



CORRECTED ORDER
IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.9901 OF 2014

Smt. Surekha Kashinath Margane
& ors.

... **PETITIONERS**

VERSUS

The State of Maharashtra & ors.

... **RESPONDENTS**

.....
Mr. V.D. Gunale, Advocate for petitioners
Mr. A.S. Shinde, A.G.P. for State
Mr. A.D. Sonkawade, Advocate holding for
Mr. A.V. Hon, Advocate for respondents No.5 and 6
.....

**CORAM : R.G. AVACHAT AND
SANDIPKUMAR C. MORE, JJ.**

Date of reserving order : 8th May, 2025

Date of pronouncing order : 1st August, 2025

ORDER :

This Petition, under Article 226 of the Constitution
of India, is filed for the following main reliefs :

- C-1) By writ of certiorari or any other appropriate writ, order or directions, the impugned communication dated 02/07/2014 issued by the Education Officer thereby seeking guidance

from the Deputy Director of Education, whether the Education Officer has jurisdiction to absorb the petitioners be quashed and or set aside and for that purpose necessary orders be issued.

C-2) By a writ of mandamus or any other appropriate writ, order or directions, the Respondents be directed to pay all the pensionary and all retiral benefits to the Petitioner No.2, Petitioner No.4a & 4b and Petitioner No.5, and for that purpose necessary orders be passed.

D) By writ of mandamus or any other appropriate writ, order or directions in the nature of writ of mandamus, the Respondents be directed to absorb the Petitioners in any other recognized granted schools with continuity of their services and other consequential benefits and release the non-salary of the petitioners from August, 2013 onwards and for that purpose necessary orders be passed.

2. Heard. The Petitioners joined service as teaching and non-teaching staff with the Respondent No.6 school, run by the Respondent No.5- Educational Institution. The Petitioners claim to have been qualified and duly appointed on the respective posts by following due process of law. Even in the course of time, their appointments have been approved. The Respondent No.6 school would receive full grants-in-aid. All was not well between the Petitioners on one hand and the then Head Mistress and the management of the school on the

other. The Head Mistress issued leaving certificates to almost all the pupils of the school. Thereby, the number of students got substantially reduced.

3. The Respondents No.1 and 2 withdrew the grants-in-aid of the school on account of the strength of the pupil to have been reduced substantially. The management closed down the school. The Petitioners were driven to fend themselves. They made many a representations to the Respondents No.1 to 4 with a request for absorbing them in some other grant-in-aid school. Since there was no positive response from the authorities concerned, the Petitioners approached this Court.

4. Pending the Writ Petition, original Petitioner No.4 passed away. Her legal representatives have been brought on record. Moreover, 3 of the 6 Petitioners attained the age of superannuation. For the sake of convenience, the parties to this Petition are referred to as the Petitioners and the Respondents as per their status in the Petition.

5. The Respondents No.1 to 3 filed affidavit-in-reply contending that, since the strength of pupils of the school was reduced to less than 30, in exercise of powers under Item No.98.2 of the Secondary School Code, grants-in-aid of the Respondent No.6 were withdrawn. The Petitioners may have remedy against the management of the school.

6. The learned A.G.P. made the submissions consistent with the affidavit-in-reply and relied on the authority in the case of **Sayyad Manjur s/o Mujafar Vs. The State of Maharashtra & ors. (Writ Petition No.1934/2017**, decided on 3/10/2022).

7. The educational institute filed its affidavit-in-reply little over 10 years after this Writ Petition was admitted. It came with a case of the services of the Petitioners to have been terminated on the ground of misconduct. Certain documents have also been placed on record. It was also submitted that the Petitioners may have remedy of appeal before the School Tribunal. The dismissal of the Petition was ultimately urged for.

