

bdv

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

WRIT PETITION NO.13551 OF 2019

Miss. Minal D/o Dhundiraj Gadewar
& others ... PETITIONERS

VERSUS

The State of Maharashtra and Ors. .. RESPONDENTS

.....

Mr. G. V. Mohekar, Advocate for the Petitioners

Mr. P.S. Patil, A. G. P. for Respondent No.1 - State

Mr. S. B. Pulkundwar, Advocate for Respondent No.4

Ms. Pradnya Talekar, Advocate for Respondent Nos. 5 & 6.

.....

**CORAM : DIPANKAR DATTA, CJ &
N. B. SURYAWANSHI, J.**

DATE : FEBRUARY 17, 2022.

PER COURT :

1. The 21 (twenty-one) petitioners, who have instituted this writ petition dated 20th October 2019, claim that they have been appointed by the respondent no.5 as Assistant Teachers following due process of law between 1997 and 2013 and are working in Primary/Secondary sections of the respondent no. 6/school since appointment. These petitioners have mounted a challenge in the writ petition to a Government Resolution dated 22nd February, 2019

(hereafter "the impugned GR", for short) issued by the Secretary, School Education Department, State of Maharashtra, respondent no.1, whereby the decision of the Government to revise the pay-scales of full-time teachers/non-teaching employees working in aided private Primary, Secondary, Higher Secondary schools etc. was conveyed upon acceptance of the report of 7th Pay Commission chaired by Shri K. P. Bakshi, Retired Additional Chief Secretary, with certain modifications. Such Government Resolution, however, has excluded the full-time teachers/non-teaching employees working in unaided private Primary, Secondary, Higher Secondary schools. Aggrieved by such exclusion brought about by the Government Resolution dated 22nd February, 2019, the petitioners have claimed the following reliefs: -

"(B) By issuing writ of Mandamus or any other appropriate writ or order or directions in the like nature, the respondent No. 5 and 6 may kindly be directed to pay salaries and other allowances/benefits in accordance with the reports of the 7th Pay Commission in view of G.R. dated 22.02.2019 issued by the respondent No.1 and consequential benefits/reliefs in regards to 7th pay commission.

(C) By issuing writ of mandamus or any other appropriate writ or order or directions in the like nature, it may kindly be held and declared that

the G.R. dated 22.02.2019 issued by respondent No.1 is totally arbitrary, discretionary to the extent of thereby granting the benefits of 7th Pay Commission to only private schools run by the private managements receiving grant-in-aid and excluding in granting the benefits of 7th Pay Commission to only private schools run by the private managements not receiving grant-in-aid in view of the law laid down by the Hon'ble Apex Court in the matter of **Secretary, Mahatma Gandhi Mission Vs. Bhartiya Kamgar Sena – 2017 (4) SCC 449.**"

2. Appearing for the petitioners, Mr. Mohekar, learned advocate, contends that there is no justification for the Government to exclude the full-time teachers of private un-aided schools from the benefits of pay-scales recommended by the 7th Pay Commission, since accepted with certain modifications by the Government. He contends that upon acceptance of the 6th Pay Commission recommendations by the Government and necessary amendment having been made to Schedule 'C' appended to the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 (hereafter "the 1981 Rules", for short), the respondents 5 and 6 had paid the petitioners salary in the revised scales; however, to introduce a discrimination between teachers of aided and un-aided institutions by the impugned GR is in violation of Article 14 of the Constitution.

Reference was made to a circular issued by the respondent no.6 dated 29.03.2019 conveying to the parents of the students of the respondent no.6 of a hike in tuition fees *inter alia* on the ground that the employees have to be paid salary as per the 7th Pay Commission recommendations. It is contended that the respondents 5 and 6 did take a decision to arrange for additional funds for meeting the entitlements of the petitioners, but salaries have not been paid in accordance with revision of pay scales much to their prejudice and detriment having regard to the terms of the impugned GR.

3. Relying on the decision of the Supreme Court reported in **(2017) 4 SCC 449 [Secretary, Mahatma Gandhi Mission and Another Vs. Bhartiya Kamgar Sena and others]**, Division Bench decisions of this Court reported in **(2017) 3 Bom CR 511 [Anil s/o Govindrao Kale and others Vs. Maharashtra Academy of Engineering & Education Research, Pune and others]** and **2019 (5) ALL MR 384 [Manojkumar S. Amare & Ors. Vs. The State of Maharashtra & Ors.]** as well as an unreported decision dated 28th August 2019 of another Division Bench rendered in **Writ Petition No. 11259 of 2017 [Vinayak**

s/o Laxmanrao Gadhekar and others Vs. The State of Maharashtra and others], Mr. Mohekar contends that the discrimination made by the Government between full-time teachers of aided and un-aided private institutions is artificial and cannot be countenanced on the touchstone of Article 14 of the Constitution and the provisions of Article 39(d) of the Constitution. He also contends that in the light of education being a Fundamental Right, the teachers, who impart education, get an element of public interest in the performance of their duties and when an element of public interest is created and the institution is catering to that element, the teacher, the arm of the institution, is also entitled to avail of remedy provided under Article 226 of the Constitution and, therefore, the petitioners are entitled to the reliefs as claimed in the writ petition.

