

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

WRIT PETITION NO. 56 OF 2018

Sou. Manisha Rajendra Kamble,
aged about 31 years, Occ. Service,
R/o Sant Tukdoji Ward, Pradnya Nagar,
Nanduri Road, Hinganghat, Tah. Hinganghat,
District – Wardha.

PETITIONER

.....VERSUS.....

1. The State of Maharashtra,
through its Secretary, Education and Sports Department,
Mantralaya, Mumbai – 32.
2. The Director of Education,
Pune, Directorate Office, Pune,
Tah. & Dist. Pune.
3. Deputy Director of Education,
Nagpur Division, Nagpur, Civil Lines,
Nagpur.
4. Education Officer (Secondary),
Zilla Parishad – Wardha,
Tah. & Dist. Wardha.
5. Awtar Meherbaba Shikshan Sanstha,
Arvi (Chhoti), Tah. Hinganghat, District – Wardha,
through its President/ Secretary Praful Madhukarrao Khode,
aged about 30 years, Occ. Business,
R/o New Yeshwant Nagar, Behind Ambedkar Hostel,
Hinganghat, Tah. Hinganghat, District – Wardha.
6. Awargiya Indira Gandhi Vidyalaya and
Arts Junior College, through its Head Master,
Pur Pidit Colony, Hinganghat,
Tah. Hinganghat, District – Wardha.

RESPONDENTS

Shri S.D. Chande, Advocate for the petitioner.
Ms S.S. Jachak, Assistant Government Pleader for respondent nos. 1 to 4.
Shri S.P. Bhandarkar, Advocate for respondent nos. 5 and 6.

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

ARGUMENTS WERE HEARD ON : JUNE 15, 2023

JUDGMENT IS PRONOUNCED ON : JULY 25, 2023

JUDGMENT : (PER : A.S. CHANDURKAR, J.)

The petitioner came to be appointed as an Assistant Teacher at respondent no.6 – Junior College that is being run by respondent no.5 – Management. The services of the petitioner came to be approved on 18/10/2013 for a period of two years. By Government Resolution dated 30/6/2014, the School was held entitled to partial grant-in-aid. The benefit in that regard came to be enhanced as per the policy of the State Government. The services of the petitioner came to be dispensed with on 27/6/2017. The petitioner on 28/6/2017 made a representation seeking salary for the period from 1/1/2011 to 28/6/2017. The representation made by the petitioner was replied by the Management on 8/7/2017 stating therein that since the services of the petitioner were approved on no grant basis, it was the responsibility of the Education Officer (Secondary) to release her salary. On that count, the Management refused to make any payment to her. In this backdrop, the present Writ Petition has been filed on 31/7/2017 praying that the Management and the School be directed to pay the petitioner her salary from 1/1/2011 to 28/6/2017.

2. In the reply filed by the Management and the School, the

entitlement of the petitioner is denied. It has been stated that though the School was held entitled for partial grant to the extent of 60% from 2011-12 which grant came to be enhanced subsequently, the same was only on paper and no funds were actually received by the School. By filing an additional affidavit, it has been further stated that while accepting the petitioner's resignation on 11/5/2017, the petitioner was paid all arrears which was an amount of Rs.5,00,000/- in cash. The petitioner however refused to give any acknowledgment in that regard. On these counts, it was stated that no relief was liable to be granted to the petitioner.

3. We have heard the learned Counsel for the parties. The petitioner seeks to rely upon the decisions in *Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust And Others Vs. V.R. Rudani And Others* [(1989) 2 SCC 691] and *K. Krishnamacharyulu And Others Vs. Sri Venkateswara Hindu College of Engineering And Another* [(1997) 3 SCC 571] to urge that the Writ Petition as filed was maintainable and the Management as well as the School were duty bound to pay the petitioner her arrears of salary.

On the other hand, the learned Counsel for the Management and the School has relied upon the decisions in i) *Sushmita Basu And Others Vs. Ballygunge Siksha Samity And Others* [(2006) 7 SCC 680]; ii) *Satimbla Sharma And Others Vs. St Paul's Senior Secondary School And*

Others [(2011) 13 SCC 760]; iii) Committee of Management, Delhi Public School And Another Vs. M.K. Gandhi And Others [(2015) 17 SCC 353]; and iv) St. Mary's Education Society And Another Vs. Rajendra Prasad Bhargava And Others [(2023) 4 SCC 498]. It is submitted that since the petitioner was seeking enforcement of her rights that were personal to her, the Writ Petition was not maintainable and no relief could be granted.

