

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

913 WRIT PETITION NO.720 OF 2023

SHAIKH YAKUB SHAIKH MOHAMMADSAHAB AND ANOTHER
VERSUS
THE STATE OF MAHARASHTRA THROUGH ITS SECRETARY AND
OTHERS

Mr.I.D.Maniyar h/f Mr.V.S.Panpatte, Advocate for the petitioners.
Mr.S.G.Sangle, AGP for the respondent/State.

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

DATE : JANUARY 31, 2023

PER COURT :

1. The petitioners have put forth prayer clause C and D as under :-

"C. By a writ of mandamus or order or direction in the like nature, and held and declare that, the petitioners, working as Hostel Superintendent and Cook in Private Ashram School, are entitled to first benefit under the assured carrier progression scheme which is declared by the State Government and to release the arrears of difference salary to the petitioners.

D. By issue of writ of mandamus or any other appropriate writ, order or direction in the like nature and direct the respondent Nos. 1 and 2 to extend the first benefit under assured carrier progression scheme to the petitioners w.e.f. their completing 12 years of service."

2. Reliance is placed upon an order dated 25.07.2018 passed by this Court in WP No.8423/2018 filed by **Milind Motiram Rathod and another Vs. The State of Maharashtra and another**. The relevant portion of the said order, which would apply to this case is reproduced as under :-

"5. The issue raised in this petition is no more res integra in view of the judgment of the Division Bench at Principal Seat in Writ Petition No. 2358/2013 and other companion matters, decided on 21st September 2013. The Division Bench in paragraph Nos. 17 to 19 of the order has observed thus :-

"17. The Assured Career Progress Scheme is a welfare scheme which is basically brought about to remove stagnation as very few promotion avenues are available to Group "C" and "D" employees. The ACPS enables the eligible employees to be placed in higher pay scale. The eligible non-teaching staff of the aided Secondary Schools in Group 'C' and 'D' category gets the benefit of ACPS. But the similar category of employees in the aided private Ashram Schools who perform identical duties have been denied the benefit of ACPS which infringes their fundamental rights under Articles 14 and 16 of the Constitution of India. The action of denial of benefits to the similarly placed employees discharging similar duties is arbitrary and violative of Article 14 of the Constitution of India.

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."

6. In view of the decision rendered by the Division Bench, as referred to above, the petition deserves to be allowed and the same is accordingly allowed.

7. The respondents are directed to examine the cases of each of the individual petitioner for deciding whether they satisfy the criteria laid down for claiming benefits under the ACPS to the private aided Government schools under the Government Resolution dated 30th April 1998, as modified from time to time, and if it is found that the petitioners are entitled to claim benefits under the Scheme and they satisfy the eligibility criteria, the respondents shall extend the benefits to the petitioners. The respondents shall scrutinize the cases of the petitioners within a period of six months and extend the benefits to such of the petitioners who are found eligible, as expeditiously as possible preferably, within a period of four months from such scrutiny."

3. Considering the above, we have perused the impugned order dated 27.07.2022 and we find that the Assistant Commissioner, Social Welfare, Nanded, Mr. Tejas Malwadkar has concluded that there is no

provision in Law for granting ACPS benefits for the first time to the non teaching staff. Apparently, the earlier orders of this Court dated 21.09.2013 and 25.07.2018 were not brought to the notice of the said Authority.

4. In view of the above, this petition is partly allowed. The impugned order dated 27.07.2022, is quashed and set aside.

5. The cases of these 2 petitioners are relegated to the office of respondent No.2 who would examine the case of each of these petitioners and satisfy himself that they cater to the criteria laid down for claiming the benefits of ACPS applicable to private schools having Government aid in the light of the GR dated 30.04.1998 and subsequently modified by this GR, which may be applicable to the cases of these petitioners. After such scrutiny, if the Authority concludes that these petitioners are entitled and eligible for the ACPS benefits, appropriate orders would be passed. Let the verification exercise be completed on or before 31.05.2023 and if found eligible, the benefits be extended to the petitioners, on or before 31.07.2023.

(SANJAY A. DESHMUKH, J.)

(RAVINDRA V. GHUGE, J.)