

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 5822 OF 2014

Maharashtra Rajya Prathamik
Shikshak Sangh, Jalgaon
Through District President,
Mr. Raosaheb Mango Patil
Age : 45 years, Occ : Service,
R/o Utkarsha Nagar,
Gunjan Bungalow,
Dhule Road, Tq. Amalner,
Dist. Jalgaon.

..PETITIONER

-VERSUS-

1. The State of Maharashtra
Through it's Secretary,
Finance Department,
Mantralaya, Mumbai-32.
2. The Secretary,
Rural Development and
Water Conservation Department,
Mantralaya, Mumbai-32.
3. The Zilla Parishad, Jalgaon,
Tq. & Dist. Jalgaon
Through its Chief Executive Officer
4. The Education Officer (Primary),
Zilla Parishad, Jalgaon,
Tq. & Dist. Jalgaon.
5. The Block Education Officer,
Panchayat Samiti, Amalner,
Tq. Amalner, Dist. Jalgaon.

..RESPONDENTS

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Advocates for Petitioner : Mr. S.P. Brahme h/f Mr. A.G. Magare

A.G.P. for Respondent nos. 1 and 2 : Mr. V.H. Dighe
Advocate for Respondent Nos. 3 to 5 : Mr. R.N. Chavan h/f Mr. Vijay Sharma

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CORAM : S.S. SHINDE & A. M. BADAR, JJ.

RESERVED ON : 13th October, 2015
PRONOUNCED ON : 19th October, 2015

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JUDGMENT (PER S.S.SHINDE, J.) :

Rule. Rule made returnable forthwith and heard finally by consent of the learned counsel appearing for the parties.

2. This Petition takes exception to the impugned Government Circulars dated 05.07.2008 and 03.11.2008 issued by the Rural Development and Water Conservation Department, Government of Maharashtra, Mantralaya, Mumbai i.e. Respondent No.2, and also the impugned report dated 13th June, 2014, submitted by the Respondent No.5, in furtherance of the impugned communication dated 14th March, 2014 of the Respondent No.4 and further impugned communication dated 6th March, 2014 issued by the respondent no.3.

3. The petitioner claims to be the association of the primary teachers. The members of the said association are discharging their official duties under the control and supervision of Respondent Nos. 2 to 5. As per the Government policy, all of them are entitled and are drawing the house rent. According to the petitioner, in view of the Government Resolution dated 5th February, 1990, issued by the Finance Department, Government of Maharashtra, the conditions prescribed in respect of employees in the rural areas that of residing at the place of duty for eligibility of House Rent Allowance, has been dispensed with by clause 4 of the aforementioned Government Resolution. The said provision is still intact. However, by way of the impugned circular dated 5th July, 2008, the Respondent No.2 has directed Respondent Nos. 3 and 4 to stop the payment of house rent to those employees, who are not residing at the place of headquarter. The learned counsel appearing for the petitioner submits that, by issuing the circular dated 5th July, 2008, without superseding the Government Resolution dated 5th February, 1990, the relaxation granted by the aforementioned Government Resolution dispensing off the

condition to stay at the place of duty, cannot be taken away. In support of the contention that, the circulars cannot override provisions of the Government Resolution, the learned counsel appearing for the petitioner pressed into service the exposition of the Supreme Court in the case of **Union of India & anr V/s Central Electrical and Mechanical Engineering Service (CE & MES) Group A (Direct Recruits) Association, CPWD & ors.**¹ and also the exposition of the Bombay High Court, Bench at Aurangabad in the case of **Santosh Ekoba Sonavane & ors V/s State of Maharashtra & ors**² and submits that, the Petition deserves to be allowed.

4. On the other hand, the learned A.G.P. appearing for Respondent/State invited our attention to the averments made in the affidavit in reply and submits that, the circulars are issued by taking recourse to Section 248 of the Maharashtra Zilla Parishads and Panchayat Samitis Act, 1961, and therefore, they have the statutory force, therefore, the Petition deserves to be rejected.

