

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

WRIT PETITION NO.270 OF 2022

Rajkumar Shivmurti Panchade,
Age : 47 years, Occupation : Service,
R/o C/o Vijaywardhini Madhyamik Ashram
School, Jalkot, Tq.Jalkot, Dist. Latur.

...PETITIONER

-VERSUS-

1. The State of Maharashtra.
Through Secretary,
Other Backward Bahujan Welfare
Department, Mantralaya, Mumbai-32.
2. The Director,
VJNT, OBC and SBC Special Help
Department, Maharashtra State,
Pune.
3. The Divisional Deputy Commissioner,
Social Welfare, Latur,
Division Latur.
4. The Assistant Commissioner,
Social Welfare Department, Latur,
Tq. and Dist. Latur.
5. The Headmaster,
Vijaywardhini Madhyamik Ashram
School, Jalkot, Tq.Jalkot,
Dist. Latur.

...RESPONDENTS

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Shri Ajay D. Pawar, Advocate for the petitioner.
Shri S.K. Tambe, AGP for Respondent Nos.1 to 4.
Shri C.T. Jadhav, Advocate for Respnodent No.5.

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CORAM : RAVINDRA V. GHUGE
&
ANIL L. PANSARE, JJ.

DATE :- 22nd June, 2022

Oral Judgment :-

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

2. The petitioner has put forth prayer clauses B to F as under :-

"B) *To quash and set aside the order dated 20.05.2020 passed by the Respondent No.4 Assistant Commissioner, Social Welfare Latur thereby, denying to count the service the period of surplus i.e. 20.05.2013 till the period of absorption i.e. 16.06.2019 as regular service of petitioner and also denied the payment of salary of the said period, the yearly increment of the said period and continuity of service with all consequential benefits, by issuing Writ of Certiorari or any other appropriate writ or order as the case may be necessary.*

C) *To quash and set aside order dated 23.07.2021 passed by the Respondent No.3 Divisional Deputy Commissioner, Latur Division, Latur, thereby not granting the benefit of higher pay scale after completion of twelve years service by counting the service period w.e.f. 20.05.2013 to 16.06.2019 i.e. the period from surplus to absorption for the benefit of counting of service for higher pay scale benefits by issuing Writ of Certiorari or any other appropriate writ or order as the case may be necessary.*

- D) *To direct the respondents authorities to grant benefits of payment of salary in favour of Petitioner as a Assistant Teacher working in Ashram School in between the surplus period till the period of absorption i.e. 20.05.2013 to 16.06.2019, by issuing Writ of Mandamus or any other appropriate writ or direction as the case may be.*
- E) *The Respondent No.5 Headmaster may please be directed to submit the salary bill of the petitioner w.e.f. 20.05.2013 to 16.06.2019 towards the Respondent No.4 Assistant Commissioner and the Respondent No.4 may please be directed to take proper decision on the salary bills in accordance with the law within specific period of four weeks by issuing necessary writ or direction as the case may be.*
- F) *The Respondent authorities may kindly be directed to grant the consequential benefits including the continuity of service and six yearly increment alongwith the arrears of payment of salary and other consequential benefits for which the petitioner is entitled for by issuing necessary writ or direction as the case may be."*

3. We have considered the extensive submissions of the learned advocates for the respective sides and the learned AGP, on 16.06.2022, 20.06.2022 and today.

4. It is obvious from the facts of the case that the petition puts forth peculiar facts which are quite uncommon and which can be summarized as under :-

- (a) The petitioner was appointed as an Assistant Teacher

on 11.06.2001 in the Secondary Ashram School.

(b) He was granted temporary approval till the academic year 2007-2008.

(c) On 20.05.2013, the recognition of the school was cancelled due to serious deficiencies and the employees were not held at fault. One of the reasons was also reduction of the strength of students, which was obviously on account of a long list of serious deficiencies.

(d) Appropriate authorities commenced the process of absorption of approved teachers from the said school.