8. We have considered the submissions advanced. Perused the documents on record. The details of the Petitioners joining service and approval to their appointments is given in tabular form below :

Sr. No.	Name of Petitioner	Date of appointment	Date of approval
1.	Smt. Surekha Kashinath Margane	16/9/1994	2002
2.	Shivaji Manikrao Birajdar	22/6/1992	1997
3.	Abhang Vithalrao Indrale	2/8/2010	Three years
4.	Smt. Mangal Sheshrao Bhosale	25/6/1993	1997
5.	Smt. Chhaya Rambhau Nannure	16/9/1994	1997
6.	Rajendra Baliram Harale	9/6/2004	2006

9. A reference is required to be made to Rule 25A of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981. However, for the sake of convenience, the said Rule is referred to at the relevant place.

10. The petitioners No.1 to 3 were initially appointed as

Assistant Teachers/ Shikshan Sevaks. The petitioners No.4 to 6 were appointed as Peons. Up till 2013, all of them except Petitioner No.3 had completed number of years of service, entitling them for pensionary benefits. It is in 2013, the strength of the pupils in the school with which they were serving, was reduced to below 30. It appears that, all was not well between the Petitioners on one hand and the then Head Mistress and some other staff of the school on the other. The management appears to have initially been on the side of the Petitioners. The then Head Mistress was terminated from service along with some other staff. They approached the School Tribunal in appeals. Their appeals were allowed with a direction to reinstate them with back wages. The wages were directed to be paid by the management. In those proceedings, the Education Officer and other officials of Education Department of the State did not appear. Meaning thereby, the appeals were heard ex-parte. It also appears that, the orders passed by the School Tribunal were not challenged by those authorities. Be that as it may.

11. The management filed affidavit-in-reply ten years

after receipt of the notice of this Writ Petition. It came with a stand of having terminated the services of the Petitioners on the ground of misconduct. It also claimed that an enquiry was made before terminating their services. Nothing tangible has, however, been placed on record in that regard except the documents in the nature of show-cause-notice sent through R.P.A.D. It is re-iterated that, there is no material at all to suggest the services of the Petitioners were terminated by following due process of law. The Education Officer in his first affidavit-in-reply admitted that all was not well between the Petitioners on one hand and the then Head Mistress of the management of the school on the other. The same reinforces the claim of the Petitioners that, on reinstatement of the then Head Mistress, she did not allow the petitioners to sign the muster roll. How come there be termination of the petitioners from service three years thereafter. We are concerned herein with the claim of the Petitioners to take them on the list of surplus teachers and absorb in service with the school receiving grants-in-aid. The record indicates that, the school was closed in 2013. To decide the claim of the petitioners, it would first be necessary to advert to the relevant rules. Rules

25A and 26 of the Maharashtra Employees of Private Schools
(Conditions of Service) Rules, 1981 are reproduced below :

25A. Termination of Service on account of abolition of posts.

The services of permanent employee may be terminated by the Management on account of abolition of posts due to closure of the school after giving him advance intimation of three months to the effect that in the event of closure of the school, his services shall automatically stand terminated. In the case of closure of school due to de-recognition, such advance intimation of three months shall be given by the Management to the permanent employees after receipt of a show cause notice from the Deputy Director.

Explanation : For the purpose of this sub-rule, the expression 'closure of the school' shall include,-

- (i) voluntary closure by the Management of the entire school if it is imparting instruction through one medium or a part of the school comprising one or more media of instruction if it is imparting instruction through more than one medium; and
- (ii) closure of the school due to de-recognition by the Department.

2. The names of the employees in aided schools, whose services stand terminated in accordance with sub-rule (1) on account of de-recognition and who are not directly responsible for such de-recognition, shall be taken on a waiting list by the Education Officer in the case of Primary and Secondary Schools or by the Deputy Director in the case of Higher Secondary

Schools and Junior College of Education, and same shall be recommended by him to the Managements of newly opened aided schools or of the existing aided schools which are allowed to open additional divisions or classes for consideration.

