

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

**INTERIM APPLICATION NO.1418 OF 2024
IN
WRIT PETITION NO.13177 OF 2023**

Sandip Ganpat Hadbal & Ors.Applicants/Petitioners

v/s.

The State of Maharashtra and Ors.Respondents

Mr. S.B. Talekar a/w Ms. Madhavi Ayyappan i/by Talekar & Associates, Advocate for the Applicants/Petitioners.

Mr. Vikas Mali, AGP for Respondent Nos.1 to 8.

Mr. Ajit Savgave, Advocate for Respondent No.9.

**CORAM : RAVINDRA V. GHUGE &
M.M. SATHAYE, JJ.**

RESERVED ON : 16th OCTOBER, 2024

PRONOUNCED ON : 29th NOVEMBER, 2024

ORDER (PER RAVINDRA V. GHUGE, J.) : -

1. By the Interim Application, the Petitioner/Applicants pray for regular payment of their monthly amounts/salary in view of their contractual engagement as an Assistant Teacher. They also pray that action be initiated against the Respondents for having failed in implementing the interim order of this Court dated 13.12.2023, passed in the Writ Petition. While considering the interim application, we have also considered the submissions of the learned

Gauri Gaekwad

Advocates for the respective sides, with reference to prayer clauses (C) and (D), set out in the Writ Petition.

2. Prayer clauses (C) and (D), set out in the Writ Petition, read thus :-

“(C) To direct the respondents to pay the petitioners, the arrears of difference between the salary payable at par to the assistant high school teachers appointed on probation for a period of two years and the salary paid to them, immediately after completion of two years of service by each one of them by applying the principle of equal pay for equal work, by issuing a writ of mandamus or any other appropriate writ, order or direction, as the case may be.

“(D) To direct the respondents to keep on paying salary to the petitioners in the pay-scale of S-15, Rs.41,800 – 1,32,300 with Grade Pay of Rs.4400 prescribed by the 7th Pay Commission, by 5th day of each month, pending hearing and final disposal of the writ petition.”

3. The learned AGP has vehemently opposed grant of further relief, during the pendency of the Writ Petition. He submits that the Government has issued a GR dated 31.7.2017, vide which, the monthly stipend was fixed at Rs.8000/-. The advertisement was published and it was made known to them that they would receive

only Rs.8000/- per month as stipend. Vide GR dated 07.02.2023, the order of this Court passed at the Aurangabad Bench dated 30.6.2022, in Writ Petition no.1367/2022, was followed and the said stipend was increased to Rs.18000/- per month.

4. He draws our attention to paragraph nos.4, 5 and 6, of the affidavit in reply dated 21.6.2024, filed by Mrs. Sangita Chandrakant Bhagwat, Education Officer (Primary), which read as under :-

“4. I say that pursuant to Government Resolution dated 31st July, 2017 Zilla Parishad Palghar issued advertisement and invited applications for appointment of 123 posts of Assistant Teachers (41 posts in English subject, 41 posts in science subject and 41 posts in mathaematics subject) to teach in 9th and 10th standarts on purely contract basis. I say that it is specifically stipulated in the said advertisement that candidate shall be appointed temporarily for the period of nine monts on consolidated honorarium of Rs.8000/- per month and once the contract period over, services of appointee shall be automatically come to an end. I say that pursuant to advertisement issued by Zilla Parishad Plaghar, about 500 candidates applied for the post of Assistant Teacher on contractual basis.

5. I say that the Palghar Zilla Parishad constituted selection committee for the purpose of selection of Assistant Teachers on contarct basis. I say that accordingly selection committee conducted the selection process and prepared a provisional merit

list and select list of candidates who applied for the post of Assistant Teacher. I say that the Petitioners were selected and therefore the Respondent No.9 issued appointment orders to the Petitioners and appointed them on purely contract basis for nine months on consolidated honorarium of Rs.8,000/- per month. I say that said appointment orders specifically stipulated that appointment is on temporary basis for contract period and once the contract period over, services of appointee shall be automatically come to an end. It is also stipulated that the appointee shall not claim any right of re-appointment and creation of post.

