

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

WRIT PETITION NO.1472 OF 2015.

- 1] Chandrashekhar Prakash Shimpi,
Age 35 years, occu. Service,
r/o Athawade Bazar, Kala Lane,
Pachora, Tq. Pachora,
District Jalgaon.
- 2] Rajashri Madhavrao Chavan,
Age 40 years, occu. Service,
r/o Plot No.3 Radhakrushna Nagar,
Behind S.K. Oil Mill, Jalgaon,
Tq. & District Jalgaon.
- 3] Prashant s/o Kailash Patil,
age 32 years, occu. Service,
r/o Wadi Shewale, Tq. Pachora,
District Jalgaon.
- 4] Surekha Prakash Tandale,
age 37 years, occu. Service,
r/o Talathi Colony,
Bhadgaon Road,
Tq. Pachora, Dist. Jalgaon

.. PETITIONERS

VERSUS

- 1] The State of Maharashtra,
through its Principal Secretary,
School Education Department,
Mantralaya, Mumbai – 32.
- 2] The Director of Education (Primary),
Central Building, Dr. Annie Basent Marg,
Pune – 411 001.
- 3] Deputy Director of Education,
Nashik Division, Nashik.

- 4] The Education Officer (Secondary),
Zilla Parishad, Jalgaon.
- 5] Ekvira Madhyamik Vidyalaya,
through its Head Master,
Pravin s/o Gajanan Joshi,
r/o Veruli Khurda, Tq. Pachora,
District Jalgaon.
- 6] Nutan Mahila Sarvodaya Balvikas Sanstha,
through its President / Director,
Madhavi w/o Pratap Taware,
r/o Deshmukhwadi, Pachora,
Tq. Pachora, Dist. Jalgaon.

..RESPONDENTS

Mr.V.J. Dixit, Sr. Counsel i/b ...
Mr.S.S.Dixit, Advocate for the
Petitioners.

Mr.C.V. Dharurkar, AGP for the Respondents – State

Mr.A.S. Kulkarni, Advocate h/f Mr.S.B. Yawalkar, Advocate for
Respondent Nos. 5 and 6.

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WITH

WRIT PETITION NO.1471 OF 2015.

- 1] Suvarna Santosh Patil,
age 30 years, occu. Service,
r/o Plot No.21, Gajanan Nagar,
Pungaon Road,
Pachora, Tq. Pachora,
District Jalgaon.
- 2] Kapil s/o Shivaji Jadhav,
age 32 years, occu. Service,
r/o Girla Pumping Road,
Jadhav Mala, Pungaon Road,
Tq. Pachora, District Jalgaon.

.. PETITIONERS

VERSUS

- 1] The State of Maharashtra,
through its Principal Secretary,
School Education Department,
Mantralaya, Mumbai – 32.
- 2] The Director of Education (Primary),
Central Building, Dr. Annie Basent Marg,
Pune – 411 001.
- 3] Deputy Director of Education,
Nashik Division, Nashik.
- 4] The Education Officer (Secondary),
Zilla Parishad, Jalgaon.
- 5] Dalit Mitra Sau. Nirmalatai Dattatraya Taware
Madhyamik, Uccha Madhyamik Vidyalaya, Pachora,
District Jalgaon,
through its Head Master,,
r/o Deshmukhwadi, Tq. Pachora,
District Jalgaon.
- 6] Nutan Mahila Sarvodaya Balvikas Sanstha,
through its President / Director,
Madhavi w/o Pratap Taware,
r/o Deshmukhwadi, Pachora,
Tq. Pachora, Dist. Jalgaon

..RESPONDENTS

...
Mr.V.J. Dixit, Sr. Counsel i/b Mr.S.S.Dixit, Advocate for the
Petitioners.

Mr.C.V. Dharurkar, AGP for the Respondents – State

Mr.A.S. Kulkarni, Advocate h/f Mr.S.B. Yawalkar, Advocate for
Respondent Nos. 5 and 6.

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WITH

WRIT PETITION NO.5765 OF 2014.

Nilkamal D/o Vasant Bhole,
age 34 years, occu. Service,
r/o Plot No.46, Vimal Patil Nagar,

Jugadevi Road, Bhusawal,
District Jalgaon.

