

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO.94 OF 2021

PETITIONERS :-

1. Waseem Farhat Khalil Farhat, aged 46 years, Occup. Service, R/o Kashkashan Colony, Amravati, Dist.Amravati.
2. Krushna Laxmanrao Chichmalkar, aged 42 years, Occup. Service, R/o Arjun Nagar, Amravati, Tq. And Dist.Amravati.
3. Mohammad Nisar Mohd. Khalil, aged 47 years, Occup. Service, r/o Mominpura, Daryapur Dist.Amaravati.
4. Vinod Baliramsa Bijwe, aged 43 years, occup. Service, R/o Meher Nagar, Daryapur, Dist.Amaravati.
5. Dr.Vilas Pandurang Bansod, aged 41 years, Occup.Service, R/o Nandanwa Nagar, Paratwada, Dist.Amaravati.
6. Chanda Sanjayrao Kadu, aged 53 years, Occ.Service,r/o Radhekrushna Colony, Morshi, Dist.Amaravati.
7. Bhagwant Baburaoji Gajbhiye aged 45 years, occup.-- R/o Multai Road, Warud, Dist.Amaravati.

...VERSUS...

RESPONDENTS :-

1. State of Maharashtra, through its Secretary, Rural Development and Water Conservation Department, Mantralaya, Mumbai 32.

2. State of Maharashtra through its Secretary, School Education and Sports Department, Mantralaya, Mumbai-32.
3. Divisional Commissioner, Amravati, Division, Amaravati, tq. And Dist. Amaravati.
4. Zilla Parishad, Amaravati through its chief Executive officer, Amaravati Tq. And Dist. Amaravati.
5. Education Officer (Primary), Zilla Parishad, Amaravati Tq. And Dist.Amaravati.

 Mr.A.R.Deshpande, counsel for the petitioners.
 Ms.S.S.Jachak, AGP for respondent Nos.1 to 3.
 Mr.S.M.Bhangde, counsel for respondent Nos.4 and 5.

AND
WRIT PETITION NO. 487 OF 2020

- PETITIONERS :-**
1. Arunkumar Yadorao Baghele, aged 48 years, Occup.Service, R/o Shriram Nagar, Tumsar, Post Tumsar, Tah.Tumsar, Dist.Bhandara.
 2. Vijaykumar Bhadu Chachere, aged 42 years, Occup. Service, R/o C/o K.A.Bhoyar, Gowardhan Nagar, Tumsar, Tah.Tumsar, Dist.Bhandara
 3. Manjusha Dhoman Bodele, aged 38 years, Occup. Service, r/o Behind Ganesh Lawns, Plot No.11, Dewhadi Road, Gowardhan Nagar, Tumsar, Tah. Tumsar, Dist. Bhandara.

...VERSUS...

RESPONDENTS :-

1. State of Maharashtra through its Secretary, Rural Development and Water Conservation Department, Mantralaya, Mumbai 32.
2. State of Maharashtra through its Secretary, School Education and Sports Department, Mantralaya, Mumbai-32.
3. Divisional Commissioner, Nagpur, Division, Nagpur, tq. And Dist. Nagpur.
4. Zilla Parishad, Bhandara through its Chief Executive Officer, Bhandara Tq. And Dist. Bhandara.
5. Education Officer (Primary), Zilla Parishad, Bhandara Tq. And Dist. Bhandara.

 Mr.A.R.Deshpande, counsel for the petitioners.
 Ms.S.S.Jachak, AGP for respondent Nos.1 to 3.
 Mr.Ratnakar Khobragade, counsel for respondent Nos.4 and 5.

CORAM : **A.S.CHANDURKAR &
 MRS.VRUSHALI V. JOSHI, JJ.**

DATED : **24/01/2023**

COMMON J U D G M E N T (Per :Mrs. Vrushali V. Joshi, J.)

(1) Heard Mr. A.R. Deshpande, learned counsel for the petitioners, Mrs.S.S. Jachak, learned Assistant Government Pleader for the respondent nos.1 to 3, Mr. S.M. Bhangde, learned counsel for the respondent nos.4 and 5 in Writ Petition No.94 of 2021 and Mr.A.R.Deshpande, counsel for the petitioners.

Ms.S.S.Jachak, AGP for respondent nos.1 to 3. Mr.Ratnakar Khobragade, counsel for respondent Nos.4 and 5 in Writ Petition No.487 of 2021.

(2) Rule. Rule made returnable forthwith. Heard finally by consent of the learned counsel appearing for the parties. Since similar challenges arise in these writ petitions, they are decided together by this common judgment.