1 2008 AIR (SC) 3

2 2001(1) Bom.C.R. 825

5. This Petition raises short but important question of law that, whether by issuing impugned Government Circulars dated 05.07.2008 and 03.11.2008, the Rural Development and Water Conservation Department, Government of Maharashtra, Mantralaya, Mumbai i.e. Respondent No.2, can take away the protection granted by the Government Resolution dated 5th February, 1990, issued by the Finance Department, Government of Maharashtra, Mantralaya, Mumbai, in favour of the employees working in rural areas, wherein the condition prescribed in respect of employees in the rural areas that of residing at the place of duty for eligibility of House Rent Allowance, is dispensed with by clause 4 of the said Government Resolution, without superseding the aforementioned Government Resolution and whether, circulars dated 5th July, 2008 and 3rd November, 2008 issued by the Respondent No.2 can have overriding effect over the Government Resolution dated 5th February, 1990 ?

6. We have heard the learned counsel appearing for the petitioner and the learned A.G.P. appearing for the Respondent/State. With their able assistance, we have

perused the documents placed on record and, in particular, the Government Resolution dated 5th February, 1990, issued by the Finance Department, Government of Maharashtra, Mantralaya, Mumbai. The introductory part of the said Resolution reads thus :-

“Government has sanctioned rates of House Rent Allowance to the Government employees and others with effect from 1st April, 1988 under Government Resolution, Finance Department, No.RPS-1287/643/SER-10, dated the 25th April, 1988. The demand that State Government employees and others may be granted House Rent Allowance on the lines of Central Government rates was under consideration of Government. Government has decided that the employees of the State Government, Zilla Parishads and Government aided institutions who are entitled for the House Rent Allowance as per existing Government orders, shall be granted House Rent Allowance at the rates similar to those of Central Government employees and from the dates mentioned in the Table under para 2 below.”

7. In clause 2 of the said Government Resolution, the House Rent Allowance admissible to the various categories of the employees working under the State

Government and under the Local Bodies etc., have been mentioned. For the purpose of deciding the present Petition, the clause 4 of the said Government resolution is relevant, which reads thus :-

“4. House Rent Allowance at the above rates shall be payable to all employees (other than those residing in Government owned/hired accommodation) without requiring them to produce rent receipts. These employees shall, however, be required to furnish a certificate prescribed in Annexure II under Government Resolution, Finance Department, No.RPS-1287/643/SER-10, dated 25th April, 1988, to the effect that they are incurring some expenditure on rent/contributing towards rent. House Rent Allowance shall also be paid to Government employees living in their own houses, subject to their furnishing a certificate as in Annexure II accompanying the said resolution. These certificates shall be produced by the employees in the month of April each year or whenever there is a change in the contents of the certificate. All other conditions at present applicable for grant of House Rent Allowance shall continue to apply. The conditions prescribed in respect of employees in the rural areas that of residing at the place of duty for eligibility of House

Rent Allowance shall however, be dispensed with.”

(Underline supplied)

Whether the members of the petitioner – association are entitled to take benefit of said Government Resolution and receive the House Rent can get answer, in para 7 of the said Government Resolution, which reads thus:-

“7. In exercise of the powers conferred by the proviso to Article 248 of the Maharashtra Zilla Parishad and Panchayat Samitis Act, 1961 (Mah. V of 1962) and all other powers enabling it in that behalf, Government is also pleased to direct that these orders should also be made applicable mutatis mutandis to the full-time Zilla Parishad employees.”

It is not in dispute that, the said resolution was made applicable to the employees working under the Zilla Parishads and Panchayat Samitis in the State of Maharashtra.

