

(2017) 03 BOM CK 0102
In the Bombay High Court
Case No : Writ Petition No. 1893 of 2014

Anil

APPELLANT

Vs

Maharashtra Academy of Engineering and Education Research

RESPONDENT

Date of Decision : 20-03-2017

Acts Referred:

Constitution of India, 1950 — Article 14, Article 226
Maharashtra Employees of Private Schools (Conditions of Service) (Amendment) Rules, 2016 — Rule 1
Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 — Section 16

Citation : (2017) 3 AIRBomR 254 : (2017) 3 BCR 511 : (2017) LIC 2022

Hon'ble Judges : T.V. Nalawade and Sangitrao S. Patil, JJ.

Bench : Division Bench

Advocate : Mr. B.L. Sagar Killarikar, Advocate, for the Petitioners In W.P. No. 1893 of 2014, 1921 of 2014, 7519 of 2016; Mr. G.V. Mohekar, Advocate, for the Petitioners In W.P. No. 3522 of 2016; Mr. R.J. Godbole, Advocate, for the Petitioners In W.P. No. 8010 of 2016 and for the Respondent Nos. 3 and 5 In W.P. No. 6546 of 2016; Mr. P.M. Nagargoje, Advocate, for the Petitioners In W.P. No. 9203 of 2016 and for the Respondent Nos. 4, 6 and 7 In W.P. No. 6546 of 2016; Mr. R.B. Narawade, Advocate, for the Petitioners In W.P. No. 10652 of 2016; Mrs. A.V.Gondhalekar, A.G.P, for the Respondent/State In All Writ Petitions; Mr. G.L. Deshpande, Advocate, for the Respondent Nos. 1 and 2 In W.P. No. 1894 of 2014; Mr. R.F. Totla, Advocate, for the Petitioners In W.P. No. 6546 of 2016 and For Respondent Nos. 4 and 5 In W.P. No. 3522 of 2016, For Respondent No. 5 in W.P. No. 8010 of 2016 and 9203 of 2016 and For Respondent No. 7 In W.P. No. 10652 of 2016; Mr. A.B. Shinde, Advocate, for the Respondent No. 3 In W.P. No. 3522 of 2016 and for the Respondent No. 5 In W.P. No. 10652 of 2016; Mr. S.R. Deple and Mr. D.K. Rajput, Advocates, for the Respondent No. 4A In W.P. No. 7519 of 2016; Mr. S.V. Adwant, Advocate, for the Respondent No. 1 In W.P. No. 1921 of 2014

Final Decision : Dismissed

Judgement

Sangitrao S. Patil, J.—Rule, returnable forthwith. With the consent of the learned counsel for the contesting parties and the learned A.G.P., heard finally.

2. The common questions of law and fact are involved in these writ petitions. Hence, they are being decided by this common judgment.

3. Writ Petition Nos. 1893/2014, 1921/2014, 3522/2016, 7519/2016, 8010/2016, 9203/2016 and 10652/2016 have been filed by the Assistant Teachers (hereinafter referred to as "the petitioners") against the Educational Institutions (hereinafter referred to as "the respondents"), in which they are serving, while Writ Petition No. 6546/2016 has been filed by one of the Institutions against the Deputy Director of Education and four of the Assistant Teachers. From the pleadings of the parties as well as the reliefs claimed in the above numbered writ petitions, it would be clear that the central point for consideration is "whether unaided private schools and/or minority unaided private schools are under an obligation to ensure equal pay to the petitioners to that of their counterparts serving in the Government schools or private aided schools. Considering the rival pleadings as well as the contentions raised by the learned counsel for the contesting parties, the following points fall for our determination :

(i) Whether the provisions of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 ("the Act of 1977", for short) and the Rules of 1981 made under the said Act, so far as the pay scales of the teachers are concerned, are applicable to the Minority or Nonminority Private Unaided Schools ?

(ii) Whether the Maharashtra Employees of Private Schools (Conditions of Service) (Amendment) Rules, 2016 ("the Amended Rules of 2016", for short) are enforceable ?

(iii) Whether the Writ Petitions filed by the Assistant Teachers are maintainable ?

(iv) Whether the doctrine of contracting out would assist the Educational Institutions in denying the same pay scales to the Assistant Teachers, which are payable to their counterparts under the provisions of the Act of 1977 and the Rules of 1981 ?