.. PETITIONER

VERSUS

- 1] The State of Maharashtra,
through its Principal Secretary,
School Education Department,
Mantralaya, Mumbai – 32.
- 2] The Director of Education (Primary),
Central Building, Dr. Annie Basent Marg,
Pune – 411 001.
- 3] Deputy Director of Education,
Nashik Division, Nashik.
- 4] The Education Officer (Secondary),
Zilla Parishad, Jalgaon.
- 5] Pundlik Ganpat Barhate Madhyamik Vidyalaya,
Through its Head Master,
Sudhir s/o. Rupchand Patil,
Age: 50 Years, Occu. Service,
R/o. Behind Nahata College, Jamner Road,
Gayatrinagar, Bhusawal,
Tq. Bhusawal, Dist. Jalgaon
- 6] Narmada Shikshan Prasarak Mandal,
Through its President
Parikshit s/o. Pundlik Barhate,
Age: 36 Years, Occu. Business,
R/o. Behind Nahata College, Jamner Road,
Gayatrinagar, Bhusawal,
Tq. Bhusawal, Dist. Jalgaon

..RESPONDENTS

Mr.V.J. Dixit, Sr. Counsel i/b Mr.S.S.Dixit, Advocate for the
Petitioners.

Mr.C.V. Dharurkar, AGP for the Respondents – State
Respondent Nos.4 and 6 served.

**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.1471/2015, 1472/2015, and 5765/2014, the petitioners have challenged the orders dated 17th May, 2014 passed by the respondent No.2 - Director of Education (Primary), as also 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 pay arrears of salary of the petitioners as outstanding on 17th May, 2014. The petitioners have also prayed for directions to the respondents to declare them surplus and absorb in any other school receiving grants-in-aid.

3] The facts in brief, as narrated in Writ Petition No. 1472 of 2015, are as under:

The Government of India envisaged a Scheme namely Inclusive Education of the Disabled at Secondary Stage (IEDSS), this Scheme is Centrally sponsored Scheme of integrated education for disabled children. The Scheme was introduced with a view for providing educational opportunity for children with disabilities in general school, to facilitate their

retention in the school. In pursuance to the said Scheme, the respondent No.5 submitted separate proposals for getting approval to the Units. The respondent No.2, by his separate orders, approved the proposals submitted by respondent No.5 and permission was given to run these units for providing education to disabled students.

4] As per the said scheme, the post of one special teacher is permissible for the students in 1:5 ratio, and the post of one Peon / Attendant (Parichar) is permissible for students in 1:10 ratio. The petitioners are possessing requisite qualifications required by the IEDSS Scheme, therefore, the respondent No.5 appointed the present petitioners as special teachers / peon.

5] The petitioners stated that, earlier the respondent No.3 granted provisional approval to the appointment of some of the petitioners for their respective posts, and later on those approvals were extended. It is stated that, the respondent No.5 is running the said units, and the petitioners are teaching and helping the disabled students in the said units. The petitioners further stated that, during these years, various Officers of the respondent No.1 visited the said units, and they have also given their reports in the Inspection Register that, the units are working properly as provided in the IEDSS Scheme.

6] The petitioners stated that, though the said units are running properly, the respondent No.2, by his separate orders dated 17.5.2014, withdrew the approvals granted to the Units run by the respondent No.5 – School. While withdrawing the said approval, the respondent No.2 neither assigned any reason

nor any opportunity of hearing was given to the petitioners or respondent No.5 or 6. In all, there were more than 20 students taking education in the said Units. Because of the impugned orders, the academic career of the said students is seriously affected and there is no education facility available to the said disabled students in near vicinity.

7] It is stated that, the petitioners working as Special Teachers and Peon, in the Units run by respondent No.5 – school for years together and their scales are also fixed by the Competent Authority, still the petitioners are not getting their salaries. The petitioners made various representations to the Head Master of respondent No.5 – School for getting arrears of their salaries but in vain.

8] It is stated that, the Government of Maharashtra, by issuing a Circular dated 31st August, 2009, provided that, all the service conditions and the Rules applicable to the teachers working in private schools, are applicable to the special teachers working in the Units imparting education to the disabled students. The petitioners are possessing requisite qualification for appointment on the post of teacher. Therefore, though the petitioners are working as special teachers, still their services are governed by the provisions of M.E.P.S. Rules. Therefore, they are eligible for declaring as surplus and to be absorbed in some other secondary schools. So far as petitioners who is appointed as a Peon/Attendant (Parichar) is concerned, his appointment was approved and after granting approval peon's services came to be terminated. Therefore, he is also entitled to be absorbed in other granted school.

