



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

WRIT PETITION NO. 5264 OF 2023

Jitendra s/o Waman Telange,
Aged about 47 years, Occupation – Service,
R/o C/o. Chandrabhan Pote, V.J.N.T.
Primary Ashram Shala, Dongarkharda,
Tq. Kalamb, District Yavatmal.

.... **PETITIONER**

VERSUS

- 1) The State of Maharashtra,
through Secretary, Department of
Social Welfare, Mantralaya, Mumbai.
- 2) Regional Deputy Director,
Other Backward Class Welfare Department,
Amravati, Tq. And District Amravati.
- 3) Assistant Commissioner,
Special Welfare Department, Yavatmal,
Office at Near Police Quarter, Yavatmal,
Tq. and District Yavatmal.
- 4) Late Chandrabhanji Pote (V.J.N.T.),
Primary Ashram School, Dongarkharda,
through its Headmaster, Office at
Dongarkharda, Tq. Kalamb, District
Yavatmal.
- 5) Dinesh Shantaramji Kolhe,
Aged - Major, Occupation – Service,
R/o Ward No.4, Hanuman Nagar,
Ralegaon, Tq. Ralegaon, District Yavatmal.

.... **RESPONDENTS**

Mr. J.B. Kasat, Counsel for the petitioner,
Ms. Ritu Sharma, AGP for respondent Nos. 1 to 3,
Mr. Gopal Mishra, Counsel for respondent No.4,
Mr. P.S. Patil, Counsel for respondent No.5.

CORAM : A.S. CHANDURKAR
& ABHAY J. MANTRI, JJ.
DATED : 31st OCTOBER, 2023

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

Rule. Rule made returnable forthwith and heard learned Counsel for the parties.

2. Respondent No.5 claims to have been appointed in the post of Hostel Superintendent at respondent No.4-School. His services came to be terminated on 26-10-2009. In the vacancy caused by the termination of his services, the petitioner came to be appointed on the said post. The services of the petitioner came to be approved by the Divisional Social Welfare Officer vide order dated 24-12-2012. Respondent No.5 being aggrieved by the order of termination had approached the Regional Deputy Commissioner by filing an appeal. The said appeal came to be dismissed and the petitioner challenged that order by filing Writ Petition No.6572/2013. The said writ petition was also dismissed on 21-1-2014. Respondent No.5 filed review application vide Miscellaneous Civil Application No.159/2016. By the

order dated 12-12-2019 the order passed by the Divisional Social Welfare Officer was set aside and respondent No.5 was permitted to avail the remedy under Section 9 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977. Since a reference to the order of the Divisional Social Welfare Officer was wrongly made as 24-12-2010, the same was corrected to read as 25-6-2013. In the meanwhile, the regular salary of the petitioner came to be withheld from January 2023. In this backdrop, the petitioner has filed the present writ petition seeking a direction to release his regular salary.

3. Mr. Gopal Mishra, learned Counsel appearing for respondent No.4 submits that salary bills of the petitioner have been sent to the Regional Deputy Director since the petitioner is discharging duties. An objection however is raised by Mr. P.S. Patil, learned Counsel for respondent No.5 on the ground that the appeal preferred by him challenging the termination is under consideration by the School Tribunal. The petitioner having been appointed on the post that was earlier held by respondent No.5, said respondent No.5 will be prejudiced if the petitioner's salary released.

4. We find that the petitioner has been appointed on the post in question after the services of respondent No.5 came to be terminated. For all these years he was receiving salary, the same was however discontinued from January 2023 only on the ground that there was a reference made to the order dated 24-12-2010 while deciding Miscellaneous Civil Application No. 159/2016. That error has now been corrected. Since the petitioner is discharging the duties, he is entitled to regular salary. In so far as the apprehension of respondent No.5 is concerned, same can be taken care of by observing that the School Tribunal is free to consider the prayer for grant of back-wages in case the order of termination is set aside on its own merits and in accordance with law. Accordingly, the respondent Nos. 2 and 3 to take steps to release the salary of the petitioner from January, 2023 pursuant to the bills submitted by respondent No.4. In case there is any deficiency in the pay bills, the respondent No.4 shall remove the same. Necessary steps shall be taken within a period of three weeks of producing the copy of this judgment.

5. Rule is made absolute in the aforesaid terms with no order as to costs.

(ABHAY J. MANTRI, J.)

(A.S. CHANDURKAR, J.)