

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.3740 OF 2019

1. Archana d/o Balaji Biradar
Age : 36 years, occ : service
R/o At Post Lohara, Taluka Udgir,
District Latur.
2. Shalini d/o Narsingrao Mogale
Age : 35 years, occ : service
R/o as above.
3. Ganpati Venkatrao Mehatre
Age : 34 years, occ : service
R/o Udgir, District Latur.
4. Swarnamala d/o Vinayakrao Biradar
Age : 33 years, occ : service
R/o At post Lohara, Taluka Udgir,
District Latur.

Petitioners

Versus

1. The State of Maharashtra
Through it's Secretary
Education Department,
Mantralaya, Mumbai
2. Director of Education (Primary),
Maharashtra State, Pune.
3. Deputy Director of Education,
Latur Division, Latur.
4. The Education Officer (Primary),
Zilla Parishad, Latur.
5. Navsamaj Shikshan Prasarak
Mandal, Udgir, Dist. Latur
Through its Secretary.

6. Sane Guruji Prathamik Vidya
Mandir, Udgir, District Latur
Through it's Headmaster

Respondents

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Mr. V.S. Panpatte, Advocate for the petitioners.
Smt. M.A. Deshpande, A.G.P. for respondent Nos.1 to 3.
Mr. U.B. Bondar, Advocate for respondent No.4.
Mr. D.S. Kudale, Advocate for respondent Nos.5 and 6.

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CORAM : C.V. BHADANG AND
SANDIPKUMAR C. MORE, JJ.

DATED : 22 JULY 2022

JUDGMENT (PER SANDIPKUMAR C. MORE, J.) :

Rule made returnable forthwith. Learned A.G.P. waives service for respondent Nos.1 to 3. Learned Counsel Mr. Bondar waives service for respondent No. 4. Learned Counsel Mr. Kudale waives service for respondent Nos.5 and 6. Heard finally by consent of the parties.

2. The petitioners in this petition are seeking the following reliefs :

“B) To hold and declare that, the Petitioners are eligible and entitled to receive grants, arrears and their salary w.e.f. June-2012 and more particularly in view of Exh. “E” from where the IIIrd Division of 2nd and 3rd classes as well as IInd divisions of 6th and 7th classes of Respondent No.6 School is made applicable to such grants.

C) By issue of Writ of mandamus or Order or direction in the like nature, the impugned order dated 01.06.2017 issued by the respondent No. 4 Education Officer may kindly be quashed and set aside.

D) By issue of Writ of mandamus or Order or direction in the like nature, the Respondents, may kindly be directed to release their salary and arrears as per the Notification and stages of grants which are made applicable to the post of petitioners”.

3. The petitioners are the employees working as Assistant Teachers in respondent No. 6 – School, which is being run by respondent No. 5 i.e. the registered Educational Institution. Initially, respondent No. 6 – School was being run on non-grant basis, but thereafter it was brought on 100 % grant-in-aid basis. Respondent No. 1 i.e. the State of Maharashtra, by Notification dated 01.03.2014, decided to bring certain divisions of non-aided private schools on grant-in-aid basis. Accordingly, respondent Nos. 5 and 6 – School started receiving grant-in-aid to the extent of 20 % since June 2012 to the third division of 2nd and 3rd standards and to the second division of 6th and 7th standards in the school. Accordingly, the present petitioners as per the relevant staffing pattern were appointed on the aforesaid divisions. It is further contended by the petitioners that 20 % grant was made applicable to the school since June 2012, but thereafter stages were also made applicable to release further grants as mentioned in the orders dated 27.06.2014 and 06.08.2014 passed by the Education Officer, Latur i.e. respondent No. 4. Thus, it is claimed by the

petitioners that at present their posts are entitled for 100 % grants. However, though the petitioners are entitled for getting 100% grant of which 20% grant was applied since June 2012, but till today no salary accordingly has been released to them by the respondents despite submission of the bills to that effect repeatedly.

4. Further, it is claimed by the petitioners that though as per the Government Resolution dated 01.03.2014 their posts are entitled to get 100 % grant, but the respondent No.1 did not release such grant and suddenly on 19.09.2016, issued further notification by forfeiting the earlier benefits and stating that only 20% grant will be made applicable to the petitioners and other similarly situated employees, till further orders. Hence, the petitioners are before this Court.