26. Retrenchment on account of abolition of posts.

(1) A permanent employee may be retrenched from service by the Management after giving him 3 months' notice, on any of the following grounds, namely :

(i) reduction of establishment owing to reduction in the number of classes or divisions;

(ii) fall in the number of pupils resulting in reduction of establishments;

(iii) change in the curriculum affecting the number of certain category of employees;

(iv) closure of a course of studies;

(v) **any other bona fide reason of similar nature.**

- (2)
- (3)
- (4)
- (5)
- (6)
- (7)
- (8)
- (9)”

12. It would also be necessary to refer to Articles 98.1, 98.2 and 98.3 of the Secondary School Code (Code for short), which read thus :

98.1 No grant will be paid for any class in a secondary school with less than an average daily attendance of 30 pupils. However, the Deputy Director concerned may at his discretion relax the condition in the following cases :-

(0) Batches of students admitted during the first five years of the existence of a school

(i) Schools exclusively for girls;

(ii) Schools exclusively in Scheduled areas;

(iii) Schools for children of minority languages groups teaching through the medium of one or more of the following minority languages viz. Gujarati, Kannada, Tamil, Telugu, Urdu, Sindhi, Hindi, Malayalam;

(v) Schools which have been started at places which were planned in the Educational Survey of 1957.

98.2 The rule may be relaxed by the Deputy Director concerned in the case of standards with a strength of 50 or more pupils which have been split up into classes for imparting instruction effectively, and in other deserving cases. No relaxation shall be made in cases that may result in local unhealthy competition.

98.3 relaxation of the condition of average attendance for certain temporary period has been indicated in appendix TWENTY-TWO.

Note : (These rules have been superseded vide Government Resolution, E, and Y.S.D. No.SSN.1074/68698NII of 22nd April 1976, which has been printed as “Appendix-22”).

13. Close reading of the aforesaid rules would indicate that, Rule 26 has no application at all since it is not a case of retrenchment of the Petitioners from service. Close reading of Rule 25A would also suggest that, case of the Petitioners would not be covered thereby. In our view, there is some gray area as regards dealing with a case of the Petitioners and alike situation. It is true that, by virtue of Article 98.1 of the Code, salary grants may be withdrawn on account of the strength of pupils of the school reduced to below 30. The rules and the Code do not provide for taking care of services and other benefits of the employees like Petitioners who were serving on the post in the schools receiving 100% grants. Moreover, the Petitioners, except petitioner No.3 rendered service more than 13 years by 2013. By abruptly withdrawing salary grants, compelling the management to close down the school is nothing but driving the employees to fend on themselves. When other employees of the school who were allegedly terminated for misconduct, were allowed to be reinstated in service with back wages as the officials of the Education Department did not prefer to contest their appeals. There can be no two views over what has been observed by the Division

Bench of this Court in case of Sayyad Manjur (supra) relied by the learned A.G.P. In the said case, the Division Bench observed in paragraph Nos.12 to 18 as under :

12. Thus absorption in another school is not a matter of right. The Education Officer/Deputy Director merely recommends the surplus teacher to the management of either newly opened aided school or the existing aided schools which are allowed to open additional divisions or classes for consideration.

13. The issue of entitlement of surplus teacher for absorption has been interpreted in various decisions of this Court. The Full Bench of this Court in the case of Kanhaiyyalal Sonbaji Gajbhiye (supra) has held in para No. 29 as under :

29. A bare reading of rule 25A would show that it deals with termination on account of abolition of posts resulting from closure, voluntary or on the ground of de-recognition of the school. It does not refer to the concept of “retrenchment” which appears to dominate the newly amended rule 26. That apart, rule 25A does not grant same degree of protection to the terminated employees as was available to them in earlier rule 26 and which was in the nature of their absorption in another school and protection of their services till absorption. Instead, rule 25A gives new kind of protection, rather privilege, to the terminated employees of aided schools. Sub-rule (2) of rule 25A lays down that if such employees from aided schools are not directly responsible for the de-recognition of the school, their names must be included in waiting list by the competent authority, who

may be either the Education Officer or the Deputy Director depending upon the class of the school. It imposes further duty upon the competent authority to recommend their names to the Managements of newly aided schools or the existing aided schools which are allowed to open additional divisions or classes for consideration.

