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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.6136 OF 2009

Nandatai Laxman Harale,
Age : 35 years, Occ : Service
working as Instructor in Savitribai
Phule Blind Girls Residential School,
Nanded.
R/o C/o Prabhakar Dattatraya Shinde,
Vinkar Vasahat, Near Government Milk Dairy,
Dhanegaon, CIDCO, Nanded,
Taluka and District Nanded.

...PETITIONER

-Versus-

- 1 Zilla Parishad, Nanded.
 Through Chief Executive Officer,
 District Nanded.
- 2 The Social Welfare Officer,
 Block-A, Zilla Parishad, Nanded,
 District Nanded.
- 3 Satwaji Patil Kinhalkar
 Shikshan Prasarak Mandal,
 Loghulud, Taluka Bhokar,
 District Nanded.
 Through its President.
- 4 Nandarani Prabhakar Jadhav,
 Age : 37 years, Occ : Service,
 C/o Savitribai Phule Blind Girls
 Residential School, Taroda (Kh.),
 Nanded, District Nanded.
- 5 The Appellate Authority &
 Divisional Social Welfare Officer,
 Latur Division, Latur,
 District Latur.

6 Nagnath Ramji Kadam,
Age : 55 years, Occ : Ex-President &
Present Vice President of Satwaji Patil
Kinhalkar Shikshan Prasarak Mandal,
R/o No.42, P-2, HUDCO, New Nanded,
District Nanded.

...RESPONDENTS

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Shri V.D.Salunke, Advocate for the Petitioner.

Shri V.S.Panpatte, Advocate for Respondent No.2.

Smt.R.D.Reddy, Advocate for Respondent No.3.

Shri V.D.Gunale, Advocate for Respondent No.4.

Shri S.K.Chavan, Advocate for Respondent No.6.

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CORAM : RAVINDRA V. GHUGE, J.

Reserved on : 10th September, 2015.

Pronounced on : 06th October, 2015.

Judgment :

1 This petition has been admitted by the order dated
15.09.2009. Ad-interim relief in terms of prayer clause (D) was granted,
which reads as under:-

*“Pending the hearing and final disposal of this
Writ Petition, impugned order dated 15.06.2009
passed by the Respondent No.5 in Appeal No.1/2009
may kindly be stayed.”*

2 By the order dated 01.12.2009, the ad-interim relief granted

on 15.09.2009 was confirmed.

3 The Petitioner is aggrieved by the order dated 15.06.2009 passed by Respondent No.5 / Appellate Authority by which Appeal No.1/2009 was allowed. Consequentially, the order delivered by Respondent No.2/ Social Welfare Officer, Zilla Parishad, Nanded was quashed and set aside.

4 The submissions of Shri Salunke, learned Advocate for the Petitioner, can be summarized as follows:-

- (a) Respondent No.3/ School is a special school.
- (b) On 01.01.2006, the Petitioner was appointed as an Instructor since she was qualified and had completed certificate course of the Rehabilitation Council of India (RCI) and was awarded a certificate under Section 19 of the Rehabilitation Council of India Act, 1992.
- (c) The Petitioner was deployed at the Savitribai Blind Girls Residential School, Taroda (Khurd), Nanded. She is working as an Instructor even today.
- (d) Respondent No.3/ School wrongly forwarded the proposal of the Petitioner and Respondent No.2 granted approval by

order dated 06.06.2007 showing the date of appointment of the Petitioner as 15.01.2001 despite her working as an Instructor from 01.01.1996.

- (d) Respondent No.4 challenged the approval of the Petitioner by filing Writ Petition No.3814/2007 before this Court.
- (e) By order dated 17.07.2008, the Division Bench of this Court allowed the petition preferred by Respondent No.4 herein and directed Respondent No.3/ Management to forward a fresh proposal in respect of seeking approval to the appointment of both, the Petitioner as well as the Fourth Respondent.
- (f) By inquiry report dated 15.09.2008, a Three Members Committee from the Social Welfare Department, Zilla Parishad, Nanded concluded that the Petitioner was working as an Instructor as per the correspondence between Respondent No.3/ Management and the Zilla Parishad.
- (g) The Management had forwarded the proposal of Respondent No.3/ School to the Rehabilitation Council of India (for short "RCI") for registration of Instructors under RCI showing the name of the Petitioner at Sr.No.1 as having been appointed as an Instructor.

- (h) The necessary certificate that was required to be annexed to the proposal sent to RCI indicated the Petitioner along with two other persons as Instructor- Teacher (Craft) and her date of appointment as 01.01.1996. The name of Respondent No.4 does not appear in these records.
- (i) Respondent No.4 preferred an appeal before Respondent No.5 bearing No.1/2009.
- (j) In its judgment dated 15.06.2009, the Appellate Authority / Respondent No.5 concluded that the Management has issued a specific appointment order to Respondent No.4 as an Instructor and had not produced any appointment order issued to the Petitioner.
- (k) The Management cannot suppress the fact that the Petitioner was appointed as an Instructor as she was duly qualified and was mentioned in the application form for registration to the RCI as an Instructor along with two other persons.
- (l) If the stand of the Management is accepted that the Petitioner was never appointed as an Instructor, then it would establish that the Respondent No.3/ Institution has acted fraudulently and has committed a fraud on the RCI by indicating the Petitioner as an Instructor.

