

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR**

CIVIL APPLICATION NO. 392/2021 IN WRIT PETITION NO. 6680/2019)
(Arunodaya Bahu-Uddeshiya Vikas Sanstha & ors. Vs. Leela Suresh Zode &
ors.)

with

CIVIL APPLICATION NO. 405/2021 IN WRIT PETITION NO. 6680/2019)
(Arunodaya Bahu-Uddeshiya Vikas Sanstha & ors. Vs. Leela Suresh Zode &
ors.)

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

CAW No. 392/2021

Mr. B. G. Kulkarni, Advocate for petitioners/applicants

Mr. A. Z. Zade, Advocate for respondent No. 1.

Mr. K. L. Dharmadhikari, AGP for respondent Nos. 2 & 3.

CAW No. 405/2021

Mr. B. G. Kulkarni, Advocate for petitioners

Mr. A. Z. Zade, Advocate for applicant/respondent No. 1.

Mr. K. L. Dharmadhikari, AGP for respondent Nos. 2 & 3.

CORAM : MANISH PITALE J.

DATE : 29.03.2022

The petitioners as well as respondent No.1 have filed these applications seeking specific direction to be issued to the respondent No. 2 – Education Officer.

2. It is contended that in terms of direction given by a Division Bench and learned Single Judge of this Court in similar situation, the State has been

directed to bear the burden of payment of back-wages to an employee similarly situated like respondent No. 1 in the present case.

3. The applicants/petitioners contend that the period for which the respondent No. 1 remained out of service due to termination of his service on 05.01.2017, till he was reinstated in pursuance of the impugned order passed by the Tribunal, on 01.10.2021, the post of Assistant Teacher in question remained vacant throughout and that therefore, the State is liable to pay back-wages for the said period as the School in question is grant-in-aid School. It is the case of applicants/petitioners that for the said sanctioned post which remained vacant during the aforesaid period, they did not claim salary. Attention is invited to judgment of Division Bench of this Court in the case of ***Kohali Rural Education Society & anr. Vs. The State of Maharashtra & ors. (Judgment and order dated 24.08.2016 passed in Writ Petition No. 6274/2015)*** and judgment of learned Single Judge of this Court dated 10.10.2019, passed in ***Writ Petition No. 5108/2013 (Nutan Vidarbha Shikshan Mandal, Amravati & anr. Vs. Ambadas Sitaram Satange & anr.)*** and connected petitions.

4. Mr. B. G. Kulkarni, learned counsel appearing for the applicants/petitioners and Mr. A. Z. Jibhkate, learned counsel appearing for respondent No. 1 have both relied upon the aforesaid judgments of this Court to seek appropriate directions against the respondent No. 2 – Education Officer.

5. Mr. K. L. Dharmadhikari, learned Assistant Government Pleader for respondent No. 2 submits that if proposal is moved in terms of judgments of this Court, the respondent No. 2 Education Officer would examine them in accordance with law.

6. In the case of Kohali Rural Education Society & anr. (Supra), the Division Bench of this Court in similar circumstances, considered liability of the State to bear the burden of payment of back-wages in a similar situation, where the post in question was a sanctioned post, it had remained vacant for the relevant period and the Management had not claimed salary for the said post, despite being a grant-in-aid Institution. The Division Bench of this Court in the case of Kohali Rural Education Society & anr. (supra) observed as follows:-

“On hearing the learned Counsel for the parties, we find that it would be necessary to direct the respondent