(e) Since the petitioner was not considered for absorption on account of lacking permanent approval, he approached this Court by filing Writ Petition No.6823/2013 seeking permanent approval.

(f) By order dated 08.10.2014, this Court concluded that the petitioner was entitled for permanent approval and accordingly, he was granted such approval with effect from the date of his appointment. He was held entitled for the benefits under Rule 26 of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 (for short, "the 1981 Rules").

(g) As this order was not complied with, the petitioner had to approach this Court on two occasions by filing Contempt Petition No.311/2015 and Contempt Petition No.626/2016.

(h) By order dated 10.10.2018 in Contempt Petition No.626/2016, this Court recorded in paragraphs 4, 6 and 7 as under :-

"4. *The affidavit-in-reply is filed on behalf of respondent Nos.1 to 4 by Mr.Babasaheb Gurushantappa Arawat, who is occupying position as a Assistant Commissioner, Social Welfare Department, Government of Maharashtra, Latur. It is stated in the affidavit-in-reply that after receiving Government order, respondent No.4 i.e. Assistant Commissioner, Social Welfare, Latur, immediately drawn the salary bill Rs.16,84,285/- and same amount is deposited in petitioner's account on 26th October, 2016. The copy of the letter given to the Bank referring to the amount is annexed to said affidavit-in-reply. Deponent, in para 13 of the reply stated that name of the petitioner Rajkumar Shivmurtiappa Panchade has been included in the list of surplus secondary teacher at Sr.No.1 and as per this seniority reservation, education qualification and available vacancy, petitioner will be absorbed in other Ashram School in Latur district. Copy of the list of surplus teacher is also annexed to the said affidavit-in-reply.*"

"6. *On 15th November, 2016, learned AGP submitted that at the relevant time also as there was no vacancy available, the petitioner would not be absorbed but the statement was made that he will be absorbed as vacancy would be available.*"

"7. *We hope and trust that respondent No.4 would maintain his statement and accordingly, the petitioner would be absorbed as and when vacancy is available. The grievance of the petitioner, as such is complied with substantially. Accordingly, the petition is disposed of."*

(i) The petitioner thus, received his unpaid salary as per the applicable pay scale for the period 2007-2013.

(j) The petitioner tendered several representations to the authorities to immediately absorb him in service at any place where the vacancy may have arisen as his colleagues from the school, which was de-recognized, were also absorbed.

(k) The statement made by the authorities was recorded in paragraph 6 reproduced above by this Court, which indicates that there were no vacancies available to accommodate the petitioner in 2016.

(l) Eventually, the petitioner was absorbed in employment on 16.06.2019 in the same school, which was de-recognized earlier, after the recognition was restored.

5. Considering the vehement submissions of the learned AGP, we have perused the records, threadbare and his

submissions can be summarized as under :-

(a) The petitioner was not earlier considered for absorption along with his accommodated employees since he did not have permanent approval.

(b) There is no law that entitles the surplus teacher to claim salary for the period of being declared surplus, if the said situation has arisen on account of the de-recognition of the school.

(c) Reliance is placed on two orders passed by the learned Division Bench of this Court at the Principal Seat dated 27.01.2015 in Writ Petition No.4305/2014 filed by ***Chandrama Milind Bhatkar and others vs. Secretary, Ministry of VJNT, OBC and SBC, Mumbai and others*** and dated 16.02.2015 in Writ Petition No.5303/2014 filed by ***Shri Sawant Pandurang Dattatraya and another vs. The State of Maharashtra and others***, vide which, Rule 25-A and 25-A(2) of the 1981 Rules were considered and it was concluded that there is no law that mandates payment of salary during the period of being surplus if such surplusage is caused on account of the de-recognition of the school.

(d) The learned AGP has placed reliance upon the

Government Resolution dated 01.04.2016 and the clarificatory Government Resolution dated 17.10.2016 in the light of the orders of this Court dated 27.01.2015 in the case of ***Chandrama Bhatkar (supra)*** and dated 16.02.2016 in the case of ***Sawant Pandurang (supra)***, that the salaries to the surplus teachers are payable only if they are rendered surplus on account of fall in the strength of students and those teachers, who are rendered surplus on account of de-recognition of the school, are not entitled for the salary during the period of their unemployment.