6. I say that Petitioners are accepted the terms and conditions of their appointment with open eyes and they were fully aware of the nature of their employment and therefore now they are estopped from challenging the contractual nature of appointment. I say that the Petitioners were appointed as per Government Resoulution dated 31st July, 2017 on purely contract basis and their contract were continued on same terms and conditions and therefore they have no any legal right to seek regularisation. I say that the Petitioners were not appointed agiasnt sanctioned post and therefore they are not entitile to seek regularization. I say that Petitioners are not appointed as per existing rule and procudure for appointment of Assitant Teacher and therefore the Petitioners are not entitile to seek regularization. I say that the Petitioners were appointed purely on contract basis and they were not appointed through open competition and if regularisation is passed it would be in contravention of Article 14 of The Constitution of India.”

5. He, therefore, submits that these Petitioners had accepted their contractual appointments with eyes wide open and now they cannot claim wages equal to those who are in regular employment. He submits that granting such pay structure to the Petitioners would amount to equating them with the candidates who have been selected through the public employment process. He also relied upon the GR dated 25.8.2005, to contend that they cannot be granted regularisation since it would amount to validating back door entries. He also relies upon the GR dated 23.9.2024. He cites the judgment delivered by the Hon'ble Supreme Court in *Chief Executive Officer, Zilla Parishad, Solapur v/s Ashok Dhondiba Meher and others, 2022 DGLS (SC) 1684*, to oppose regularisation.

6. The learned Advocate for the Petitioners relies upon the following reported judgments :-

(i) *Rabinarayan Mohapatra v/s State of Orissa and Others, (1991) 2 SCC 599* ;

(ii) *Chief Conservator of Forests and Another v/s Jagannath Maruti Kondhare and Others, (1996) 2 SCC 293* ;

(iii) *Jaipal and Others v/s State of Haryana and Others, (1988) 3 SCC 354* ;

(iv) *Swabhimani Shikshak Va Shikshaketar Sanghatana Maharashtra Rajya, Nashik and Others v/s The State of Maharashtra and Others, judgment pronounced on 20.09.2022 in Writ Petition No.4300 of 2021 (Aurangabad Bench) ;*

(v) *Smt. Kusum Ashok Waghmare v/s The State of Maharashtra and Others, order dated 30.06.2022 in Writ Petition No.1367 of 2022 (Aurangabad Bench) ;*

(vi) *Mohini Jain (Miss) v/s State of Karnataka and Others, (1992) 3 SCC 666 ;*

(vii) *M.G. Pandke and Others v/s Municipal Council Hinganghat, District Wardha and Others, 1993 Supp (1) SCC 708;*

(viii) *Narendra Ishulal Rahangdale v/s. State of Maharashtra and Others, 2005 (3) L.L.N. 479 ;*

(ix) *State of Maharashtra v/s. Sant Dnyaneshwar Shikshan Shastra Mahavidyalaya and Others, (2006) 9 SCC 1 ; and*

(x) *State of Punjab and Others v/s. Jagjit Singh and Others, (2017) 1 SCC 148.*

7. In Ashok Dhondiba Meher and others (supra), the Hon'ble Supreme Court has held in paragraph 11, as under :-

“11. In the above circumstance, it is noticed that in the present facts the only relief granted by the

High Court to the private respondents herein is to be paid the wages at the minimum of the pay-scale at the lowest grade, in the regular pay-scale extended to the regular employees holding the same post. The said benefit ordered to be extended is in tune with the observations of this Court in Jagjit Singh (supra). Further, in the instant facts what cannot be overlooked is also that the private respondents though employed through the contractors are discharging the onerous duties of driving the ambulance which is operated to provide the benefit of public health to the citizens in the PHC's under the Zilla Parishad which in turn is for discharging the obligation of the State. Therefore, in such circumstances, the minimum relief that has been granted by the High Court would not call for interference. We at this juncture also take note of the fact that the judgment dated 20.11.2019 passed by the coordinate bench of the High Court in Dhiraj S. Wankhade (supra), relied upon by the High Court in the instant case had been assailed before this Court in a Special Leave Petition (Civil) bearing Diary No.12195/2020. However, the Special Leave Petition came to be dismissed by this Court on 22.02.2021.”

