



drp

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.3116 OF 2019

Mohammed Hanifuddin Khan s/o
Aminuddin Khan

PETITIONER

Age - 43 years, Occ - Assistant Teacher,
R/o Behind Moin-ul-uloom High School
Silk Mills Colony, Railway Station,
Aurangabad 410 010

VERSUS

1. All Sisters Educational and Welfare Society RESPONDENTS
Aurangabad Through its President,
R/o Ravindra Nagar
Katkot Gate Road,
Aurangabad
2. All Sisters Educational and Welfare Society
Aurangabad Through its Secretary,
R/o House No. 1-17-25, Juna Bazar
Aurangabad
3. Annisa Primary School (Urdu Medium)
Through its Headmistress
R/o Ravindra Nagar, Katkot Gate Road,
Roshan Gate Area,
Aurangabad
4. The Education Officer (Primary)
Zilla Parishad, Aurangabad
5. The State of Maharashtra
Through its Secretary,
School Education & Sports Department,
Mantralaya, Mumbai

.....
Dr. R. J. Godbole, Advocate for the Petitioner
Mr. S. R. Kolhare, Advocate for Respondents No.1 to 3
Mr. C. D. Biradar, Advocate for Respondent No.4
Mr. A. V. Lavte, AGP for Respondent - State
.....

**[CORAM : NITIN B. SURYAWANSHI, &
SANDIPKUMAR C. MORE, J. J.]**

RESERVED ON : 25th AUGUST, 2025
PRONOUNCED ON : 22nd SEPTEMBER, 2025

JUDGMENT (PER NITIN B. SURYAWANSHI, J.):

1. Rule. Rule made returnable forthwith. Heard finally with the consent of the learned advocates for the parties.
2. This petition, filed under Article 226 and 227 of the Constitution of India, questions legality and propriety of order dated 1st October, 2018 passed by Respondent No.4 – Education Officer, rejecting proposal dated 20th December, 2017 submitted by the Management seeking approval to the services of the Petitioner. The Petitioner seeks direction to Respondent No.4 – Education officer to grant approval to the services of the Petitioner with effect from 5th February, 1995 with all consequential benefits. The Petitioner also prays for directions to the Respondent Education Officer to pay arrears of salary from 1st December, 2004 till date, as per the prescribed pay scale, along with interest @ 9% p.a.
3. This Petition was initially dismissed by order dated 19th March, 2019. Thereafter, the Petitioner filed Review Application (Civil) No. 23 of 2021, which is allowed by order dated 7th June, 2022 and the Writ Petition is restored.

4. Admitted facts on record are that, the Petitioner was appointed as Assistant Teacher on 5th February, 1995, against sanctioned and aided post, in Respondent No.3 school run by Respondents No.1 and 2. He worked there as an Assistant Teacher, for more than 3 years and, therefore, acquired the status of permanent teacher. Respondent - Management, terminated services of the Petitioner on 19th March, 1999. The Petitioner challenged his termination, by filing Appeal No. 116 of 1999 before the School Tribunal, Aurangabad. The Education Officer was party Respondent No.4 in the said Appeal. By order dated 26th August, 2003, the School Tribunal allowed the Appeal and set aside the termination order of the Petitioner and directed to reinstate the Petitioner as Assistant Teacher with back salary benefits, by imposing costs of Rs.1,500/-.

5. The Management challenged the said order of the School Tribunal, by filing Writ Petition No. 4177 of 2003, which was dismissed on merits, by the learned Single Judge of this Court on 7th October, 2003. The Management challenged the judgment and order of the learned Single Judge, by filing Letters Patent Appeal No. 232 of 2003. Considering availability of vacant, aided post, the Appeal Bench refused to grant stay to the order of reinstatement of the Petitioner, but the order of payment of back

salary benefits, was stayed till 14th June, 2004.

By interim order dated 11th March, 2004 passed in Civil Application No. 9587 of 2003 in the LPA, the Appeal Bench directed the Management to reinstate the Petitioner on vacant post of Assistant Teacher, which was a sanctioned vacancy, till decision in Appeal No. 94 of 2003 filed by one Smt. Salma Begum.

6. The Petitioner was permitted to resume duty on 1st December, 2004 against aided post, by keeping a separate muster. The Respondent - Management, forwarded proposal for grant of approval to the services of the Petitioner. According to the Petitioner, he worked in the School from December, 2004 onwards till date of filing of the Writ Petition, without salary and without approval.

7. Thereafter, the management agreed to forward the proposal of the Petitioner seeking approval to his services and withdraw the LPA. Accordingly, compromise terms were executed between the Petitioner and the Management, which were verified before the learned Registrar (Judicial) of this Court on 4th October, 2007. As per the terms of the compromise, the Management accepted judgment of the School Tribunal and the order in Writ Petition No. 4177 of 2003. It is also accepted that

the Petitioner was not appointed against a post of Smt. Navid Siddiqui and his appointment was made after following due procedure of law and he was appointed against clear, permanent, aided vacancy with effect from 5th February, 1995, on probation for two years and his services were confirmed with effect from 5th February, 1997. The Management has withdrawn the order dated 14th March, 1999 issued against the Petitioner and agreed to forward proposal for approval of the services of the Petitioner against aided post, by treating his service as Assistant Teacher with effect from 5th February, 1995. The Management also agreed to forward bill for arrears of his salary as per the prescribed pay scale, to the Education Officer with effect from 1st December, 2004 till date and agreed to treat services of the petitioner as continuous service for all the purposes against aided post. The Management further agreed to take appropriate steps against the junior most teacher appointed after the Petitioner. The Management also agreed to give seniority to the Petitioner with effect from 5th February, 1995. The LPA was disposed of as withdrawn in view of the compromise terms, Exhibit "X".