9] It is stated that, after passing of the orders dated 17.5.2014, thereby withdrawing the approvals granted to the Units run by the respondent No.5, the petitioners made various representations to respondents No.1 and 2 for declaring them surplus and absorbing them in any other granted school, but no attention was given to the representations. Hence these petitions.

10] The learned senior counsel Mr.V.J.Dixit appearing for the petitioners submits that, so far the petitioner No.1 is concerned, he is appointed as a Peon / Attendant [Parichar] for helping the disabled students, taking education in the units run by the respondent No.5. After following due procedure, the permanent approval is granted by the respondent No.3 to the appointment of the petitioner No.1. However, after withdrawal of the approval of the units, the services of the petitioners are terminated. Therefore, the petitioner No.1 is also 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.

11] 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 25th November, 2013 and 26th November, 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 25/26th November, 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.

12] 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 25th and 26th November, 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.

13] 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.

14] 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 25th and 26th November, 2013. The impugned instructions are not applicable to the petitioners.

15] The learned AGP appearing for the respondent – State relying upon the averments in the affidavit-in-reply filed on behalf of the respondent Nos.1 to 4, made following submissions:

By the communication dated 17th May, 2014, the respondent No.2 i.e. the Director of Education [Primary] has cancelled 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 can take education with general students. This unit were started in the regular schools. During the State wide inspection dated 25/26th November, 2013, these units were inspected and the Deputy Director of Education / Education Officer [Secondary] have made recommendation on the basis of factual inspection. The Government, therefore, issued letter to the Director of Education on 15.05.2014. In pursuance to the said

communication, further communication dated 17.05.2014 is issued, and the Government has accepted the recommendation for closure of these 679 units and thereby approved the action of cancellation of recognition of these units.

16] It is further submitted that, the petitioners have prayed for payment of arrears of salary on 17.05.2014. 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 teachers are non-teaching employee after 31.08.2009. 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 13.04.2009.

17] It is further submitted that, this scheme is 100% financed by the Central Government, and the guidelines are issued on 31.08.2009 for implementation of the said scheme. While implementing the scheme, the 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 31.08.2009, new units were sanctioned and 1185 special

teachers were approved along with 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.

18] 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.

19] It is further 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 not remained sufficient, than the teacher appointed for the said unit in that school, their services 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.

20] It is further submitted 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. 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 2014-15, 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.

21] In view of this, the 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 25/26th November, 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 notice, those are as under A] at the time of 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.

22] 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 Government Resolution dated 26.03.2002, no appointments shall be made without prior permission of the Government, therefore, while making appointment Government sanction for basic post is necessary, 2] According to the Government Circular dated 25.08.2005 issued in pursuance to the directions issued by the Hon'ble Supreme Court in Dr.Smt. Goal Vs. State of Rajasthan dated 28.02.2003, J. Umrani Vs. Registrar, Co-operative Societies dated 27.07.2004, 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 the prescribed procedure.

23] It is further submitted that, the special teachers appointed are not within the basic post, and therefore, for

creation of post, the sanction from the High Power Committee was necessary and such sanction was not there. It is further submitted that, 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 cancelling 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.

24] It is further submitted that, in view of the facts and circumstances mentioned herein 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. The 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 benefited and number of students are deprived from the exclusive education scheme.

25] It is further submitted that, to give benefits of inclusive education all the disabled students, the 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 prevailing as it is for the benefits of specially disabled student. The Central Government funds shall not go waste or misutilized, 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.

26] It is further submitted that, the communication dated 17.05.2014 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 the said communication issued by the Director of Education, the policy as referred above, *vide* communication dated 07.07.2015 is remained by the Government at present and the Government has decided not to regularize the services of these teachers in view of the comprehensive policy laid down.

27] It is further 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

7 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. Therefore, relying upon the averments in the affidavit-in-reply, annexure thereto, the learned AGP appearing for the Respondent – State submits that, Petitions may be dismissed.

