

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.19120 OF 2024

Shri Sunil Gulabrao Wadatkar,
Indian Inhabitant, Adult,
Aged about 52 Years,
R/at H-402, Radhakrishna Park,
Hajimalang Road,
Kalyan (E), Dist. Thane
Mobile No.9702781409

....Petitioner

VERSUS

1. Vidya Vikas Education Society
Through its President / Secretary,
Having office at
Dr. Babasaheb Ambedkar Vidyalaya,
(English Medium),
Kannamwar Nagar No.2.
Vikhroli, Mumbai - 400 083.
2. Dr. Babasaheb Ambedkar Vidyalaya,
(English Medium) School,
Through the Headmaster
Kannamwar Nagar No.2.
Vikhroli, Mumbai - 400 083.
3. The Education Inspector,
Brihanmumbai, Northern Zone,
Chembur, Mumbai-400 071.
4. The Deputy Director,
Mumbai Region, Mumbai,
Jawahar Bal Bhavan,

Netaji Subhash Marg,
Charni Road, Mumbai (W) - 400 004.

5. The State of Maharashtra
Through the Secretary,
School Education Department,
Mantralaya, Mumbai - 400 032

....**Respondents**

Mr. A.J. Rizvi, Advocate for the Petitioner.

Mr. S.C. Naidu a/w Ms. Nandini G. Menon, Advocate for the
Respondent Nos.1 and 2.

Mrs. Pooja Joshi Deshpande, AGP for Respondent Nos.3 to 5.

CORAM : RAVINDRA V. GHUGE

&

ASHWIN D. BHOBE, JJ.

RESERVED ON : 01st APRIL, 2025

PRONOUNCED ON : 09th May, 2025

JUDGEMENT (PER ASHWIN D. BHOBE, J.)

1. **Rule.** Rule made returnable forthwith and heard finally
by consent of the parties.

2. By the present Petition filed under Article 226 of the
Constitution of India, Petitioner has sought for the following
substantial reliefs:

“(a) that this Hon’ble Court be pleased under Article 226 of the Constitution of India to issue a writ, or writ or mandamus or writ in the nature of mandamus thereby holding and declaring that the Petitioner is entitled for payment of the salary as per scale and revised scale from time to time under the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 and rules framed thereunder;

(b) that this Hon’ble Court be pleased under Article 226 of the Constitution of India to issue a writ, or writ or mandamus or writ in the nature of mandamus thereby directing the Respondent-management to pay the salary as per scale / revised scale prescribed under the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 and rules framed thereunder and also pay arrears of the Salary (Rs.17.37,070 - Rupees Seventeen Lakhs Thirty Seven Thousand Seventy only) alongwith interest (Rs. 26,74,085/- - Rupees Twenty Six Lakhs Seventy Four Thousand Eighty Five only) for the period from December, 1999 to August, 2024 as mentioned & calculated in Exhibit “H” above;”

3. Case of the Petitioner as pleaded in the petition is that the on 07.12.1999, Petitioner was appointed as a Peon by the Respondent No.1 in the Respondent No.2 School. Services of the Petitioner came to be terminated w.e.f. 13.08.2019, as the Petitioner raised a demand for senior grade pay and promotion to the post of Clerk. Appeal bearing No. 23 of 2019 filed by the Petitioner before the School Tribunal, against the order of termination was allowed, by the School Tribunal on 31.01.2022, thereby directing the

reinstatement of the Petitioner in service with continuity and full back wages. Respondent Nos.1 and 2 questioned the order dated 31.01.2022 before this Court in Writ Petition No.2731 of 2022.

4. Vide Order dated 17.10.2023, this Court allowed the said Writ Petition No. 2731 of 2022, by setting aside the order dated 31.01.2022 passed by the School Tribunal in Appeal No.23 of 2019 as also the order of termination dated 13.08.2019. Enquiry proceedings were restored and remitted before the Enquiry Committee for conducting the enquiry afresh.

5. Petitioner filed Interim Application No.7137 of 2024 in Writ Petition No.2731 of 2022, seeking clarification in respect of the subsistence allowance payable to the Petitioner during the pendency of suspension. Petitioner and the Respondent Nos. 1 & 2, resolved the subject matter of review by filing Consent Minutes of Order before this Court. This Court by accepting the Consent Minutes of Order filed by the parties, disposed off the Interim Application No.7137 of 2024.