8. In Rabinarayan Mohapatra (supra), the Hon’ble Supreme Court has held in paragraph 5, as under :-

“5. We have heard Mrs. Uma Mehta Jain, learned counsel for the appellant. This Court in Rattan Lal v. State of Haryana speaking through Venkataramaiah, J. (as the learned Judge then was) observed as under :

The State Government of Haryana has failed to discharge that duty in these cases. It has been appointing teachers for quite some time

on an ad hoc basis for short periods as stated above without any justifiable reason. In some cases the appointments are made for a period of six months only and they are renewed after break of a few days. The number of teachers in the State of Haryana who are thus appointed on such ad hoc basis is very large indeed. If the teachers had been appointed regularly, they would have been entitled to the benefits of summer vacation along with the salary and allowances payable in respect of that period and to all other privileges such as casual leave, medical leave, maternity leave etc. available to all the Government servants. These benefits are denied to these ad hoc teachers unreasonably on account of this pernicious system of appointment adopted by the State Government. These ad hoc teachers are unnecessarily subjected to an arbitrary 'hiring and firing' policy. These teachers who constitute the bulk of the educated unemployed are compelled to accept these jobs on an ad hoc basis with miserable conditions of service. The Government appears to be exploiting this situation. This is not a sound personnel policy. It is bound to have serious repercussions on the education institutions and the children studying there. The policy of 'ad hocism' followed by the State Government for a long period has led to the breach of Article 14 of the Constitution. Such a situation cannot be permitted to last any longer. It is needless to say that the State Government is expected to function as a model employer.

We strongly deprecate the policy of the State Government under which 'ad hoc' teachers are denied the salary and allowances or the period of the summer vacation by resorting to the fictional

breaks of the type referred to above. These 'ad hoc' teachers shall be paid salary and allowances for the period of summer vacation as long as they hold the office under this order. Those who are entitled to maternity or medical leave shall also be granted such leave in accordance with the rules."

9. In Jagannath Maruti Kondhare and others (supra), it has been held by the Hon'ble Supreme Court, in paragraph nos. 28 and 29, as under :-

"28. Insofar as the financial strain on State Exchequer is concerned, which submission is sought to be buttressed by Shri Dholakia by stating that in the Forests Department itself the casual employees are about 1.4 lakhs and if all of them were to be regularised and paid at the rate applicable to permanent workmen, the financial involvement would be in the neighbourhood of Rs.300 crores - a very high figure indeed. We have not felt inclined to bear in mind this contention of Shri Dholakia as the same has been brought out almost from the hat. The argument relating to financial burden is one of despair or in terrorem. We have neither been impressed by the first nor frightened by the second inasmuch as we do not intend that the view to be taken by us in these appeals should apply, proprio vigore, to all casual labourers of the Forests Department or any other Department of the Government.

29. We wish to say further that if Shri Bhandare's submission is taken to its logical end, the justification for paying even minimum wages could wither away, leaving any employer, not to speak of model employer like the State, to exploit

unemployed persons. To be fair to Shri Bhandare it may, however, be stated that the learned counsel did not extend his submission this far, but we find it difficult to limit the submission of Shri Bhandare to payment of, say fair wages, as distinguished from minimum wages. We have said so, because if a pay scale has been provided for permanent workmen that has been done by the State Government keeping in view its legal obligations and must be one which had been recommended by the State Pay Commission and accepted by the Government. We cannot deny this relief of permanency to the respondent-workmen only because in that case they would be required to be paid wages meant for permanent workers. This right flows automatically from the relief of regularisation to which no objection can reasonably be taken, as already pointed out. We would, however, observe that the relief made available to the respondents is not one which would be available ipso facto to all the casual employees either of the Forests Department or any other Department of the State. Claim of casual employees for permanency or for higher pay shall have to be decided on the merits of their own cases.”

10. In view of the consistent directions of the Hon’ble Supreme Court in catena of judgments, some of which have been adverted to by us in the foregoing paragraphs, we are of the considered view that it would be just, proper, appropriate and equitable, to direct the authorities who have engaged the Petitioners, to ensure that the minimum pay in the lowest pay grade, inclusive of dearness allowance, payable to the regular/permanent employees,

shall be paid to these Petitioners, keeping in view the nature of duties performed by them, which are comparable to those being performed by the regular/permanent employees. These directions, as an interim measure, shall be implemented from the month of December, 2024. We record that the issue of regularisation and arrears of salaries, would be dealt with, when we decide the Writ Petition, finally.

11. In view of the above, **Interim Application is disposed off.**

(M.M. SATHAYE, J.)

(RAVINDRA V. GHUGE, J.)