



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.12783 OF 2017

Virbhadra Shivshankar Swami,
age 36 yrs, Occ. Service,
R/o at Tondar, Udgir,
Tq. Udgir, Dist. Latur.

Petitioner.

VERSUS

1. The State Of Maharashtra,
Through it's Principal Secretary,
School Education Department,
Mantralaya, Mumbai – 32.
2. The Deputy Director of Education,
Latur Division, Latur.
3. The Education Officer (Primary),
Zilla Parishad, Latur.
4. Bhartiya Mahila Shikshan and
Prashikshan Sanstha, Tirupati
Society Udgir, Behind Bhosale Complex,
Udgir, Tq. Udgir, Dist. Latur
Through its' Secretary.
5. The Headmistress,
Saint Dnyaneshwar Mauli Primary
Vidyamandir, Udgir Tirupati Society
Udgir, Behind Bhosale Complex,
Udgir, Tq. Udgir, Dist. Latur.

Respondents

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Advocate for the Petitioner : Mr. R.D. Biradar
AGP for Respondents 1,2 : Mr. N.S. Tekale
Advocate for Respondents 4,5 : Mr. Sachin Deshmukh h/f Mr.
I.D. Maniyar
Advocate for Respondents 3 : Mr. V.C Patil h/f U.B. Bondar
Advocate for Respondents : Mr. K.T. Shirrurkar For intervenor

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WITH

CIVIL APPLICATION NO. 4391 OF 2018

IN

WRIT PETITION NO.12783 OF 2017

Dhondiram Vithal Khandade

Applicant/intervenor

IN

Virbhadra Shivshankar Swami And Others

Versus

The State of Maharashtra and others. Respondents

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Advocate for Applicant : Mr. K.T. Shirrurkar

AGP for Respondents 1, 2: Mr. N.S. Tekale

Advocate for Respondent 3 : Mr. V.C. Patil h/f Mr. U B Bondar

Advocate for Respondent Pet in WP : Mr. R D Biradar

Advocate for Respondents 4,5: Mr. Sachin Deshmukh h/f I.D.

Maniyar

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CORAM	:	SMT. VIBHA KANKANWADI & S. G. CHAPALGAONKAR, JJ.
Reserved on	:	April 02, 2024
Pronounced on	:	April 16, 2024

FINAL ORDER :- (Per S.G. Chapalgaonkar, J.)

1. The petitioner approached this Court under Article 226 of the Constitution of India, seeking directions against respondent nos.4 and 5 to submit salary bills to respondent no.3-Education Officer and direct him to release arrears of salary of the petitioner from academic year 2012-2013 i.e. the year since when respondent nos.4 and 5 are held eligible to receive grant-in-aid. The petitioner seeks further directions

against respondent nos.4 and 5 to release his salary dues from 15.9.2005 till academic year 2012-2013.

2. Mr. R.D. Biradar, learned advocate appearing for the petitioner submit that respondent no.4 runs respondent no.5 School. They invited the applications for recruitment of the teachers. Petitioner being eligible and qualified responded to the advertisement. The petitioner came to be selected and appointed on 15.9.2005. The Education Officer granted permanent approval to his appointment from 16.9.2007 on non-grant basis. In 2016, when school received 20% grant-in-aid, the Management withheld salary bills of petitioner and others in pursuance of demand of the amount. The petitioner raised grievance regarding non-payment of salary with the Education Officer. Consequently, enraged Respondent nos.4 and 5 deleted petitioner's name from the salary bill of teachers. According to the petitioner, he is a senior teacher in the school. His name appears consistently at serial no.4 in the seniority list during the period from 2011 to 2016. However, he is kept without salary till this date, making him to face starvation. As such, he urged to grant relief, as prayed.

3. Respondent nos.4 and 5 filed affidavit-in-reply and refuted petitioner's contentions. They state that petitioner was appointed on ad-hoc basis on 1.7.2010 on honorarium since he expressed his desire to gain experience. However, from 30.4.2013 petitioner left the school. Since then, he is not in the service. Petitioner has prepared a forged appointment order and managed to obtain approval in the year 2012 by

misleading the Education Officer. The documents relied upon by the petitioner are forged and fabricated.

4. The Respondent No.3-Education Officer filed affidavit-in-reply and raised doubt regarding genuineness of the approval order dated 9.4.2012 relied by the petitioner. However, it is admitted that for academic year 2014 to 2017 Government sanctioned eight posts on grant-in-aid basis on school establishment. The Management provided information in form of proposal for releasing grant-in-aid in which name of the petitioner is appears at serial no.15 and his date of appointment is shown as 13.9.2005. However, due to reduction of the posts in the school, only 7 teachers are granted approval for salary grants @ 20%.

5. The petitioner filed rejoinder affidavit and affirmed that the allegations incorporated in reply against him are false. The approval dated 9.4.2012 is issued by the Education Officer. Name of the petitioner finds place in the record consistently during the period from 2010 to 2013. Even, the petitioner was served a show cause notices in December, 2017. The petitioner has duly replied to said show cause notices. There is ample material disclosing him to be at work.

