

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 2009 OF 2015

Shri Aba Umchand Sonawane,
Age 34 years, Occ. Special Teacher,
R/o Through Sahebrao Chavan,
Plot No.11, Opposite to Udesing Anna
Society, Salunkhe Nagar, Dhule Road,
Chalisingaon, Tq. Chalisingaon,
District Jalgaon.

..Petitioner

Versus

1. The State of Maharashtra
Through its Principal Secretary,
Department of Social Justice,
Mantralaya, Mumbai 32.
2. Regional Deputy Commissioner,
Social Welfare (Appellate Authority),
Nashik Division, Nashik
3. Priyadarshani Va Vanashri
Dadasaheb Chavan Bahuuddesiya
Vikas Va Krushi Sanshodhan Sanstha,
Through its Chairman
At Dwarka Building, Old Airport Road,
Chalisingaon, Dist. Jalgaon.
4. In-charge Head Master,
Dadaso D.D. Chavan Muk Badhir
Vidyalaya, Chalisingaon, Dist. Jalgaon.
5. District Social Welfare Officer,
Zilla Parishad, Jalgaon.
6. Commissioner,
Handicapped Welfare Commissionerate,
Maharashtra State, Pune.
7. Shri Vijay Kashinath Wani,
Age major, Occ. Special Teacher,
R/o Through D.D. Chavan Muk Badhir
Vidyalaya, Chalisingaon, Dist. Jalgaon.

8. Shri Ganesh Dhondu Suryawanshi,
Age major, Occ. Special Teacher,
R/o Through D.D. Chavan Muk Badhir
Vidyalaya, Chalisgaon, Dist. Jalgaon.

..Respondents

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Advocate for Petitioners : Shri Patil Sandesh R.
AGP for Respondents 1 & 2 : Smt. Shinde V.A.
Advocate for Respondent 3 : Smt. Sakhare Sonali
Advocate for Respondent 7 : Shri Phatale S.S.
Advocate for Respondent 8 : Shri Jain R.N. h/f Shri Bagul D.S.

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CORAM : RAVINDRA V. GHUGE, J.

Dated: August 24, 2015

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ORAL JUDGMENT :-

1. Heard.

2. Rule.

3. By consent, Rule is made returnable forthwith and the petition is taken up for final disposal.

4. The petitioner is aggrieved by the order dated 14.1.2010, delivered by the Accounts Officer from the Salary Department, Social Welfare Commissionerate, Pune and the order of respondent No.2, dated 20.1.2015, delivered in Appeal No.2 of 2013.

5. Issue is as regards the 25% of higher pay scale, payable to the Senior-most employee in his capacity as a Special Teacher, teaching in

the Deaf and Dumb School in the State of Maharashtra. The petitioner and respondent Nos.7 and 8 are such Special Teachers, who have been trained to impart education to the deaf and dumb children in the respondent No.4 School.

6. The petitioner was appointed on 17.1.2000 after being registered with the Rehabilitation Council. He possesses the qualification of D. Ed. and H.I. (Hearing Impaired). Respondent No.7 has been appointed in 1996. Respondent No.8 has been appointed on 1.2.2000.

7. The grievance of the petitioner is that respondent Nos. 7 and 8 have acquired their qualifications for becoming Special Teachers from the Rajeev Smruti Bahuuddheshiy Sanstha and Shri Swami Samarth Muk Badhir Teachers' Center. This institution was de-recognised 27.8.1996. Consequentially, the institute preferred Writ Petition No.2718 of 2000 along with other connected group of petitions before the learned Division Bench of this Court at Mumbai. By judgment and order dated 25.7.2000, the Writ Petitions were disposed off.

8. It is noteworthy that those students, who had passed their courses from the said institutions and were taken into employment by various Schools for the Deaf and Dumb in the State of Maharashtra receiving grant-in-aid from the State, found their services in jeopardy. The learned Division Bench of this Court, by its observations in

paragraph Nos. 8 to 10 (i) to (iii), has held as under:-

“8 It seems that the students who had passed D.Ed. Course conducted by the aforesaid two Institutions were taken in Employment by various deaf and dumb Schools in the State of Maharashtra, which are receiving grant in aid from the State Govt. As a result of withdrawal of recognition by Rehabilitation Council these Schools terminated the services of some of the teacher, who had acquired qualification from the aforesaid two Institutes. In some cases the schools have stopped paying salary of these teachers.

9 Mrs. Pawar appearing for the Council stated that the two Institutions in question did not even care to send the correct list of candidates qualified to appear for the Examination in the session of 1994-95 and 1995-96. In spite of repeated reminders sent by the Council. The Council has offered to conduct examination for the students who had passed in 1994-95 and 1995-96 at Ali Yavar Jahg National Institute for Hearing Handicapped (AYJNIHH) as a special case. As for as the students who had passed Examination in 1996-97 are concerned the Council has taken a stand that it is not liable to conduct examination for the students who were admitted in 1996-97 since provisional recognition was withdrawn on 27-8-1996. The Council has also expressed its inability to conduct any examinations for the students who had appeared for the examinations from the said two institutions in the year 1992-93 and 1993-94 as the Council itself came into existence in 1993 and the recognition was granted to both the Institutions for the first time in 1993. We have inquired from the Id. AGP whether the State Government had any machinery prior to 1994 for supervising the D.Ed. (H.I.) course conducted by the various

Institutions we are informed by the learned AGP that no such machinery existed. We are also informed that some of candidates, who had passed the examination from the aforesaid two Institutions prior to 1994 had passed only 10th std. Examination and not 12th std. Examination as per the norms fixed by the council. We are also informed that the Rehabilitation Council is conducting Bridge Course through the AYJNIHH and the candidates, who have passed in bridge course also registered in the register of the Council of Rehabilitation personnels.