(3) The petitioners in Writ Petition No.94 of 2021 are employed as teachers in various schools run by Zilla Parishad, Amravati. The petitioners in Writ Petition No.487 of 2021 are similarly placed teachers teaching in Zilla Parishad Schools in Bhandara district. By Circular dated 12.12.2000 issued by the respondent no.1 scheme of honouring teachers with a district Award was formulated. The selection was to be done by a District Level Committee and the awards were to be given on 5th September of each year, being Teacher's Day with the consent of the Divisional Commissioner as stipulated by Clause 12. As a result the awardee teachers were getting an additional increment.

On 04.09.2018, the respondent no.1 issued another Circular and decided to delete Clause 12 of the earlier Circular dated 12.12.2000. As a result, the grant of such award was discontinued. Each petitioner herein contends that he has been selected by the district level committee prior to issuance of the Circular dated 04.09.2018 but has been issued the recognition certificate after 04.09.2018. Since the petitioners are not being granted benefit of the additional increment they have challenged the Circular dated 04.09.2018 issued by the respondent no.1 withdrawing the grant of additional increment granted to the District Awardee Teachers. In the alternate, the petitioners seek a declaration that the Circular dated 04.09.2018 cannot be the basis for denying them the benefit of an additional increment as their selection is prior to 04.09.2018. The petitioners thus claim the additional increment as per Circular dated 12.12.2000 with interest.

(4) The learned counsel appearing for the petitioners contended that Clause 12 of Circular dated 12.12.2000 stipulates that on selection for the award a teacher would be given an additional increment which is independent of the yearly increment. By issuing a Circular dated 04.09.2018, Clause 12 of

the Circular dated 12.12.2000, which pertains to grant of one additional increment to the District Awardee Teachers, has been deleted. The petitioners were selected by the District Level Committee and felicitated as District Awardee Teachers on the occasion of Teachers' day and the certificates were issued to them accordingly. The procedure for selection of petitioners as District Awardee Teachers was already completed prior to the issuance of the Circular dated 04.09.2018 by the Zilla Parishads and therefore, the names of the petitioners were also communicated to the Divisional Commissioner for approval. The entire procedure of selection of petitioners as District Awardee Teachers having been completed before issuance of Circular dated 04.09.2018, the said Circular would operate prospectively and could not be given retrospective effect. Hence deletion of Clause 12 of the Circular dated 12.12.2000 would not affect the entitlement of the petitioners to receive the additional increment. The learned counsel for the petitioners relied upon the Judgment of this Court in *Writ Petition No.5419 of 2018 (Sanjay Ramkrushan Waghmare and ors. Vs. State of Maharashtra and ors.)* dated 14.02.2019 to urge that Circular dated 04.09.2018 did not have any retrospective effect. The names of petitioners as selected awardee teachers is reflected in the communication dated 03.09.2020

issued by Zilla Parishad to the Divisional Commissioner, Amravati. In it, Circular dated 12.12.2000 is specifically referred. It is thus submitted that the Circular dated 04.09.2018 be declared illegal, arbitrary and discriminatory and the respondents be directed to release the arrears of said benefits to the petitioners along with interest. The communication dated 23.07.2019 issued by respondent No.5- in Writ Petition No.94 of 2021 is also sought to be set aside.

(5) The learned counsel appearing for the Zilla Parishads as well as the learned Assistant Government Pleader have opposed the writ petitions. It is submitted that the Zilla Parishad merely recommends the name of teachers who are eligible to receive the award. This is done by the Committee as constituted. Only after the names are approved by the Divisional Commissioner is the selection final. The approval of the Divisional Commissioner in both writ petitions is after 04.09.2018 and hence till the names are approved, the selection of the teachers is not final. Hence the petitioners were not entitled to the reliefs as prayed for. The learned counsel for Zilla Parishad, Bhandara relied upon the decision in the case of ***Sethi Auto Service Station and another Vs.***

Delhi Development Authority and ors. reported in ***(2009) 1 SCC 180*** to substantiate his contention.

(6) The facts on record indicate that insofar as the petitioners employed with Zilla Parishad Amravati are concerned the Selection Committee in its meeting held on 27.08.2018 recommended the names of teachers found eligible for the district award. On 03.09.2018 it directed the felicitation of such teachers to be done on 05.09.2018 with the permission of the Divisional Commissioner. The approval by the Divisional Commissioner is dated 05.10.2018.

Insofar as Zilla Parishad Bhandara is concerned, the meeting of the Selection Committee was held on 24.08.2018 and names of teachers entitled to receive the award were recommended. The administrative approval to the expenditure towards the award was given by the Divisional Commissioner on 31.08.2018. The felicitation of the awardee teachers and distribution of certificates took place on 05.09.2018. It is thus clear that in both the writ petitions the selection and recommendation of the petitioners to receive the award as per Clause 12 of the Circular dated 12.12.2000 is prior to 04.09.2018

and the actual distribution of the certificates is after 04.09.2018 as the approval by the Divisional Commissioner is after 04.09.2018. In these facts, the entitlement of the petitioners would have to be considered.