6. Petitioner is under suspension and facing the departmental enquiry in terms of the directions issued in the Writ Petition No.2731 of 2022.

7. Petitioner claims to be entitled for payment of salary as per the scale, increments in terms of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 (**MEPS Act, 1977**) and Rules framed thereunder. Petitioner, by his various representations made to the Respondents in the year 2008, 2015, 2016 and 2023, respectively, requested for grant of the claims made by the Petitioner, which request was not considered. According to the Petitioner, he is entitled to an amount of Rs. 17,37,070/- towards arrears of salary, which the Petitioner claims to be entitled in terms of the pay-scale and the revised scale. Petitioner by relying on the calculations of the arrears of salary claims that he would be entitled to Rs.47,742/- and in terms of the order dated 08.05.2024 passed in Interim Application No.7137 of 2024, 75% of subsistence allowance would be Rs.35,807/-, however, as on date, the Petitioner is paid an amount of Rs.19,088/-. By legal notice dated 28.09.2024, the Petitioner made a demand to the Respondents to pay the amount of Rs. 17,37,070/- along with interest. Respondents having failed to comply with the requisition made in the legal notice, the Petitioner is before this Court.

8. Mr. A.J. Rizvi, learned Advocate for the Petitioner submits that the Petitioner is entitled to the amounts towards salary

arrears, based on the pay-scale and the revised pay-scale payable under the provisions of MEPS Act, 1977. He submits that the Petitioner would be entitled to the amounts as calculated by the Petitioner in the calculation sheet annexed as Exhibit "I". He reiterates the case pleaded in the petition.

9. Mr. S.C. Naidu, learned Advocate for the Respondent Nos.1 and 2 draws our attention to the order dated 08.05.2024 passed in Interim Application No.7137 of 2024 and the Consent Minutes of Order filed in the said proceedings, to submit that the matter being settled before the Hon'ble Single Judge, the Petitioner would not be entitled to any amounts, much less, any reliefs as sought for in the present petition. He submits that the Consent Minutes of Order were signed by the parties before this Court out of their own free will and the same has been acted upon, as such, the Petitioner is not entitled to resile from the said arrangement. He further submits that the claims made by the Petitioner in prayer clause (b) is for the period from December, 1999, which claims would be barred by limitation considering the petition was filed before this Court on 15.10.2024. He submits that the Writ Petition would not be entitled against the Respondent Nos.1 and 2 being a private institution. He relies on the following decisions :

(i) *St Mary's Education Society & Anr. V/s. Rajendra Prasad Bhargava & Ors.,*¹

(ii) *Union of India & Others V/s. Tarsem Singh,*²

(iii) *State of Madhya Pradesh & Others V/s. Yogendra Shrivastava,*³

(iv) *Bhagwan Shikshan Prasarak Mandal & Anr. V/s. Vinayak & Ors.,*⁴

10. In the earlier round of litigation, i.e., Interim Application No.7137 of 2024 filed in Writ Petition No.2731 of 2022, the Petitioner and the Respondent Nos.1 and 2 had resolved the subject matter thereof by filing Consent Minutes of Order. As contentions are being raised with reference to effect of the said Consent Minutes of Order on the claim of the Petitioner, contents of the Consent Minutes of Order filed in Interim Application No.7137 of 2024 (at Exhibit "G" page nos.49 to 53), are extracted hereunder:

CONSENT MINUTES OF ORDER FILED IN INTERIM APPLICATION

NO.7137 OF 2024 IN WRIT PETITION NO.2731 OF 2022

“Without prejudice to rights and contentions of both parties, in order to ensure that the on-going enquiry is completed expeditiously and within a time bound

1 [2022] 8 S.C.R. 301

2 (2008) 8 SCC 648

3 (2010) 12 SCC 538

4 Civil Appeal No. 6229 of 2023

manner, the parties, by consent have agreed to the following terms for clarification of the order dated 17th October 2023 passed by this Hon'ble Court in above Writ Petition:

1. Recorded that the Applicant, for the period of deemed suspension from 14th August 2019 to 30th April, 2024, has received from the Respondent Society Subsistence Allowance at the rate of 50% of leave salary + Dearness Allowance.

