

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.4531 OF 2018

Ramesh Sudam Bandgar] Petitioner

Vs.

The State Of Maharashtra through]
The Assistant Government Pleader]
and others.] Respondents

WITH

WRIT PETITION NO.4557 OF 2018

Mahendra Subhash Dabhade] Petitioner

Vs.

The State Of Maharashtra through]
The Assistant Government Pleader]
and others.] Respondents

WITH

WRIT PETITION NO.4532 OF 2018

Aparna Ulhas Sakpal] Petitioner

Vs.

The State Of Maharashtra through]
The Government Pleader]
and others.] Respondents

WITH

WRIT PETITION NO.4533 OF 2018

Minakshi Shashikant Shahapure] Petitioner

Vs.

The State Of Maharashtra through]

The Assistant Government Pleader	]	
and others.	]	Respondents

WITH

WRIT PETITION NO.4555 OF 2018

Sonali Vitthal Sakore	]	Petitioner
-----------------------	---	------------

Vs.

The State Of Maharashtra	]	
and others.	]	Respondents

WITH

WRIT PETITION NO.5454 OF 2018

Sandip Bhanudas Bhosale	]	Petitioner
-------------------------	---	------------

Vs.

The State Of Maharashtra through	]	
The Assistant Government Pleader	]	
and others.	]	Respondents

WITH

WRIT PETITION NO.4618 OF 2018

Shraddha Damodhar Maske	]	Petitioner
-------------------------	---	------------

Vs.

The State Of Maharashtra	]	
and others.	]	Respondents

WITH

WRIT PETITION NO.4535 OF 2018

Usha Vijay Sonawane	]	Petitioner
---------------------	---	------------

Vs.

The State Of Maharashtra through	]	
It's Secretary and others.	]	Respondents

WITH
WRIT PETITION NO.4540 OF 2018

Sharad Rajaram Mungase	]	Petitioner
Vs.		
The State Of Maharashtra	]	
and others.	]	Respondents

WITH
WRIT PETITION NO.4536 OF 2018

Rohan Madhukar Khaire	]	Petitioner
Vs.		
The State Of Maharashtra	]	
and others.	]	Respondents

WITH
WRIT PETITION NO.4539 OF 2018

Sandeep Balasaheb Limgude	]	Petitioner
Vs.		
The State Of Maharashtra through	]	
and others.	]	Respondents

WITH
WRIT PETITION NO.4534 OF 2018

Ratnnamala Mohan Mandake	]	Petitioner
Vs.		
The State Of Maharashtra	]	
and others.	]	Respondents

WITH
WRIT PETITION NO.4619 OF 2018

Deelip Nurjya Mavachi] Petitioner
Vs.
The State Of Maharashtra through]
and others.] Respondents

WITH

WRIT PETITION NO.4538 OF 2018

Nivrutti Mahadev Thanave] Petitioner
Vs.
The State Of Maharashtra]
and others.] Respondents

WITH

WRIT PETITION NO.4537 OF 2018

Shirishkumar Digamar Suryawanshi] Petitioner
Vs.
The State Of Maharashtra through]
and others.] Respondents

.....

Mr. Saurabh Pakale i/b Mr. S.M. Katkar, for PetitionerS.
Mrs.S.S.Bhende, A.G.P, for Respondent-State.
Mr. Anurag Jain for Respondents No.3 and 4.

.....

**CORAM: S.V. GANGAPURWALA &
A. S. DOCTOR, JJ.**

DATED : AUGUST 1, 2022

P.C.

1 In all these Writ Petitions, the Petitioners seek salary as per the pay scale. This court under interim order had directed Deputy Director of Education to consider stand of the Management and to

submit the report about the entitlement of the salary. Deputy Director of Education has submitted the report and affidavit in reply is also filed. It is submitted in the affidavit that the Petitioners are entitled for salary as per the pay scale. The Petitioners herein are appointed on consolidated salary from the years 2007 to 2010 and are continued in service.

2 According to the learned Counsel for the Petitioners, Petitioners are entitled for payment of salary as per the pay scale prescribed under Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 (for short “Act, 1977”).

3 The learned Counsel for the Institution submits that Petitioners are appointed on consolidated salary. The appointment orders issued to the Petitioners also specifically provide for consolidated salary. The Institution has right to appoint employees on consolidated salary. The learned counsel places reliance on the judgment of the full bench of this court in the case of *Ramkrishna Chauhan vs. Seth D.M.High School & Ors.*¹

4 The learned Counsel submits that the school is on Non-Grants Basis. It is not feasible for the school to pay salary as per pay scale to

1 (2013) 3 ALL MR 1 (F.B.)

the employees on unaided division. The Petitioners accepted appointment orders without any demur and has approached this court after about 7/8 years. According to the learned counsel, report of the Deputy Director of Education is without considering the documents placed by the Institution.

5 With the assistance of the learned counsel for the parties, we have gone through the appointment orders. Appointment orders thus, specify that the Petitioners are appointed on fixed consolidated salary. The Act, 1977 does not make a distinction between employees on unaided post and employees on aided post. The Act, 1977 applies uniformly to the employees on aided as well as unaided schools. The Act, 1977 and its schedule provides for pay scale of the Assistant Teachers.

6 Full bench of this court in the case of ***Ramkrishna Chauhan*** (Supra) has observed that the Management has inherent powers to make appointment on contractual basis. At the same time, full bench of this court in paragraph 13 of the said judgment has observed that though the Management has implicit power to appoint a duly qualified person on contractual employment even against a permanent vacancy but, that must be only an interim arrangement

till a suitable candidate is found in the selection process. It cannot be continued on year to year basis in succession.

7 It would appear that in all these matters, Petitioners are officiating their duties as Assistant Teacher for more than 10 years. It is certainly impermissible for the Management to extract the work from the Assistant Teacher for such a length of service on contractual basis. It would be unfair on the part of the Institution to continue employees for years together on contractual basis. We are also aware of the financial implication the Institution will enter into because of directions to pay the arrears of the salary as per the pay scale to the Petitioners. The Petitioners also have approached this court only in the year 2018 to get the salary as per the pay scale. We would in the aforesaid scenario, adjust the equities and pass the following order:

- a. Respondent Institution shall pay salary to the Petitioners as per the applicable pay scale from 01.10.2015.
- b. Amount already paid shall be adjusted. The arrears shall be paid by the Institution to the Petitioners within six months. However, regular salary as per the pay scale shall be paid to the

Petitioner from 01.09.2022.

c. With the aforesaid observation, Writ Petitions are disposed of.

(A. S. DOCTOR, J.)

(S.V. GANGAPURWALA, J.)