



Gaikwad RD

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 2290 OF 2020

1. **PRIYANKA P WAYANGANKAR,**
Aged Adult, R/o: E/204, Bhoomikanya
CHS, Near Ice Factory, Phoolpada,
Virar (East).
2. **ALAKNANDA SUNIL NAIK,**
Aged Adult
3. **ANURADHA B SUVARNAKAR,**
Aged Adult
4. **VANMALA RAJIV PATIL,**
Aged Adult
5. **PRANITA SACHIN RAUT,**
Aged Adult, Petitioners Nos.2 to 5
serving as Assistant Teachers at Kai
Krishna Moru Patil Deshmukh
Vidyalaya, Tulinj, Nalasopara (E),
Vasai.

... PETITIONERS

~ VERSUS ~

1. **THE STATE OF MAHARASHTRA,**
Through the Principal Secretary,
Department of Education and School,
Mantralaya Annexe, Mumbai 400 032.

2. **THE DEPUTY DIRECTOR OF
EDUCATION,**
Thane.
3. **THE EDUCATION OFFICER,**
Zilla Parishad (Primary), Thane.
4. **TULINJ EDUCATION TRUST,**
Through its General Secretary, Having
its office at: Kai Krishna Moru Patil
Deshmukh Vidyalaya, Tulinj,
Nalasopara (E), Vasai.
5. **KAI KRISHNA MORE PATIL
DESHMUKH VIDYALAYA,**
Having office at: Tulinj, Nalasopara (E),
Vasai.

... RESPONDENTS

APPEARANCES

FOR THE PETITIONERS	Mr Mihir Desai, Senior Advocates, <i>i/b Dervyani Kulkarni</i>
FOR RESPONDENT- STATE	Mrs PJ Gavhane, AGP.
FOR RESPONDENTS NOS 4 AND 5	Mr Sachin S Punde.

**CORAM : G.S.Patel &
Neela Gokhale, JJ.**

RESERVED ON : 18th July 2023

PRONOUNCED ON : 11th August 2023

JUDGMENT (Per Neela Gokhale, J):-

1. **Rule.** Rule returnable forthwith. The Respondents have filed Affidavits in Reply. Heard finally by consent of the parties.
2. The Petitioners seek to quash a Government Resolution (“**GR**”) dated 19th September 2016 and seek directions to the Respondent State to sanction salary grants to the two divisions of 5th to 7th Std of the Respondent school and to release the arrears of salaries as per scale.
3. At the outset, we note that similar relief relating to disbursal of arrears of salary is also sought by another teacher at the same school in a connected Writ Petition No. 4393 of 2017.
4. There is an Affidavit filed by the Respondent, Education Department in that Petition containing a clear admission as to the approval of 100% grant-in-aid to the Respondent school.
5. Surprisingly, the Respondent Department has deviated from its stand taken in the other proceedings relating to the same school. We have noted this for reasons that will unravel in the following discussion.
6. The Petitioners are Assistant Teachers engaged in the 5th Respondent school run by the 4th Respondent Education Trust. The Respondents No. 2 and 3 are the Deputy Director of Education and the Education Officer (Primary), Zilla Parishad, Thane respectively of the 1st Respondent, the State of Maharashtra.

7. The facts giving rise to the Petition reveal that the Petitioners were appointed as Assistant Teachers in the Respondent school pursuant to a selection procedure during the period from 1996 to 1999. Initially, the Petitioners were on contractual basis and thereafter by order dated 26th August 2010–2011, their services were approved on a regular basis. Thereafter, grant-in-aid was approved for their services with effect from 1st June 2010.

8. Pursuant to the representations of the Management, the Education Department agreed to grant 100% aid to all the divisions in the school and ultimately by letter dated 27th July 2010 the grant was sanctioned. The Petitioners have received salary till November 2012 from the grant. However, the salary grant was withdrawn from December 2012. The Petitioners represented to various authorities for restoring the grant-in-aid, but the Education Officer by a letter dated 14th August 2013 conveyed that there was in fact an over-payment of Rs 80,00,662/- and the same was to be refunded to the State. Thereafter, by a GR dated 30th June 2014, the State approved 100% grant to the school, but issued a further GR of 19th September 2016 modifying the earlier GR to the extent of reducing the salary grant to 20% instead of 100%. It is this GR that is assailed in the present Petition.

9. Mr Desai, learned Senior Counsel appearing for the Petitioner, apprehends recovery by the Education Department of the purported over-payment of the grant disbursed by the Government. It is this apprehension that has led to the filing of the present Petition also seeking disbursal of arrears of salaries from

academic year 2011-12. Mr Desai states that the Department has erroneously withdrawn the sanctioned grant which action is arbitrary, illegal and in violation of the Petitioner's fundamental right of Articles 14 and 21 of the Constitution of India. He also says that the modification to the GR of 2014 is arbitrary and illegal and deserves to be set aside.

