolution dated 08-11-2000, which, according to the petitioner is applicable to his case, we do not find any merits in this petition. The same is, therefore, dismissed. Rule is discharged.

(S.G. MEHARE, J.)

(RAVINDRA V. GHUGE, J.)

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