

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

120 WRIT PETITION NO.11453 OF 2022

SWABHIMANI SHIKSHAK VA SHIKSHAKETAR SANGHATANA
MAHARASHTRA RAJYA THROUGH ITS SECRETARY AND
OTHERS
VERSUS
THE STATE OF MAHARASHTRA THROUGH SECRETARY AND
OTHERS

...
Advocate for Petitioners : Mr. Ajay D. Pawar
AGP for Respondents : Mr. S.K. Tambe
.....

**CORAM : RAVINDRA V. GHUGE AND
SANJAY A. DESHMUKH, JJ.
DATED : 15th FEBRUARY, 2023.**

PER COURT :-

1. This petition is filed through a union, so also through the concerned employees at Sr. No. 4 to 137. The primary prayers of the petitioners are set out in prayer clauses B, C, D and E as under:-

- “B) To direct the respondents to grant benefits of regular pay scale in favour of the petitioner Nos. 4 to 137 working as ‘Watchmen’ in Ashram schools run by the Private Management under Tribal Development Department at par with the Watchmen working under the Government Ashram Schools in Tribal areas by issuing writ of mandamus or any other appropriate writ or directions as the case may be.
- C) To direct the respondent authorities to implement the G.R. dated 13.12.2019 for watchmen by which the Government has taken a decision to grant the regular pay scale for multipurpose employees (including Watchman / Chaukidar/

Paharekari) working in the Ashram Schools under the Tribal Development department by issuing necessary writ or directions as the case may be.

- D) To Hold and declare that the petitioners Nos. 4 to 137 are also entitled to get benefits of regular pay scale at par with the Watchmen working in Government Ashram Schools coming under the Tribal Development Department, in view of the judgment and order of this Hon'ble Court in W.P. No. 4300 of 2021 dated 20.9.2022, by issuing necessary writ or directions as the case may be.
- E) To hold and declare that the petitioners Nos. 4 to 137 are also entitled to arrears of salary of earlier three years w.e.f. filing of the present writ petition in view of the judgment and order of this Hon'ble Court in W.P. No. 4300 of 2021 dated 20.9.2022."

2. The petitioners relied upon the judgment delivered by this Court, dated 20.9.2022, in writ petition No. 4300 of 2021, filed by the present union and 58 workmen. This Court concluded in the light of the law laid down by the Hon'ble Supreme Court in ***State of Punjab and others vs. Jagjit Singh and others, 2017 (1) SCC 148***, as under:-

"25. In ***Punjab State Electricity Board*** (supra) the Apex Court has re-stated the settled principle that equation of pay scales must be left to Government and on decision of experts and that the Court should not interfere with it. We are in respectful agreement with the said proposition. However, the issue involved in the present case is not about equation of pay scales of two posts. The issue is about the extension of pay scales of temporary employees who are being paid

honorarium in the light of the law laid down in **Jagjit Singh** (supra). Therefore, the decision is clearly distinguishable. **P.S. Gopinathan** (supra) is relied upon in support of the contention that having accepted appointments on payments of honorarium, the petitioners are estopped from claiming the pay scales. We are afraid, the principle of estoppel cannot be invoked in the case before us as the Apex Court in **Jagjit Singh** (supra) has specifically dealt with this aspect and has held that

“In the light, who is compelled to work on lesser wage does not do so voluntarily. He does so, to provide food and shelter to his family, at the cost of his self respect and dignity, at the cost of his self worth, and at the cost of his integrity. For he knows, that his dependents would suffer immensely, if he does not accept the lesser wage. Any act, of paying less wages, as compared to others similarly situate, constitutes an act of exploitative enslavement, emerging out of a domineering position. Undoubtedly, the action is oppressive, suppressive and coercive, as it compels involuntary subjugation.”

Thus, the principle of estoppel cannot be invoked while deciding the issue of grant of pay scales to the temporary employees.

E. CONCLUSION

26. Considering the sound exposition of law on principle of equal pay for equal work to temporary employees in **Jagjit Singh** (supra), we have no hesitation in holding that the petitioners are required to be granted minimum pay in the payscale admissible for the post of Watchmen/Security Guards/Multi-Tasking Staff engaged in the Government Ashram Schools. The monitory benefits arising out of

extension of payscale are however required to be restricted to three years prior to the date of filing of the Petition i.e. w.e.f. 02-02-2018 or from the date of appointment, in the event of appointment being made after 02-02-2018.

F. **ORDER**

27. Consequently, we proceed to pass the following order:

- i) We direct the respondents to pay to the petitioners wages at the minimum of payscale admissible for the post of Watchmen/Security Guards/Multi-Tasking Staff engaged in the Government Ashram Schools.
- (ii) Monitory benefits arising out of extension of such pay scale is however restricted to three years prior to the filing of the present petition i.e. w.e.f. 02.02.2018 or from the date of engagement of the respective petitioners, whichever is later.
- (iii) Writ Petition is allowed in above terms.
- (iv) There shall be no orders as to costs."

3. The learned A.G.P. submits that merely because this court has delivered a judgment in another matter, and only because there seems similarity as regards the facts of the petitioners' case and the case which is decided, a blanket order cannot be passed by this court. Each of these petitioner has to establish that they were working as watchman in the various Ashram Schools, operated by the private management, which are covered under the Tribal

Development department. Whether these petitioners really were working as Watchmen or Choukidar or the Paharekari or whether they were working in any other capacity, will have to be scrutinized and only after crystallizing the rights of the petitioners, reliefs could be granted in terms of the Government Resolution dated 13.12.2019.

4. We do find that the submissions of the learned A.G.P. are well placed. Ideally, such matters are to be filed either in the Industrial court or an Industrial dispute has to be raised so as to lead oral and documentary evidence and establish a right of each petitioner as regards designation/nomenclature/nature of duties/duration of employment/pay scales paid to the regular employees and the shortfall in the pay scale. Once this exercise is completed, the right of the petitioners can be crystallized under Item 9, Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 or by raising an Industrial Dispute under Section 2(k) of the Industrial Disputes Act, 1947, either in the Reference Court or before the Industrial Tribunal.

5. As such, this petition is disposed off in the light of the above and the judgment of this Court, dated 20.09.2022, delivered in writ petition No. 4300 of 2021, with the following directions:-

- a) The concerned department under which the Ashram Schools in the Tribal area are functioning, shall scrutinize

the cases of each of the petitioner Nos. 4 to 137 and also of similarly situated other employees, who may not have approached this court, for the purposes of identifying their designation/nomenclature/ nature of duties/duration of employment/ pay scales etc. paid to the regular employees and the shortfall in the pay scale. This exercise of verification shall be completed within four weeks.

- b) After completion of the verification exercise, respondent authorities shall proceed to quantify the arrears of their service benefits and thereafter, make such payments to each of the eligible candidates, whether he is one of the petitioners or others who have not approached the court, as the case may be, within 90 days after completion of the scrutiny exercise.
- d) Akin to the judgment dated 20.9.2022 (supra), the arrears would be restricted either for a period of last three years preceding the filing of the Writ Petition or from the date of engagement of a particular candidate, whichever is less.
- e) Any aggrieved petitioner or similarly situated employees, would be at liberty to seek redressal of his/their grievance, by taking recourse to the remedy, as is statutorily provided.

(SANJAY A. DESHMUKH, J.)

(RAVINDRA V. GHUGE , J.)

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