



{1}

wp 12373.2017 R.odt

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 12373 OF 2017

- 1] Namod S/O. Chandrabhan Dahiwale
Age 46 years, Occ. Service.
- 2] Vijay s/o. Paulus Bhosale
Age 39 years, Occ. Service,
- 3] Sharad s/o. Dada Salve
Age 45 years, Occ. Service,
- 4] Ajay s/o. Paulus Bhosale
Age 42 years, Occ. Service,
- 5] Smt. Rekha d/o. Murlidhar Salve,
Age 36 years, Occ. Service.

... Petitioners.

- 6] Laxman s/o. Madhukar Sonawane,
Age 32 years, Occ. Service.

Petitioner No.6 is deleted as per order dated 2.7.2019
passed by this Honourable Court in CA No. 5103 of 2019

VERSUS

- 1] The State of Maharashtra
through its Secretary,
School Education Department,
Mantralaya, Mumbai-32.
- 2] The Education Officer (Secondary)
Zilla Parishad, Beed.
- 3] Vidyabhavan Trust, 2718,
Jalna Road, Beed – 431 122.
through its President/Secretary.

- 4] The Head Master,
St. Xavier's High School, Takadgaon
Road, Georai, Tq. Georai, Dist. Beed.

.. Respondents.

Mr. Vijay A. Dhakne, Advocate for the petitioners.
Mr. N.S. Tekale, AGP for respondent Nos. 1 and 2.
Dr. R.J. Godbole, Advocate for respondent Nos. 3 and 4.

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

**RESERVED ON : 27TH FEBRUARY, 2024.
PROUONUCED ON : 15TH MARCH, 2024.**

JUDGMENT [S.G. CHAPALGAONKAR, J.]. :-

1. Heard. Rule. Rule made returnable forthwith. Heard finally by consent of learned advocate for the respective parties.

2. The petitioners have approached this Court under Article 226 of the Constitution of India with following prayers :-

[B] By issuing writ of mandamus or any other appropriate writ, order of direction as the case may be, the respondent No.2 Education Officer may kindly be directed to pay and release the due salaries and allowances of the petitioners admissible to the post of assistant teachers since September, 2016.

[C] By issuing writ of mandamus or any other appropriate writ, order or direction as the case, the respondent Nos. 3 and 4 may kindly be directed to pay the arrears of the salaries and allowances admissible for the post of assistant teachers to the petitioners since their initial appointments with all consequential benefits.

3. Mr. V.A. Dhakne, learned advocate appearing for the

petitioners submits **that** the petitioners are employees of respondent No.3 and discharging duties as Assistant Teachers in St. Xavier's High School, Takadgaon Road, Georao, District Beed. They have been appointed during the period from 2006 to 2019 by following due process of law against sanctioned un-aided posts on probation. Their services were approved by the Education Officer in the year 2012 in the pay Scale of Rs. 9,300 – 34800 or Rs. 5,200 – 20,200. On completion of **initial** probation period, the petitioners have been confirmed in the services in terms of **Section** 5(3) of the Maharashtra Employees of Private Schools (Conditions of Service Regulation) Act (Hereinafter, "the MEPS Act" for sake of brevity). The Education Officer has accorded permanent approval to petitioner Nos. 1 to 4 as Assistant Teachers in the pay scale of Rs. 9,300 – 34,800 and petitioner Nos. 5 and 6 as Assistant Teachers in the pay Scale of Rs. 5,200 – 20,200 on un-aided basis. The petitioners have continuously discharged their duties as Assistant Teachers. However, the management failed to pay salaries to them as per the pay scales prescribed since the date of their appointments. Since 2016, the school is receiving grant in aid from the State Government. The salary bills have been submitted by the Head Master to the office of respondent No.2. However, no action is taken to release the salaries. According to the **petitioners**. The respondents are under statutory **obligation** to pay the salary to the teachers as per the prescribed pay scales in terms of Rule (7) and Schedule "C" of the MEPS Rules, 1981. He would further submit that although the respondent No.3 has received **minority** status, it owes obligation to pay the salary in terms of prescribed the pay scales. He relies upon the following judgments :-

- 1] Manojkumar Amare Vs. State of Maharashtra 2020 (1) Mh.L.J. 742**
- 2] Sushila Bhikaji Savant Vs. State of Maharashtra 2006(2) Mh.L.J. 841**

3] Vaishali V. Chandekar and others Vs. State of Maharashtra 1998(1) Bom.C.R. 227

4] Perwez Khajuddin Kalal Vs. State of Maharashtra 2008(5) Mh.L.J. 523

5] Anil Govindrao Kale Vs. State of Maharashtra 2018(7) All M.R. 522

6] Shri Anandi Mukta Sadguru Shree Muktajee Trust and others Vs. V.R. Rudani and others, AIR 1989 SC 1607(1).

Relying upon aforesaid judgments, he submits that since respondents are under statutory obligation to release the salary as per the pay scales prescribed, on their failure to discharge obligation, the directions can be issued in exercise of writ jurisdiction under Article 226 of the Constitution of India.