CONCLUSIONS

6. As noted above, this is a peculiar case, which after considering the entire records, convinces us to grant monetary benefits to the petitioner. In support of our conclusions, we find that the following factors are decisive:-

(a) Though the petitioner was working as an Assistant Teacher from 11.06.2001 and there is no issue as regards the manner of his appointment, he was not granted permanent approval.

(b) He was on a temporary approval till 2007-2008.

(c) He cannot be blamed for the Government not

granting him approval.

(d) On the date of cancellation of the recognition of the school, identically placed teachers were equipped with permanent approvals and hence, they were considered for absorption excluding the petitioner as he did not have the permanent approval, for no fault on his part.

(e) The petitioner had to litigate by approaching this Court and under the orders of this Court dated 08.10.2014, he was granted the approval. In the said order dated 08.10.2014, the learned Division Bench concluded in paragraph 8 as under :-

"8. The school is already de-recognized from 25.05.2013. Naturally the petitioner was a permanent employee. He will be entitled to benefit of Rule 26 of the Maharashtra Employees of Private Schools (Conditions of Service) Rules."

(f) Even thereafter, the petitioner had to file two Contempt Petitions since the directions of this Court were not being implemented.

(g) With multiple rounds of litigation made by the petitioner to this Court, he was granted permanent approval on 13.02.2016.

(h) On the plea that there are no vacancies, the

petitioner was not absorbed and all his colleague teachers were absorbed in 2013.

(i) The petitioner was ultimately absorbed on 16.06.2019 after a passage of four years.

7. During the course of hearing in this matter, we called upon the learned advocate for the petitioner to have a discussion with the petitioner and suggest as to whether, the journey of litigation could be given a quietus. We granted an adjournment on 20.06.2022 and today, the petitioner, who is present in the Court, has filed an affidavit dated 22.06.2022 vide which, the petitioner has waived 40% of the back-wages/ arrears of salary.

8. The colleagues/ teachers of the petitioner had approached this Court in Writ Petition No.8289/2014 wherein, this Court (Coram : S.V. Gangapurwala and V.K. Jadhav, JJ.) passed an order on 01.07.2015 by which, these colleague teachers, who were absorbed on 29.07.2013 within two months of the de-recognition of the school as they were approved teachers, were granted entire wages. Their service was also directed to be considered as being continued and as such, it was

held that there would be no break in service.

9. As noted above, the present petitioner is not at fault for having not been granted approval. Had the authorities granted him the approval along with his colleague teachers, he would have been an approved teacher on the date the recognition of the school was cancelled and consequentially, he would have been absorbed along with them on 29.07.2013.

10. This Writ Petition is allowed. In view of the above and that the petitioner has waived 40% of his arrears of salary and since he was deemed to be approved by the order of this Court dated 08.10.2014, we grant him 60% arrears of wages from the order of this Court dated 08.10.2014 till his absorption on 16.06.2019.

11. Needless to state, there shall be no break in service of the petitioner, in the sense that he would be deemed to be in continuous service from the date of his appointment dated 11.06.2001. The arrears of the salary shall be paid to him on or before 15.10.2022, which is more than 90 days from today and for the said reasons, we are not granting interest on the said amount.

12. We make it clear that there would be no extension of

time to make the payment. However, if the payment is still not made as directed above, the amount shall carry interest at the rate of 6% per annum and the same shall be paid by the concerned officers from their salaries, who may be the cause for delay in clearing the payment of arrears of the petitioner.

13. The view taken by us in this matter is based on the peculiar and unusual facts of the case as recorded herein above. This order shall not be cited as a precedent before any court by any surplus teacher, save and except in identical set of facts.

14. Rule is made absolute accordingly.

kps

(ANIL L. PANSARE, J.)

(RAVINDRA V. GHUGE, J.)