

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

WRIT PETITION NO.485 OF 2020

Siddiqui Mohammad Mujeeb s/o
Mohammad Ayyub Siddiqui,
Age : 54 years, Occupation : Teacher,
MCVC Department,
Maulana Azad High School and
Junior College, Town Hall,
Aurangabad.

...PETITIONER

-VERSUS-

1. The State of Maharashtra.
Through the Secretary,
Department of Higher and
Technical Education,
Mantralaya, Mumbai-32.
2. The Deputy Director,
Vocational Educational and
Training, Bhadkal Gate,
Aurangabad.
3. The Joint Director,
Vocational Education and Training,
Bhadkal Gate, Aurangabad.
4. Anjuman Ishat-E- Taalim Trust.
Through its Secretary,
Gulam Mehmood Akther,
National Colony,
Opp. Maulana Azad College,
Rouza Baugh, Aurangabad.
5. The Principal,
Maulana Azad High School and
Junior College, Town Hall,

Aurangabad.

....RESPONDENTS

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Shri Mohammad Waseemullah, Advocate for the petitioner.

Shri S.G. Sangle, AGP for respondent Nos.1 to 3.

Shri S.S. Kazi, Advocate for respondent Nos.4 and 5.

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CORAM : RAVINDRA V. GHUGE

&

S.G. MEHARE, JJ.

DATE :- 25th August, 2021

Oral Judgment (Per Ravindra V. Ghuge, J):-

1. Rule. Rule made returnable forthwith and heard finally by the consent of the parties.

2. The petitioner has put forth prayer clauses B and C as under :-

“(B) By issuing writ of direction or writ in like nature, the Respondent Nos.4 and 5 may kindly be directed to release the Travelling Allowance of the Petitioner since from June 2012 to till date, amounting to Rs.90000/- App.

(C) The Respondent Nos.4 and 5 may also be directed to pay the salary of two days of dated 09.08.2016 and 27.12.2016 of the petitioner by considering it to be casual leave, amounting to Rs.6000/- App.”

3. There has been no ad-interim protection to the

petitioner in this Court.

4. The petitioner has approached this Court contending that he was entitled for Travelling Allowance (TA) since, though he was residing within one kilometer from the place of work, he was not occupying an accommodation provided by the Management. He has relied upon the Government Resolution dated 05.04.2010 in which, clause 3 (1) on internal page 2 indicates that an employee, who is residing within one kilometer distance between the place of work and his residence, would not be entitled for travelling allowance, if he is occupying the residence, which is provided by the employer.

5. The learned advocate for the respondents/ Management points out the communication dated 27.01.2006 addressed by the petitioner to the Principal of the College stating therein that he would not dispute that he was residing within one kilometer from the place of work. He was not occupying the residence provided by the Management. Yet, he agreed for recovery of the travelling allowance amount already paid at the rate of Rs.200/- per month with a rider that since there are about 30 to 35 similarly situated employees, recovery should also be made uniformly from all of them and the petitioner should not be

picked and chosen selectively for such action of recovery.

6. Since we find that clause 3(1) under the Government Resolution dated 05.04.2010 is unambiguous and disentitles an employee from travelling allowance only if he is occupying the residence provided by the employer and which is within one kilometer from the place of work, that respondent No.2 would be the appropriate authority to consider the case of employees, who are similarly situated as like the petitioner.

7. Hence, this Writ Petition is disposed off with the following directions :-

(a) Respondent No.2/ Deputy Director would issue a notice to respondent No.4 calling upon it to supply the list of employees, who have been granted accommodations by the Management and are residing within one kilometer from respondent No.5/School & Junior College.

(b) After receiving such list, respondent No.2 would issue notices to all these employees as well as the Management for holding a hearing on whether, the travelling allowance amount has been wrongly paid.

(c) After affording a reasonable opportunity of hearing to all affected parties and on perusing the records, respondent

No.2 shall pass a reasoned order on or before 31.12.2021.

(d) Needless to state, respondent No.2 shall decide as to which employees are occupying official accommodations provided by the Management and shall declare which of these employees would be entitled for travelling allowance and who would be disentitled for the same.

(e) If any of the employees, who are not occupying the accommodation provided by the Management or though occupying such accommodation, reside beyond one kilometer from the school, shall be held to be entitled and in which case, respondent No.2 would peruse the record for assessing the arrears of travelling allowance and shall, accordingly, direct the Management to pay such arrears to such eligible employees.

(f) Considering the law laid down by the Honourable Supreme Court in *Syed Abdul Qadir vs. State of Bihar, 2009 (3) SCC 475* and *the State of Punjab and others vs. Rafiq Masih (White Washer) and others, 2015 (4) SCC 334*, we direct that if any employee has been erroneously paid the travelling allowance, such payment shall be stopped forthwith, though recovery shall not be effected.

(g) If recovery has already been effected from any

employee by now and who is held to be disentitled, further recovery may be stopped and the recovered amount need not be refunded.

8. Rule is discharged.

kps (S.G. MEHARE, J.)

(RAVINDRA V. GHUGE, J.)