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

911 WRIT PETITION NO.2690 OF 2022

1. Vakil Sahebrao Jadhav (Died)
Through his L.Rs.
Anita Vakil Jadhav @
Anita Shankar Rathod
Age: 42 years, Occ. : Household/Pensioner
2. Ramesh s/o Madhukar Ghuge,
Age: 43 years, Occ.: Service
3. Dashrath s/o Tukaram Rathod,
Age: 42 years, Occ. : Service
4. Ushabai Shankar Rathod,
Age: 43 years, Occ.: Service
5. Sheshrao Tukaram Rathod,
Age: 41 years, Occ.: Service
6. Janabai Shankar Rathod,
Age: 40 years, Occ.: Service
7. Janardhan Sahebrao Jadhav,
Age: 41 years, Occ.: Service,

Petitioners No.1 to 7 are all
R/o. Gadadgavhan Tanda,
Tq. Jintur, Dist. Parbhani

...PETITIONERS

VERSUS

- 1] The State of Maharashtra
Through its Secretary,
Other Backward Bahujan Welfare Department,
Mantralaya, Mumbai-32
- 2] The Director,
V.J.N.T., O.B.C. & Special Backward Class

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@ Other Backward Bahujan Welfare
Social Welfare Department,
Maharashtra State, Pune

- 3] The Deputy Commissioner,
Social Welfare Department,
Division Aurangabad, Aurangabad
 - 4] The Assistant Commissioner @
Social Welfare Department,
District Social Welfare Officer,
Parbhani, Dist. Parbhani
 - 5] The Secretary,
Indira Shikshan Prasarak Mandal
Chitnerwadi, Tq. Jintur, Dist. Parbhani
 - 6] The Head Master,
Late Jorsing Naik Madhyamik Ashram School,
Gadadgavhan Tanda,
Tq. Jintur, Dist. Parbhani
- ...RESPONDENTS

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Mr V. P. Kadam, Advocate h/f Mr V. A. Bagal, Advocate for
petitioners;

Mr S. G. Sangle, A.G.P. for respondent Nos.1 to 4

Mr K. T. Taur, Advocate for respondent Nos.5 & 6

**CORAM : RAVINDRA V. GHUGE
AND
SANJAY A. DESHMUKH, JJ.**

DATE : 23rd November, 2022

ORAL JUDGMENT : (Per :- Ravindra V. Ghuge, J.)

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

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2. The petitioners have put forth prayer clauses (B) and (C), which read as under :-

“B) By issuing writ of mandamus or any other writ or direction in like nature that, quash and set aside the order passed by Resp. No. 4 dated 28/01/2022 thereby the proposal of the petitioners for granting benefits of time bound promotion / A.C.P.S. has been rejected.

C) By issuing writ of mandamus or any other writ or direction in like nature that, the Respondents No. 1 to 4 within a stipulated period to grant benefits of time bound promotion/ A.C.P.S. alongwith the consequential benefits in favour of petitioners as they have completed 12 years service from the date of their respective appointments as Non Teaching Staff in the Resp. No.6 aided Ashram School.”

3. Having considered the submissions of the learned Advocates for the respective sides, we have perused the order dated 21/09/2013, delivered by this Court at the Principal Seat, in Writ Petition No.2358/2013, filed by Kiran Namdeo Shinde and others Vs. State of Maharashtra and the connected matters. We deem it appropriate to reproduce paragraph Nos.17 to 21 of this Judgment, which read as under :-

17. The Assured Career Progress Scheme is a welfare scheme which is basically brought about to remove stagnation as very few promotion avenues are available to Group ‘C’ and ‘D’ employees. The ACPS enables the

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eligible employees to be placed in higher pay scale. The eligible non-teaching staff of aided Secondary Schools in Group 'C' and 'D' category gets the benefit of ACPS. But the similar category of employees in the aided private Ashram Schools who perform identical duties have been denied the benefit of ACPS which infringes their fundamental rights under Articles 14 and 16 of the Constitution of India. The action of denial of benefits to the similarly placed employees discharging similar duties is arbitrary and violative of Article 14 of the Constitution of India.