28] The learned counsel appearing for the respondent Nos.5 and 6 relying upon the affidavit-in-reply filed in Writ Petition No.1472/2015, made following submissions:

The respondent No.6 is a public trust registered under Maharashtra Public Trusts Act and runs and conducts Marathi Medium aided Primary and Secondary School. As there were students the permission was granted for unit of locomotive disability [अस्थिव्यंग] from 1st September, 2009. The petitioner No.1 worked and helped, and assisted the said disabled students. The name of the petitioner No.1 was also approved. The petitioner No.1 came to be appointed on 1st September, 2009 as Attendant. The approval to his appointment has been granted. The petitioner No.1 was further appointed on 1st June, 2010, and thereafter, on 1st June, 2011 on permanent basis. The approval has been granted by the respondent No.3. The salary

of the petitioner No.1 has been paid through Education Department, Zilla Parishad, Jalgaon [Pay and Provident Fund Unit] to the petitioner No.1 from 1st September, 2009 till 30th April, 2010. It is further submitted that, on 15th May, 2010, the permission was granted for Hearing Impairment Unit from 1st May, 2010. The petitioner No.3 came to be appointed on 1st June, 2010, for one year i.e. till 31st May, 2012. Thereafter, he was further appointed on 1st June, 2012 till 31st May, 2013, and thereafter, permanent appointment order has also been given to the petitioner No.3. The respondent No.3 has granted approvals to the appointment of the petitioner No.3. The salary of the petitioner No.3 has been paid through Education Department, Zilla Parishad, Jalgaon [Pay and Provident Fund Unit] to the petitioner No.3 from 1st June, 2010 till 30th April, 2011. It is submitted that, one Dhanraj Himmat Patil was also working in the unit, but he resigned and left the services.

29] It is further submitted that, on 1st November, 2010, permission was granted to start mental retardation unit from 1st August, 2011, the name of the petitioner No.2 was also approved. The petitioner No.2 came to be appointed on 1st August, 2011 till 31st May, 2012, and thereafter, appointed on 1st June, 2012 till 31st May, 2013, and thereafter, permanently appointed on 1st June, 2013. The respondent No.3 has granted approval to the appointment of the petitioner No.2. The salary of the petitioner No.2 has been paid through Education Department, Zilla Parishad, Jalgaon [Pay and Provident Fund Unit] to the petitioner No.2 from 1st June, 2010 till 30th April, 2011.

30] It is further submitted that, one additional unit of Hearing Impairment was granted on 18th December, 2012 and the name of the petitioner No.4 was also approved. The petitioner No.4 came to be appointed on 8th December, 2012 on provisional basis till 31st May, 2012. Thereafter, she was continued from 1st June, 2013 till 31st May, 2014. The respondent No.3 granted approval to the appointment of the petitioner No.4 for the period from 18th December, 2012 till 31st May, 2013. It is submitted that, the pay bills of the petitioners as per the approvals were not accepted by the authorities. Though, the units were approved by the respondent No.2 and appointments of the petitioners were approved by the respondent No.3. It is submitted that, the scheme has been introduced for the benefit of disabled persons of various categories and for their upliftment. The scheme provides for teaching such disabled persons, teachers / instructors / attendants are appointed as per the scheme. It is submitted that, abruptly, the communication dated 17th May, 2014, has been issued for closing the units without hearing the management. The units are closed and the petitioners are not in service of the respondent Nos.5 and 6, as the units are closed. It is submitted that, the appointments of petitioners are made after following due procedure of law, and the petitioners possess requisite qualification. The approvals to the petitioners were granted by the respondent No.3 after verifying the documents. The learned counsel submits that, so far allegations against the respondent Nos. 5 and 6 are concerned, those are denied.

