

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

WRIT PETITION NO.452 OF 2015

- 1] Abhijit Kishor Patil,
age 40 years, Occu. Service,
r/o 235, Swapnapurti, Shivaji Nagar,
Jalgaon, Tq. & Dist. Jalgaon.
- 2] Smt. Sarika Bhaskarrao Nikam,
age 36 years, occu. Service,
r/o as above.
- 3] Shaikh Israr Ahmed Abdul Majid,
age 36 years, occu. Service,
r/o 204, Shivaji Nagar, Jalgaon,
Dist. Jalgaon.
- 4] Deepak Mohansing Patil,
age 34 years, Occu. Service,
r/o at/Post Sakri, Tq. Bhusawal,
Dist. Jalgaon.
- 5] Mahendra Kashinath Chaudhary,
age 36 years, occu. Service,
r/o Gandhipura, Chahardi,
Tq. Chopda, Dist. Jalgaon.
- 6] Tukaram Kisansing Patil,
age 38 years, occu. Service,
r/o Wazarkhede, Tq. Bhusawal,
Dist. Jalgaon

..PETITIONERS.

VERSUS

- 1] The Union of India,

through Secretary
Human Research Development
School Education & Letersee Department,
Delhi.

- 2] The State of Maharashtra
through Secretary of
School Education Department,
Mantralaya, Mumbai.
- 3] Director of Education (Primary)
Pune, Dist. Pune.
- 4] Deputy Director of Education,
Nashik Region Nashik,
Dist. Nashik.
- 5] Education Officer (Secondary),
Zilha Parishad, Jalgaon,
Dist. Jalgaon.
- 6] Gram Vikas Vidyalay Pimprala,
Tal & Dist. Jalgaon,
through Head Master.
- 7] Anglo Urdu High School
Pratapnagar, Jalgaon,
Taluka & Dist. Jalgaon,
through Head Master.
- 8] Madhyamik Vidyalay Wazarkhede
Taluka & Dist. Jalgaon,
through Head Master.
- 9] Pandit Jawaharlal Neharu Vidyalay,
Akulkhede, Tq. Chopda, Dist. Jalgaon,
through Head Master.

.. RESPONDENTS.

...

Mr.S.P. Brahme, Advocate for the Petitioners.

Mr.Ajay Talhar, ASG for Respondent No.1.

Mr.C.V. Dharurkar, AGP for the Respondent Nos.2 to 5 – State.

Mr.J.K. Bansod, Advocate for respondents 6 to 9.

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WITH**WRIT PETITION NO.3811 OF 2015**

- 1] Prashant Ramkrushna Patil
Age: 36 years, Occu: Service
R/o. Plot No.3B, LIC Colony,
Behind Hotel Samrat, Dhule Road,
Amalner, Tq.Amalner, Dist. Jalgaon
- 2] Ramesh Chintaman Wagh
Age: 33 Years, Occu: Service,
R/o. At / Post Jatode, Tq. Shirpur,
Dist. Dhule
- 3] Ghansham Bharat Chaudhari
Age: 33 Years, Occu: Service
R/o. At / Post Kalamsare,
Tq. Pachora, Dist. Jalgaon
- 4] Nikam Mai Pandurang
Age: 35 Years, Occu: Service
R/o. Plot No.38, Bhalerao Nagar,
Dhule Road, Amalner,
Tal. Amalner, Dist. Jalgaon
- 5] Rajput Premendrasingh Machhcindrasingh
Age: 34 Years, Occu. Service,
R/o. Nagai Colony, Satana Naka,
Malegaon, Tq. Malegaon, Dist. Nashik

- 6] Nikam Harish Vasantryao
Age: 40 Years, Occu. Service
R/o. Vanshri, Samantha Nagar,
Dhule Road, Amalner,
Tq. Amalner, Dist. Jalgaon
- 7] Patil Sanjay Shantaram
Age: 43 Years, Occu. Service,
R/o. At / Post Sarbete [Kh.], Tq.Amalner,
Dist. Jalgaon
- 8] Patil Simabai Shalikrao
Age: 31 Years, Occu. Service,
R/o. Plot No.3B, LIC Colony,
Behind Hotel Samrat, Dhule Road,
Amalner, Tq.Amalner, Dist. Jalgaon
- 9] Patil Vishalkumar Vasantryao
Age: 26 Years, Occu: Service,
R/o. Mangalmurti Nagar,
Near Deshmukh Bunglow, Amalner,
Tq.Amalner, Dist. Jalgaon

.. PETITIONERS

VERSUS

- 1] The Union of India
Through Secretary
Human Research Development
School Education & Literacy Department
Delhi.
- 2] The State of Maharashtra
Through Secretary of
School Education Department
Mantralaya, Mumbai

