



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
WRIT PETITION NO. 6209 OF 2019**

Shil Kumar S/o Baliram Karad,
Age: 39 years, Occu: Nil,
R/o: Near Anjali Hote,
Morewadi, Ambajogai, Dist. Beed.

..Petitioner

Versus

1. The State of Maharashtra
through its Principal Secretary,
Department of Social Justice and Speical
Assistance, VJ, NT, OBC & SBC Welfare
Department, Mantralaya, Mumbai-32.
2. The Director, Social Welfare Department,
Maharashtra State, New Administrative
Building, Pune,
Email- directorsocialwelfare@yahoo.com.
3. The Regional/Divisional Deputy Commissioner,
Social Welfare Department, Aurangabad Region,
Aurangabad, Dist. Aurangabad.
4. The Assistante Commissioner, Aurangabad,
(earlier- Special District Social Welfare Officer)
Social Welfare Department, Beed, Dist. Beed.
5. Shri Saint Vittaleshwar Shikshan Prasarak Mandal,
Shivajinagar, Parli Vaijinath,
Through its Secretary,
Anil S/o Ramdhan Rathod,
Age. Major, Occ. Secretary,
R/o Rathod Niwas, Behind Vittal Rukmini Mandir,
Anandnagar, Ambajogai,
Dist. Beed.
6. Secondary Ashram School,
Anandnagar, Ambajogai, Dist. Beed,
Through its Headmaster,
Namely-Santosh S/o. Anil Rathod.

..Respondents

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Mr. K. D. Khade and Mr. R. G. Hange, Advocate for the Petitioner.
Mr. N. S. Tekale, AGP for Respondent Nos.1 to 4.
V. P. Golewar, Advocate for Respondent Nos.5 and 6.

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**CORAM : SMT. VIBHA KANKANWADI AND
S. G. CHAPALGAONKAR, JJ.**

JUDGMENT RESERVED ON :- 04th MARCH 2024.

JUDGMENT PRONOUNCED ON :- 18th MARCH 2024.

JUDGMENT (Per: S. G. Chapalgaonkar, J.):

1. Rule. Rule made returnable forthwith. With the consent of the parties, matter is taken up for final hearing at the stage of admission.

2. The petitioner approaches this Court under Article 226 of the Constitution of India seeking directions against respondent nos.1 to 4 to pay salary of the petitioner from non-salary grant-in-aid of respondent nos.5 and 6 within stipulated period. The petitioner had also made another prayer seeking directions against respondent nos.1 to 4 to reinstate the petitioner with respondent no.6-Institution and grant him permanent approval and consequential benefit. However, second prayer is not pressed into service by the petitioner during the course of hearing.

3. The contention of the petitioner is that he was appointed as an Assistant Teacher with respondent no.6-Ashram School w.e.f. 01.07.2005. The appointment of the petitioner was approved vide order dated 25.03.2009 issued by the Special District Social Welfare Officer, Beed / respondent no.4. The said approval was on ad-hoc basis for the period from 01.07.2005 to 19.06.2007. Although the petitioner was continued in service after 2007, no salary paid to him. Even, the his proposal for permanent approval was withhold. The petitioner raised grievance regarding non-payment of salary as well withholding of permanent approval. No further steps have been taken by respondent nos.1 to 4. On 31.03.2018 and 01.09.2018 respondent nos.3 and 4 conducted hearing as regards to the irregularities in management of

respondent nos.5 and 6. However, no further action is taken. In this background, the petitioner seeks to issue Writ of Mandamus against respondent nos.1 to 4 for release of his salary from the year 2007 onward from non-salary grant-in-aid of respondent nos.5 and 6.

4. The respondent nos.5 and 6 filed affidavit-in-reply contending that the petitioner is not in service since June-2006 and not entitled to claim any salary. Further there is no provision by which payment of salary can be released from non-salary grant receivable to respondent-School or any private aided institution. It is pointed out that the petitioner has approached the School Tribunal at Aurangabad under Section 9 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 vide Miscellaneous Appeal No.09/2019 against alleged termination of his services. The said Appeal is pending for adjudication before the Tribunal. However, the petitioner suppressed the aforesaid facts from this Court.

5. The respondent nos.1 to 4 filed affidavit-in-reply stating that the temporary approval was granted in favour of the petitioner as an Assistant Teacher for Academic Year 2005 to 2007. Thereafter, the management has not submitted proposal for continuation of services of the petitioner. In pursuance of the representation made by the petitioner, respondent nos.4 had called upon respondent nos.5 and 6 School to forward the proposal of the petitioner for the approval. However, aforesaid communication dated 23.04.2014 has not been responded by the management. The petitioner has alternate remedy to approach the Regional Deputy Commissioner, (Social Welfare) for redressal of his grievance regarding grant of approval as per Government Resolution dated 03.10.2017. The Writ Petition for reliefs as claimed would not be maintainable.

6. During course of hearing, the petitioner restricted his prayers seeking directions against respondent nos.1 to 4 to pay him salary dues from non-salary grants receivable to respondent nos.5 and 6 School. Although petitioners prayers are not clear regarding period for which he is claiming the salary dues but from pleadings in the petition, it can be gathered that his claim is for the period from June-2007 to 2016.

7. It is apposite to refer the judgment of Supreme Court in case of ***Union of India Vs. Tarsem Singh***¹, wherein in paragraph 8 it is observed thus:

“8. In this case, the delay of sixteen years would affect the consequential claim for arrears. The High Court was not justified in directing payment of arrears relating to sixteen years, and that too with interest. It ought to have restricted the relief relating to arrears to only three years before the date of writ petition, or from the date of demand to date of writ petition, whichever was lesser. It ought not to have granted interest on arrears in such circumstances.”

8. The present petition is filed on 20.03.2019. Evidently by way of present petition the claim is raised for recovery of the salary dues for the period from 2007 to 2016. Apparently claim appears to be barred by limitation. In any case, this Court would not be in a position to entertain the prayer for recovery of the salary dues barred by limitation. Pertinently, the petitioner approached the School Tribunal at Aurangabad contending that his services have been terminated vide order dated 20.06.2016. Therefore, as per his own case he is not in service since three years before to filing of the present petition.

9. Pertinently, prayers in this petition seeks directions only against respondent nos.1 to 4 to pay his salary from non-salary grants receivable to respondent nos.5 and 6. No prayer seeking directions for

¹ (2008) 8 SCC 648.

payment of salary dues is made against respondent nos.5 and 6. The record shows that the services of the petitioner were approved till 19.06.2007 only and thereafter, his proposal for approval was not forwarded to the respondents-Authorities. As such, when there is no approval to the continuation of the services of the petitioner from the year 2007 onwards, respondent nos.1 to 4 have no statutory obligation in the matter of payment of salary to the petitioner. We are, therefore, of the firm opinion that the prayer before us cannot be entertained in Writ jurisdiction as the petitioner failed to establish his statutory right. Further, there are disputed questions of facts which cannot be gone into under Writ jurisdiction of this Court. However, in case the petitioner has already availed any alternate remedy as permissible under law. He shall be at liberty to prosecute same without being impeded by observations hereinabove.

10. Resultantly, Writ Petition stands dismissed.

11. Rule is discharged.

(S. G. CHAPALGAONKAR)
JUDGE

(SMT. VIBHA KANKANWADI)
JUDGE