8. By way of issuing impugned circular dated 5th July, 2008, and circular dated 3rd November, 2008, issued

by the Respondent No.2 and also impugned communication dated 14th March, 2014, issued by the Respondent no.4 and further impugned communication dated 6th March, 2014 issued by the Respondent No.3, Respondent No.2 has taken decision to stop paying House Rent to those employees, who are not residing at the place of duty/headquarter. As a result of which, the house rent for which the members of the petitioner-association and similarly situated employees working throughout State of Maharashtra, who were entitled, Respondents have stopped paying the house rent and said amount has been withheld from the date of issuance of the impugned communication dated 14th March, 2014. The relevant clause (2) of the Government Resolution dated 5th July, 2008 reads thus :-

“2. पंचायत राज समितीने केलेल्या वर नमूद सूचना स्वीकारून शासन आता असे आदेश देत आहे की, जिल्हा परिषदांमधील शिक्षक, ग्रामसेवक, इत्यादी जे कर्मचारी मुख्यालयी हजर राहत नसतील त्यांच्याविरुद्ध शिस्तभंगविषयक कठोर कारवाई करण्यात यावी. अन्यथा, अशा कर्मचा-यांविरुद्ध कारवाई न करण्यास जे अधिकारी जबाबदार असतील त्यांच्याविरुद्ध तातडीने कारवाई करण्यात यावी आणि अशा मुख्यालयी न राहणा-या कर्मचा-यांचा घरभाडे भत्ता रोखण्यात यावा. उपरोक्त संदर्भ क्र.१ व २ नुसार अनुक्रमे शिक्षक व ग्रामसेवक यांच्यापुरते काढण्यात आलेले आदेश आता या शासन परिपत्रकान्वये जिल्हा परिषदांमधील मुख्यालयी न राहणा-या इतर सर्व गट “क” व “ड” मधील कर्मचा-यांनाही लागू करण्यात येत आहेत. हे आदेश सर्व संबंधितांच्या निदर्शनास आणण्याबाबत दक्षता घ्यावी.”

(Underline supplied)

9. The true translation of the said document is as under :-

“2. By accepting the aforementioned suggestions put forth by the Panchayat Raj Committee, the Government is now issuing these orders for taking strict disciplinary action against the teachers of Zilla Parishad, Gramsevak and the employees who do not remain present at their head-quarters. Otherwise the Officers who are not taking action against such employees will be held responsible and immediate action shall be taken against them and House Rent Allowance of such employees who do not stay at their headquarters should be stopped. The above referred orders issued at serial Nos. 1 and 2 which were confined to Teachers and Gramsevak are now applicable by this Government Circular to all the employees of group “C” and “D” who do not stay at their Headquarters. Due care be taken to bring into the notice of all the concerned scrupulously.”
(Underline supplied)

10. We have carefully perused the averments in the affidavit in reply and additional affidavit filed by Respondent Nos. 1 and 2. So far the aforementioned Government

Resolution of 1990, is concerned, it is stated that, the Government by its corrigendum dated 30th November, 1990 referring to Government Resolution dated 25th April, 1988, has stated about how to calculate the house rent allowance and compensatory local allowance in which Government has directed that, the basic pay is defined in Rule 9(36)(I) of the Maharashtra Civil Service (Pay) Rules, 1981, on that basis pay of the house rent allowance and compensatory local allowance should be calculated. Hence the issue raised in this Writ Petition & the above corrigendum dated 30th January, 1990, and referring Government Resolution dated 25th April, 1988, are not co-related, the house rent allowance is not part of basic pay as defined in the above rule no.9. It is further stated in para 10 that, as per Rural development Department's letter dated 2nd September, 2015, the Government circular of Finance Department dated 24th April, 1988 and 5th February, 1990, clarified about how to allow house rent allowance. There is no compulsion for employee to reside at headquarter, but as per Section 248 of Maharashtra Zilla Parishad and Panchayat Samiti Act, 1961 (Regulation Rule No.5 of 1962), it is implemented to employee of Zilla Parishad. It is also clarified that, if the

department has decided the compulsion to reside the employee at their head quarter, the department can make such rule, for better administration and implementation of schemes for the benefit of rural people, therefore, the Rural Development department has taken a decision by the circular dated 5th July, 2008, 3rd November, 2008 and 14th November, 2000.