Copy to be served on Govt. Pleader,
High Court of Bombay Bench at Aurangabad

- 3] Director of Education [Primary],
Pune, Dist. Pune
- 4] Deputy Director of Education
Nashik Region, Nashik
Dist. Nashik
- 5] Education Officer [Primary]
Zilha Parishad, Jalgaon
Dist. Jalgaon
- 6] Z.D.Sonawane High School
Mudi, Tq. Amalnar, Dist. Jalgaon
Through its Head Master
- 7] Madhyamik Vidyalay Loan [Gr]
Tal. Amalner, Dist. Jalgaon,
Through its Head Master
- 8] Balaji Vidyalay Gandhali – Pilode
Tal. Amalner, Dist. Jalgaon
Through its Head Master
- 9] Late Shri H.P. Patil Madhyamik Vidyalay,
Ambapimpri, Tq. Parola, Dist. Jalgaon
Through its Head Master

RESPONDENTS

...

Mr. S.P.Brahme, Advocate for the petitioners

Mr. A.G.Talhar, Assistant Solicitor General for Respondent No.1

Mr. C.V.Dharurkar, AGP for the respondent Nos.2 to 4

Mr. M.S.Sonawane, Advocate for the Respondent No.5

Mr. Sachin Deshmukh, Advocate for the respondent Nos.6 to 9

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WITH

WRIT PETITION NO.3813 OF 2015

- 1] Savita Madhukar Suryawanshi
Age: 39 Years, Occu: Service
R/o. C/o. Pramod Madhukar Suryawanshi
At/Post Mudi, Tq. Amalner, Dist. Jalgaon
- 2] Dnyaneshwar Bhaskar Patil,
Age: 33 Years, Occu: Service,
R/o. At / Post Mudi, Tq. Amalner,
Dist. Jalgaon
- 3] Pravin Bhaidas Patil,
Age: 25 Years, Occu. Service
R/o. Shirud Naka, Hanuman Nagar,
Amalner, Tq. Amalner,
Dist. Jalgaon.

..PETITIONERS**VERSUS**

- 1] The Union of India
Through Secretary
Human Research Development
School Education & Literacy Department
Delhi
- 2] The State of Maharashtra
Through Secretary of
School Education Department
Mantralaya, Mumbai.
- 3] Director of Education [Primary],
Pune, Dist. Pune

- 4] Deputy Director of Education
Nashik Region, Nashik
Dist. Nashik
- 5] Education Officer [Primary]
Zilha Parishad, Jalgaon
Dist. Jalgaon
- 6] Madhyamik Vidyalay Loan [Gr]
Tal. Amalner, Dist. Jalgaon,
Through its Head Master
- 7] Z.D.Sonawane High School
Mudi, Tq. Amalnar, Dist. Jalgaon
Through its Head Master
- 8] Late Shri H.P. Patil Madhyamik Vidyalay,
Ambapimpri, Tq. Parola, Dist. Jalgaon
Through its Head Master **..RESPONDENTS**

...

Mr. S.P.Brahme, Advocate for the petitioners
Mr. A.G.Talhar, Assistant Solicitor General for Respondent No.1
Mr. C.V.Dharurkar, AGP for the respondent Nos.2 to 4
Mr. M.S.Sonawane, Advocate for the Respondent No.5
Mr. Sachin Deshmukh, Advocate for the respondent No.8
Respondent Nos.6 and 7 served.

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WITH

WRIT PETITION NO.5794 OF 2015

- 1] Pankaj Kantilal Kate
Age: 27 Years, Occu: Service
R/o. Gurukrupa Colony, Plot No.25
Behind Cotton Market, Dhule Road
Amalner, Tq.Amalner, Dist. Jalgaon

- 2] Sunita Shivaji Saner
Age: 29 Years, Occu:Service,
R/o.C/o. Sayaji Deoram Kalu
Plot No.23, Sinchai Colony,
Walwadi, Dhule, Dist. Dhule
- 3] Pratibha Santosh Patil,
Age: 29 Years, Occu: Service
R/o. At Indwa Post Jirali
Tq. Parola, Dist. Jalgaon
- 4] Pratap Bhagatrao Mahajan,
Age: 42 Years, Occu: Service
R/o. A/P. Shirud, Tq.Amalner
Tal. Amalner, Dist. Jalgaon

..PETITIONERS**VERSUS**

- 1] The Union of India
Through Secretary
Human Research Development
School Education & Literacy Department
Delhi.
- 2] The State of Maharashtra
Through Secretary of
School Education Department
Mantralaya, Mumbai
Copy to be served on Govt. Pleader,
High Court of Bombay Bench at Aurangabad
- 3] Director of Education [Primary],
Pune, Dist. Pune
- 4] Deputy Director of Education
Nashik Region, Nashik
Dist. Nashik

5] Education Officer [Primary]
Zilha Parishad, Jalgaon
Dist. Jalgaon

6] B.S.High School
A/P. Kolpimpri, Tq.Parola,
Dist. Jalgaon
Through its Head Master

..RESPONDENTS

...