4. Mr. P. S. Patil, learned Asstt. Government Pleader appearing for the State of Maharashtra has referred to the affidavit in reply dated 9th September, 2021. It is stated therein that the scales of pay of the teaching and non-teaching employees of private schools is regulated by Rule 7 of the 1981 Rules and Schedule 'C' forming part of such Rules. After acceptance of the recommendations of the 7th

Pay Commission, Schedule 'C' has not been amended and that the Government having decided to do away with Schedule 'C', has prepared Draft Rules and duly notified the same on 4th July, 2019 inviting objections or suggestions by 4th August, 2019, whereupon the said Draft Rules together with objections/suggestions, if any, would be considered at the appropriate level of the Government. In terms of the Draft Rules, the scales of pay would be determined by the Government by general or special orders issued from time to time and that Schedule 'C' would be deleted. According to Mr. Patil, the Draft Rules are yet to be finalized and that since a policy decision has to be adopted and because of the pandemic, such finalization would take some time. It has further been submitted by him in the course of hearing, based on a communication received from the Section Officer, School Education and Sports Department, Government of Maharashtra, that private unaided schools, not receiving any financial assistance in the form of grant-in-aid from the State Government, have to meet their expenses from their own funds and the impugned GR has provisions which are intended to maintain the financial autonomy of the unaided institutions. He also submits that there is no cap or restriction on these unaided institutions

with respect to fees although it is felt that charging higher fees is impracticable especially in rural/non-urban areas where the students belong to middle class income group. Citing such communication received by him from the Section Officer, Mr. Patil has prayed for two weeks' time to file a detailed reply affidavit.

5. The writ petition is vehemently opposed by Ms. Talekar, learned advocate for the respondents 5 and 6. Placing reliance on the decision of a Division Bench of this Court reported in **2014 (5) Mh. L.J. 877 [Mahadeo s/o Pandurang More and others Vs. State of Maharashtra and others]**, it is her contention that Schedule 'C', which forms part of the 1981 Rules, cannot be amended by a Government Resolution. It is her further submission that any decision regarding the pay scales and implementation thereof other than by the mode and in the manner prescribed by the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 (hereafter "the Act", for short) or the 1981 Rules, cannot be treated as valid and binding on the respondents 5 and 6. She has further referred to the decision of the Supreme Court reported in **(2011) 13 SCC 760 [Satimbla Sharma**

and others Vs. St. Paul's Senior Secondary School and others] in support of the proposition that unaided private minority schools, like the respondent no.6, are not 'State' within the meaning of Article 12 of the Constitution and, therefore, the respondent no.6 is under no obligation to ensure 'equal pay for equal work' as envisaged in Article 39(d) thereof. It is also her contention, relying on the decision reported in **(2006) 7 SCC 690 [Sushmita Basu and Others Vs. Ballygunge Sikha Samity]**, that a writ of mandamus against a private educational institution would not lie in the absence of any statutory provision for application of the recommendations of the Pay Commission to private unaided institutions even on the grounds of parity. She has, accordingly, prayed for dismissal of the writ petition.

6. We have heard learned advocates appearing for the rival parties including the learned A.G.P., considered the material on record and perused the decisions cited at the Bar.

7. The conditions of service of teachers employed in private unaided institutions including minority institutions

are governed by the provisions of the Act. In so far as the scales of pay are concerned, provisions contained in Rule 7 of 1981 Rules read with Schedule 'C' would regulate payment of salary to the full-time teachers. In view of such statutory scheme, a writ of mandamus would indeed lie against a private unaided minority institution like the respondent no.6 and/or against the respondent no.5 in relation to its affairs of administering the school since there is indeed involvement of a public law element. The respondents 5 and 6 being bound by the Act and the 1981 Rules, they are amenable to the writ jurisdiction of this Court. However, this would not automatically result in grant of relief to the petitioners. In fact, for the immediate reasons to follow, we would hold that no case for relief has been set up in the writ petition.

8. Schedule 'C' appended to the 1981 Rules was amended by the State Government upon acceptance of the recommendations of the 6th Pay Commission on 6th September, 2016. That was the last time Schedule 'C' was amended. As on date, Schedule 'C' stands as it is without any further amendment to extend benefits of the 7th Pay Commission recommendations to the teachers like the

petitioners. So long the benefits flowing from acceptance of such recommendations with certain modifications are not reflected in Schedule 'C', the petitioners cannot legitimately expect to claim any such benefits even if such benefits had been extended by the impugned GR. This, in view of the decision in **Mahadeo s/o Pandurang More** (supra). The Division Bench in **Manoj Aware** (supra) did not have the benefit of looking at the decision in **Mahadeo s/o Pandurang More** (supra) and proceeded to make certain observations in paragraph 12 of its decision, which are inconsistent therewith and strikes somewhat of a discordant note. Owing to non-consideration of the decision in **Mahadeo s/o Pandurang More** (supra), we are not inclined to the view that the decision in **Manoj Aware** (supra) should guide our thinking process and, therefore, hold that quashing of the impugned GR, as prayed for by the petitioners, would not be any worth so long Schedule 'C' is either amended in accordance with law or so long the Government, upon finalization of the Draft Rules, replaces Schedule 'C' with a general or a special order determining the scales of pay for the full-time teachers/non-teaching employees of private unaided institutions and granting benefits to teachers like the petitioners. As the matter

stands today, the petitioners are not entitled to any relief.

9. Notwithstanding what we have observed above, we do not propose to dismiss the writ petition. In our opinion, interest of justice would be sufficiently served if instead of dismissal of the writ petition we dispose of the same with directions. The Additional Chief Secretary, School Education and Sports Department, Mantralaya Annexe, Mumbai 400 032, is directed to finalize the amendments to the 1981 Rules as proposed in the Draft Rules in accordance with law, within three months from the date of receipt of a copy of this order. Should there be any cause of grievance, after such finalization, either for the petitioner or the respondents 5 and 6, they shall be at liberty to explore their remedies in accordance with law. No costs.

10. We make it clear that all other contentions of the parties are left open for being urged in appropriate proceedings, except those which have been decided by this order.

(N. B. SURYAWANSHI, J.)

(CHIEF JUSTICE)