

(2026) 08 BOM CK 3191

In the Bombay High Court, Nagpur Bench

Case No : WRIT PETITION NO.4590 OF 2022

Vijay Rajaram Thombre & Ors.

APPELLANT

Vs

The State Of Maharashtra & Ors.

RESPONDENT

Date of Decision : 04-08-2026

Acts Referred:

Constitution of India — Articles 14 and 21, 226

Citation : (2026) 08 BOM CK 3191

Hon'ble Judges : Sushil M. Ghodeswar, J;Y.G. Khobragade, J

Bench : Division Bench

Advocate : Mr. Rahul Ghuge, Advocate, Mrs. H.S. Dhande, AGP

Final Decision : Allowed

Judgement

JUDGMENT (PER : SUSHIL M. GHODESWAR J.): -

1. RULE. Rule made returnable forthwith. Heard finally with the consent of learned counsels for the respective parties.

2. By the present petition, the petitioners seek prayer clauses (i) to (iii), which are reproduced as under :-

(i) quash and set aside the impugned Government Resolution dated 08.06.2016 issued by the respondent no.1-State (Annexure-C) as being violative of Articles 14 and 21 of the Constitution of India and being arbitrary and unreasonable;

(ii) quash and set aside the impugned order dated 08.07.2021 (Annexure-H) passed by respondent no.3-Additional Commissioner, Tribal Development Department, Amravati Division;

(iii) further be pleased to direct the respondents to pay and release the arrears of salary and all other service benefits from the date of de-recognition of the earlier school dated 05.11.2016 till the date of their posting in 2019;

3. On 08.07.2021, the Additional Commissioner, Tribal Development, Amravati Division, Amravati, passed an order thereby, rejecting the claim of the petitioners for the payment of salary for the period in which they were not working.

4. According to the petitioners, they were working as regular employees in Aided Ashram School, managed by Shri Ramchandra Maharaj Sevabhavi Bahuuddeshiya Shikshan Sanstha Ganeshpur, District Buldana at Village Pala. The said school came to be de-recognized by the respondent-authorities by order dated 05.11.2016. Immediately thereafter, on 21.12.2016, the petitioners submitted a representation seeking their absorption in some other schools.

5. It is further contended that the respondent No.1-State of Maharashtra, through its Secretary, Tribal Development Department, Mantralaya, Mumbai, issued a Government Resolution (for short "GR") dated 08.06.2016 introduced a policy of "no work no pay" in respect of employees serving in the Government as well as Private Aided Ashram Schools. The said GR prescribed that whenever the School is de-recognized, the teaching and non-teaching staff would not be entitled for the payment of salary till their services are absorbed and in some other schools.

6. According to the petitioner, after repeatedly requesting for absorption, they came to be absorbed by the Competent Authority thereby, directing them to join their services at various places, in which the vacancies were notified and available. The order of absorption of the petitioners regarding joining their services came to be passed on 04.08.2017 and 25.06.2018.

7. The names of petitioner Nos.1 and 2 appear in the order dated 04.08.2017 at Sr. Nos.2 and 3 respectively, whereas, the name of petitioner No.3 appears in the order dated 25.06.2018. Vide the aforesaid order, respondent No.3-Additional Commissioner, Tribal Development Department, Maharashtra State, Amravati Division, Amravati, relieved the petitioners, enabling them to join at their respective new places of absorption. According to the petitioners, despite there being a specific order by the State Authorities, they were not permitted to join at their respective posts by the respondent Nos.4 and 5. They were informed that the posts are not vacant and thus, they were restrained from letting them work on the said posts in-spite of their willingness to discharge their duties on the said posts.

8. It is therefore, submission of the petitioners that although they were ready and willing to join on their respective places of absorption, however, they were denied and refused the opportunity to work on the their respective posts. In support of their contentions, they have submitted various representations dated 14.11.2017, 11.08.2017, 05.12.2017, 01.12.2018, 31.07.2018, 26.02.2019, 27.05.2019, 07.08.2019, etc, requesting them to permit the petitioners to join on their respective posts.

9. In pursuance of the aforesaid submissions, Mr. Ghuge, learned counsel for the petitioners invited the attention of this Court, to the communication dated 28.09.2017 issued by respondent No.3-Additional Commissioner, Tribal Development Department, Maharashtra State, Amravati Division, Amravati to the Project Officer, Integrated Tribal Development Project, Kinwat, Pusad. The said

communication specifically informed that despite there being directions to absorb the petitioners, the Project Officer, Integrated Tribal Development Project, has not allowed them to join their duties and therefore, the Deputy Secretary, Tribal Development Department has expressed his serious disappointment.