nos.1 and 2, in the circumstances, of the case, to release the salary in favour of the respondent no. 3. In the case before the Hon'ble Supreme Court, the liability to pay the salary was specifically fastened on the Management and the State Government was discharged of its liability to pay the salary. Such is not the case here. In the case before the Hon'ble Supreme Court, the Management had sought the salary by filing a petition and the said petition was withdrawn before a second petition for the same relief was filed. Though in the peculiar facts before the Hon'ble Supreme Court, the Hon'ble Supreme Court had held that the Management would be liable to pay the salary and the State Government would not be liable to reimburse it to the Management, the Hon'ble Supreme Court has observed that generally it would be for the State Government to release the salary to a discharged employee of a grant-in-aid school. In the instant case, though this Court had directed the Management to pay the salary to the respondent no.3, this Court had kept the issue in regard to the reimbursement of the salary by the petitioners from the State exchequer, open. The issue in regard to the payment of salary by the Management was not foreclosed by the judgment in the writ petition. It is rightly submitted on behalf of the petitioners that since the

petitioners had not employed any other employee in the place of the respondent no.3 as the Headmaster and had not secured the salary for such other employee, it would be necessary for the respondent nos. 1 and 2 to pay the salary of one employee i.e. the respondent no. 3 in this case. The post on which the respondent no. 3 was appointed was a sanctioned post and his promotion was approved. If that is so, the respondent no. 2 could not have declined to reimburse the salary to the petitioners. In the facts of this case, we are of the view that it would be necessary for the respondent nos. 1 and 2 to pay the salary to the respondent no.3.

Hence, for the reasons aforesaid, the writ petition is allowed. The impugned order is quashed and set aside. We hereby direct the respondent nos. 1 and 2 to release the difference of salary to the respondent no.3-a for the period from 05.10.2006 to 28.03.2007 and the entire salary for the period from 28.03.2007 to 31.08.2008 within a period of two months. Since the petitioners have already paid a sum of Rs.3,00,000/- to the respondent no. 3 in pursuance of the judgment in the writ petition, the respondent nos. 1 and 2 should release an amount of Rs.3,00,000/- in favour of the petitioners and an amount of Rs. 2,21,192/- in favour of the respondent nos. 3-a, within a period of two months.”

7. Similarly, the learned Single Judge of this Court in the case of Nutan Vidarbha Shikshan Mandal, Amravati & anr. (supra) in a similar situation directed as follows:-

“In the impugned judgment there is a direction to pay back-wages to the respondent No.1 from 23/05/2011 till his reinstatement. By the interim directions issued by this Court in Writ Petition No. 3382/2015 the respondent No. 1 is receiving his regular salary pursuant to his reinstatement. Insofar as the question of back-wages is concerned the Education officer would be required to examine the entitlement of the Management to receive grants for that period. If it is found that there was no other appointment made on the post that was held by the respondent No.1 and further his post was duly sanctioned, then the Education Officer would be liable to release salary grants in that regard.

In view of aforesaid I do not find any reason to interfere with the judgment of the School Tribunal. By observing that the petitioners are free to seek reimbursement of the amount of back-wages from the salary grants admissible to them, the writ petitions are disposed of. Needless to state that if the Education Officer finds that the Management is entitled to salary grants for the aforesaid period, same shall be released in favour

of the petitioners. To facilitate this aspect the Management shall within a period of six weeks from today submit the salary bills of the concerned respondent-employee to the Education officer. Within further period of four weeks from that date the Education Officer shall take necessary steps in that regard. On receiving the amount of back-wages, the respondent-employee in each writ petition undertakes to refund the amount of Rs. 50,000/- that was received by him pursuant to the directions issued in the contempt proceedings.”

8. In view of the above, this Court is of the opinion that these two applications can be conveniently disposed of by giving appropriate directions to the respondent No. 2. Education Officer. The applicants/petitioners in Civil Application No. 392/2021, shall move appropriate proposal along with bills for payment of back-wages to the respondent No.1 for the period between 05.01.2017 to 30.09.2021 before the respondent No. 2 – Education Officer within a period of two weeks from today. Applicants/petitioners will consult the respondent No. 1 while moving such proposal and bills, so that there is no dispute in that regard. Upon receipt of such proposal and bills, the respondent No. 2 Education Officer shall examine the same and pass appropriate orders in the light of law laid down by

this Court, within a period of eight weeks from the date of receipt of the proposal and bills.

9. Applications stand disposed of.

JUDGE