

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION (WP) 7566/2022

1. Mahadev Motiram Dighore
Aged 47 years, Occ. Kamathi,
R/o. C/o. Shir Chhkradhar Swami
Prathamik Ashram School Mendha
Tah. Lakhandur, Dist. Bhandara.
2. Satish Prabhuji Tembhurne
Aged 44 years, Occ. Cook,
R/o. C/o. Shri Chhkradhar Swami
Prathamik Ashram School Mendha
Tah. Lakhandur, Dist. Bhandara.
3. Rajesh Baliram Pathode
Aged 51 years, Occ. Assist Cook
R/o. C/o. Shri Chhkradhar Swami
Prathamik Ashram School Mendha
Tah. Lakhandur, Dist. Bhandara.
4. Ku. Indubai Janba Tembhurne
Aged 54 years, Occ. Helper
R/o. C/o. Shri Chhkradhar Swami
Prathamik Ashram School Mendha
Tah. Lakhandur, Dist. Bhandara.

..... PETITIONER(S)

// VERSUS //

1. The State of Maharashtra,
Through its Secretary Social
Welfare Department, Mantralaya,
Mumbai – 32.
2. The Regional Commissioner,
Social Welfare Department, Nagpur
3. The Assistant Commissioner,
Social Welfare Department,
Bhandara

.... RESPONDENT(S)

Mr. P.S. Kshirsagar, Advocate for the petitioners
Mr. M. K. Pathan, AGP for the respondents

**CORAM : ROHIT B. DEO AND
Y.G. KHOBRAGADE, J.J.**

DATED : 15/02/2023

ORAL JUDGMENT : (PER:- Y.G. KHOBRAGADE, J.)

Rule. Rule made returnable forthwith. With the consent of both the sides the matter is heard finally at the stage of admission.

2. By the present petition, the petitioners have prayed as under:-

ii) Direct the Respondent No. 3 The Assistant Commissioner, Social Welfare Department, Bhandara to grant higher pay scale in favour of Petitioners immediately after completing their 10 and 20 years qualifying service from the date of their initial appointments and grant all the consequential benefits in views of GR dated 30.04.1998 (Anex-2) and dated 02/03/2019 (anex-6) modification from the date of their initial appointment and grant all the consequential benefits in view of GR dated 30.04.1998 (Anex-2) and modification from time to time and in view of the judgment dated 21.09.2013 in W.P. No. 2358/2013 (Anex-3) passed by Hon'ble Principal Bench of Bombay High Court issuing writ of mandamus or any other appropriate writ or direction to the respondents;

iii) Direct the respondents to accept the proposal of petitioners non-teaching employees of the Ashram School for granting of higher pay scale immediately

after completing 10/12/20 years of qualifying service and the considered the same as per G.R. dated 30.04.1998 (Anex-2) and G.R. dated 02/03/2019 modification from time to time and in view of the judgment dated 21.09.2013 passed in Writ Petition no. 2358/2018 (Anex-3) passed by Hon'ble Principal Bench of Bombay High Court by issuing writ of mandamus or any other appropriate writ or direction as the case may be;

iv) Direct the respondents to grant higher pay scale immediately after completing 10 and 20 years qualifying service from the date of their initial appointments with the retrospective effect with all monetary benefits and arrears in the salary;"

3. The grievance of the petitioners is that they are working being non-teaching staff of Shri Chhkradhar Swami Prathamik Ashram School Mendha (Chapral), Tah. Lakhanpur, Dist. Bhandara and they served more than twelve years service and their appointments have been approved by the competent Authority. However, they have not been granted higher pay scale under the Assured Career Progression scheme (for short the "ACPS") on completion of twelve years qualifying service from the date of their appointments, though they are entitled to receive the same vide Government Resolutions dated 30.04.1998, 18.04.1995 and 08.06.1995 wherein Class "C" and "D" employees for which no promotional post is available even after completion of twelve years, are entitled for higher pay scale benefit under the ACPS and the said benefit denied by the respondents. Therefore, the petitioners have prayed for

issuance of direction against respondent 3 to grant them higher pay scale on completion of qualifying service under Government Resolutions (*supra*).

