

(1)

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

WRIT PETITION NO.10261 OF 2022

**JAWAHARLAL BALIRAM JADHAV AND ANOTHER
VERSUS
THE STATE OF MAHARASHTRA THROUGH SECRETARY
AND OTHERS**

**AND
WRIT PETITION NO.10390 OF 2022**

**DINESH SUNDARLAL JADHAV AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA THROUGH SECRETARY
AND OTHERS**

**AND
WRIT PETITION NO.10415 OF 2022**

**DEEPAK RAMA BIRHADE AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA THROUGH SECRETARY
AND OTHERS**

....

Mr Ajay D. Pawar, Advocate for petitioners;
Mr S. G. Sangle, Mr S. G. Karlekar and Mrs R. P. Gaur, A.G.Ps.
for respondents/State

**AND
WRIT PETITION NO.10277 OF 2022**

**MAIDABI ISMAIL SAYYAD
VERSUS
THE STATE OF MAHARASHTRA THROUGH ITS
PRINCIPAL SECRETARY AND OTHERS**

....

Mr A. R. Borulkar, Advocate for petitioner;
Mr P. S. Patil, A.G.P. for respondents/State

(2)

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

DATE : 12th October, 2022

PER COURT:

1. All the petitioners in these petitions are identically placed.
2. The petitioners in the first petition have put forth prayer clauses (B), (C) and (D), which read as under :-

“B) To direct the respondents to grant benefits of time bound promotion/ ACPS in favour of Petitioners immediately after completing their 12 years qualifying service from the date of appointment as non-teaching staff of aided Ashram school as per G.R. dt. 30.04.1998 and grant all the consequential benefits that might have accrued to them by issuing writ of mandamus or any other appropriate writ or direction as the case may be;

C) To hold and declared that the Petitioners are also entitled to get benefits of order dt. 21.09.2013 in W.P. No.2358/2013, order dated 16.11.2021 in Writ Petition No. 12472/2021 and order dated 08.03.2022 in writ petition no. 3247/2022 in respect of granting time bound promotion /A.C.P.S. as per Govt. Resolution dated 30.04.1998 after completion of 12 years service from the date of appointment as non-teaching staff of aided Ashram school by issuing necessary writ or directions as the case may be;

D) To direct the Respondent no. 4 assistant Commissioner Nanded, to consider the proposal submitted by the Headmaster of petitioners school in the light of

(3)

judgment and orders dated 21.09.2013 in W.P. No. 2358/2013, order dated 16.11.2021 in Writ Petition No. 12472/2021 and order dated 08.03.2022 in writ petition no. 3247/2022 passed by this Hon'ble Court, by issuing writ or directions as the case may be."

3. Issue raised by all these petitioners is no longer *res integra*. By a judgment dated 21/09/2013, delivered by this Court [Coram : Abhay S. Oka (as his Lordship then was) and Revati Mohite Dere, JJ.] in Writ Petition No.2358/2003, filed by Kiran Namdeo Shinde and others Vs. State of Maharashtra and others and a group of matters, at the Principal Seat and further orders passed by this Court at Aurangabad, the claim of all such petitioners have been accepted. It would be appropriate for us to reproduce the directions issued by this Court in Kiran Namdeo Shinde (supra) in paragraph Nos.18 to 21, as under :-

“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.

(4)

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

(5)

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 learned A.G.Ps. representing the respondents submit that, they cannot argue against the law and since there is a judicial pronouncement by this Court, the Authorities would scrutinize and examine each case of these petitioners and after confirming that the petitioners are eligible for benefits of ACPS, such benefits would be extended to them.

5. In the light of the above, these petitions are disposed off. The directions set out in paragraph No.21 in Kiran Namdeo Shinde (Supra), reproduced above, will be applicable to the case of these petitioners.

(SANJAY A. DESHMUKH, J.)

(RAVINDRA V. GHUGE, J.)

sjk