Mr. S.P.Brahme, Advocate for the petitioners

Mr. R.B.Bagul, Assistant Solicitor General for Respondent No.1

Mr. C.V.Dharurkar, AGP for the respondent Nos.2 to 4

Mr. M.S.Sonawane, Advocate for the Respondent No.5

Mr. A.S.Kulkarni, Advocate holding for Mr. S.B.Yawalkar,
Advocate for the Respondent No.6.

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

Reserved on : 16th October, 2015.

Pronounced on : 30th October, 2015.

JUDGMENT [Per S.S.Shinde, J.]:

1. Rule, returnable forthwith. By consent of the parties,
heard finally at the admission stage.

2. By way of filing writ petitions No.452/2015, 5794/2015,
3811/2015 and 3813/2015 the petitioners have challenged the

communication / instructions dated 7.7.2015 issued by respondent No.1 to respondent No.2. The petitioners have further sought directions to the respondents to include the names of the petitioners in the eligible or qualified list of special teachers maintained by respondents 2 to 5, to award all service benefits, benefits of permanency to the petitioners and regularization of services. Petitioners further prayed for directions to pay their monthly salary. The petitioners have also prayed for directions to the respondents to absorb them in any other school receiving grants-in-aid.

3. The facts in brief, as narrated in Writ Petition No.452 of 2015, are as under:

The petitioners herein were appointed as special teachers in the respondent No.6 to 9 schools, they hold requisite qualifications and it is stated that they are rendering services presently also. It is stated that the petitioners were appointed by following due procedure, their appointments were approved, they

were appointed on sanctioned posts, their appointments were as per the scheme sponsored by Central Government. Under the said scheme, the petitioners have to help the students with disabilities to bring them in the main stream. The funds have been disbursed by the respondent No.1 for the salary and other implementation. However, the petitioners are deprived of regular salary and the service benefits without assigning any reasons or without conducting any inquiry. It is stated that the respondents have prepared list of 328 qualified teachers. A separate list of 679 unqualified teachers is also made. A separate list of 384 teachers is prepared with objections. The petitioners are not included in any of these lists. It is stated that the lists prepared by the respondents are defective and the petitioners ought to have been placed in the list of qualified teachers. Without apprising any reasons, the service benefits of the petitioners are stopped. It is stated that the petitioners are qualified, approved and appointed on sanctioned posts over unit of disabled students. There is requirement of services of the petitioners. They are in service but, there is no disbursement of grants for

salary. The petitioners made representations to the respondents however, there is no response from the respondents. Hence, these petitions.

4. The learned counsel Mr. S.P.Brahme appearing for the petitioners submits that, petitioners are appointed as a special teachers for helping the disabled students, taking education in the units run by the respondent No.6. After following due procedure, the permanent approval is granted by the respondent No.3 to the appointment of the petitioners. However, after withdrawal of the approval of the units, the services of the petitioners are terminated. Therefore, the petitioners are required to be declared as surplus and required to be absorbed in other granted school. It is submitted that, after passing of the order dated 17th May, 2014, thereby withdrawing the approvals granted to the units run by the respondent No.5, the petitioners made various representations to the respondent Nos.1 and 2 for declaring them surplus and absorbing them in any other granted school, but no attention was given by the respondent Nos.1 and 2 towards the representations made by the petitioners.

5. It is further submitted that, all the petitioners held requisite qualifications. They have also registered with Rehabilitation Council of India. They were appointed after following due procedure of law, and the appointment of petitioners are also approved by the Deputy Director of Education. Their unit was approved. The said unit was functioning when so called inspection was conducted on 10.01.2013 and 25.11.2013. There was adequate strength of the students required for functioning of the unit. No proper inquiry was conducted on the date of inspection. The said inspection report is defective and erroneous. Without ascertaining the factual aspects, the report was submitted. The inspecting Officers have recorded favourable remarks in the school record. It is submitted that, the instruction issued by the respondent No. 1 to the respondent No.2 on 07.07.2015 is based upon erroneous inspection, conducted on 10.01.2013 and 25.11.2013. It is submitted that, on the basis of said report, the instructions are issued to cancel the appointments of the petitioners and other special teachers. It is submitted that, the impugned orders are

passed in breach of the principles of natural justice. It is further submitted that, the services of the petitioners are approved by the Competent Authority, and the scale of salary of the petitioners are fixed by Competent Authority, still the arrears of salary are not paid to the petitioners.

