IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.1153 OF 2021

1. Balasaheb Manik Bhore
Age: 46 years, Occ: Service
R/o: Ganeshnagar, Osmanabad
Taluka and District Osmanabad

2. Manesh Atmaram Navale,
Age: 43 years, Occ: Service
R/o: Yermala, Taluka Kallam.
District Osmanabad

3. Rajendra Ramrao Pawar
Age: 48 years, Occ: Service
R/o: Yashwantnagar. Barshi Naka, Osmanabad
Taluka and District Osmanabad

4. Mahendra Pandurang Jatgap.
Age: 38 years, Occ: Service
R/o: Yermala, Taluka Kallam
District Osmanabad ...Petitioners

VERSUS

1. The State of Maharashtra
Through its Secretary,
School Education & Sports Department,
Mantralaya, Mumbai

2. The Director of Education (Primary)
State of Maharashtra, Pune

3. The Deputy Director of Education
Latur Region, Latur

4. The Education Officer (Primary)
Zilla Parishad, Osmanabad

5. Trimurti Magaswargiya Shikshan Prasarak Mandal

Wagholi, Taluka and District Osmanabad
Through its Secretary ...Respondents

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Mr. P. G. Tambade h/f. Mr. Santosh S. Jadhavar, Advocate for the Petitioners.
Mr.V. M. Kagne, AGP for Respondent Nos. 1 to 3.
Mr. S. D. Kaldate, Advocate for Respondent No.4
Mr. Sanjaykumar B. Bhosale, Advocate for Respondent No.5

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CORAM : NITIN B. SURYAWANSHI AND
ABASAHEB D. SHINDE, JJ.

RESERVED ON : 08.06.2026

PRONOUNCED ON : 03.07.2026

JUDGMENT (Per Abasaheb D. Shinde J.) :-

1. Heard.

2. Rule. Rule made returnable forthwith. With the consent of the parties the matter is taken up for final hearing at the stage of admission.

3. The petitioners have approached this Court under Article 226 of the Constitution of India seeking following main reliefs :-

> *B] By issuing writ of mandamus or any other appropriate writ order or direction, respondent No.1 to 4 may kindly be directed to absorb petitioners in other recognized schools receiving grant in aid.*
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> *C] By issuing writ of mandamus or any other appropriate writ, order or direction, the respondents No.1 to 4 may kindly be directed to release salary of the petitioners from September 2019 till their absorption in other recognized schools receiving grant in aid with further direction to continue to pay them salary from the schools wherein they would be absorbed.*

4. During pendency of this Petition, the petitioners are

absorbed in other schools and they are being paid salary in the said schools with effect from the date of their absorption. Therefore, prayer Clause-B of the Writ Petition no longer survives. What remains to be decided is prayer Clause-C regarding payment of salary from the date of declaring the petitioners as surplus i.e. September 2019 till the date of their absorption in other recognized school.

5. For better appreciation, the service details of the petitioners are given in the table below :-

Sr. No.	Name of the Petitioner	Date of First Appointment	Date of Appointment on the said School	Date of declaration as surplus	Date of Absorption in another school
1.	Balasaheb Manik Bhore	15.06.1998	14.06.1999	18.09.2019	01.11.2022
2.	Manesh Atmaram Navle	01.10.1999	01.10.1999	18.09.2019	17.12.2022
3.	Rajendra Ramrao Pawar	22.11.1999	22.11.1999	18.09.2019	01.11.2022
4.	Mahendra Pandurang Jagtap	05.01.2009	05.01.2009	18.09.2019	--.02.2023

SUBMISSIONS :-

6. Learned Counsel for the petitioners submits that Respondent No.5-Educational Trust was running a primary school, namely, Bajirao Patil Primary School, Osmanabad (for the sake of brevity hereinafter referred to as ***'the said school'***). The said school was a recognized school and was receiving 100% grant-in-aid. The petitioners were appointed as Assistant

Teachers in the said school after following due procedure of law. The petitioners have attained the status of permanent teachers and were receiving salary from the grant-in-aid payable to the said school. He would further submit that there were in all 9 sanctioned posts of Assistant Teachers in the said school, however, due to reduction in the strength of students, initially four (04) Assistant Teachers were declared surplus and were directed to be absorbed in other schools under the orders of Respondent No.4.

7. Learned Counsel for the petitioners further submits that Respondent No.1-State Government, by an order dated 16.07.2017, cancelled the recognition of the said school. Though the order is dated 16.07.2017, however the same appears to have been signed on 16.07.2019. Pursuant to the said order, Respondent No.4 vide order dated 18.09.2019 intimated Respondent No.5-School about its de-recognition, by virtue of which the petitioners were declared surplus. Accordingly, the names of petitioners were enlisted in the waiting list of surplus teachers.