Point No. (i) :

4. The learned counsel for the petitioners submit that as per subsection (1) of Section 3 of the Act of 1977, the provisions of the said Act apply to all private schools in the State of Maharashtra, whether receiving any grantinaid from the State Government or not. They further submit that Section 4 of the Act of 1977 read with Rule 6 of the Rules of 1981 also do not make any distinction between aided and unaided schools or minority or nonminority schools in respect of the pay scales given in Schedule "C" of the Rules of 1981.

5. On the other hand, Mr. R.F. Totla, the learned counsel appearing for the respondent ? Minority Educational Institution submits that the said provisions are not applicable to the Minority Unaided Educational Institutions. The learned counsel appearing for the non Minority Educational Institutions also submit that

the private unaided schools cannot be forced to pay the same salary to their teachers which is being paid to the teachers working in the Government schools or private aided schools.

6. The sum and substance of the contentions raised by the learned counsel for the respondents is that the minority or non-minority private unaided schools are not bound by the provisions of the Act of 1977 and the Rules of 1981 so far as the pay scales are concerned.

7. The learned counsel for both the contesting parties have relied on the judgment in the case of Mahadeo s/o Pandurang More and others v. the State of Maharashtra and others 2014 (5) Mh.L.J. 877. In the said case, point No. (i), referred to above, was under consideration of the Division Bench of Nagpur Bench of this Court. The Division bench considered various judgments of the Hon"ble the Supreme Court and the Bombay High Court, which have been cited by the learned counsel for the parties before us also and answered the said point in the affirmative with the following observations.

"30..... The appellant management contended that they were not liable to pay the salary and allowances prescribed under the Fifth Pay Commission. Hon"ble Apex Court noticed that under the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977, as per Section 3 (1) the provisions of the Act apply to all private schools, whether receiving any grantinaid from the State Government or not. Section 16 stated that the State Government may by notification in the Official Gazette, make rules for carrying out the purposes of this Act and Section 16 (2) (a) says that the State Government may by the Official Gazette prescribe minimum qualification for recruitment of employees of private schools (including its procedure); (b) their scales of pay and allowances. There was no dispute that these provisions of the Regulation Act are applicable to the appellant school. Supreme Court held that the Division Bench of the High Court was justified in holding that the appellant school was liable to pay the salary and allowances on the basis of the Fifth Pay Commission recommendations and are bound by MEPS Act. Though this judgment does not consider the impact of minority nature, it definitely declares that receipt of grants has no relevance in so far as application of MEPS Act/Rules or pay structure prescribed thereunder. As there can not be different yardsticks for minority and nonminority, scales of pay prescribed in Schedule "C" of 1981 Rules are available to petitioners also."

"26. After perusal of these cases we find that any law intended to regulate the service conditions of employees of aided educational institutions equally applies to minority aided or unaided institutions also, provided that such law does not interfere with the overall administrative control of the management over the staff. Law or Rules prescribing the service conditions or their pay scales are only regulatory in nature and do not impinge upon the basic character of the minority institutions."

"28. Thus, this judgment does not help the minority institution in any way.

Moreover, here Section 4 of 1977 Act read with Rule 6 of 1981 rules also do not make any distinction between aided and unaided schools or nonminority and minority schools qua scales of pay mentioned in Schedule "C" of the 1981 Rules."

8. The contention of the learned counsel for the respondents that the respondent/ Institutions are not financially sound enough to pay salary to the petitioners at par with the salary that is being paid to the teachers serving in Government schools or private aided schools. This argument does not contain any substance. It needs no consideration. This Court, in the case of Mahadeo s/o Pandurang More and others (supra), in paragraph No. 26 of the judgment, referred to paragraph No. 23 of the judgment in Frank Anthony Public School Employees' Association v. Union of India (1986) 4 SCC 707 and held that financial problem is not a valid defence to deny fair treatment to the staff in the minority or non-minority aided or unaided Institutions. Here, it would be worthwhile to reproduce paragraph No. 23 of the judgment in Frank Anthony Public School Employees' Association v. Union of India (supra), which reads thus:

"We must refer to the submissions of Mr. Frank Anthony regarding the excellence of the institution and the fear that the institution may have to close down if they have to pay higher scales of salary and allowances to the members of the staff. As we said earlier the excellence of the institution is largely dependent on the excellence of the teachers and it is no answer to the demand of the teachers for higher salaries to say that in view of the high reputation enjoyed by the institution for its excellence, it is unnecessary to seek to apply provisions like Section 10 of the Delhi School Education Act to the Frank Anthony Public School. On the other hand, we should think that the very contribution made by the teachers to earn for the institution the high reputation that it enjoys should spur the management to adopt at least the same scales of pay as the other institutions to which Section 10 applies. Regarding the fear expressed by Shri Frank Anthony that the institution may have to close down we can only hope that the management will do nothing to the nose to spite the face, merely to "put the teachers in their proper place". The fear expressed by the management here has the same ring as the fear expressed invariably by the management of every industry that disastrous results would follow which may even lead to the closing down of the industry if wage scales are revised."

9. The learned counsel Shri Totla, representing one of the respondents, relying on the judgment in The Correspondent/Principal Arokiamada Matriculation Higher Secondary School v. Tmt. T. Sorubarani and Ors., submits that the Government has no administrative control to ensure equal pay for equal work by forcing private unaided educationalists. In that case, as seen from para 8 of the judgment the question raised was whether the obligation of the State to provide free and compulsory education can force private educationalists to provide schooling on the principle of equal pay for equal work merely on the executive instructions which had no statutory force. The said question was answered in the negative. In the present case, it is not because of any executive instructions that

the respondents are being asked to ensure equal pay for equal work. The Act of 1977 and the Rules of 1981, which have statutory force, make it obligatory on the part of the respondents to ensure equal pay for equal work. In view of this distinguishing fact, the judgment of Madras High Court, cited above, would be of no help to the respondents to escape from the liability to ensure equal pay for equal work. However, this judgment as well as the judgment in *Mrs. Satimbla Sharma and others v. St. Paul's Senior Secondary School* (2011) 13 SCC 760, cited on behalf of the respondents, certainly would advance the case of the respondents that the Government Resolutions dated 12th June, 2009 and 21st May, 2010 and the letter dated 31st December, 2015, issued by the Deputy Director of Education as well as the letter dated 11.03.2016 issued by Accounts Officer, Audit Squad (Education Department), Nanded, directing the respondents to ensure payment of salary to the petitioners, as per the recommendations of 5th Pay Commission and 6th Pay Commission with arrears, cannot be enforced on the respondents in the absence of any supporting legal provision in the Act of 1977 or the Rules of 1981.

10. Since point No. (i) referred to above, is no more *res integra*, we hold that the provisions of the Act of 1977 and the Rules of 1981, are applicable to the Minority as well as Non-minority Unaided Schools, so far as the pay scales of the teachers are concerned.

Point No. (ii) :

11. The learned counsel for the respondents vehemently contend that the Amended Rules of 2016 have no force of law since they have not been laid before each House of the State Legislature, as contemplated under subsection (4) of Section 16 of the Act of 1977. They submit that as observed by Nagpur Bench of this Court in paragraph No. 46 of the judgment in the case of *Mahadeo s/o Pandurang More and others* (*supra*), unless and until scales of pay sought for by the petitioners therein find birth in Schedule "C" appended to the Rules of 1981, a direction to extend the same to them cannot be issued. The Court further observed that amendment to Schedule "C" to propose new scales of pay is subject to the procedure laid down in Section 16 (3) and (4) of the Act of 1977. The learned counsel for the respondents submit that since the procedure laid down in subsection (4) of Section 16 has not been followed by the respondent ? State Government, the Amended Rules of 2016 cannot be acted upon.

12. On the other hand, the learned counsel for the petitioners and the learned A.G.P. submit that the Amended Rules of 2016 have been duly notified in the Official Gazette of the Government of Maharashtra and they are legally enforceable.

13. In order to decide this controversy, it would be necessary to reproduce subsections (3) and (4) of Section 16 of the Act of 1977, which read as under :

(3) All rules made under this Act shall be subject to the condition of previous

publication.

(4) Every rule made under this Act shall be laid, as soon as may be, after it is made before, each House of the State Legislature, while it is in session for a total period of thirty days, which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, and notify such decision in the Official Gazette, the rule shall from the date of publication of such notification have effect, only in such modified form or be of no effect as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done or omitted to be done under that rule."