(7) Perusal of the Circular dated 12.12.2000 indicates that the initial selection of eligible teachers to receive the award is by the committee constituted at the level of the Zilla Parishad. The names of the teachers eligible are recommended by the eight member committee to the Divisional Commissioner and on his approval the award is conferred. The fact that the award has to be given on the 5th September of each year which is also called 'Teachers Day' is a relevant aspect. If the teachers entitled to receive the award have to be identified by the committee to enable such teachers to receive the award on 5th September, it goes without saying that such exercise of identification would be required to be undertaken much prior to that date. For some years, the award has been given on 5th September or even thereafter. Circular dated 04.09.2018 proceeds to delete Clause 12 of the Circular dated 12.12.2000. The object thereof is clear that from 04.09.2018 and onwards the committee would cease to identify eligible teachers for such award. This would not mean

that those teachers identified for receiving such award would not receive it in view of Circular dated 04.09.2018. Taking such view would result in giving retrospective effect to the said Circular. That does not appear to be the intention of the Circular and this has been held in Writ Petition No.1954 of 2018 decided at the Aurangabad Bench on 25.01.2019.

In was urged that since approval by the Divisional Commissioner was given after 04.09.2018 the concerned teachers would not get benefit of Clause 12 of the Circular dated 12.12.2000. It must be noted that selection of eligible teachers is an important step for being eligible to receive the award. Unless a teacher is selected by the Committee his name cannot be considered by the Divisional Commissioner. Hence, once a name recommended by the Committee at the Zilla Parishad level is approved by the Divisional Commissioner such approval would relate back to the date of selection/identification of such teacher by the Committee. If such selection/identification of a teacher for receiving the award is prior to 04.09.2018 then there is no reason to deprive the teacher of such award only on the ground that the Divisional Commissioner has approved his name after 04.09.2018. The reliance placed on the decision in ***Sethi Auto Service Station***

and another Vs. Delhi Development Authority and ors. (Supra) is clearly misplaced since reliance therein was placed on notings in the files to sustain a claim based on legitimate expectation. In any event if the Divisional Commissioner does not approve the name of any teacher selected to receive the award there would be no question of such teacher receiving the award even if his name is recommended by the Committee. But a teacher whose name is recommended by the Committee prior to 04.09.2018 cannot be deprived of such award only on the ground that the Divisional Commissioner has approved the name after 04.09.2018.

(8) Though by the Government Resolution, Clause 12 of the Government Circular dated 12.12.2000 has been deleted, the deletion would take effect from 04.09.2018 and would not adversely affect the claims of the eligible District Awardee Teachers for grant of additional increment in addition to their entitlements as regard their regular increments. The Circular was issued on 04.09.2018 and the certificates were given on 28.11.2018, the names of the awardees were forwarded for the approval of the additional increment prior to 04.09.2018. Merely, because the approval to the selection of teachers as District Awardee Teachers has been granted on 28.11.2018 i.e. after

04.09.2018, it does not and cannot disentitle the petitioners from getting one additional increment. Getting belated approval to the selection of petitioners from the Divisional Commissioner, cannot at all be the ground to deny the benefits of one additional increment. The selection of petitioners as District Awardee Teachers has made prior to the issuance of Circular dated 04.09.2018. The facts show that it is an award conferred upon them and it is therefore, in addition to regular normal increments. The Government Resolution dated 24.08.2017 does not speak about any incentives conferred upon the teacher as an award. We are therefore, not in a position to accept the submissions made by the learned Assistant Government Pleader and learned counsel for the respective Zilla Parishads. The increments additionally granted ought to have been continued and its benefits should have been received by the District Awardee Teachers till their superannuation. So we are of the view that all these petitioners are also entitled to have the benefit of grant of advance increment in terms of the Government Circular dated 12.12.2000.

(9) In view of above, we are inclined to allow the writ petitions. We direct the respective Zilla Parishads to continue to honour the teachers by granting them benefit of the additional

increment under Clause 12 of the Circular dated 12.12.2000. It is held that Circular dated 04.09.2018 would not affect the claim of the petitioners to receive one additional increment since their selection/recommendation to receive the award is prior to 04.09.2018. The benefits accordingly be released within a period of three months from today.

(10) Rule is made absolute in the above terms with no order as to costs.

(MRS.VRUSHALI V. JOSHI, J)

(A.S.CHANDURKAR, J)