

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 1860 OF 2009
WITH
WP/4000/2008, WP/4001/2008, WP/4002/2008,
WP/4003/2008 & WP/4004/2008

ST. XAVIERS EDUCATION TRUST AND ANR
VERSUS
THE UNION OF INDIA AND ORS

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Advocate for Petitioners : Shri Niteen Pradhan h/f Shri S.S.Halkude
ASG for Respondent 1 : Shri Alok Sharma
AGP for Respondents 2 to 4 : Shri V.B.Ghadge

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CORAM : D. G. KARNIK & S. B. DESHMUKH, JJ.
Dated: February 27, 2012
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PER COURT :-

1. Heard learned counsel for parties.
2. The petitioners in Writ Petition Nos. 4000 to 4004 of 2008 are the teachers employed by private schools, which are run by the minority unaided institutions. The grievance of the petitioners therein is that they are not being paid salary as payable to the trained teachers as per Rule 7 of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1951 (hereinafter referred as "the Rules") and conditions of service prescribed under the Rules are also not being followed by the private unaided minority schools. Rule has been issued in Writ Petition Nos.4000 to 4004 of 2008. The Court has also granted interim relief directing the managements of the schools to pay salary as per the Rules and 5th Pay Commission. Review Petition made for modification of the interim order was dismissed by this Court and Special Leave Petition filed against the order in Review Petition is pending in the Supreme Court.

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4. In the meanwhile, the managements of the private schools have filed Writ Petition 1860 of 2009, challenging the very validity of the Rules. It is their contention that since they are unaided minority institutions, they are free to run the institutions in the manner they choose that has been recognised by the Supreme Court in the cases of T.M.A.Pai Foundation Vs. State of Karnataka [(2002) 8 SCC 481], Islamic Foundation Vs. State of Karnataka [(2003) 6 SCC 697] and P.A.Inamdar Vs. State of Maharashtra [(2005) 6 SCC 537].

5. Since the validity of the Rules was challenged, this Court had issued a notice to the learned Advocate General vide its order dated 1.4.2009. Shri Ghadge, learned AGP appears on behalf of the learned Advocate General.

6. After having heard learned counsel for the parties, we are of the view that arguable case is made out for admission of Writ Petition No.1860 of 2009. Hence Rule, returnable on 12.3.2012. To be heard along with Writ Petition Nos. 4000 to 4004 of 2008. Ad-interim relief, if any, granted previously is extended till the returnable date.

7. Learned ASG for respondent No.1 and learned AGP for respondents 2 to 4 waive service of the Rule.

(S. B. DESHMUKH, J.)

(D. G. KARNIK, J.)

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