

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

WRIT PETITION NO.2216 OF 2013

- 1] Shivkumar s/o. Meherbabu Shriramwar,
Age: 35 Years, Occu.: Service,
R/o. Rajsarthinagar, [Nr. Maroti Mandir]
Shiv Road, Taroda Naka [Bk], Nanded,
Dist. Nanded.
- 2] Sayyed Merajunnisa d/o Shirajoddin Kadri,
Age: 48 years, Occu. : Service,
R/o. Zoheb Manjil, Behind Chand Masjid,
Near Khoja Colony, Sai Nagar,
Nanded, Dist. Nanded
- 3] Vithal s/o. Shankarrao Bokare,
Age: 43 Years, Occu. : Service,
R/o. Someshwar Rahati,
Tq. Nanded, Dist. Nanded.
- 4] Mrs. Faridabanu Rahematulla
Age: 40 Years, Occu.: Service,
R/o. Ekbalnagar, Near Water Tank,
Nanded, Dist. Nanded
- 5] Babulal s/o. Razakmiya Momin,
Age: 45 Years, Occu.: Service,
R/o. Laxminagar, Degloor Naka,
Maltekdi Road, Nanded,
Dist. Nanded

PETITIONERS

VERSUS

- 1] The State of Maharashtra,
Through its Secretary,
Social Welfare Department,
Mantralaya,
Mumbai-32.

- 2] The Director of Social Welfare,
Maharashtra State,
Pune.
- 3] The Commissioner of Handicapped
Social Welfare,
Maharashtra State,
Pune-1.
- 4] The District Social Welfare Officer,
Grade-I, Zilla Parishad,
Nanded.
- 5] Kai. Narsing Kawwal Shikshan Prasarak
Mandal, Nanded, Dist.Nanded,
Through its Secretary
[Respondent No.5 deleted as per
Court's Order dtd.15.04.2015].

RESPONDENTS

...
Mr. Sandip Swami, Advocate holding for Mr. V.D.Gunale,
Advocate for the Petitioners.
Mrs.S.G.Chincholkar, AGP for Respondent Nos.1 to 3
Mr. V.S.Panpatte, Advocate for the Respondent No.4
Respondent No.5 – Deleted.

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

Reserved on : 02.09.2015
Pronounced on: 16.09.2015

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

- 1] Heard.
- 2] Rule. Rule made returnable forthwith, and
heard finally with the consent of the parties.

3] This Writ Petition is filed seeking direction to the respondent Nos.1 to 4 to declare the petitioners as surplus and absorb them in any other recognized, granted Schools as per the Rules and their seniority. Once they are declared as surplus, they should be paid arrears towards salary.

4] It is the case of the petitioners that, the respondent Nos.1 to 3 have granted permission to the School run by Kai. Narsing Kawwal Shikshan Prasarak Mandal, Nanded [herein after would be referred to as 'Institution'] from 01.04.1994, having intake capacity of 25 physically handicapped students, *vide* order dated 06.05.1997 and started providing grant-in-aids, but *vide* order dated 30.03.1998, from the Year 1996-97. The respondent Nos.1 to 3 have granted permission to the Institution to run two schools by the above-referred orders at Nanded i.e. St. Meherbaba Niwasi Apang Vidyalaya, Taroda and Mahatma Phule Niwasi Apang Vidyalaya, Shatinagar, Itwara, Nanded.

5] It is further the case of the petitioners that, they are being eligible and qualified for the respective posts, they were selected and duly appointed by the society

on 01.04.1996 on the post of Art Teacher, Special Teacher, Clerk, Cook and Caretaker. The petitioners have placed on record appointment orders.

6] It is further case of the petitioners that, the respondent No.4 has granted staff approval as well as individual approvals to the petitioners, after verifying and scrutiny of the proposals submitted by the Institution.

7] It is further case of the petitioners that, since their appointments in the Year 1996, they were in continuous service in the School run by the Institution. They were appointed on vacant and clear posts as per the reservation, and their appointments were approved by the respondents. They have completed more than 3 Years continuous service, and they have got status of permanent employee after completion of two years of service, as per the provisions of Special Code for Handicapped Children and as per the provisions of MEPS Act and Rules. Since from their appointments till the material date, they have worked sincerely and with satisfaction of the authorities. There is no single complaint against them, either from the School Authorities or from the Social Welfare Department. Their entire service record is unblemished and blot-less.