6. It is further submitted that, the instructions, to revoke personal approval granted to the petitioners as well as approval given to the unit operating in the respective schools of the petitioners, are arbitrary and illegal. The instructions to cancel the appointments of the petitioners are perverse, shocking, and it was based upon the faulty report of the inspection, conducted on 10.01.2013 and 25.11.2013. The blanket instruction to terminate 1185 special teachers and 72 Attendants, are unsustainable. It is further submitted that, the instruction to cancel the appointment of the petitioners and to terminate their services is without considering the nature of the appointment, their qualifications, their registration with the Rehabilitation Council of India, and length of service rendered by them after

their appointments. It is submitted that, the instruction dated 07.07.2015 run contrary to the Government Resolution dated 31.08.2009. The petitioners were appointed after following due procedure of law. The units over which they were appointed was approved. Their appointments were also approved by the competent authorities. The few of special teachers received salary and other service benefits. Hence, it is not desirable and reasonable to discontinue the petitioners.

7. It is further submitted that, the respondent No.1 overlooked that, the petitioners have rendered considerable services with the respective schools. They were qualified and appointed after following due procedure of law. Their services were approved. Under these circumstances, without individual cases, their services cannot be terminated. It is pertinent to note that, no fault can be attributable to the petitioners. It is submitted that, the respondent No.1 committed gross illegality and arbitrariness in directing to terminate the services of the petitioners, because after rendering services for considerable

period, the rights are created in them and termination of the services is not the solution for effective implementation of the policy of the respondents or to achieve its objectives. It is desirable to accommodate the petitioners in the private schools as well as at the block level or cluster level if they are regularly appointed employees.

8. It is further submitted that, the instructions to terminate the services of 1185 special teachers and 72 Attendants is *patently* illegal and against equity. Unless, the individual claims of the petitioners are verified by the Competent Authorities, and the defects in their appointments are found, the services of the petitioners cannot be discontinued. The instructions impugned needs to be set aside, because those are based upon incorrect data collected by the respondents, *vide* their inspections conducted on 10.01.2013 and 25.11.2013. The impugned instructions are not applicable to the petitioners.

9. The learned AGP appearing for the respondents 2 to 5, relying upon the affidavit-in-reply filed on behalf of respondents

No.2 to 5 in Writ Petition No.452 of 2015, submitted that the Petitioners have filed the Writ Petitions seeking direction to quash and set aside the order dated 17.5.2014 issued by the Respondent no. 2 after examining the legality, validity and propriety thereof. The learned counsel placed reliance on the exposition of the Supreme Court in the case of *Sethi Auto Service Station & Anr. Vs. Delhi Development Authority & Ors.*¹ and submits that, a denial of legitimate expectation in a given case amounts to denial of right.

10. The learned AGP submitted that, by the said communication the Respondent no. 2 i.e. Director of Education (Primary) has canceled the unit under I.E.D.S.S.. The reasons behind this communication is that, the scheme is sponsored by the central Government for the students within 14-18 years of age who take education with general students. These units were started in the regular schools. During the State wide inspection dated 10.01.2013 and 25.11.2013, these units were inspected and the Deputy Director of Education/ Education Officer

¹ 2009 [1] SCC 180

(Secondary), have made recommendation on the basis of factual inspection. The Government therefore, issued letter to the Director of Education on 15.5.2014. In pursuance to said communication further communication dated 17.5.2014 is issued and the Government has accepted the recommendation for closure of these 679 units and thereby approved action of cancellation of recognition of these units.

11. The learned AGP further submitted that, the Petitioners have prayed for payment of arrears of salary on 17.5.2014. The scheme is sponsored by Central Government and now the Government has issued guidelines in respect of the appointments approved to the units and the appointments of the special teacher are non teaching employee after 31.8.2009. It is informed that, considering the need of special education to the handicapped students, training facilities were made available through the special units and it was a part of integrated education. However, as per the Government policy of inclusive education, the handicapped students were to be accommodated along with the regular students, therefore the central

Government has started integrated education scheme (Secondary Education) from 13.4.2009.

12. It is further submitted that, this scheme is 100% financed by the Central Government and guidelines are issued on 31.8.2009 for implementation of the said scheme. While implementing the scheme facilities were inspected to be proved to the special disabled student in cooperation with the special teacher and general, teacher. However, it is noticed by the Government that, after introduction of the scheme these specially disabled students were given education according to the integrated education system and in the said scheme till 31.8.2009, new units were sanctioned and 1185 special teachers were approved along with the 72 attendants. It appears from the report submitted by the Director of Education that, these appointments are made by the non Government organization/private institutions.