14. Here, reference may be made to the judgment of a Three Judge Bench of the Hon"ble the Supreme Court in M/s Atlas Cycle Industries Ltd. and others v. State of Haryana AIR 1979 SC 1149, where the effect of not laying the Rules before the Legislature has been considered. In paragraph No. 21 of the judgment, the Hon"ble the Supreme Court considered three "kinds of laying" as described and dealt with in "Craies on Statute Law", the 7th Edition, as under :

- (i) Laying without further procedure,
- (ii) Laying subject to negative resolution
- (iii) Laying subject to affirmative resolution

(i) Simple laying. The most obvious example is in Section 10 (2) of the 1946 Act. In earlier days, before the idea of laying in draft had been introduced, there was a provision for laying rules etc., for a period during which time they were not in operation and could be thrown out without ever having come into operation (compare Merchant Shipping Act, 1894, Section 417; Inebriates Act, 1898, Section 21) but this is not used now.

(ii) Negative resolution. Instruments so laid have immediate operative effect but are subject to annulment within forty days without prejudice to a new instrument being made. The phraseology generally used is "subject to annulment in pursuance of a resolution of either House of Parliament." This is by far the commonest form of laying. It acts mostly as a deterrent and sometimes forces a Minister (in Sir Cecil Carr's phrase) to "buy off opposition" by proposing some modification.

(iii) Affirmative resolution. The phraseology here is normally "no order shall be made unless a draft has been laid before Parliament and has been approved by a resolution of each House of Parliament". Normally, no time limit is fixed for obtaining approval ? none is necessary because the Government will naturally take the earliest opportunity of bringing it up for approval ? but Section 16 (3) of the Housing (Financial and Miscellaneous Provisions) Act, 1946 did impose a limit of forty days. An old form (not much used nowadays) provided for an order to be

made but not to become operative until a resolution of both Houses of Parliament had been obtained. This form was used in Section 10 (4) of the Road Traffic Act 1930 (of Road Traffic Act, 1960, Section 19 (3))... The affirmative resolution procedure necessitates a debate in every case. This means that one object of delegation of legislation (viz. Saving the time of Parliament) is to some extent defeated. The procedure therefore is sparingly used and is more or less reserved to cases where the order almost amounts to an Act, by effecting changes which approximate to true legislation (e.g. where the order is the meat of the matter, the enabling Act merely outlining the general purpose) or where the order replaces local Acts or provisional orders and, most important of all, where the spending, etc. of public money is affected.

Sometimes where speedy or secret action is required (e.g. the imposition of import duties), the order is laid with immediate operation but has to be confirmed within a certain period (cf. Import Duties Act, 1958, Section 13 (4)). This process of acting first and getting approval after has also been adopted in the Emergency Powers Act 1920 under which state of emergency can be proclaimed and regulations made. The proclamation must be immediately communicated in Parliament and does not have effect for longer than a month; but it can be replaced by another proclamation. Any regulations made under the proclamation are to be laid before Parliament immediately and do not continue in force after the expiration of seven days from the time when they are so laid unless a resolution is passed by both Houses providing for their continuance."

15. In the same judgment, in para 24, the Hon^{ble} the Supreme Court referred to the judgment delivered by a Five Judge Bench of the Supreme Court in *Jan Mohammad Noor Mohammad Bagban v. The State of Gujarat* and another AIR 1966 SC 385, wherein the Hon^{ble} Court considered the provisions of Section 26 (5) of the Bombay Agricultural Produce Markets Act, 1939, which was quite a similar provision to that of subsection (4) of Section 16 of the Act of 1977. In that case also, after framing of the rules under subsection (1) of Section 26, the Provincial Government had not laid the said Rules before each of the Chambers of the Provincial Legislature. The Hon^{ble} the Apex Court observed as under:

"Section 26(5) of Bombay Act 22 of 1939 does not prescribe that the rules acquired validity only from the date on which they were placed before the Houses of Legislature. The rules are valid from the date on which they are made under section 26(1). It is true that the Legislature has prescribed that the rules shall be placed before the Houses of Legislature, but failure to place the rules before Houses of Legislature does not affect the validity of the rules, merely because they have not been placed before the Houses of the Legislature. Granting that the provisions of sub-section (5) of Section 26 by reason of the failure to place the rules before the Houses of Legislature were violated, we are of the view that sub-section (5) of Section 26 having regard to the purposes for which it is made, and in the context in which it occurs, cannot be regarded as mandatory."