8] It is further case of the petitioners that, due to some non-compliance of the formalities and some deficiencies, the respondent No.2 rejected the recognition and the license of the School namely Mahatma Phule Apang Vidyalaya, vide order dated 27.03.1999. The management did not challenge the order of rejection of the license to the afore-mentioned School, similarly, the license of another School i.e. St. Meherbaba Niwasi Apang Vidyalaya, Taroda, run by the same management was also rejected by the respondent by same order dated 27.03.1999. However, the said order was also not challenged by the management.

9] It is further case of the petitioners that, they are poor employees and their employment was only source of their livelihood. According to them, they are permanent approved employees. Due to the closure of the School, they are suffering from starvation. It is the case of the petitioners that, the Bombay High Court, Bench at Aurangabad in Writ Petition Nos.43/2004 decided on 24th June, 2004 and in Writ Petition No.5744/2003, issued certain directions to the Government to prepare list of employees, working in the schools for handicapped children, which are closed so as to absorb those employees

in other special schools meant for handicapped schools, as per the seniority of the employees. The respondent No.3 issued general directions to all the Social Welfare Officers and the Special District Social Welfare Officers in the State, and thereby asking them to submit detail information for absorption of the employees. The petitioners made several representations to the respondent Authorities and requested them to include their names in the list prepared for absorption of the employees from the schools, which are already closed. The respondent School also submitted the list of the employees in the office of respondent No.4 and requested to absorb them, vide his communication dated 14th March, 2006. It is further case of the petitioners that, as per the representations made by the petitioners as well as the Head Master of the said School, the respondent No.4 i.e. Social Welfare Officer recommended and forwarded the list of the petitioners for absorption to the respondent No.3 vide his communication dated 14/16th March, 2006. It is further case of the petitioners that, the respondent No.3 Commissioner, vide his communication dated 21st June, 2012 directed respondent No.4 District Social Welfare Officer, Nanded to submit his explanation for absorption with his remarks and the copies of the approvals duly

attested by him. In response to the said communication by the Commissioner, the District Social Welfare Officer, vide his communication dated 18th September, 2012 again submitted the proposals of the petitioners for absorption to the respondent No.3 along with attested approval copies and the order of closure of the school. It is the case of the petitioners that, the respondent No.3 vide his subsequent communication dated 19.11.2012 again directed respondent No.4 to produce the original copy of rejection of the license of the said school and the Photostat copy of approval of the employees as well as the original copy of the sanction of the post with his remarks. However, the respondent No.4 has not supplied those copies, which were asked by the respondent No.3, nor submitted his remarks as directed by the respondent No.3, vide his communication dated 19.11.2012.

10] It is specific case of the petitioners that, in respect of another School run by the same Management and the same Institution, the license of the said School was rejected by the respondent No.2 by the same order. However, the employees, working in the said school, are absorbed by the respondent No.3 in different schools.

There were total 8 employees, and they were also appointed along with the petitioners, and also their appointments were approved along with the petitioners for the Year 1996-97, 1997-98 and for the year 1998-99. Those 8 employees are absorbed by the respondent No.3 in other schools, the petitioners are having copies of absorption orders of three employees out of 8. The petitioners have placed on record copies of the absorption orders dated 17th June, 2011 and 16th April, 2012, of all three employees from the Meherbaba Niwasi Apang Vidyalaya, Taroda, which was run by the same management. Therefore, it is the case of the petitioners that, they are similarly situated employees working in the school run by the same management, and the said school is also closed along with the school, wherein the petitioners were working. The respondents have absorbed all of them, but singled out the petitioners for no reasons. The inaction and non-action on the part of the respondents, in not absorbing the petitioners and kept hanging them is illegal, discriminatory and arbitrary. The respondents have not followed the directions issued by the High Court in Writ Petition No.43/2004 and Writ Petition No.5744/2003. The absorption of the petitioners is kept hanging, though the

proposal was submitted by the District Social Welfare Officer along with all the documents to the respondent No.3. The respondent No.3, however, has raised nominal queries, submission of copies of rejection of license, and the copies of staff approval and individual approvals, which were already submitted to the District Social Welfare to the respondent No.3 with his recommendation. The inaction and non-action on the part of the respondents is, therefore, illegal.