10. Accordingly, the petitioners after much persuasion, were permitted to join their respective posts on 19.11.2019 and 02.07.2019 as Teacher, Cook and Helper respectively. After joining at their respective posts, the petitioners made representation dated 29.01.2020 seeking payment of arrears of salary for the period commencing from the date of de-recognition of the earlier school at Pala till the date of their absorption in the year 2019. Since, the said representation was not decided, the petitioners approached this Court by filing the Writ Petition No.2016 of 2021 (Vijay Rajaram Thombre and Others Vs. The Commissioner, Tribal Development Department, Maharashtra State, Nashik) which is decided on 18.06.2021. While disposing of the said writ petition, this Court directed the Additional Commissioner, Tribal Development Department, Maharashtra State, Amravati, to decide the representation in accordance with law. Accordingly, respondent No.3 heard the petitioners on 06.07.2021 and thereby, rejecting the claim of the petitioners for payment of salary for the period during which they were not working.

11. Being aggrieved by the said impugned order passed by respondent No.3, the petitioners have approached this Court by filing the present petition under Article 226 of the Constitution of India.

12. Mr. Ghuge, learned counsel for the petitioners fairly submitted that after joining their respective posts, the petitioners have been regularly receiving their salaries. However, the issue involved in the present petition is only in respect of the claim of arrears of salary and all other service benefits for period commencing from the date of de-recognition of their earlier school till the joining of the petitioners at their respective new absorbed place of schools.

13. The main contention of the petitioners is that they had been continuously pursuing the authorities and repeatedly requesting them to permit them to join them at their respective places of absorption, even after the orders of absorption were passed by the State Authorities. During this period, they were virtually required to suffer for non-payment of salary. Their efforts to approach the respondent Authorities through representations is clearly evident on the basis of various representations, which are annexed in the writ petition, pointing out that despite the direction issued by the State Authorities, they were not permitted to join at their respective places of postings.

14. According to the petitioners, though the Government introduced the policy of not paying the salaries for the period for which employees were not in service on the ground that "no work no pay", however, the fact about readiness and willingness of the employees to work and denial on the part of the employer to permit the employee to work are not considered in the said Government

Resolution.

15. According to Mr. Ghuge, learned counsel for the petitioners, the petitioners are having their lawful rights to claim the arrears of the salary for the period during which they were ready and willing to work at their respective absorbed places. More particularly, when the work was also available with the employer, the petitioners were not allowed to join their services by the Project Officer, Integrated Tribal Development Project, on total unsustainable reasons, for which they are not responsible.

16. He further invited the attention of this Court to the order dated 24.01.2020 issued by the Additional Commissioner, Integrated Tribal Development Department, Thane, wherein in an identical case, the waiting period to join at respective posts at new absorbed schools came to be considered and regularized on the ground that the delay in absorption was due to administrative reasons and that the employees had not performed any other work during the said period.

17. In the present case, it is an admitted position that the petitioners did not actually work during the said waiting period. However, they were continuously doing their efforts to join at the place of absorption at their respective posts. Despite giving the order by the State Authorities, it was not appropriate on the part of Project Officer, Integrated Tribal Development Project, to refuse the petitioners from joining on their respective posts of absorption.

18. The petitioners were virtually kept on waiting on the positive hope that they would be allowed to join their respective posts. Therefore, it is found that there was no mistake on their part to join their duties, despite, there being specific direction by the respondent Authorities.

19. In that view of the matter, we find that the case of the petitioners can be considered by relying upon the judgment passed by the Hon'ble Apex Court in the case of State of Bihar and Others Vs. Kripa Nand Singh and Another reported in (2014) 14 Supreme Court Cases 375, wherein the principle of "no work no pay" has been considered on the ground that when the employees were not at fault in that event, they cannot be held responsible for the non-payment of salary.

20. It is further pointed out that in the judgment in the matter of Union of India and Others Vs. K.V. Jankiraman and Others reported in (1991) 4 Supreme Court Cases, 109, has held that where an employee though willing to join their service and work, is not allowed to work without his fault.

21. In view of this, this Court find that though the School of petitioners in which they were rendering their services was de-recognized and later on the State Government ordered their absorption, however, despite issuing the order petitioners were not permitted to join their respective duties. Admittedly, there is no submission on behalf of respondent-State that the School was de-recognized because of the poor performance on the part of the petitioners. In that event when the State Government had directed the respondent Nos.4 and 5 to absorb

the petitioners on their respective posts, there was no occasion for them to not allow the petitioners to resume their duties.

22. Furthermore, there is also no justification from the Project Officer, Integrated Tribal Development Department, as to why he could not permit the petitioners to join their duties on the transferred/absorbed places as stated herein above. The record discloses that the petitioners made several attempts to join their duties at their respective place of postings. However, they were prevented by the respondents-Authorities from joining the duties, for which no fault can be attributed to them.

23. In view of above observations and the law laid down by the Hon'ble Apex Court, we are inclined to allow the present Writ Petition. Hence, I pass the following Order :-

ORDER

(i) The Writ Petition No.4590 of 2022 is allowed.

(ii) The Order dated 08.07.2021 passed by respondent No.3-Additional Commissioner, Tribal Development Department, Amravati Division, Amravati, is hereby quashed and set-aside.

(iii) The respondents are directed to pay and release the arrears of salary and all other service benefits to the petitioners for the period from 05.11.2016, being the date of de-recognition of the earlier school, till the date of their joining at their respective places of absorption.