4. Issue involved in the present petition is no more *res integra* in view of various judgments of this Court including judgment of the Division Bench at the Principal Seat in Writ Petition 2358/2013 (***Kiran Namdeo Shinde and ors. Vs. The State of Maharashtra and ors.***) and other connected writ petitions, decided on 21.09.2013. The Co-ordinate Bench of this Court in paragraphs 17 to 19 of the judgment has observed thus:-

"17. The Assured Career Progress Scheme is a welfare scheme which is basically brought about to remove stagnation as very few promotion avenues are available to Group "C" and "D" employees. The ACPS enables the eligible employees to be placed in higher pay scale. The eligible non-teaching staff of the aided Secondary Schools in Group 'C' and 'D' category gets the benefit of ACPS. But the similar category of employees in the aided private Ashram Schools who perform identical duties have been denied the benefit of ACPS which infringes their fundamental rights under Articles 14 and 16 of the Constitution of India. The action of denial of benefits to the similarly placed employees discharging similar duties is arbitrary and violative of Article 14 of the Constitution of India.

18. Only on the basis of purported ground of financial crunch, we fail to understand the approach of the State Government of discriminating

between the non-teaching staff of aided Ashram Schools and non-teaching staff of aided private Schools. At one stage both the Schools were functioning under the control of only one department.

19. In our view the denial of benefit of ACPS amounts to discrimination, which is hit by the rights guaranteed by Articles 14 and 16 of the Constitution of India."

5. Similarly, in Writ Petitions 4049/2018, 7043/2018 and 8198/2020, similar grievance has been adjudicated, wherein it has been held that on fulfillment of criteria laid down under the ACPS, the non-teaching staff of the Aided Government Ashram School and Private Aided School including the Ashram Schools are entitled for benefit. However, respondent is required to examine cases of each individual petitioners for deciding whether they satisfy the criteria laid down for claiming benefit under the ACPS to the Private Aided School and Government Ashram School under the Government Resolution dated 30.04.1998.

6. It appears that services of petitioner 1 – Mahadev Motiram Dighore, petitioner 2 – Satish Prabhuji Tembhurne and petitioner 4 - Ku. Indubai w/o Janba Tembhurne approved vide order dated 16.08.2000, and services of petitioner 3 – Rajesh Baliram Pathode are approved on 04.09.2004. It appears that the petitioners have completed their services for more than twelve years. On 30.04.1998, the State Government

issued Government Resolution and made applicable higher pay scale to Class “C” and “D” staff of non-teaching staff of Aided Ashram School. The petitioners are working with Shri Chhkradhar Swami Prathamik Ashram School Mendha (Chapral), Tah. Lakhanpur, Dist. Bhandara which is 100% Grant-in-Aid School and the petitioners have completed more than twelve years continued service.

7. It is not in dispute that on 02.03.2019, the State Government made applicable the benefit of higher pay scale on completion of service of ten years, twenty years and thirty years and revised the policy. However, an employee who has received 1st ACPS benefit prior to 01.01.2016 on completion of twelve years service, said employee would be entitled for 2nd ACPS benefit on completion of eight years (i.e. 12 years + 8 years = 20 years) and 3rd ACPS benefit on completion of thirty years (i.e. 20 years + 10 years = 30 years). Similarly, if an employee has already received 2nd ACPS benefit, he would be entitled for higher pay scale under 3rd ACPS benefit on completion of six years service (i.e. 24 years + 6 years = 30 years).

8. Since, the petitioners have completed twelve years of service, the petitioners' claim for entitlement of higher pay scale certainly falls within the ambit of Government Resolution dated

30.04.1998 and modified Government Resolution dated 02.03.2019. In view of the above discussion, we proceed to pass the following order:-

(i) The petition is allowed in terms of prayer clauses (ii) to (iv) (*supra*).

(ii) If it is found that any/all the petitioners, duly satisfies the eligibility criteria, he/she/they shall be extended benefit of scheme by the respondents within a period of three months from the receipt of the copy of this order.

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

(Y.G. KHOBRAGADE, J.)

(ROHIT B. DEO J.)