4. Per contra, Dr. Rajendra Godbole, learned advocate for respondent Nos. 3 and 4 vehemently submits that claim of the petitioners to the extent of back wages/salary from the date of their initial appointment is hopelessly barred by limitation. The petitioners have waived their right to receive salaries as per the prescribed pay scales by tendering affidavits. They are estopped from raising such claim inconsistent to affidavits in the form of undertaking given to the school management. He would further submit that there are disputed questions of facts, the adjudication of which is not possible in writ jurisdiction of this Court. The petitioners have failed to make any representation before invoking the writ jurisdiction of this Court. Particularly, for seeking issuance of writ of Mandamus, prior representation in **sine-qua-non**. The petition is, therefore not maintainable. The respondent No.3 being a minority educational institution, has every right to prescribe its own pay scales and exercise its choices in the matter of management of the school. He would, therefore, urge to dismiss the writ petition. He relies upon the observations of the Supreme Court of India in the matter of General Manager, *Sri Siddheshwara Cooperative Bank Ltd. and another vs. Ikbali*

and others (2013) 10 SCC 83, to contend that statutory benefit can always be waived by a party, for whose benefit such provision has been made. The petitioners have lawfully **waived** their right to receive salary as prescribed, by tendering affidavits to management. The copies are placed on record of this Court. He would also rely upon another judgment in the case of *Lachoo Mal vs. Radhye Shyam AIR 1971 SC 2213 and Vasu P. Shetty Vs. Hotel Vandana Palace and others (2014) 5 SCC 660*.

5. Learned AGP, relying upon the affidavits filed on behalf of respondent No.2 submits that the salary bills submitted by the management have been processed and the amount as admissible has been disbursed. Now petitioners are receiving regular salary.

6. Having regard to the submissions advanced, it is apparent that there is no dispute as regards to the appointment of the petitioner with respondent No.4 school and fact that they are discharging their duties as Assistant Teachers. The evidence on record clearly depicts that the petitioners appointments were made by following due process of law. The Education Officer accorded approval of petitioner Nos. 1 to 4 in the pay scale of Rs. 9,300 – 34800 and petitioner Nos. 5 and 6 in the pay scale of Rs. 5,200 – 20,200 . On successful completion of probation period, the petitioner's services are confirmed and permanent approvals are accorded in respective pay scales. Eventually, there can not be any dispute that the petitioners are entitled for receiving the salary as per their appointment as Assistant Teachers. Perusal of the approvals granted by the Education Officer clearly depicts the pay scales applicable, and entitlement to receive the salary as per the prescribed pay scales.

7. Respondent Nos. 3 and 4 by filing affidavits in reply contends that the petitioners have waived their right to receive salary as per the pay scales. Our attention is invited to the affidavits dated 14.12.2013 executed by the petitioners in favour of the Secretary of the respondent Trust, wherein, they have stated that in case the school receives grant-in-aid, they shall be satisfied with the amount of grant in aid receivable to the school and they shall not raise any claim for release of salary in terms of pay prescribed by Sixth Pay Commission. Perusal of wordings in the affidavit, nowhere suggest that the petitioners waived their right to receive salary as prescribed. What is discernible from the aforesaid affidavit is that, they have simply agreed to receive amount to the extent of grant in aid receivable to school and they shall not claim salary in terms of Sixth Pay Commission.

8. Petitioners have not controverted the contentions in the affidavit in reply that undertaking in the form of affidavit submitted by them. However, as observed, waiver of right to receive salary in terms of the statutory right is not discernible from the contents of the affidavits. We are, therefore, of the considered view that the petitioners have not voluntarily waived right to receive salary. The Supreme Court of India in the case of *Secretary, Mahatma Gandhi Mission Vs. Bhartiya Kamgar Sena (2017) 4 SCC 449*, observed that “even un-aided private secondary schools do not claim exclusion from the implementation of the Pay Commission Reports. The Government Resolutions issued by the State of Maharashtra prescribes that all the schools should implement 6th Pay Commission Report and pay salary to the staff alongwith difference in salary payable to them from January, 2006. It is further observed that

the administrative instructions issued by the State in exercise of power under Article 162 of the Constitution of India are binding and enforceable. Therefore, the petitioners are entitled for the pay as per the pay scales **prescribed** in the respective Pay Commission Reports as accepted by the State of Maharashtra in Government Resolution issued for that purpose.

9. The aforesaid position of law is reiterated in various judgments, referred by the learned advocate for the petitioners. So far as the contention raised on behalf of the respondents that the petitioners are seeking a writ of mandamus and they had not represented the management in this regard, we find that the petitioners have made such representations dated 5.4.2017 and 27.7.2017, which are placed at Exh. E alongwith the petition. Therefore, the technical objection raised on behalf of the respondents deserves to be rejected.

10. So far as the submission that the claim of the petitioners is barred by limitation, we are in agreement with the learned advocate for the respondents to certain extent. Although petitioners have made omnibus prayer, seeking direction against respondent Nos. 3 and 4 to release the arrears of salaries as admissible, from the date of their initial appointments, it is trite that such claim can be considered only for the period of 3 years preceding the date of filing of the writ petition. We are, therefore, inclined to partly allow the writ petition and direct the respondent Nos. 3 and 4 to release the salary as admissible to the post of petitioners i.e. Assistant Teachers as per the pay scales prescribed for the period of 36 months (3 years) preceding the date of filing of the writ petition i.e. 12.09.2017. Hence, we pass the following order :-

O R D E R

- [a] Writ petition is partly allowed;
- [b] The respondent Nos. 3 and 4 shall pay salary to the petitioners as per the pay scales applicable to Assistant Teachers as admissible in terms of respective Pay Commissions (6th and 7th) for the relevant period, within a period of three months from the date of this order alongwith interest @ 6% p.a.
- [c] Rule made absolute in above terms.

[S.G. CHAPALGAONKAR, J]

[SMT. VIBHA KANKANWADI, J]

grt/-