



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 11486 OF 2021

Asif Khan Sadique Khan,
Age; 46 years, Occ; Service,
B.M.Jain Urdu Primary School,
Pratap Nagar, Jalgaon,
Tq. & Dist. Jalgaon,
Resient of Shahu Nagar, Jalgaon.

....Petitioner

VERSUS

1. The State of Maharashtra
Through Secretary,
Sports and Education Department,
Mantralaya, Mumbai – 400 032.
2. The Education Officer (Primary)
Zilla Parishad, Jalgaon.
3. The President,
Iqra Education Society, Jalgaon,
C/o; Iqra H.J. Thim College,
Mehrun, Jalgaon.
4. The Head Master,
B.M. Jain Urdu Primary School,
Pratapnagar, Jalgaon,
Tq. & Dist. Jalgaon.

.....Respondents.

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Advocate for the Petitioner : Mr. PATIL JITENDRA V
AGP for Respondents/State : Mr. S.K.SHIRSE
Advocate for Respondent No. 2 : MS. KUTTI CHOUDHARY
CHAITALI R.
Advocate for Respondent Nos. 3 & 4 : Mr. KAZI S.S.

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

DATE : 30th JANUARY, 2024.

ORAL JUDGMENT : (PER - SMT. VIBHA KANKANWADI, J.)

1. Rule. Rule made returnable forthwith. With the consent of parties taken up for final hearing.

2. The petitioner seeks salary in the pay scale of Rs. 4500-7000 from the year 2005 onwards.

3. It is the case of the petitioner that he has been working with the respondent No. 4-School since 09.06.2005. Permanent approval has been granted to him on 21.08.2007. At the time of his appointment, the respondent-school was unaided and, therefore, the entire responsibility of payment of salary to him rested squarely on the management. It is undisputed that since September 2016 the school is in receipt of 20% grant in aid. Since December 2020, the school is in receipt of 40% grant in aid. Accordingly petitioner's salaries are being disbursed by the management in accordance with the grant in aid sanctioned

from time to time. The issue is therefore with regard to payment of 100% salary by the management during the years 2005 till August 2016, 80% salary from September 2016 to November 2020 and 60% salary from December 2020 onwards, as he has not been shifted to 100% grant post.

4. We must note at the outset that the present petition has been filed on 03.10.2021 claiming arrears of salary from the year 2005. The prayer is thus clearly time barred. However, since payment of salary is a matter of continuous cause of action, the petition cannot be dismissed only on the ground of delay and laches. Following the decision of the Apex Court in the case of Union of India and another Vs. Tarsem Singh reported in (2008) 8 SCC 648, if the claim of the petitioner is found to be meritorious, the arrears are required to be restricted to three years prior to filing of the writ petition.

5. Under the provision of Rule 7 read with Schedule C of the Maharashtra Employees of Private Schools (Condition of Service) Regulation Rules, 1981 (for short “Rules of 1981”), it is liability of the school management to pay salary to the petitioner

as prescribed in Schedule C. Mr. Kazi, learned counsel appearing for the school management does not dispute the liability of the management to pay salary as prescribed in Schedule C of the Rules of 1981.

6. In the light of the position emerging before us, we partly allow the petition by passing following order.

ORDER

A. The respondent-management shall pay salary and allowances to the petitioner in the pay scale prescribed in Schedule C of the Rules of 1981 with effect from 03.10.2018 onwards i. e. three (03) years prior to filing of the petition.

B. The arrears of said salary be paid to the petitioner by deducting the amount already paid.

C. Such arrears arising out of salary and allowances be paid to the petitioner within a period of four (04) months from today.

D. The writ petition is partly allowed. Rule is made absolute in above terms. There shall be no order as to costs.

(S.G. CHAPALGAONKAR)
JUDGE

(SMT. VIBHA KANKANWADI)
JUDGE