

**(2002) 02 BOM CK 0117**

**Bombay High Court (Nagpur Bench)**

**Case No:** Writ Petition No. 2374 of 1987

Nisha Eknath Shende and Others

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

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**Date of Decision:** Feb. 25, 2002

**Acts Referred:**

- Constitution of India, 1950 - Article 226

**Citation:** (2002) 4 BomCR 578 : (2002) 3 BOMLR 729 : (2002) 3 MhLj 267

**Hon'ble Judges:** V.M. Kanade, J; V.G. Palshikar, J

**Bench:** Division Bench

**Advocate:** V.A. Masodkar, for the Appellant; A.Y. Deopujari, Asstt. Govt. Pleader, for the Respondent

**Final Decision:** Dismissed

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### **Judgement**

V.G. Palshikar, J.

By this petition, the petitioners pray for the following reliefs :-

"a) The Education Officer be kindly directed to implement his order dated 21-10-1985 produced at Annexure No. 5 and this Hon"ble Court be pleased to further direct that the payments of due salaries be made to the petitioners without any delay;

b) By suitable writ, order or direction the respondent No. 4 be directed to submit the salary bills before the Education Officer for purpose of payment of arrears of salary;

c) The Education Officer be kindly directed to consider the cases of petitioners 1 and 2 for purposes of approval for the further period of 84-85 and 85-86 and respondents Nos. 2 to 4 be directed to pay the salary of the period 84-85 and 85-86;

d) By suitable writ, order or direction it be kindly declared that the petitioners 1 and 2 are in continuous service of the respondents Nos. 3 and 4;

e) Any other suitable writ, order or direction for proper adjudication of the subject matter be kindly passed; and

f) Petition be allowed with costs."

2. A reply has been filed by the respondent/Education Officer and all facts, alleged by the petitioners, are controverted. The petition, therefore, raises several disputed questions of facts and is liable to be dismissed on that ground alone.

3. The learned counsel, appearing on behalf of the petitioners, pointed out that the Education Officer had already granted approval to the appointments of the petitioners and, therefore, the petitioners were entitled to be paid for the period they worked. Annexure No. 5, page 19 of the petition, proves this allegation of the petitioners. It speaks as regards granting of approval to the appointments of the petitioners and further directs for payment of salaries to them immediately. In the face of this document/Annexure, issued in October, 1985, the management was liable to make the payments. If factually payment is not done, the remedy of the petitioners was to file a suit for recovery of the money due. Instead, the petitioners have chosen to come up this Court to exercise its writ jurisdiction.

4. No writ can be issued against Dr. Babasaheb Ambedkar High School, Gondia, as it is a private institution. There is no proof on record to show that payments, as directed by the letter (Annexure No. 5 of the petition) have not been factually made by the society; and in any case, the grants for that period having already paid to the institution, no fresh directions are necessary, nor a writ can be issued asking the Education Officer to implement the order dated 21-10-1985.

5. In the result, therefore, the petition fails and is dismissed as such.