14. In the case of Prabhakar Panjabrao Mahajan (supra) this Court has held in para No. 27 as under:

27) A teacher who is terminated on account of contingency covered by rule 25A can only be considered for recommendations to the management of other school for being appointed on their establishment as a fresh candidate and such management is required to consider the case of employee for absorption and any such appointment of employee terminated under rule 25A is required to be treated as newly appointed employee who has (the petitioner in this case) suffered termination under rule 25A of the MEPS Rules. All new appointees are required to be treated as Shikshan Sevak covered under the Scheme of Shikshan Sevak framed by the Government vide Government Resolution dated 27th April 2000 read with modified Government Resolution dated 13th October 2000.

15. So far as payment of salary to the absorbed teacher is concerned, the same is governed by the provisions of Rule 91(2) of the Code of 2018, which provides that the absorbed teacher shall not be entitled to salary till the date of joining by way of absorption. The period between the date of declaration as surplus teacher till the date of joining in absorbed school is required to be treated

as dies non.

16. The issue of payment of salary in the light of the provisions of Rule 25A of the Rules of 1981 has been dealt with by this Court in various decisions. In the case of Gramin Vikas Shikshan Va Krida Prasarak Mandal Khadki (supra) this Court has held in para No. 39 as under :

39. If it is closure under Rule 25A, there is no question of payment of any back wages and employee becomes entitled to placement in list of surplus candidates. If it is retrenchment under Rule 26, there can be no termination and respondent no.1 continues to earn salary every month till she is absorbed. We have already concluded that even if it is a case of closure under Rule 25A, still otherwise termination on 20.06.1997 is bad. Hence, the entitlement to relief of reinstatement or then to relief of absorption and also to relief of wages denied (back wages) turns upon the answer to question whether on 20.06.1997 respondent no.1 has been retrenched under Rule 26 or terminated under Rule 25A?

(emphasis supplied)

17. Also this Court in the case of Chandrama Milind Bhatkar and others (supra) and Shri Sawant Pandurang Dattatraya and another (supra) has denied salary prior to the date of actual joining consequent to absorption.

18. Considering the inter play between Rule 25A of the Rules of 1981 and Rule 91(2) of the Code of 2018, it is clear that absorption of a surplus teacher is not a matter of right and that upon absorption, the teacher is not entitled to be paid salary till the date of actual joining. There is yet another difficulty for the petitioner. He is seeking implementation of order dated 26.07.2016 and payment of salary in pursuance thereof.

However, by subsequent order dated 16.11.2019, the order dated 26.07.2016 has been cancelled. The order dated 26.07.2016 no longer survives. The petitioner has not challenged the order dated 16.11.2019 in the present petition at least qua cancellation of order dated 26.07.2016. The cancellation of order dated 26.07.2016 has thus attained finality. Therefore, the order dated 26.07.2016 can no longer be relied upon while deciding petitioner's entitlement to salary.

14. It would not be in the fitness of things to concede to the submissions of the learned A.G.P. that when the management had come with a stand of having terminated the Petitioners from service, their remedy would be to prefer appeal to the School Tribunal against their termination. In the peculiar facts and circumstances of this case, the Respondents No.2 to 6 need to be directed to take the petitioners (Smt. Surekha Kashinath Margane, Shri Shivaji Manikrao Birajdar, Shri Abhang s/o Vithalrao Indrale, Smt. Chhaya Rambhau Nannure and Shri Rajendra s/o Baliram Harale) on the list of surplus Teachers and accommodate on the schools receiving 100% grant-in-aid.

