

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

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WRIT PETITION NO.8820 OF 2021

Namdev Chhabu Waje & Ors.

.. Petitioners

Versus

The State of Maharashtra & Ors.

.. Respondents

Mr.Balaji S.Shinde for the petitioners.

Mrs.P.N. Diwan, AGP for the respondent nos.1 to 6-State.

CORAM : R.D. DHANUKA AND

R.N.LADDHA, JJ.

DATE : 21st December 2021

P.C.:-

. Rule. Learned AGP waives service for the respondent nos.1 to 6-State. By consent of parties, petition is heard finally.

2. By this petition filed under Article 226 of the Constitution of India, the petitioners seeks writ of mandamus against the respondent nos.4 to 6 to give/re-grant One-step pay scale (Ekstar) from respective dates of withdrawal and seeks further direction to pay the salaries and arrears of salaries of the petitioners as per Ekstar (One-step pay scale) from respective dates from withdrawal of Ekstar, after completion of 12 years till the petitioners works in Tribal/PESA area, as per Government Resolution dated 6th August 2002 and as per the judgment dated 14th July 2021 in Writ Petition (St.) No.9543 of 2021.

3. The petitioners are the teachers working under the control of the respondent nos.4 to 6 and are given postings in Tribal area. The respondents granted one step pay scale to the petitioners till completion

of 12 years. The respondent nos.5 & 6 on their own misinterpretation of the clause 3 (7) of the Government Resolution cancelled the earlier one step pay scale and directed to recover alleged excess paid to the petitioners though they are still working in Tribal/PESA area as per the Government Resolution dated 6th August 2002. It is the case of the petitioners that the said interpretation is absolutely perverse. On 17th November 2018, the Nashik Zilla Parishad revoked one step pay scale thereby misinterpreting clause 3(7) of the Government Resolution.

4. On 10th December 2021, this Court after referring to the judgment of this Court in Writ Petition (St.) No.9543 of 2021 filed by **Baban S.Chavan and Ors. Vs. State of Maharashtra & Ors.** and other companion matters directed the learned AGP to take instructions from the authorised officer whether such action can be withdrawn by Zilla Parishad therein. Learned AGP tenders a copy of the letter dated 21st December 2021 stating that State Government has no objection to grant hearing to the petitioners and to pass a fresh order. Letter dated 21st December 2021 is taken on record.

5. A perusal of the order passed by this Court from time to time including the judgment of this Court at Aurangabad Bench delivered on 5th October 2021 in case of **Purushottam Vasant Kale Vs. The State of Maharashtra & Ors.** indicates that this Court has quashed and set aside the recovery notice and remanded the matter back to the authority for reconsideration in accordance with law.

6. In our view, the said judgment in case of **Purushottam Vasant Kale (supra)** and the judgment of this Court delivered on 14th

July 2021 in case of **Baban S.Chavan & Ors. (supra)** apply to the facts of this case. We are respectfully bound by the said judgments. We do not propose to take a different view in the matter. In our view, the impugned order passed by the respondents is contrary to the principles of law laid down in the above referred judgments.

7. We accordingly pass the following order :-

- (i) The impugned action of recovery initiated by the respondents is quashed and set aside.
- (ii) The petitioners have agreed to appear before the respondent no.4 on 29th December 2021 at 11.00 a.m.
- (iii) The respondent no.4 shall pass fresh order after hearing the petitioners through their respective advocates or an authorised representatives without being influenced by the order of recovery of the amount taken till date which is set aside by this order and shall decide the matter in accordance with law by interpreting the clause 3 (7) of the Government Resolution dated 6th August 2002 in right perspective and after taking into consideration the principles of law laid down in catena of the decisions.
- (iv) The petitioners would be at liberty to file written arguments along with the representation before the respondent no.4 within one week from today.
- (v) The respondent no.4 shall decide representation within six weeks from the date of first hearing.
- (vi) The order that would be passed by the respondent no.4 shall be conveyed to the petitioners within two weeks from the date of passing such order.
- (vii) If the order that would be passed by the respondent no.4 is adverse

against the petitioners, no coercive steps shall be taken against the petitioners for a period of four weeks from the date of communication of the order.

- (viii) The respondent no.4 shall continue to pay salaries of the petitioners (one step pay scale) at the rate at which they were being paid prior to the date of recovery of amount.
- (ix) Writ petition is allowed in aforesaid terms. Rule is made absolute. Parties to act on the authenticated copy of this order. No order as to costs.

R.N.LADDHA, J

R.D. DHANUKA, J.