16. In paragraph No. 25 of the judgment in M/s Atlas Cycle Industries Ltd. (supra), the Hon'ble the Apex Court further referred to the case of D.K. Krishnan v. Secretary, Regional Transport Authority, Chittoor, AIR 1956 Andhra 129, wherein the validity of Rule 134A of the Madras Motor Vehicles Rules, 1940, made under the Madras Motor Vehicles Act, 1939, empowering the Regional Transport Authority to delegate its functions to the Secretary was challenged on the ground that it was not laid before the Legislature of the Madras State as required by Section 133 (3) of the Act, which provided that the Rules shall be laid for not less than fourteen days before the Legislature as soon as possible after they were made and should be subject to modification as Parliament or such Legislature may make during the session in which they are so laid. In that case, it was held as under:

"This rule (i.e. the one contained in Section 133(3)) therefore, is not made either a condition precedent or a condition subsequent to the coming into force of the rules. It does not provide for any affirmative resolution. The rule continues to be in force till it is modified by the Parliament.

If subsection (3) is only directory, in view of the opinion expressed by us, it is clear from a fair reading of the words used in the section that the rules made under the section came into effect immediately they were published and they continued to be in force because it is not suggested that they were modified by the Legislature. We, therefore, hold that the rule in question is valid."

17. The notification dated 6th September, 2016, whereby the Amended Rules of 2016 have been published, starts with the following wording :

"No. Vetan 1014/CR 214/14/TNT 3. In exercise of the powers conferred by subsection (1), clause (b) of subsection (2) of the section 16 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 (Mah. III of 1978), and of all other powers enabling it in this behalf, the Government of Maharashtra hereby makes the following rule, the same having been previously published as required by subsection (3) of section 16 of the said Act."

(Emphasis supplied)

It is, thus, clear that the Amended Rules of 2016 were previously published by the Government as required by subsection (3) of Section 16 of the Act of 1977. Subsection (4) falls under the category (ii) i.e. "Laying subject to negative resolution", as explained in "Craies on Statute Law". The last sentence of subsection (4) of Section 16 shows that such modification or annulment made by the Legislature shall be without prejudice to the validity of anything previously done or omitted to be done under the rules framed under subsection (1). This sentence itself indicates that the said Rules would be legally enforceable until they are modified or annulled and whatever has been done or omitted to be done under that those Rules prior to that, would not be invalid. In the circumstances, in view of the abovestated legal position clarified by the Hon'ble the Apex Court, subsection (4) has to be treated as directory and not mandatory.

18. Mr. S.V. Adwant, the learned counsel for the respondents, relying on the judgment delivered by a Two Judge Bench in Association of Management of Private Colleges v. All India Council for Technical Education and others 2013 STPL (Web) 353 SC, submits that as per section 24 of the AICTE Act, not placing the Amended Rules and Regulations made under the said Act before each House of Parliament, as prescribed in the said section, which is mandatory, would vitiate the amended Rules and Regulations.

19. It is true that Section 24 of the AICTE Act, as has been reproduced in paragraph No. 44 of the above cited judgment, is almost identical to that of Section 16 (4) of the Act of 1977. However, it seems that while holding the said provision mandatory, the Hon'ble the Apex Court referred to the contention raised by the learned counsel for the appellant that the amended Regulation has not been placed before the Parliament, which is mandatory, as per the provisions of Section 24 of the AICTE Act and further mentioned that "the said contention has not been disputed by the AICTE in these cases." The judgments in the cases of M/s Atlas Cycle Industries Ltd. and others (supra) and Jan Mohammad Noor Mohammad Bagban (supra), delivered by the Benches of larger strength, were not referred to by the AICTE in that case. On the contrary, AICTE itself seems to have admitted that section 24 of the AICTE Act is mandatory, without going to its actual nature as considered in the above cited judgments delivered by the Benches of larger strength.

20. Here, a reference may be made to the judgment in the case of Central Board of Dawoodi Bohra Community and another v. State of Maharashtra and another (2005) 2 SCC 673, wherein it has been held that the law laid down by the Supreme court in a decision delivered by a bench of larger strength is binding on any subsequent Bench of lesser or coequal strength. In view of this legal position, the above cited judgments delivered by the Benches of larger strength would prevail over the judgment in the case of Association of Management of Private Colleges (supra), cited by the learned counsel for the respondents. Consequently, the provisions of Section 16 (4) of the Act of 1977 will have to be held as directory and not mandatory.