31] We have given careful consideration to the

submissions of the learned Senior 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. Upon perusal of the order of appointment of the petitioner No.1 i.e. Chandrashekhar Prakash Shimpi, which is at Exhibit-C Page 41 of the compilation of Writ Petition No. 1472/2015, it appears that, the said appointment order is issued on 1st September, 2009. It appears that, he was appointed as F.T.Parichar in the scale of Rs.4440-7440 GP 1300/- with effect from 1st September, 2009. It is written in clause No.2 of the said appointment order that, the appointment is on probation for a period of 1 year with effect from 1st September, 2009 till 31st May, 2010. It is also mentioned in clause No.3 of the said appointment letter that, the conditions of service shall have as laid down in the Maharashtra Employment of Private School [Condition of Service] Regulation Act, 1977 and the Rules made thereunder. The said order is signed by the Director of the respondent No.6 Sanstha. It further appears that, there is another appointment order dated 1st June, 2011, again appointing the petitioner No.1 namely Chandrashekhar Prakash Shimpi for one year with effect from 1st June, 2010 to 31st May, 2011. It further appears that, there is third appointment order issued on 1st June, 2011, wherein in clause No.2 it is written that, his appointment is continuous. Therefore, upon perusal of the contents of three appointments letters, it appears that, the petitioner No.1 was appointed initially for 1 year, followed by

another appointment order for one year and thereafter 'continuity in service' [सेवा सातत्य] is granted in the pay scale of Rs.4440-7440 GP 1300/-.

32] So far the petitioner No.2 namely Rajashri Madhavrao Chavan is concerned, her appointment letter is dated 1st August, 2011 and it is in the pay scale of Rs.9300-34,800 GP Rs.4300/- with effect from 1st August, 2011. It is written in the said appointment letter that, the appointment is on probation for a period of one year. There is second appointment letter dated 1st June, 2012 for one year, followed by third appointment letter dated 1st June, 2013 in the same pay scale. However, it is written that, the appointment from 1st June, 2013, is permanent. In case of the petitioner No.3 namely Prashant Kailash Patil, his appointment is with effect from 1st June, 2010 in the pay scale of Rs.5200-20200 GP Rs.2000/-. The said appointment was also for one year, followed by another appointment letter dated 1st June, 2012 for the period of one year, and thereafter, third appointment letter dated 1st June, 2013, mentioning therein that, there is continuity in service [सेवा सातत्य]. In case of the petitioner No.4 namely Mrs. Surekha Prakash Tandale, her appointment letter is dated 8th December, 2012 in the pay scale of Rs.5200-20200 GP Rs.2000/- for one year, thereafter, followed by another one year. However, there is no third appointment letter like the petitioner Nos. 1 to 3 herein.

33] Upon perusal of the contents of the letter dated 24th January, 2011, which is at Exhibit-D Page 52, it appears that, the Deputy Director of Education, Nashik Region, Nashik has granted approval to the services of the petitioner No.1 namely

Chandrashekhar from 1st September, 2009 for the academic Year 2009-2010. The said approval is granted on the following conditions:

- "1) युनिटसाठी निर्धारित केलेली अपंग विद्यार्थी संख्या (10) कायम राखणे अत्यावश्यक आहे.
- 2) युनिट कमी झाल्यास अनुदान मिळणार नाही. व सदर कर्मचा-यांची जबाबदारी संस्थेची राहिल व सदर परिचराचे समायोजन अन्य युनिटवर करता येणार नाही.
- 3) दर 5 वर्षांनी आर.सी.आय. नोंदणी नुतनीकरण करून घेणे आवश्यक आहे.
नुतनीकरणासाठी आर.सी.आय. मान्यताप्राप्त आवश्यक प्रशिक्षण पूर्ण करणे गरजेचे आहे. व त्यासाठी संबंधित शाळेने उपरोक्त विशेष शिक्षकांना वेळोवेळी प्रशिक्षणासाठी कार्यमुक्त करणे आवश्यक आहे."

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

1. It is utmost necessary to maintain the strength of physically challenged students up to (10) fixed for each unit.
2. If a unit is closed Grant in Aid will not be continued and it will be the responsibility of such institution and such attendant shall not be adjusted to any other unit.