11] Therefore, the learned counsel appearing for the petitioners relying upon the pleadings in the Petition submits that, the respondent authorities have discriminated between similarly situated employees of Meherbaba Niwasi Apang Vidyalaya, Taroda, and the present petitioners. Three employees of the aforementioned school are absorbed, however, though the petitioners are similarly situated the same benefit is not given to them. Therefore, Writ Petition deserves to be allowed.

12] On the other hand, the learned AGP appearing for the Respondent – State invited our attention to the affidavit-in-reply filed on behalf of the respondent Nos. 1 to 3, by Shri Sunil Nagesh Khamitkar, working as District

Social Welfare Officer, Zilla Parishad, Nanded and submits that, it is not in dispute that, the petitioners are employees of the Institution's Special School. It is not disputed that, the petitioners are duly approved employees by the respondent No.4. It is further submitted that, the school was initially run by the Institution and pursuant to the Government Resolution dated 29th January, 1998, Advance Grants were sanctioned by the Government to the Institution and the Director of Social Welfare, Maharashtra, Pune had issued orders dated 30.03.1998 to grant Rs.4 lacs towards the same. It is, therefore, submitted that, the said grants were sanctioned for the Year 1996-97 and 1997-98, relying on which the respondent No.4 has given temporary approval to the service of the petitioners for the said period till the end of the Year 1999. Therefore, the appointment of the petitioners are temporary for the relevant period only. It is further submitted that, pursuant to the various directions of the High Court in Writ Petition Nos.5744/2003 & 43/2004, issued by the Division Bench of the Bombay High Court, Bench at Aurangabad, the process of enlisting the name of the employees of the special schools, who were rendered surplus due to closure of special schools, has taken place in the Year 2004-05. It is further submitted

that, the process has been carried out by the respondent Authorities as per Rule 25A of the MEPS Rules. The names of the surplus employees from 188 closed schools were enlisted in the waiting list. There is unreasonable delay caused in respect of the petitioners' claim. The petitioners have not satisfactorily explained the delay. It is submitted that, the approval given to the petitioners for the period from 01.04.1996 to 21st March, 1999 was temporary. Moreover, the approval was granted by the respondent No. 4 on 14th March, 2000 i.e. after lapse of one year from the rejection of the proposal for the certificate registration, and therefore, such approval given by the respondent No.4 appears to be doubtful. Therefore, the learned AGP prays that, the Petition may be rejected.

13] We have given careful consideration to the submissions of the learned counsel appearing for the petitioners, and the learned AGP appearing for the Respondent – State and its Authorities. It is true that, there is a delay in raising the grievance by the petitioners. However, upon perusal of the documents placed on record, the petitioners and also the management of the School wherein the petitioners were working, did file various

representations and the applications. However, it appears that, their request was turned down by the respondent No.3. The respondents have not disputed that, the present petitioners were the employees of the Special School, and they were duly approved employees by the respondent No. 4. There is no reply to the statements made in para 15 and 16 of the Writ Petition that, three employees out of 8, who were serving in the another schools run by the same management i.e. Meherbaba Niwasi Apang Vidyalaya, Taroda, have been absorbed on 17.06.2011 and 16th April, 2012. The documents at Exh.I placed on record by the petitioners clearly shows that, those three employees have been absorbed. Therefore, the case of the petitioners that, the respondents should not have discriminated between two similarly situated employees, deserves consideration.

14] Upon perusal of the pleadings in the Petition, it appears that, the requisite information and also some documents were not submitted by the respondent No.4 to the respondent No.3. *Prima facie*, it appears that, the petitioners have disclosed the case of the discrimination between two sets of similarly situated employees, in case of absorption.

15] In that view of the matter, in our opinion, the cases of the petitioners deserve to be reconsidered by the respondents and in particular respondent No.3. In the result, we direct the respondent No.3 to reconsider the cases of the petitioners in the light of the documents, which are submitted by the respondent No.4, and also the management of the School wherein the petitioners were serving, and the copies of the documents placed along with the present Writ Petition, and after allowing the petitioners to putforth their contentions and documents in support of their cases, and take the decision as expeditiously as possible, however, within 6 months from today.

16] Rule made absolute in above terms. The Petition stands disposed of.

Parties to act upon an authenticated copy.

Sd/-

[A.M.BADAR]
JUDGE

Sd/-

[S.S.SHINDE]
JUDGE