6. It appears that during pendency of the present petition, certain steps were taken by the Education Officer on the basis of the representations/complaints made by the petitioner. On 18.4.2023 the Director of Education,

Maharashtra State, Pune after hearing all the concerned and based on the record, recorded finding that the petitioner is an approved teacher. His name appears in the seniority list of the School from 2011 to 2016, however, later-on his name has been removed. Similarly, in 2017-2018 respondent nos.4 and 5 submitted proposal for release of grant in aid. Consequently, directions have been issued to Deputy Director of Education, at Latur to grant further opportunity of hearing and issue necessary directions to respondent nos.4 and 5 to incorporate petitioners name in 'Shalartha Pranali.' The Education Officer has consequently passed an order directing respondent nos.4 and 5 to forward the proposal for inclusion of petitioner's name in the 'Shalartha Pranali.'

7. Respondent no.3 filed additional affidavit-in-reply stating that the petitioner's name does not appear in the seniority list prepared for release of 20% grant-in-aid against 8 sanctioned posts at the School. Salary grant @ 20% has been released as per seniority list provided by school. It is further stated that although the petitioner is appointed in 2005, he was not on duty till 1.6.2010 and during 1.6.2010 till 8.2.2013 the Management has paid his salary for that period. The School Management never submitted salary bills as regards to the petitioner since 2013 onward. Prior to that school was on non-grant basis.

8. Having considered the submissions advanced on behalf of the respective parties, it appears that petitioners appointment as 'Assistant teacher' is made in the year 2005.

The school was not receiving grant-in-aid at the relevant time. The record placed before us shows that the petitioner was working in the school. At least after 2010 there is voluminous evidence to support contention of the petitioner that he discharged his duties. Seniority list maintained by the school consistently shows his name. Even when school forwarded proposal for grant-in-aid, petitioner's name was included with his date of appointment. Staffing pattern sanctioned for the school for year 2012 shows petitioner's name as Assistant Teachers. However, after school started receiving benefit of grant-in-aid, his name appears to have been deleted from the list. Although, Management is disputing each and every document relied upon by the petitioner, they candidly admits that petitioner worked during the period from 2010 to 2013. Record indicates that in 2017 when online proposal for grant-in-aid was filled in, petitioner's name was shown as assistant teacher in the school. Some inquiry appears to have been conducted at the level of the Director of Education, Deputy Director of Education and Education Officer on the basis of representations made by the petitioner and those authorities have recorded finding based on available record that petitioner is an approved teacher and entitled to continue in the service on grant-in-aid post.

9. So far as prayers in this petition are concerned, petitioner is seeking directions to release arrears of salary from academic year 2012-2013 i.e. when respondent nos.4 and 5 held eligible for grant-in-aid. Second prayer seeks recovery of the arrears of salary from 2005 to 2012-2013 from respondent

nos.4 and 5. Present writ petition is filed on 15.6.2017. Therefore, looking to the law of limitation, at the most, petitioner's claim for three years preceding date of filing writ petition can be considered.

10. Stale claim for the period beyond three years preceding the date of writ petition cannot be entertained. In that view of the matter, we find that respondent-Management has wrongly withhold salary of the petitioner and raising inconsistent plea to defeat right of the petitioner to receive salary. The record indicates that the petitioner is discharging his duties. His name appears in the seniority list as well as staffing pattern. As per observations in order dated 19th April, 2023 passed by Director of Education, the Management admitted petitioner to be teacher in school in communication made in March, 2017 while furnishing information for release of the grant-in-aid. However, subsequently deleted his name from the list of the approved teachers with grant-in-aid. There are documents to indicate that the petitioner was served with show cause notice dated 8.12.2017 by the Head Mistress, which is duly replied by him. Contents of the show cause notice and reply tendered by the petitioner clearly depicts that the petitioner was on duty at the relevant time. Even the observations made by the officers of Education Department depict petitioner was on duty. Management is suppressing the aforesaid facts. There is nothing to indicate that petitioner's services were terminated by adopting due process or petitioner was served notice for unauthorized absence from school. In absence of any such action, case of Management that petitioner

voluntarily abandoned services cannot be accepted. Management has not placed material depicting that admissible salary was released to petitioner.

11. On the basis of impeccable material available on record, we find that petitioner was on duty with respondent school preceding three years of filing of this petition, hence, entitle to receive financial benefits which are wrongly withhold by management.

12. In view of our findings and observations herein-above, the civil application for intervention do not survive. Consequently, we proceed to pass the following order.

ORDER

- i. Writ Petition is partly allowed.
- ii. Respondent nos.4 and 5 shall submit salary bills of the petitioner to respondent no.3 for Three years preceding the date of filing of this petition i.e. 16.6.1014 to 15.6.2017.
- iii. Respondent No.3 shall process such bills as per admissible grant in aid to the post of petitioner in accordance with law after examining relevant record in light of observations made herein above.
- iv. The Respondent No. 3 shall further determine amount of balance of salary payable to

petitioner by Respondent nos.4 and 5 for aforesaid period and communicate quantification so made to them within three months from date of this order.

- v. After processing petitioner's salary bills as per admissible grant-in-aid, balance amount of salary shall be paid by Respondent nos.4 and 5 to petitioner within the period of three months from date of receipt of communication of quantum determined by respondent No. 3.
- vi. Writ Petition is accordingly disposed off. No costs.
- vii. Civil application No.4391 of 2018 is also disposed off.

(S. G. CHAPALGAONKAR, J.) (SMT. VIBHA KANKANWADI, J.)

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