10 *We have heard the Learned council appearing for the parties at some length. All the learned council agreed that some via-media will have to be found out for protecting the carrier of the students, who had passed from the said two Institutions at Barsi and Solapur respectively. Ms. Pawar learned counsel stated that the Council is willing to hold Examinations for the students who had passed out from the aforesaid two Institutions after 1994-95 if so directed by this Court and appropriate arrangement for their Examination will be made through the AYJNIHH. However the question of those who had passed prior to 1994-95 still remains. We feel that in their case the Council can conduct Bridge Course and upon completing the Bridge course their names can be entered in the Register, maintained by the Council as Rehabilitation personnels. Accordingly we pass the following order.*

- i. The Rehabilitation Council shall conduct Examination for the student of Rajiv Smruti Bahu Uddeshiya Sanstha and Shri Swami Samarth Mook Badhir Teachers Centre who had appeared and passed the Diploma Course during the year 1994-95, 1995-96 and 1996-97 provided they has passed 10+2 Examinations and*

the names of the said students, who pass the said Examination would be entered in the Register maintained by the Rehabilitation Council.

ii. The Diploma holders from the above two Institution who have been employed as trained teachers in the deaf and dum schools and other similar Schools for handicapped children will be continued in service on ad-hoc basis subject to their passing the examination and State Government as well as concerned School shall release salary of such teachers.

iii. The Rehabilitation council shall conduct Bridge course for the candidates who had passed D. Ed. (H.I.) course from the aforesaid two Institutions prior to 1994 and upon completion of the course their names will be entered in the register of the Council.”

9. The petitioner, therefore, submits that respondent No.7, thereafter appeared for the examination Diploma in Education of Hearing Impaired and passed the said examination on 1.7.2002. His services were protected by the directions of the learned Division Bench as above. Therefore, in the submissions of the petitioner, the seventh respondent has got himself registered with the Rehabilitation Council of India on 31.10.2002 and hence his appointment from 1996 till 2002 stands washed away and it has to be presumed that he has been appointed for the first time in 2002.

10. The petitioner, therefore, submits that once it has been concluded that the qualifications acquired in 1996 by respondent No.7 were not sustainable, it has to be presumed that he was unqualified and he was not in employment. The petitioner, therefore, becomes a Senior-most employee and hence, is entitled for 25% higher pay scale. Consequentially, the impugned orders deserve to be quashed and set aside.

11. Shri Phatale, learned Advocate appearing on behalf of respondent No.7 opposes the petition. He submits that the petitioner has not challenged his appointment. There is no prayer for quashing his appointment. Similarly, there is no prayer that the seventh respondent should be deemed to be in service only after October, 2002 and his earlier seniority stands watered down.

12. He further submits that he had passed the relevant examination in 1996 and was appointed as a Special Teacher. Subsequently, the concerned institute was de-recognised on account of violation of the terms and conditions of recognition. These institutes had approached the learned Division Bench of this Court. This Court had noted the fact that the services of some of these teachers were terminated and some of the Schools had stopped paying salary to such teachers. In this situation, in order to protect the services of these teachers, the High Court delivered the order reproduced above and continued the services

of such teachers. In the event, the High Court was dissatisfied with the qualifications acquired by respondent No.7 and similarly situated employees, it would have made some observations regarding their continuance and their seniority. He, therefore, submits that by this petition, the said issue cannot be reopened and the seniority of the petitioner, pursuant to his appointment in 1996 cannot be called in question.

13. The learned AGP has supported the impugned order.

14. I have considered the submissions of the rival sides and have gone through the impugned orders passed by the Accounts Officer and respondent No.2, by which, the Appeal of the petitioner has been rejected.

15. It is evident from the decision rendered by the learned Division Bench of this Court, dated 25.7.2000 that this Court intended to protect the services of these teachers. The issue of termination of some teachers as well as stoppage of their salaries by some schools was a point for determination before this Court. By considering the said issues and by recording that the career of such students who had passed out from the said two institutions needs to be protected, an arrangement was made for re-conducting their examination as well as by conducting a bridge course. Pursuant to their passing, it was noted that their

names would be entered in the register maintained by the Council under specific orders passed by this Court. The services of such Diploma holders who were appointed as Trained Teachers in the Schools for the Deaf and Dumb were continued on ad-hoc basis, subject to their passing the examination. Their salaries were also directed to be paid. After passing such examinations, their names were directed to be included in the register of Rehabilitation Council.

16. In my view, respondent No.2 has rightly refrained from reopening this issue. I do not find that this Court, by its order dated 25.7.2000 intended to take away the seniority and services benefits of such teachers, who were affected by the derecognition of the said institution.

17. In the light of the above, I do not find that the impugned order could be termed as being perverse or erroneous. This petition is devoid of merits and stands dismissed. Rule is discharged.

(RAVINDRA V. GHUGE, J.)

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