13. It is further submitted that, as per the academic year 2015-16 there are 43569 specially disabled students however,

according to integrated education system at the school level one unit for 5 students and one special teacher to be appointed. Even after appointment of 1185 special teachers in this manner, only 9096 specially disabled students should be benefited due to the scheme,. Therefore, rest of these students deprived from the benefits of the education scheme.

14. The learned AGP submitted that, it is noticed that, it is not possible to retain 5 students every year in the same school and if that required strength of student is reduced or are not remained sufficient than the teacher appointed for the said unit in that school, his service will not be properly utilized. This issue is discussed in the meeting conducted by the Human Resource Development Ministry, Union of India and it is opined that, the State Government is empowered to look after the need of special students while recruiting special teacher. It is also noticed that, the Human Resource Development Ministry has issued guidelines in December, 2014 that appointment of these special teachers be made at block/cluster level and those special

teachers be asked to teach the special teacher in the schools within the respective blocks/cluster and training to that effect is given to these teachers. The teaching method will be at par with the integrated inclusive education implemented under the Sarva Shiksha Abhiyan/Scheme i.e. Instead of appointing teachers on it, it will be cluster based because strength of students is found unequal in the units. Therefore with a view to equalize the education process to a specially disabled students, cluster will be the base.

15. He submitted that, it is also noticed that, the teachers appointed by the private institutions, their services are restricted to that school only and such appointment cannot be made at group/ cluster level. The 1185 special teachers are mostly appointed by the private institutions and they cannot be appointed on district/cluster level. The financial aid and the salary of special teachers appointed under the scheme is entirely sponsored by the Central Government. Therefore, the Central Project Approval Boards meeting in 2014 -2015, it is noticed

that, as to why the benefits of scheme is not given to all these students and it is specifically directed after discussion that, all these students should be benefited.

16. The learned AGP submitted that, in view of this, financial supports from the Central Government, it was necessary before granting approval to the appointments, the necessary consent or sanction from the Central Government ought to have been taken. Moreover during the State wide verification of schools done on 10.01.2013 and 25.11.2013 and on inspection of integrated units, it is noticed that, some units are closed as well as the appointments of special teachers made on the units are irregular and many objectionable discrepancies are noticed, those are as under; A) at the time making appointments of special teacher those were made without holding requisite professional qualification. B) persons who completes educational course conducted by rehabilitation council of India according to Rehabilitation Council Act, 1995, his registration is compulsory and without verifying such R.C.I registration appointment of

special teacher were made and approvals are granted to them.

C) without obtaining sanction to the unit, the local bodies/ private unaided schools have appointed special teachers.

D) According to inclusive education scheme appointment in private unaided or local Government institutions, the special teachers were to be appointed through open competition mode of open competition is violated.

17. It is further submitted that, considering the irregularities and difficulties while making appointments of the special teachers on cluster/block level, there will be many difficulties i.e.

1) According to the G.R dated 26.3.2002 no appointments shall be made without prior permission of Government therefore, while making appointment Government sanction for basic post is

necessary. 2) According to the Government circular dated

25.8.2005, issued in pursuance to the directions issued by the

Hon'ble Supreme Court in Dr. Smt. Goal Vs. State of Rajasthan

dated 28.2.2003, J. Umrani Vs. Registrar, Cooperative Societies

dated 27.7.2004, 3) Initial appointment is not according to

the prescribed norms then the regularization in service is not

permissible. The special teachers were to be appointed according to prescribed procedure.

18. He further submitted that, the special teachers appointed are not within the basic post and therefore, for creation of post, sanction from the High Power Committee was necessary and such sanction was not there. The appointments of 1185 special teachers and 72 attendants under the units are approved without following due procedure all the sanctioned units and the approval granted to the special teacher should be cancelled by the Deputy Director of Education as well as these special teachers/attendants should be removed from the posts. While canceling the appointments the authorities are directed to see that existing rules are followed as well as existing rules and principle of natural justice are followed.

19. It is further submitted that, in view of the facts and circumstances mentioned above, it may be seen that the unit sanctioned earlier and the payment made on the said units are not sufficiently governing all the special disabled students and

huge number of students were remained beyond scope and benefits of the inclusive education scheme. Purpose and intention of introduction of scheme by the Central Government is to provide education facilities to the special disabled students and to bring them in the main stream of education. On sanction of units earlier and granting approval to 1185 teachers, only 9096 out of 43569 specially disabled students were benefits and huge number of students are deprived from the exclusive education scheme.