2. Agreed, declared and confirmed that the Applicant gives up his claim for Subsistence Allowance computed at the rate of 75% of leave salary + Dearness Allowance for the period from 14th August 2019 till 30th April, 2021.

3. Agreed, declared and confirmed that the Respondent Society shall pay the Subsistence Allowance computed at the rate of 75% of the leave salary + Dearness Allowance from 1st May 2021 and shall continue to pay subsistence allowance at the said rate till date of final Order of the Management consequent upon findings of the Enquiry Committee.

4. Agreed, declared, confirmed that the arrears of subsistence allowance from 1st May, 2021 till 30th April, 2024 are as under:

I. May 21-May22 = 13 months X Rs. 6019/- = Rs. 78,247/-

II. June 22-April 24 = 23 months x Rs. 6162/- = Rs. 1,41,726/-

Total = I + II = Rs. 2,19,973/-

5. Agreed, declared, confirmed and undertaken by the Respondent No. 1 & 2 that the said arrears of Rs. 2,19,973/- for the period 1st May, 2021 to 30th April, 2024 (i.e. balance 25% of leave salary + DA) after deducting Tax @ Source shall be paid on or before 7th June, 2024.

6. *Agreed, declared, confirmed by the Respondent No. 1 & 2 shall not raise any dispute about payments made to the Applicant from 1st January 2019 till 13th August, 2019 in future in any manner and Respondent No. 1 & 2 permanently give up claim, if any, towards excess payments for the aforesaid period.*

7. *Agreed that the enquiry proceedings shall be resumed on 14th June, 2024 and the same shall be completed as expeditiously as possible and in any event within months from resumption of enquiry on 14th June 2024.*

8. *The Applicant undertakes not to address any personal communication or send any WhatsApp message or email to the Convenor, Awardee Teacher, Representative of the Establishment before the Enquiry Committee or to any of the witness of the management till the conclusion of the enquiry proceedings and communication, if any, shall be addressed and submitted to the Enquiry Committee only.*

FOR APPLICANT

FOR VIDYA VIKAS EDUCATION SOCIETY

Sd/-

Sd/-

(Mr. Sunil G. Wadtkar)

(Mr. Shirish Sule)

Executive Officer of Respondent

No.1 for Respondent No. 1 & 2

Identified by

Sd/-

Sd/-

Advocate for Applicant

Advocate for Respondents”

11. Records of the case bear out that the Consent Minutes

of Order were filed by the Petitioner and Respondent Nos.1 and 2 before this Court. The said Consent Minutes of Order were accepted by this Court and Interim Application No.7137 of 2024 was disposed off on 08.05.2024 the basis of the said Consent Minutes of Order. Order dated 08.05.2024, which is passed in terms of the Consent of Minutes of Order has been acted upon by the parties, which is evident from the averments made by the Petitioner in paragraph Nos. 7 and 13 of the memo of petition.

12. The Petitioner has neither challenged the said Consent Minutes of Order in the present petition nor does the memo of petition contain any averment of the Consent Minutes of Order being vitiated on account of fraud or the Petitioner was coerced in filing the Consent of Minutes of Order. Apparently, the Consent of Minutes of Order were signed before this Court. Even otherwise, it is not the case of the Petitioner that the Consent of Minutes of Order were signed outside the Court.

13. In view of the above said position, which is evident from the records placed before us, the Petitioner, who has signed and accepted the Consent of Minutes of Order with open eyes, estopped from raising from any contentions contrary to the same.

Even otherwise, the Petitioner having not voiced any issue with regard to his alleged entitlement of a different pay-scale, in the proceeding of Interim Application No.7137 of 2024, the Petitioner cannot now be permitted to raise such issues, more so, pending the enquiry. Attempt made by the Petitioner to resile from the Consent Minutes of Order cannot be accepted.

14. In view of the above we decline to exercise our extraordinary jurisdiction and reject the petition. However, we leave all the contentions of the Petitioner open in the pending enquiry. Further, in the event the Petitioner is exonerated in the pending enquiry, the Petitioner would be at liberty to file appropriate proceedings in accordance with law.

15. **Petition is dismissed.** There shall be no orders as to cost.

(ASHWIN D. BHOBE, J.)

(RAVINDRA V. GHUGE, J.)