15. So far as regards back wages are concerned, we are not inclined to grant the Petitioners the said relief in view of

the principle of “No work no pay”. The learned Advocate for the petitioners has relied on the judgment of the Apex Court in case of **U.P. State Brassware Corpn. Ltd. v. Tapan Kumar Bhattacharya and another (2002) 6 SCC 41, Uttaranchal Forest Development Corpn. v. M.C. Joshi (2007) 9 SCC 353, Jaipur Development Authority v. Ramsahai and another (2006) 11 SCC 684, and Jagbir Singh v. Haryana State Agriculture Marketing Board and another (2009) 15 SCC 327.**

But in the recent years the Supreme Court is reiterating its earlier decisions that reinstatement with full back wages is normal rule, it has emphasised that if the employer wants to avoid payment of full back wages, then he has to plead and prove that the employee was gainfully employed and was getting wages equal to the wages he/ she was drawing prior to termination of service. It has held that the Courts must keep in view that the wrongdoer is the employer and the sufferer is the employee and there is no justification to give a premium to the employer for his wrongdoings by not granting full back wages. Sometimes the Courts take the view

that due to pendency of the cases for a long time the employer should not be saddled with the payment of full back wages, but this view was not found favour with the Supreme Court and it was held in the case of **Deepali Gundu Surwase** (supra) that lack of infrastructure and manpower is one of the principal reasons for the delay in disposal of the cases in the tribunals and Courts and for this the employee cannot be blamed or penalised. It was further held that it would be miscarriage of justice if he is denied back wages simply because there was a long lapse of time between termination of his service and reinstatement by the Court and in such situation, the employer, who is a wrongdoer, gets the benefit of the delay. The relevant part of the judgment of the Supreme Court in **Deepali Gundu Surwase (supra)** reads as under :

“38.6. In a number of cases, the superior courts have interfered with the award of the primary adjudicatory authority on the premise that finalisation of litigation has taken long time ignoring that in majority of cases the parties are not responsible for such delays. Lack of infrastructure and manpower is the principle cause for delay in the disposal of cases. For this the litigants cannot be blamed or penalised. It would amount to grave injustice to an employee or workman if he is denied back wages simply because there is long lapse of time between the termination of his service and

finality given to the order of reinstatement. The courts should bear in mind that in most of these cases, the employer is in an advantageous position vis-a-vis the employee or workman. He can avail the services of best legal brain for prolonging the agony of the sufferer i.e. the employee or workman. He can avail the services of best legal brain for prolonging the agony of the sufferer i.e. the employee or workman, who can ill-afford the luxury of spending money on a lawyer with certain amount of frame. Therefore, in such cases it would be prudent to adopt the course suggested in *Hindustan Tin Works (P) Ltd. v. Employees* (1979) 2 SCC 80.

16. Since there is nothing to indicate who is to be blamed for the mess or reasons compelling withdrawal of the grants-in-aid, it would not be in the fitness of things to grant the Petitioners back wages. Moreover, the petitioners could only be taken on the list of surplus Teachers/ staff for being accommodated. The State is not under obligation to pay salary for unserved period on such account. So far as regards deceased Petitioners are concerned, a direction to give them pensionary benefits after considering the period during which they were not in service, to be in continuous service.

17. For all the aforesaid reasons, the Writ Petition is allowed in terms of the following order :

ORDER

- (i) The Writ Petition is allowed.
- (ii) The Respondents No.2 to 6 are directed to take the petitioners No.1 Smt. Surekha Kashinath Margane; No.3 Shri Abhang s/o Vithalrao Indrale; and No.6 Shri Rajendra s/o Baliram Harale on the list of surplus Teachers/ staff and absorb them in service with the school/s receiving 100% grant-in-aid within a period of six months from the date of this order. The earlier services of the petitioners No.1, 3 and 6 be treated as their notional service for the purpose of pensionary benefits without back wages.
- (iii) So far as deceased Petitioners No.4 Smt. Mangal Sheshrao Bhosale, who died pending the Petition; and petitioners No.2 Shri Shivaji Manikrao Birajdar and No.5 Smt. Chhaya Rambhau Nannure, who attained the age of superannuation is concerned, the Respondents No.2 to 6 are directed to count the period as regular service until the date of their death or attaining the age of superannuation, and grant

them consequential pensionery and other benefits within a period of six months from the date of this order.

(SANDIPKUMAR C. MORE, J.)

(R.G. AVACHAT, J.)

fmp/-