20. It is further submitted by the AGP that, to give benefits of inclusive education all the disabled students, Government has decided to have comprehensive policy. The earlier implementation is not found suitable and it is not accommodating all the specially disabled student. The appointments of the special teachers and sanction of unit was not in consultation or approval by the Central Government. Though the Central Government is providing 100% grant and implementation of scheme itself is at the instance of Central Government. Therefore, views expressed during the conference

with Human Resources Development Ministry should prevail as it is for the benefits of specially disabled student. Central Government funds shall not go waste or mis-utilized therefore, all the specially disabled students needs to be clubbed under clusters because unit attached to the school has many limitation which can be sorted out by bringing them under cluster.

21. The learned AGP submitted that, the communication dated 17.5.2014 was issued considering the fact that, during the inspection, irregularities are noticed by the inspecting authority and recommendations were made by the Deputy Director/ Education Officer for closing down the units. Subsequent to said communication issued by the Director of Education, the policy as referred above, vide communication dated 7.7.2015 is remained with the Government at present and the Government has decided not to regularize services of these teachers in view of the comprehensive policy laid down.

22. He submitted that, appointments are made on the 100% finance sponsored scheme of Central Government for specially

disabled student, when it is noticed that, every unit may not get 5 students consistently therefore it is decided to make appointment of block/district cluster level and the teachers appointed by the private management may not accept the appointments of block/cluster level because the special teacher appointed will have to impart education at cluster level by way of mobile teaching under the respective cluster/taluka. This scheme is introduced for the benefits of specially disabled students and the regularization claimed as of right is not permissible and the Writ Petition seeking benefits of regularization is not maintainable. It is submitted that, the Petitioners have prayed for arrears of salary, since the grants are not available for disbursement, there is no question of payment of salary to the teachers.

23. Lastly, the learned AGP submitted that, in view of the facts and circumstances mentioned above, the relief claimed by the Petitioners cannot be granted and the Writ Petitions deserve to be dismissed with costs. The learned AGP pressed into service exposition of the Supreme Court in the case of *Nazira Begum*

*Lashkar and others Vs. State of Assam and others*² and submits that, the appointment of the petitioners was not in accordance with procedure prescribed in law, therefore, this Court may not issue direction for adjustment of equities in favour of petitioners.

24. The learned Assistant Solicitor General appearing for the respondent No.1, relying upon the affidavit-in-reply filed on behalf of respondent No.1 – Union of India, submitted that, the 'Inclusive Education for Disabled at Secondary State' is launched by the Central Government from the year 2009-10. This scheme replaces the earlier scheme of 'Integrated Education for Disabled Children' (I.E.D.C.) and provides assistance for the Inclusive Education of the Disabled Children in Classes IX to XII. The scheme covers all children studying at the Secondary Stage in 'Government, local body and Government-aided schools' with one or more disabilities as defined under the Persons with Disabilities Act, 1995 and the National Trust Act, 1999 in the Class-IX to XII, namely 'blindness, low vision, leprosy cured, hearing impairment, locomotory disabilities, mental retardation, mental

² AIR 2001 SC 102

illness, autism, and cerebral palsy. It is further submitted that it may eventually cover speech impairment, learning disabilities etc. Girls with the disabilities receive special focus to help them gain access to secondary schools, as also to information and guidance for developing their potential. The privately aided Schools are not covered in the scheme. Setting up of model inclusive schools in every State is envisaged under the Scheme.

25. The learned ASG appearing for the respondent No.1 further submitted that, the subject of appointment of special teachers is entrusted to the State Government. The special education teachers under the scheme of 'Inclusive Education for Disabled at Secondary State' are recruited by the State Governments as per the eligibility norms of the scheme. It is submitted that, the Union of India has no role to play in selection or recruitment of the special disability teacher.

26. The learned ASG further submitted that the Government of Maharashtra was sanctioned Rs.298.45 lakhs as first installment

in the year, 2009-10 for the I.E.D.S.S. Scheme. The special education teachers under the I.E.D.S.S. Scheme were required to be appointed by the State Government in Government and Government aided schools but the State Government appointed them at schools including private aided schools, which are not covered under the Scheme. In spite of this, the State Government appointed such teachers in private aided schools also. The State Government also decided to reorganize the scheme making it totally student-centric. The State had also proposed to close all the centres in private aided schools and merge the eligible teachers in these schools at the block levels.