18. Only on the basis of purported ground of financial crunch, we fail to understand the approach of the State Government of discriminating between the non-teaching staff of aided Ashram Schools and non-teaching staff of aided Private Schools. At one stage both the Schools were functioning under the control of only one department.

19. In our view the denial of benefit of ACPS amounts to discrimination, which is hit by the rights guaranteed by Articles 14 and 16 of the Constitution of India.

20. As we have already noted that there is already a Government Resolution and a Policy which grants the benefit of ACPS to non-teaching staff of the aided Private Schools, the petitioners who are claiming benefit on the basis of parity will have to satisfy the criteria laid down by the policy which governs the cases of the similarly placed non-teaching staff of the private aided Schools. Though, we are holding that non-teaching staff in Group 'C' and 'D' posts in aided private Ashram Schools will be entitled to the benefit of ACPS, which is already extended to the non-teaching staff of the aided Private Schools, the question whether individual petitioners satisfy the requirements incorporated in the Government Policy applicable to non-teaching staff of private government aided schools will have to be left to be decided by the appropriate Authorities.

21. Hence, we dispose of the petitions, by passing the following order :-

- (i) We declare that the benefit of ACPS, which is applicable to the employees of Group 'C' and 'D' non-teaching staff of the aided Private Schools in the State under the Government Resolution dated 30th April, 1998 as modified from time to time shall be available to the non-teaching staff of the same category in the private aided Ashram Schools ;
- (ii) The appropriate Authority appointed by the State Government shall examine the individual cases of the petitioners for deciding whether they satisfy the criteria laid down for availability of the benefit of ACPS to the private aided Government Schools under the Government Resolution dated 30th April, 1998 as modified from time to time;
- (iii) We make it clear that the petitioners will be entitled to the benefit of the said scheme, provided they satisfy the eligibility criteria which is prescribed for the corresponding non-teaching staff of the private aided Schools;
- (iv) We grant time of six months to the respondents to scrutinize the cases of the petitioners and to consider whether they are eligible for the benefit of ACPS;
- (v) To those petitioners who are found eligible, the benefit shall be extended, as expeditiously as possible;
- (vi) Petitions are disposed of on above terms.”

4. The Division Bench of this Court at Aurangabad, placed reliance upon the above referred judgment in Writ Petition No.4820/2016, filed by Vinod Shravan Patil and three others Vs. State of Maharashtra and others and connected matters, and

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granted an identical relief to the said petitioners. The monetary benefits, after conducting verification exercise, were to be paid within six months to the petitioners. The present petitioners are identically placed.

5. The learned A.G.P. and the learned Advocate representing the respondents submit that, they would not argue against the law settled by this Court in Kiran Namdeo Shinde (supra) and followed in Vinod Shravan Patil (supra).

6. In view of the above, this petition is allowed. The respondents/authorities would be at liberty to examine the case of each of these petitioners for verifying as to whether, they satisfy the criteria laid down for claiming the A.C.P.S. benefits, after completing 12 years in the Private/Aided Ashram Schools, in the light of the Government Resolution dated 30/04/1998, which has been modified by succeeding Government Resolutions from time to time. After concluding the exercise of verification, the amounts, based on entitlements of the petitioners, would be paid within six months from today. In the event, the authorities arrive at a conclusion that, some of the petitioners are not entitled, a reasoned order would be passed and the same would be

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communicated to the concerned employee/petitioner, as expeditiously as possible and preferably within 21 days of the decision. Thereafter, the aggrieved party would be at liberty to challenge the said decision, by resorting to a remedy, as is permissible in law.

7. Rule is made absolute in the above terms.

(SANJAY A. DESHMUKH, J.) (RAVINDRA V. GHUGE, J.)

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