10. Mrs Gavhane has contested the Petition by narrating a series of proceedings challenging an earlier GR of 15th November 2011 which granted aid to schools fulfilling specified norms, including a condition that the concerned school must have meticulously followed the reservation policy of the State amongst other conditions. She says that the matter had reached the Apex Court which ultimately negated the challenge. In response to the GR of 30th June 2014 declaring 100% grant-in-aid, she tries to draw a distinction between eligibility of a school for a grant-in-aid and actual sanctioning of the said grant. She says that the actual sanctioning is the sole discretion of the State Government which is subject to the availability of funds. She further contends that the formula of providing grant-in-aid is dynamic and no school has an enforceable right to receive this aid. In that context, she supports the GR dated 19th September 2016 which modifies the earlier GR of 2014. She has relied upon a decision of this Court in Writ Petition No.7333 of 2013 in *Bormalnath Shikshan Sanstha & Anr v State of Maharashtra & Ors* (AS Oka, J, as he then was, and Revati Mohite Dere, J).

11. Mr Punde, learned Counsel, appears for the Management. He supports the Petitioner. However, he buttresses that support by outlining the additional woes of the Management, pleading that the students in their school come from poor and lower middle class family and in the absence of a grant, they will be compelled to increase the fees which will in turn discourage students from continuing education and there is possibility of agitation on the school ground, etc. The Management thus makes it clear that it is unable to bear the burden of salaries of the teachers, and hence the authority cannot recover the amount purported to have been wrongly disbursed.

12. By order dated 20th June 2023, we had directed the Respondents No 4 and 5, the Trust and the school to prepare a statement of the amounts which have been paid to the Petitioner and other similarly placed teachers from 2012 onwards, according to them. The Petitioner was given an opportunity to verify such statement as was to be filed by the Respondents. However, no such clarification is forthcoming.

13. The matrix of pleadings and arguments canvassed on behalf of the Department overlooks the affirmations made by the Education Officer himself in the Affidavit filed in Writ Petition No. 4393 of 2017 in the identical matter tagged with the present Petition. In the Affidavit in Reply in that Petition, the teachers' salary claim is clearly admitted by the Department. Admittedly, the 100% grant-in-aid is approved with effect from 2012 and the teachers are thus entitled to receive the arrears of their salary from the year 2012 from

the grant. The Department has apparently failed to disburse the approved grant. The name of the school appears in Annexure 'A' to the GR of 30th June 2014 as an institution approved for 100% aid. The contention of Mrs Gavhane that the grant is from the date of the GR and not from the year 2012 is stated only to be rejected for the reason that firstly, the GR itself is silent about the effective date and secondly, the Department's own affidavit clearly admits to granting aid from the year 2011-2012. To confound it further, the letter of 10th February 2011 at Exhibit 'C' indicates approval of 100% grant-in-aid to the services of the Petitioners with effect from 1st June 2010. This need not deter us from holding the effective date as being the Academic Year 2011-2012 for 100% grant-in-aid for the reason that the Petitioners themselves are seeking arrears of salary only from December 2012, having received their salaries up to that date.

14. Undoubtedly, it is within the discretion of the Government to actually sanction grants to eligible schools and no Management can claim a fundamental right to receive such a grant. There is no quarrel with this proposition. However, in the facts and circumstances of the present case, the Department itself has admitted and owned its intention to specifically sanction grant to the schools listed in Annexure 'A' to the GR of 30th June 2014, which includes the Respondent school. The Affidavit is dated 14th December 2021 and the GR impugned by the Petitioners is of 2016. The 2016 GR has modified the 2014 GR to the extent that the 100% grant is reduced to 20% which has given way to apprehension of recovery of over-payment of the difference. By no stretch can the Government now ignore the affirmations in the Affidavit and gloss

over them by pointing to an earlier GR of 2016. We hold the Government to its admission and affirmation in its Affidavit filed before us.

15. The decision cited by Mrs Gavhane does not assist the case. That case was related to a challenge to the criteria laid down by the Government to determine the eligibility of a school to receive government grants. It is held in that case that the government is entitled to demand fulfilment of the conditions and the school is liable to comply with the requirements such as compliance with reservation policy etc. The decision in the cited case is wholly inapplicable to the facts in the present matter.

16. In view of the foregoing, the Respondent Department is directed to disburse the arrears of salaries from 2012 to the Petitioners within a period of four weeks from the date of this order and continue to pay the same as per applicable scale. The Respondents School and Trust have not independently petitioned us challenging any recovery made or apprehended by the Government in respect of over-payment and hence we have not dealt with that aspect. We, however, make it clear that any recovery made by the Government in that regard will not be recovered from the salaries of the Petitioners. We say this since the Petitioners as teachers have discharged their duties towards the pupils regularly and diligently despite being deprived of salaries as per their full entitlement and we will not permit any such burden to be shifted on to them. The contentions of the Management regarding any grievance of recovery, etc are left open in case the Management is advised to

initiate any proceeding pertaining to the same in a jurisdictionally competent Court.

17. Rule is made absolute in terms of prayer clause (c), which reads thus:

“(c) For a Writ of Mandamus or writ, order or direction in the nature of mandamus or for any other appropriate writ, order or direction, directing the Respondents to release the salary and arrears of salary as per scale prescribed for Assistant Teachers from the academic year 2011-2012 onwards.”

18. No costs.

(Neela Gokhale, J)

(G. S. Patel, J)