27. The learned ASG further submitted that, in the Project Approval Board (PAB) meeting in the Ministry of HRD for the year 2014-15, the State Government had submitted a proposal for the Salary of 1080 special education teachers. While considering the same, the State Government was requested to furnish the complete details of special education teachers for whom the salary had been requested. Accordingly, the State Government

had submitted a list of 993 teachers vide their mail dtd. 20th June, 2014. this list included the names of all the six petitioners at Sr.Nos.260, 261, 262, 291, 292 and 785. Further vide letter dtd. 31st July, 2014, the State Government furnished a list of 752 special education teachers for consideration of their salary. This list did not include the name of six petitioners. After examination of the list of 752 special education teachers information in respect of only 238 special education teachers was found complete. Accordingly, Rs.1112.69 lakhs as first installment of salary of 238 teachers for the year 2014-15 was released on 1.8.2014 by the Ministry of HRD. It was found that, 328 teachers were eligible as per the norms of I.E.D.S.S. Scheme. On furnishing of complete information, the grant for remaining special education teachers would be considered by the Government of India. Only those special education teachers whose names are recommended by the State Government are considered by the Government of India. It is further submitted by the ASG that, regarding eligibility of petitioners, the State Government has to decide the same and their entitlements as per

the norms of the scheme. The Central Government will consider only those names submitted by the State Government. The learned ASG submitted that, the petitioners have not challenged any action of Central Government i.e. the respondent No.1 and therefore, the name of Union of India may be deleted from the list of respondents.

28. We have given careful consideration to the submissions of the learned Counsel appearing for the petitioners, the learned AGP appearing for the respondent Nos.1 to 4, and the learned counsel appearing for the respondent Nos.5 and 6. With their able assistance, we have perused the pleadings, and grounds taken in the Petition, and annexure thereto, affidavit-in-reply filed by the respondent Nos.1 to 4, and also by the respondent Nos.5 and 6, and also the Judgments cited across the bar by the learned counsel appearing for the respective parties.

29. The petitioners in all Petitions were appointed, initially, in particular pay scale for one year and approval was granted for the said academic year by the Deputy Director of Education.

Thereafter again appointment for one year was given. Thereafter, in cases of some of the petitioners, 'continuity of service' [सेवा सातत्य] was granted without stipulating further time limit. However, the Deputy Director of Education granted approval to the appointments of the petitioners time to time on certain conditions. Two important conditions for the purpose of proper adjudication of these Petitions are as under:

- 1) युनीट कमी झाल्यास अनुदान मिळणार नाही व सदर कर्मचा-यांची वेतनची जबाबदारी संस्थेची राहिल तसेच परिचरास समायोजन अन्य युनीटवर करता येणार नाही.
- 2) भविष्यात विद्यार्थी संख्या अभावी अथवा कोणत्याही कारणास्तव सदरचे युनिट बंद पडल्यास कुठल्याही प्रकारचे अनुदान मिळणार नाही व सदर विशेष शिक्षक समायोजन अनय युनिटवर करता येणार नाही. तसेच संबंधित विशेष विशेष शिक्षक समायोजनाची व वेतनाची संपूर्ण जबाबदारी ही संस्थेची राहिल या अटीवरच मान्यता देण्यात येत आहे याची नोंद घ्यावी."

The true translation of the above conditions translated by the office Translator is as under:

1. If a unit is closed grant shall not be released and it will be the responsibility of institution to pay.

salary of such employee and such attendant shall not be adjusted to any other unit.

2. No any grant in aid will be given if any unit is closed in future for want of strength of students or otherwise. And the adjustment of the said special teacher will not be made in any other unit. Similarly, the adjustment of such special teacher and the responsibility of his salary will be completely on the institution. It be noted that this approval is granted only on the aforesaid terms and conditions.

[Underlines added]

30. Upon perusal of the conditions in the approval letter, it is specifically mentioned therein that, in future if the Unit is closed due to less number of students or any other reasons, the Institution will not entitle for grants and said special teacher cannot be absorbed / accommodated in any other unit and responsibility of absorption of such special teacher and also salary will be of concerned management. Therefore, the approval granted to the services of the petitioners was on aforesaid conditions.

31. Upon careful perusal of the entire material placed on record, it is not specifically mentioned that, the posts were advertised. Though it is stated that, the petitioners are appointed after following proper procedure. There is no document placed on record, showing that, prior permission of the respondent authorities was taken before appointing the petitioners, and also whether there was sanction for the basic post. During the course of arguments, the learned Assistant Solicitor General submitted that, the scheme is not for private school; and it is for the Government – Local Bodies run schools. It is true that, the respondent authorities have granted approval on year to year basis, and in cases of some of the petitioners, the continuity in service without stipulating further period in the same pay scale, and also salary is paid by the Unit in the Zilla Parishad. However, while granting approval, the conditions are stipulated in the said approval – order.