3. *It is necessary to get renewed the registration of R C I after every 5 years. For renewal R C I approved training is necessary. And for that purpose it is necessary to relieve to the aforesaid special teachers from time to time for the training.*

Copy of the said approval was also marked to the Superintendent, Pay and Provident Fund Unit [Secondary], Zilla Parishad, Jalgaon, the Education Officer [Primary], Zilla Parishad, Jalgaon, and the Director of Education [Primary], Directorate, Maharashtra State, Pune-1. It is also mentioned in the said approval letter that, as soon as the academic year commences upon verification of the strength of the students, report should be submitted after three months to the office of the Deputy Director of Education, Nashik Division, Nashik. Likewise for the next academic year from 1st June, 2010 to 31st May, 2011, the approval was granted by the Deputy Director of Education. There is another letter dated 7th June, 2012, granting approval to the services of the petitioner No.1 namely Chandrashekhar with effect from 1st June, 2011 wherein in the column of the approval period it is written 'continuity of service' [सेवा सातत्य]. However, the said approval was granted on the following conditions:

- 1) युनीटसाठी निर्धारित केलेली अपंग विद्यार्थी संख्या प्रतिवर्षी किमान 5 कायम राखणे अत्यावश्यक आहे.
- 2) युनिटमधील प्रत्येक वर्षी नव्याने प्रवेश घेणा-या सर्व अपंग मुलांचे दाखले जिल्हा शल्य चिकित्सकांचे/शासनमान्य चिकित्सकांचे असणे

आवश्यक असून जुन्या विद्यार्थ्यांची दाखले दर पाच वर्षांनी परत प्राप्त करावे.

- 3) युनीट कमी झाल्यास अनुदान मिळणार नाही व सदर कर्मचा-यांची वेतनची जबाबदारी संस्थेची राहिल तसेच परिचरास समायोजन अन्य युनीटवर करता येणार नाही.
- 4) दर 5 वर्षांनी आर..सी.आय. नोंदणी नुतनीकरण करून घेणे आवश्यक आहे. नुतनीकरणासाठी आर..सी.आय. मान्यता प्राप्त आवश्यक प्रशिक्षण पूर्ण करणे गरजेचे आहे व त्यासाठी संबंधीत शाळेने उपरोक्त विशेष शिक्षकांना वेळोवेळी प्रशिक्षणासाठी कार्यमुक्त करणे आवश्यक आहे.
- 5) ज्या प्रवर्गाची युनीट मान्यता देण्यात आलेली आहे, त्याच प्रवर्गातील बी.एड. (स्पेशल) व्यावसायिक विशेष शिक्षकाने पात्रताधारण करणे बंधनकारक राहिल.
- 6) भविष्यात विद्यार्थी संख्या अभावी अथवा कोणत्याही कारणास्तव सदरचे युनिट बंद पडल्यास कुठल्याही प्रकारचे अनुदान मिळणार नाही व सदर विशेष शिक्षक समायोजन अन्य 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. It is necessary to maintain the strength of physically challenged students up to 5 every year for maintaining the unit.

2. *It is necessary to seek admission of the physically challenged students in the unit with a certificate from the District Civil Surgeon,/ Government Medical Practitioner and for old students it may be submitted after every 5 years.*

3. *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.*

4. *It is necessary to get renewed the registration of R C I after every 5 years. For renewal purpose a complete training approved by R C I is necessary and needed. And for that purpose it is necessary to the concerned school to relieve the aforesaid special teachers from time to time for the training.*

5. *It is mandatory for the B.Ed. (Special) Professional Teachers to gain eligibility for the category for which the unit is sanctioned.*

6. *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]

34] Upon perusal of the contents stated in the approval letter, it is abundantly clear that, in clause No.3, it is written that, in case of closure of the Unit, Institution will not be entitled for grants and the responsibility of payment of salary is of the Institution and such Parichar cannot be accommodated in any other Unit. In condition No.6, it is specifically mentioned 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 Institution. Therefore, the approval granted to the services of the petitioners was on aforesaid conditions.

35] The facts in Writ Petition No.1471/2015, and in Writ Petition No.5765/2014 are almost similar like in Writ Petition No.1472/2015. The petitioners therein were also issued appointment letters like the petitioners in Writ Petition No. 1472/2015, only in cases of some of the petitioners, permanent approval i.e. 'continuity of service' [सेवा सातत्य] is not granted. Therefore, in cases of those petitioners also, there are same conditions while granting approval, like in cases of the petitioners in Writ Petition No.1472/2015.

36] 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.

37] In that view of the matter, in view of the conditions in clause Nos. 3 and 6 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.

38] The learned senior 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.

39] 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 also inclined to observe 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 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**¹ 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

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services of such employees may have to be considered on merits in the light of the principles 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.”

40] 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.

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

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

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

*KADAMA/DDC**