

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

924 WRIT PETITION NO.3212 OF 2023

Tukaram s/o Indrajit Tupkar
Age 34 years, Occ. Kamathi,
Secondary Ashram School
Dhalegaon, Tq. Ahmedpur
District Latur

...Petitioner

Versus

1. The State of Maharashtra
Through its Secretary,
Social Welfare Departmental
Mantralaya, Mumbai
2. The Director,
V.J.N.T. OBC and SBC Special
Assistance Department,
Maharashtra State, Pune
3. The Regional Deputy Commissioner
Social Welfare Latur Division,
Latur
4. The Assistant Commissioner
Social Welfare Department,
Latur

...Respondents

...
Advocate for Petitioner : Mr. S.S. Phatale h/f Mr. Mahesh S. Taur
AGP for Respondents: Mr. S.K. Tambe
.....

**CORAM : RAVINDRA V. GHUGE AND
SANJAY A. DESHMUKH, JJ.
DATED : 31st MARCH, 2023.**

ORAL JUDGMENT (PER RAVINDRA V. GHUGE, J.) :-

1. Leave to delete Respondent No.5. Deletion be carried out forthwith.

2. Rule. Rule made returnable forthwith and heard finally by the consent of the parties.

3. The Petitioner has put forth prayer clauses B and C, as under:-

“B. By issuing writ of mandamus or any other appropriate writ, order or direction, the respondents, particularly respondent Nos. 1 to 4 be directed to grant higher pay scale as well as benefit of Assured Career Progress Scheme (ACPS) in favour of the petitioner, upon completion of 12 years’ service from his initial date of appointment in terms of Government Resolution dated 30th April, 1998. Consequently, the petitioner be paid all the arrears of monetary benefits as well as regular pensionary benefits by necessary pay fixation along with interest at the rate of 10% per annum from the date it became due till the actual payment and for that purpose necessary direction may kindly be issued.

C. It be held and declared that the petitioner, who was non teaching employee of the ashram school run by social welfare department of State of Maharashtra is eligible and entitled for the benefit of ACPS in terms of Government Resolution dated 30.4.1998 upon completion of 12 years’ service from the date of initial appointment and for that

purpose necessary direction be issued.”

4. The issue raised in this Petition is no longer res-integra in view of the judgment delivered by this Court at the Principal Seat in Writ Petition No. 2358 of 2013 (Kiran Namdeo Shinde and others vs. The State of Maharashtra and others) and companion matters, dated 21.9.2013. Paragraph Nos. 17 to 19 of the said judgment, read as under:-

“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 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.”

5. In view of the above, this Petition is partly allowed. We permit the Respondents authorities to carry out the verification exercise and to confirm that the Petitioner satisfies the criteria for claiming benefits of ACPS upon completion of 12 years' service, by taking into account his date of joining in the light of the Government Resolution dated 30.4.1998. Needless to state, if the Petitioner is entitled, the monetary benefits would be extended to him. Let such verification exercise be completed, on or before 31.8.2023 and if eligible, let the monetary benefits be paid to the Petitioner, on or before 31.10.2023.

6. Rule is made partly absolute in the above terms.

(SANJAY A. DESHMUKH, J.)

(RAVINDRA V. GHUGE , J.)

rlj/