21. Once it is held that the provisions of Section 16 (4) of the Act of 1977 are directory, the contention of Shri Adwant, learned counsel for the respondents based on the judgment in the cases of Association of Management of Private Colleges (supra), Subhash Ramkumar Bind alias Vakil and another v. State of Maharashtra, (2003) 1 SCC 506 and Gulf Goans Hotels Company Limited and another v. Union of India and others, (2014) 10 SCC 673, that the Amended Rules of 2016, in the absence of their notification in the Official Gazette after following the procedure laid down in subsection (4) of Section 16 of the Act of 1977, would not be enforceable, cannot be accepted. As discussed above, the Amended Rules of 2016 are very much enforceable from the date of their publication in the Official Gazette i.e. 08th September, 2016.

Point No. (iii):

22. Relying on the judgments in the cases of Mrs. Satimba Sharma (supra), The Correspondents/Principal AROKAIMADA Matriculation Higher Secondary School (supra) and K. Krishnamacharyulu v. Sri Venkateswara Hindi College of Engineering (1997) 3 SCC 571, the learned counsel for the respondents submit that the writ petition are not maintainable. We are not inclined to accept this contention for the simple reason that this issue has been dealt with by the Nagpur Bench of this Court in the case of Mahadeo s/o Pandurang More and others (supra). The Court considered the case of Mrs. Satimbla Sharma and others (supra) and in para 28 of the said judgment clearly observed that where a statutory provision casts a duty on a private aided school to pay similar salary and allowances to its teachers, as are being paid to the teachers of government aided schools, then a writ of mandamus could be issued to enforce such statutory duty. It is further observed that the writ jurisdiction of the High Court under Article 226 of the Constitution is wide enough to issue a writ for payment of pay on par with Government employees.

23. If the provisions of the Act of 1977 and Rules of 1981 cast the duty on the minority or nonminority private unaided school to pay salary to the teachers on par with their counterparts serving in the private aided schools, the respondents are under a legal obligation to follow those provisions. If the respondents neglect or avoid to follow those legal provisions, a writ of mandamus certainly can be issued against them. In the present case, the petitioners are claiming the pay scales as have been prescribed in Schedule "C" under Rule 7 (i) of the Rules of 1981. The pay scales are prescribed in Schedule "C". Since they are supported by the provisions of the Act of 1977 as well as the Rules of 1981, they are legally enforceable and the writ petitions seeking enforcement of the provisions of the Act of 1977 and the Rules of 1981, so far as the pay scales are concerned, are quite maintainable.

Point No. (iv):

24. Shri Adwant, the learned Counsel for the respondent namely Siyaram Education Society, Aurangabad, submits that the teachers employed by the said respondent have voluntarily accepted the salary which was offered to them by the said respondent, though it was not on par with the salary that is being paid to their counterparts working with the private aided schools. He pointed out the consent letters dated 16th June, 2013, given by the said teachers. According to him, the Doctrine of Contracting out permits one to waive or give up or abandon any advantages or benefits available to him under any provision of law. He submits that since the teachers working with this respondent have given up their claim for salary equal to that of the salary that is being paid to their counterparts working with private aided schools, this respondent cannot be directed to pay them the pay scales as prescribed in Schedule "C" of the Rules 1981. In support of this contention, he relied on the judgments in the cases of Lachoo Mal v. Radhye Shyam AIR 1971 SC 2213, General Manager, Sri Siddeshwara cooperative Bank Limited and another v. Ikbali and others (2013) 10 SCC 83 and

Vasu P. Shetty v. Hotel Vandana Palace and others, (2014) 5 SCC 660. The proposition of law laid down in the above cited decisions is salutary. If a teacher, at his own volition, agrees to receive less salary than the salary prescribed in Schedule "C" of the Rules of 1981, he can certainly do so and the Educational Institutions cannot be directed to pay full salary to him. However, it must be the result of his own volition. In this case, the consent letters of petitioner nos.1 to 4 executed by them prior to joining the service with this respondent have not been produced. Moreover, when they claim salary on par with the salary that is being paid to the teachers working in the private aided schools, that itself indicates that they are not ready to abandon their claim in this regard. The teachers working with this respondent i.e. namely Siyaram Education Society, Aurangabad who have voluntarily given consent letters accepting less salary than that is prescribed under Schedule "C" of the Rules of 1981, may not be entitled to claim salary prescribed under the said Schedule. However, petitioner Nos. 1 to 4, who have not voluntarily given up their claim for salary payable to them as per Schedule "C", cannot be denied the benefit of Schedule "C".