8. He would submit that though the petitioners were

declared surplus in the month of September 2019, however, they have been absorbed almost after a period of 3 years, therefore, the petitioners are entitled to receive salary for the said period. He, therefore, urged that the respondents be directed to pay the salary of the petitioners from September 2019 till the date of their absorption in other schools.

9. Per contra, learned Counsel appearing for Respondent No.4-Zilla Parishad would submit that provision for absorption of surplus employees is embodied in Sub-rule (2) of Rule 25-A of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 (hereinafter referred to as ***'the Rules of 1981'***). According to him, if closure of school is under Rule 25-A of the Rules of 1981, there is no question of payment of any backwages. The employees become entitled only for inclusion in the list of surplus candidates. He further submit that this Court, while considering the interplay between Rule 25-A of the Rules of 1981 and Rule 91 (2) of the Maharashtra Special Schools for Handicapped and Training Centre Code, 2018 (hereinafter referred to as **'the Code of 2018'**), in the case of ***Sayyad Manjur s/o Mujafar Vs. The State of Maharashtra and Ors.*** decided on 03.10.2022 in Writ Petition No.1934 of 2017 (Aurangabad

Bench), held 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 date of actual joining. He, therefore, urged that the prayer of the petitioners for payment of salary from September 2019 till the date of their absorption cannot be considered.

10. Learned AGP who towed the similar line of submissions as that of learned Counsel for Respondent No.4, submits that if the closure of a school is under Rule 25-A of the Rules of 1981, the employees of the said school at the most can be placed in the waiting list of surplus candidates and are not entitled for the payment of backwages. He, therefore, submits that the prayer of petitioners for payment of arrears of salary from September 2019 till the date of their absorption in other schools is not capable of being granted.

CONSIDERATION :-

11. We have heard learned Counsel for the petitioners, learned Counsel for Respondent No.4, as well as learned AGP, and with their able assistance, we have gone through the record. It is specific case of the petitioners that the order declaring them

surplus was passed on account of the cancellation of recognition of the said school. In view of specific averments in the writ petition, we find that the case of petitioners would fall under Rule 25-A of the Rules of 1981. Therefore, the question that arises for consideration is whether the petitioners are entitled for payment of salary as prayed for.

12. Before adverting to the rival submissions advanced by both the sides, it would be apt to refer to the provisions of Sub-rule (2) of Rule 25-A of the Rules of 1981, which contemplates absorption of surplus employees, which reads thus :-

The Maharashtra Employees of Private Schools (Conditions of Service) Regulation Rules, 1981

1. ……

2. …..

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

(1) …..

(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.]

13. A plain reading of aforesaid rule depicts that absorption in

another school is not a matter of right. Rule 25-A of the Rules of 1981 gives new kind of protection or privilege to permanent employees of aided schools. Sub-rule (2) of Rule 25-A lays down that employees of an aided school who are not directly responsible for de-recognition of the school, have to be included in waiting list by the competent authority, and such wait listed candidates can be recommended to management of newly aided schools or existing schools which are allowed to open new divisions. This rule doesn't contemplate wait listed employee to be absorbed as a matter of right and therefore there is no question of paying backwages/salary to such an employee till his absorption.

14. This Court in the case of ***Sayyad Manjur s/o Mujafar (supra)*** while considering the interplay between Rule 25-A of the Rules of 1981 and Rule 91 (2) of the Code of 2018, relying on the observations of full bench of this Court in the case of ***Kanhaiyyalal Sonbaji Gajbhiye Vs. Bhartiya Jagruti Shikshan Sanstha Sawari (Javahar Nagar) and Others*** reported in ***2020(6) Mh.L.J. 595*** has held that absorption of 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 his actual joining.

The relevant observations of this Court in the case of ***Sayyad Manjur s/o Mujafar (supra)*** reads thus :-

> *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:*
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> > *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.*
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> *14. In the case of Prabhakar Panjabrao Mahajan (supra) this Court has held in para No. 27 as under:*
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> > *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 retrench-ment under Rule 26, there can be no termination and re-spondent 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 re-instatement 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?*
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> *(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.*

CONCLUSION :-

15. In the light of above exposition of law laid down by this Court in the case of ***Sayyad Manjur s/o Mujafar (supra)***, we find that the petitioners are not entitled for arrears of salary from the date of petitioners being declared surplus till their

absorption in other schools. We, therefore, do not find any merit in the Writ Petition. The Writ Petition therefore stands dismissed with no order as to costs.

16. Rule is discharged.

(ABASAHEB D. SHINDE, J.) (N. B. SURYAWANSHI, J.)