

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.2396 OF 2022

Kailas Vinayak Jagtap ... Petitioner
Versus
The State of Maharashtra and Others ... Respondents

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Mr.Narendra V. Bandiwadekar, Senior Advocate with Mr.Vinayak Kumbhar, Mr.Rajendra B. Khaire and Mr.Aniket S.Phapale i/b. Ms. Ashwini N.Bandiwadekar for the Petitioner.

Mr.S.B.Kalel, AGP for the Respondent –State.

Mr. Deepak Hariasra i/b. Mr Vinod Utekar for Respondent No.3.

Mr.Amar Bodke i/b. Ms.Pooja V. Thorat for Respondent No.5.

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**CORAM : NITIN JAMDAR AND
M.M.SATHAYE, JJ.**

DATE : 19 APRIL 2024

P.C. :

Heard the learned Counsel for the parties.

2. On 28 March 2024, the following order was passed :

“1. Heard learned Counsel for the parties.

2. The grievance is made by learned Counsel for the Petitioner that the communication dated 13 October 2020, which reads as a prima facie opinion, has stopped the salary grant admissible to the Petitioner's post of Senior clerk for which the

approval was granted since 10 years. Learned Counsel submits that as a follow up, the Respondent-Management has issued a notice to the Petitioner.

3. The main contention raised by the Petitioner is that though the communication dated 13 October 2020 reads as a show cause notice with a prima facie opinion the final order of stopping of salary is issued and no action is taken thereafter for almost 3 and 1/2 years.

4. The perusal of the communication dated 13 October 2020 reads as a prima facie opinion and not a final conclusion. Apart from this position we have to be ascertained whether any action is taken pursuant to this communication till date. Learned AGP seeks time.

5. Stand over to 19 April 2024.

6. Since this is a prima facie opinion, we direct that no final decision be taken by the Respondent-Divisional Joint Director till further order.

7. Ad-interim order passed earlier to continue till the next date.”

3. The learned AGP has no instructions. The factual backdrop shows that the Petitioner's appointment to the post of Junior Clerk in the Respondent -College was approved by Respondent No.2, however, declined to accept the proposal of his promotion to the post of Senior Clerk. By the impugned order, the disbursal of his salary from the month of October 2020 is stayed. These approvals as on today are not cancelled by the impugned order. The salary grant to the Petitioner in respect of the Petitioner's post has been stopped in October 2022 as noted in the order dated 28 March 2024. The word

prima facie has been used by the Joint Director of Education. Therefore, unless the position exists where approval is not cancelled and continued, and salary grant is stopped as an interim measure, this position cannot continue. The learned Senior Advocate for the Petitioner also made a grievance that the stoppage of salary grant was without giving any opportunity to the Petitioner or the Respondent –Management.

4. In these circumstances, we direct that the communication dated 13 October 2020 be treated as a show cause notice. The Petitioner and the Respondent –Management would submit their reply within a period of two weeks from today. Thereafter, a final decision, if any, be taken by the Joint Director of Education within a period of four weeks thereafter. Upon expiry of six weeks, as we have directed above, that is, after submitting an explanation, if the final decision is not taken and approval continues, then it would be treated that the communication dated 13 October 2020 would stand lapsed and the State would resume salary grant and arrears in respect of the Petitioner's post since approval as on today stand.

5. Writ petition is accordingly disposed of.

6. Before implementing adverse order, the Joint Director of Education will give adequate time to the Petitioner.

(M.M.SATHAYE, J.)

(NITIN JAMDAR, J.)