11. It is true that, if Respondent No.2 wants to frame the statutory rules or to add or delete any rule, regulating the service conditions of the employees, the Section 248 of the Maharashtra Zilla Parishad and Panchayat Samiti Act, 1961 enables Respondent No.2 to take such steps. The provisions of Section 248 of the Maharashtra Zilla Parishads and Panchayat Samitis Act, 1961 reads thus :-

“248. Recruitment and conditions of service of persons serving the Zilla Parishad.-

Subject to the provisions of this Chapter, the State Government may make rules regulating-

(a) the recruitment (including reservation for Scheduled Castes and Scheduled Tribes and Backward Classes), functions, and terms and conditions of service (including payment of dearness allowance and all conduct and disciplinary matters) of persons appointed to the District Technical Service (Class III), District Service (Class III) and District Service (Class IV), and

(b) the payment to be made by the Zilla Parishad towards pension, gratuity and other benefits as respects officers and servants who have been serving any existing board and who become servants of the State Government, or the payment to be made to the State Government towards such matters in respect of State Government servants who have become members of the services under Zilla Parishad :

{Provided that, if the State Government considers it expedient so to do, it may also regulate the conditions of service as respects pay-scales, dearness and other allowances, leave, pension, provident fund or any other matter in relation to conditions of service, by a general or special order.}"

However, in the present case, it is not the case of Respondent No.2 that, the statutory rules are framed by invoking the aforementioned provision, and by virtue of said

rules by superseding said Government Resolution, the condition dispensed with in clause 4 of the the Government Resolution dated 5th February, 1990, for the employees residing in the rural areas to stay at the place of duty/headquarters, has been recalled. However, the Respondent No.2 has issued circulars and not framed any rule, and therefore, the circulars cannot override the provisions of the Government Resolution dated 5th February, 1990, issued by the Finance Department of Government of Maharashtra when said Government Resolution is still intact and not superseded by any subsequent Government Resolution, or its effect has not been nullified by bringing the statutory rules or amending said Government Resolution therefore, clause 4 of the aid Government Resolution would remain in force. The Government Resolution dated 5th February, 1990 operates as an agreement between the employer i.e. Zilla Parishad as its employee and its terms cannot be changed to the detriment of the employees unilaterally.

12. Apart from legal provision discussed hereinabove, the members of the petitioner association have

placed on record the copies of documents showing that, they are residing at the place of headquarter. However, it appears that, the Respondent Authorities have proceeded in haste and stopped the house rent allowance on the ground that, members of the petitioner association are not residing at the place of headquarter, which is not proper and same is contrary to the provisions in clause 4 of the Government Resolution referred hereinabove.

13. In that view of the matter, we hold and declare that, as long as, the said Government Resolution is intact and the conditions to stay at the place of duty is dispensed with, in favour of the employees working in the rural areas under the establishment of Respondent Nos. 2, 3 and 4, in view of the clause 4 of the said Government Resolution the said protection cannot be taken away by the impugned circulars and communications. In that view of the matter, the members of the petitioner association and all other similarly situated employees covered by aforementioned Government Resolution dated 5th February, 1990, throughout the State of Maharashtra, who are working in rural areas are entitled for house rent even though they are

not staying at headquarter/place of duty. Therefore, that part of the circular dated 5th July, 2008 and the communication dated 14th March, 2014 and 6th March, 2014, i.e. employees who are not residing at the place of headquarter, their house rent should be stopped, stand quashed and set aside. The employees in rural areas working under the control and supervision of Respondent Nos. 2 to 5 throughout the State of Maharashtra, covered by clause 4 of the aforesaid Government Resolution dated 5th February, 1990, who are entitled for house rent, their house rent cannot be stopped on the ground that, they are not residing at headquarters relying upon impugned circulars and communications. Accordingly, we direct the respondents to disburse the withheld amount towards house rent as expeditiously as possible but within four weeks from today and continue to pay the same regularly.

14. The Writ Petition is partly allowed. Rule made absolute in above terms. The Writ Petition stands disposed of with above observations.

Sd/-

(**A. M. BADAR, J.**)

Sd/-

(**S.S. SHINDE, J.**)

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SGA/-