32. In that view of the matter, in view of the conditions of the approval letters / orders mentioned hereinabove, the relief

claimed by the petitioners for declaring them surplus or for absorbing them in some other aided school cannot be entertained. It is not possible for this Court to issue any mandatory directions to the respondent – State and State authorities, in view of the condition enumerated in the approval letters / orders by the Deputy Director of Education. It is the entire responsibility of the concerned Institution to take care of the grievances of the petitioners. During the course of hearing, the learned counsel appearing for the petitioners have informed this Court that, the services of the petitioners have already been terminated. Upon perusal of the documents placed on record, and in particular appointment letters and the approval letters, it is mentioned that, the petitioners' services shall be governed by the Maharashtra Employee of Private Schools [Conditions of Service] Regulation Act, 1977 and the Rules, 1981. In that view of the matter, if the petitioners are aggrieved by termination of services, the petitioners can avail remedy under the said Act, by filing appropriate proceedings before the School Tribunal. In that respect, we do not express any opinion. However, we make it

clear that, in case the petitioners wish to approach the School Tribunal, in that case the School Tribunal to consider their cases on merits, without being influenced by the observations made in this Judgment, and not to reject it on the ground of limitation, since the petitioners were prosecuting the present Writ Petitions for considerable period.

33. The learned counsel appearing for the petitioners placed reliance on the interim order passed by the Bombay High Court at Principal Seat in the case of *Sangeeta d/o.Maruti Pund & Ors. Vs. The State of Maharashtra & ors. in Writ Petition No. 4902/2012, decided on 21st November, 2012*. The learned counsel appearing for the petitioners further placed reliance on the order passed by the Bombay High Court Bench at Aurangabad, *in the case of Pratibha Dinkar Sonawane @ Archana Sunil Patil Vs. The State of Maharashtra and others in Writ Petition No.2924/2014 along with connected matters, decided on 12th August, 2015*. However, said decision cannot be made applicable in the facts of the present case, inasmuch as, in the facts of that case, the

petitioners therein were working with respondent No.5 under the Integrated Education Scheme and subsequently, under the Inclusive Education Scheme and these petitioners were transferred to respondent No.6. Even orders were issued by the authorities absorbing the petitioners with respondent No.6 Institution. However, in the present case, all the petitioners are appointed by the private institution.

34. Though we are not inclined to issue mandatory directions to the respondents State, nevertheless for the period for which the petitioners have rendered services, they are entitled for the salary. The Deputy Director of Education, Nashik Division, Nashik, is directed to consider the said aspect, either to pay salary from the Public Exchequer, or to ask the concerned Institution to pay the salary, if the petitioners' services are continued after withdrawing the unit. We are aware that, the petitioners have worked for couple of years, and by virtue of rendering services, they have gained experience of teaching / working. It has come on record that, there are in 1185 teachers

and 72 attendants though mostly appointed by the private institutions. The State Government can frame the scheme as a one time measure / solution, so as to address the grievances of the petitioners, and other similarly situated teachers and attendants, in the light of the observations of the Hon'ble Supreme Court in para 53 of the Judgment in the case of **Secretary, State of Karnataka and others V/s Umadevi (3) and others**³ which reads thus :-

“53. One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in S.V. Narayanappa, (supra), R.N. Nanjundappa (supra), and B.N. Nagarajan (supra), and referred to in paragraph 15 above, of duly qualified persons in duly sanctioned vacant posts might have been made and the employees have continued to work for ten years or more but without the intervention of orders of courts or of tribunals. The question of regularization of the services of such employees may have to be considered on merits in the light of the principles

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settled by this Court in the cases abovereferred to and in the light of this judgment. In that context, the Union of India, the State Governments and their instrumentalities should take steps to regularize as a one time measure, the services of such irregularly appointed, who have worked for ten years or more in duly sanctioned posts but not under cover of orders of courts or of tribunals and should further ensure that regular recruitments are undertaken to fill those vacant sanctioned posts that require to be filled up, in cases where temporary employees or daily wagers are being now employed. The process must be set in motion within six months from this date. We also clarify that regularization, if any already made, but not sub judice, need not be reopened based on this judgment, but there should be no further bypassing of the constitutional requirement and regularizing or making permanent, those not duly appointed as per the constitutional scheme.”

35. In the light of the observations of the Hon'ble Supreme Court, it is possible for the State Government to frame the scheme for redressal of the grievances of the petitioners, and

other teachers and attendants as one time measure. It is also possible for the Government that, the petitioners and the other special teachers can be given appointment as block / cluster level as per the new scheme. We hope and expect that, the State Government may take appropriate steps to formulate the scheme as one time measure, and solve the problems faced by the petitioners and other similarly situated teachers and the attendants.

36. With above observations, the Petitions stand rejected. Rule stands discharged.

Sd/-
[A.M. BADAR, J.]

Sd/-
[S.S. SHINDE, J.]