8. The Management forwarded proposal for approval to the services of the Petitioner on 20th December, 2017. The Education Officer, by the impugned order dated 1st October, 2018, rejected

the proposal submitted by the Management, on the ground that there was no vacant post of Assistant Teacher available in Respondent No.3 School. The Government is paying salary to the teachers who were appointed on the approved posts during the period between 1994-95 and 2017-18. It is the responsibility of the Management to pay salary to the Petitioner. The Petitioner is aggrieved by the said rejection.

9. During the period between 24th June, 1996 and 30th August, 2007, ten Assistant Teachers are appointed by the Management in the School, wherein the Petitioner is serving.

10. By filing additional affidavit, the Petitioner has pointed out that during the pendency of the Writ Petition, the Education Officer has granted approval to his services with effect from 1st January, 2021. Name of the Petitioner is incorporated in Shalarth ID, as per order passed by the Deputy Director of Education dated 18th July, 2022.

11. Heard learned Advocate for the Petitioner, learned Advocate for the Management, learned Advocate for the Education Officer and learned AGP for the State. Perused the record.

12. Obviously, learned Advocate for the Management has

supported the Petitioner. Learned Advocate for the Education Officer submits that, since the Government has paid salary to the teachers who were appointed during the period from 1994-95 to 2017-18, on the approved posts, the Government is not liable to pay salary of the Petitioner.

13. Indisputably, the Petitioner was appointed on 5th February, 1995 on the permanent vacant, aided post. The School Tribunal has set aside the termination order of the Petitioner and directed the Respondents to reinstate the Petitioner in service along with back salary with all the consequential benefits. The Education Officer was party to the said Appeal. The judgment of the School Tribunal is confirmed by this Court in Writ Petition No. 4177 of 2003. During pendency of the LPA, preferred by the Management, compromise was arrived at between the Petitioner and the Management. As per the terms of the compromise, the Management agreed to forward proposal of the Petitioner for approval to his services, to the Education Officer and the Management has withdrawn the LPA and accepted the judgment of the School Tribunal, as well as of this Court in Writ Petition No. 4177 of 2003.

14. It is thus clear from the record that, the Petitioner had a right of precedence before the newly appointed teachers'

proposals could be forwarded. Claim of the Petitioner for approval and for payment of salary from the salary grants was a crystallized right. It is further clear from the record that because of the mischief of the Management, salary grants were consumed in paying salary to the Assistant Teachers, who were subsequently appointed, ignoring claim of the Petitioner. In these peculiar facts, the State Government cannot be saddled with financial burden of making double payment, as the Government has already paid salary to other teachers, therefore, it is the responsibility of the Management to shoulder the burden of unpaid salary of the Petitioner.

15. In the backdrop of the aforestated facts, the Education Officer has erred in passing the impugned order, thereby refusing to grant approval to the services of the Petitioner, ignoring the decision of the School Tribunal, which is confirmed by this Court in the Writ Petition. The Education Officer, being party to the proceedings before the School Tribunal as well as before this Court, was duty bound to implement the order of the School Tribunal, confirmed by this Court. The Education Officer can be said to be justified in holding that *"It is duty and responsibility of the Management to pay salary of the Petitioner"* since the Government has already paid salary to the Assistant Teacher working there at the relevant time. However, the Education

Officer has misdirected himself in refusing to grant approval to the services of the Petitioner. Non application of mind on the part of the Education Officer while passing the impugned order is writ large on the face of record. He has failed to take into consideration the relevant aspects i.e. judgment of the School Tribunal, dismissal to the challenge to the said judgment at the instance of the Management, by a well reasoned order, by this Court and the fact that, the Petitioner was appointed in the said school on 5th February, 1995, which is an admitted position on record. The impugned order, therefore, cannot be sustained and the Writ Petition deserves to be allowed. We, however, make it clear that financial burden of making double payment cannot be fastened on the Government, therefore, the salary of the petitioner will have to be borne by the Management.

16. In the result, following order:

ORDER

- A. Writ Petition is allowed.
- B. Impugned order dated 1st October, 2018 passed by Respondent No.4 - Education Officer, Zilla Parishad, Aurangabad is hereby quashed and set aside.
- C. The Education Officer shall accord approval to the services of the Petitioner with effect from 5th February, 1995.
- D. Respondents No.1 and 2 - Management shall pay the

unpaid salary of the petitioner during the period from 1st December, 2004 till 31st December, 2020, along with interest @ 6% p.a. within 12 weeks from today.

E. Rule is made absolute in the aforesaid terms.

[SANDIPKUMAR C. MORE]
JUDGE

[NITIN B. SURYAWANSHI]
JUDGE

drp/wp3116-19.doc