4. At the outset, we may state that the petitioner is claiming monetary relief in the form of arrears of salary for the period from 1/11/2011 to 28/6/2017. Ordinarily, a monetary claim prior to three years of filing of Writ Petition would not be entertained in view of the general principles of limitation by applying a period of three years as the limit within which any monetary relief as due could be claimed. For this reason, the claim from 1/11/2011 to 31/7/2014 would relate to the period beyond three years of filing of the Writ Petition. Since the relief of grant of arrears of salary for this period could not have been obtained by approaching the Civil Court, that relief will have to be held to be not entertainable on account of unexplained delay and laches.

5. Coming to the prayer for grant of arrears of salary from 1/8/2014 to 28/6/2017, it would be necessary to consider whether this relief can be granted in exercise of writ jurisdiction under Article 226 of

the Constitution of India. As stated above, the learned Counsel for the petitioner has relied upon the decisions in *Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust And Others (supra)* and *K. Krishnamacharyulu And Others (supra)*. These decisions along with various other decisions have been considered by the Hon'ble Supreme Court in its recent decision in *St. Mary's Education Society And Another (supra)*. In paragraphs 2 and 3 of the said decision, the issues dealt with have been referred to. The said paragraphs read as under :

“2. In the present appeal, two pivotal issues fall for consideration of this Court :

2.1. (a) Whether a writ petition under Article 226 of the Constitution of India is maintainable against a private unaided minority institution ?

2.2. (b) Whether a service dispute in the private realm involving a private educational institution and its employee can be adjudicated in a writ petition filed under Article 226 of the Constitution ?

3. In other words, even if a body performing public duty is amenable to writ jurisdiction, are all its decisions subject to judicial review or only those decisions which have public element therein can be judicially reviewed under the writ jurisdiction ?”

Thereafter, by referring to various earlier decisions including the decisions relied upon by the learned Counsel for the petitioner, it has been held in paragraph 36 as under :

“36. XXXX However, a judicial review of the action challenged by a party can be had by resort to the writ jurisdiction only if there is a public law element and not to enforce a contract of personal service. A contract of personal service includes all matters relating to the service of the employee – confirmation, suspension, transfer, termination, etc. [see Apollo Tyres Ltd. v. C.P. Sebastian [(2009) 14 SCC 360].”

It has been further observed in paragraphs 70 and 75.4 as under :

70. XXXX 20. The writ petition would not be maintainable against an authority or a person merely for the reason that it has been created under the statute or is to be governed by regulatory provisions. It would not even in a case where aid is received unless it is substantial in nature. The control of the State is another issue to hold a writ petition to be maintainable against an authority or a person.

75. XXXX

75.1. XXXX

75.2. XXXX

75.3. XXXX

75.4. Even if it be perceived that imparting education by private unaided school is a public duty within the expanded expression of the term, an employee of a non-teaching staff engaged by the school for the purpose of its administration or internal management is only an agency created by it. It is immaterial whether “A” or “B” is employed by school to discharge that duty. In any case, the terms of employment of contract between a school and non-teaching staff cannot and should not be construed to be an inseparable part of the obligation to impart education. This is particularly in respect to the disciplinary

proceedings that may be initiated against a particular employee. It is only where the removal of an employee of non-teaching staff is regulated by some statutory provisions, its violation by the employer in contravention of law may be interfered with by the court. But such interference will be on the ground of breach of law and not on the basis of interference in discharge of public duty.”

6. From the aforesaid decision, it can be seen that any relief based on a contract of personal service which includes the relief with regard to a claim for arrears of salary amongst other reliefs cannot be enforced in exercise of writ jurisdiction. It is only if there is a public law element involved that such relief can be sought in exercise of writ jurisdiction. The relief with regard to enforcing a contract of personal service cannot be so sought. In paragraph 75.2 of the aforesaid decision, it has been specifically observed that individual wrongs or breach of mutual contracts without having any public element as its integral part cannot be rectified through a Writ Petition under Article 226 of the Constitution of India.

7. As stated above, the only relief sought by the petitioner is for grant of arrears of salary. The said relief is in the nature of seeking enforcement of terms of contract of personal service. We therefore find that on this count, the Writ Petition would not be tenable.

8. Hence, for the aforesaid reasons, the Writ Petition cannot be

entertained for considering the prayers made therein. The petitioner is at liberty to seek such relief as is permissible in law by taking recourse to appropriate proceedings. It is clarified that the rival contentions of parties on merit have not been examined. The Writ Petition is thus dismissed. Rule stands discharged with no order as to costs.

(MRS. VRUSHALI V. JOSHI, J.)

(A.S. CHANDURKAR, J.)

Sumit