25. As stated above, the amendment to Schedule "C" would be enforceable from 8th September, 2016 i.e. the date on which the amendment was published in the Official Gazette. The petitioners are entitled to get pay scales as prescribed in Schedule "C" (prior to the amendment) till 7th September, 2016. Though the petitioners have claimed pay scales as recommended by the 5th and 6th Pay Commissions with arrears, they are entitled to get their pay fixed and claim arrears, if any, as per the pay scales prescribed in Schedule "C" as existed prior to the Amendment i.e. upto 7th September, 2016 and then in terms of the Amended Schedule "C" from 8th September, 2016 onwards.

26. The petitioners state that the respondent ? Gyan Mata Vidya Vihar has fixed pay scale on the basis of 6th Pay Commission in 2010. However, as per notice dated 8th March, 2016, the said respondent communicated to the petitioners through its Principal i.e. respondent No. 5 that there was a clerical error in the calculation of the salary with effect from June, 2014 and that the said mistake would be rectified with effect from February, 2016 and the issue in respect of recovery of the excess money paid to the petitioners would be deliberated in the next Managing Committee meeting for final decision.

27. The learned counsel for the respondent ? Gyan Mata Vidya Vihar submits that no final decision has yet been taken for recovery of the excess money from the petitioners that has been paid to them because of wrong pay fixation.

28. The learned counsel for the petitioners cited the judgments in the cases of State of Punjab and others v. Rafiq Masih (White Washer) and others (2015) 4 SCC 334 and Babulal Rama Thakre v. Work Load Committee, Zilla Parishad and others 2016 (2) ALL MR 750 and submit that the amount alleged to have been paid to the petitioners in excess due to mistake on the part of the respondent ? Gyan Mata Vidya Vihar, without there being any fraud played or misrepresentation made by the petitioners, cannot be allowed to be recovered

from them. In our view, the abovesaid cases are fully applicable to the facts of the present cases also. The amount of excess payment alleged to have been paid due to wrong pay fixation by the respondent ? Gyan Mata Vidya Vihar to the petitioners, who are class III employees serving with the said Institution, cannot be allowed to be recovered. However, the contention of the petitioners that the respondent ? Gyan Mata Vidya Vihar shall be directed to continue to pay the same pay scale to them in future also, cannot be accepted since the said pay scale is not supported by Schedule "C" of the Rules of 1981.

29. In the result, we pass the following order:

(i) The respondents (Educational Institutions) shall fix pay scales of the petitioners (Teachers) as provided in Schedule "C" of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Rules, 1981 as existing prior to and after the Amendment Rules of 2016, respectively.

(ii) The respondents (Educational Institutions) shall pay salary to the petitioners (Teachers) as prescribed in Schedule "C" regularly from April, 2017 actually payable in May, 2017.

(iii) The petitioners (Teachers) are entitled to get arrears, if any, of additional pay accumulated due to revised pay fixation in terms of clause (i) above.

(iv) The respondents shall pay arrears payable to the petitioners due to revised pay fixation, within six months from today.

(v) The impugned letter dated 31st December, 2015, issued by the Deputy Director of Education, Latur and the letter dated 11th March, 2016, issued by the Accounts Officer, Audit Squad (Education Department), Nanded are quashed and set aside.

(vi) The respondents are restrained from making recovery of any amount from the petitioners towards excess payment made to them on account of wrong pay fixation.

(vii) The Writ Petitions are allowed in the above terms and Rule is made absolute accordingly.

(viii) The parties shall bear their own costs.

30. After pronouncement of the above judgment and order, Mr. R.F. Totla, the learned counsel for the respondents ? Educational Institution prayed for grant of stay to the execution of the order passed today.

31. Considering the reasons given in the judgment and the fact that the revised pay scale would be applicable from 1st January, 2016 only, as per the Amendment made in Schedule "C", which was the claim of the respondents ? Institutions themselves, we are not inclined to grant stay to the execution of the order passed today. In the circumstances, the request for stay to the order passed today, stands rejected.