5. The petition is strongly opposed by respondent Nos.1 to 4 under affidavit-in-reply duly sworn-in by respondent No.4 on 16.03.2020. It is contended by respondent No.1 to 4 that though respondent No.6 – School was assured for giving 100% grant as per the orders dated 27.06.2014 and 06.08.2014, but the same was subject to financial condition of the Government of Maharashtra and under the Government Resolution dated 15.11.2011, it was already declared that the applicability of issuance of grants is the right of the Government and those grants would only be released if the Government would be in financial condition to issue the same. Respondent Nos.1 to 4, thus, claimed

that under the Government Resolution dated 19.09.2016 the Government has taken policy decision to release only 20% grant to the above-mentioned divisions of respondent No. 6 – School and claimed that all other similarly situated schools have also accepted such position. Thus, in short, respondent Nos.1 to 4 are claiming that the State, by considering its financial position, is always empowered to take suitable decision for cutting short the grant which was assured earlier.

6. On the other hand, respondent Nos.5 and 6 Management and Headmaster of the School respectively submitted written notes of arguments and supported the claim of the petitioners. They relied upon judgment of the Hon'ble Apex Court in the case of State of Jharkhand and others vs ***Brahmputra Metallica Ltd., Ranchi and others reported in 2020 SCC Online SC 968.***

7. We have carefully gone through the entire material on record in the light of the submissions made by the concerned Counsel of the rival parties.

8. It is not in dispute that the petitioners are working as Assistant Teachers on third division of 2nd and 3rd Standards as well as second division of 6th and 7th Standards of respondent No.6 – School and their posts are grant-in-aid posts to the extent of percentage of grant as mentioned in the orders of respondent No.4 dated 27.06.2014 and 06.08.2014. On perusal of those orders, it is clearly evident that grant-in-aid to the extent of 20%

was issued to those divisions since June 2012. Further, it appears that from June 2013 upto June 2016 the grant-in-aid was to be increased by 20% in each year. Thus, it was agreed by the Government of Maharashtra that from June 2016 the aforesaid divisions would be on 100% grant-in-aid basis.

9. The question before us in the instant petition is, whether the State Government can reduce grant of 100% as assured earlier to 20%, by issuing subsequent Government Resolution to that effect.

10. The learned Counsel for respondent Nos.5 and 6 heavily placed reliance on the judgment of the Hon'ble Apex Court in the case of State of **Jharkhand vs Brahmputra Metallica Ltd.** (supra). We have carefully gone through the said judgment wherein the doctrine of promissory estoppel and doctrine of legitimate expectations are discussed. However, in the said judgment the Hon'ble Apex Court was dealing with the question of giving rebate of electricity duty as offered under Jharkhand Industrial Policy in respect of which the exemption Government Resolution was issued belatedly on 8 June 2015. The present case differs on facts from the case in the aforesaid judgment. As such, the said decision may not come to the aid of the petitioners in this case.

11. Here, respondent No. 1 – State is claiming that it had not given any assurance to respondent Nos.5 and 6 that they would receive 100% grant as of right. On the contrary, it was

already made clear to the petitioners and respondent Nos. 5 and 6 that the Government would issue such grants only when it would be in a financial condition to do so. Thus, the State is claiming that considering its policy as reflected in Government Resolution dated 19.09.2016, the divisions on which the petitioners are working, are not entitled to get more than 20% grants as on today and respondent No.1 is empowered to take any such policy decision considering its financial situation.

12. It is extremely important to note that in the recent judgment in Civil Appeals No.7682-84 of 2021 reported in **(2022) 4 SCC 193** in the case of **State of Maharashtra vs Bhagwan and others**, the Hon'ble Apex Court has made the following observation in para 28 :

“28. As per the settled proposition of law, the Court should refrain from interfering with the policy decision, which might have a cascading effect and having financial implications. Whether to grant certain benefits to the employees or not should be left to the expert body and undertakings and the court cannot interfere lightly. Granting of certain benefits may result in a cascading effect having adverse financial consequences”.

Thus, the above observation clearly indicates that the States are empowered to take any policy decision to meet out their expenses and the Court should refrain from interfering with the policy decision of State which may create hurdle in financial management.

13. In the instant matter, it appears that though certain assurance for bringing the divisions of respondent No.6 – School under 100% grant-in-aid basis, was given by respondent No.1 – State under the earlier Government Resolution and orders of respondent No. 4 to that effect, however no such grant was released. Moreover, respondent No.2 had also not issued the Government Resolution in consonance with the aforesaid orders of respondent No.4. Now under the policy decision respondent No.1- State has decided only to issue 20% grant to all the applicable divisions under the impugned order dated 01.06.2017. As per the observations of Hon'ble Supreme Court in the aforesaid judgment in the case of *State of Maharashtra vs Bhagwan and others* (supra), we are not inclined to interfere with such policy decision of respondent No.1.

14. In view of the above, we pass the following order.

ORDER

- (i) The Writ petition is dismissed.
- (ii) Rule stands discharged.

SANDIPKUMAR C. MORE, J.

C.V. BHADANG, J.