- (m) There is no record available to establish that Respondent No.4 had ever discharged her duties as a Teacher (Instructor).
- (n) The record indicates that Respondent No.4 was only working as a Superintendent and not as an Instructor.
- (o) By a detailed report of Respondent No.2 dated 20.10.2008, it was concluded that the Petitioner was working as an Instructor from 01.01.1996. Respondent No.4 was working as a Superintendent from 01.10.1999 to 2005-2006.
- (p) It was also indicated that the Management is now projecting a picture that the Petitioner was working as a Social Rehabilitation Karyakarti (Worker) from 07.10.1999 though the said post was created on 18.08.2004 by the Government. Hence, she could not have been working on the said position from 07.10.1999 as is tried to be indicated by the Management.
- (q) Despite the fact situation as above, the Appellate Authority has interfered with the matter and has concluded that Respondent No.4 was working as an Instructor and was not working as a Superintendent.

5 Respondent No.3/ Management has preferred an affidavit in reply contending therein that the Petitioner was not appointed as an Instructor. She was appointed as a Social Rehabilitation Worker in 1999. Respondent No.4 was never working as a Superintendent. The Petitioner was not duly appointed as an Instructor. The Appellate Authority has rightly come to a conclusion on the basis of the record that Respondent No.4 has been appointed as an Instructor from 01.10.1997.

6 Respondent No.5/ Appellate Authority has filed an affidavit in reply. It is stated that no appointment order was issued to the Petitioner on 01.01.1996 for appointing her as an Instructor. No appointment order of the Petitioner was produced while passing the impugned order.

7 Shri Panpatte, learned Advocate for Respondent No.2, submits that Respondent No.4 has passed her SSC in 1990. She took six years to complete her HSC which she passed in June, 1996. She has undergone the course of Tailoring and Cutting in April, 2000. Despite the direction of the Division Bench dated 17.07.2008 by which Respondent No.3 was directed to forward the proposal of the Petitioner as well as Respondent No.4, the Management has deliberately withheld the proposal of the Petitioner and forwarded the proposal of Respondent No.4 in

violation of the mandate of the High Court.

8 Shri Panpatte submits that the conduct of the Management is contemptuous and is deplorable. The Petitioner was earlier shown as having been appointed as an Instructor on 01.01.1996 as per the certificate issued by Respondent No.3. It is not contended by Respondent No.3/ Management that the said certificate which was forwarded along with an application to the RCI for registration, is a false or bogus document. He further submits that the Petitioner could not have been shown as a Social Rehabilitation Worker, when the said post was created only on 18.08.2004 by the order of the State Government. When the post itself was created on 18.08.2004, the Petitioner could not have been shown as having been appointed as a Social Rehabilitation Worker w.e.f. 07.10.1999.

9 Shri Panpatte, therefore, submits that the order of the Division Bench needs to be complied with and the Management be directed to forward the proposal of the Petitioner as well as Respondent No.4 as expeditiously as possible to Respondent No.2 and the same shall be considered and an appropriate order would be passed.

10 Shri Gunale, learned Advocate for Respondent No.4, has strenuously submitted as under:-

- (a) Respondent No.4 was appointed as an Instructor on 01.10.1997.
- (b) The seniority list placed on record as in 2006-2007 indicates that the Petitioner was working as a Social Rehabilitation Worker from 08.10.1999.
- (c) Respondent No.4 was working as an Instructor from 01.10.1997.
- (d) The date of appointment of the Petitioner as an Instructor is 15.01.2001.
- (e) There are three posts of Instructors and only one post is vacant.
- (f) The Appellate Authority has scrutinized all the documents and has rightly come to a conclusion that Respondent No.4 has been working as an Instructor.
- (g) If at all, it is presumed that the Petitioner and Respondent No.4 are working as Instructors notwithstanding the fact that Shri L.D.Suryawanshi and Shri R.M.Chavan are also working as Instructors from 01.10.1995 and 01.01.1997, respectively, the appropriate authority can consider the position under

Rules 26, 27 and 28 of the MEPS Rules, 1981 and direct the absorption of the surplus instructor.

- (h) The competent authority can direct the junior most instructor to be absorbed in any other school by declaring the said candidate surplus.

11 I have considered the submissions of the learned Advocates for the respective sides as have been recorded herein above.

12 It cannot be overlooked that the Division Bench of this Court had directed Respondent No.3/ Management by its order dated 17.07.2008 passed in Writ Petition No.3814/2007, to forward the proposal of the Petitioner as well as Respondent No.4 to Respondent No.2/ Department. It was also observed that Respondent No.2/ Department would then consider the rival claims of the Petitioner and Respondent No.4 and come to a conclusion as regards who amongst the two was working as an Instructor.

13 It also cannot be overlooked that there are three positions of Instructors available with Respondent No.3/ Management and one amongst the four i.e. the Petitioner, Respondent No.4, Shri

L.D.Suryawanshi and Shri R.M.Chavan, is likely to be surplus, if all these four persons are working as Instructors. Insofar as Shri L.D.Suryawanshi and Shri R.M.Chavan are concerned, there is no dispute that both of them are working as Instructors.

14 Respondent No.3 has shrewdly avoided complying with the directions of this Court by order dated 17.07.2008. It was under an obligation to refer the proposal of the Petitioner as well as Respondent No.4 for seeking approval. Considering the stand taken by Respondent No.3, it appears, prima facie, that the Management has refrained from sending the proposal of the Petitioner with oblique motives. This conduct of the Management needs to be deprecated. Owing to the approach of the Management, the Petitioner as well as Respondent No.4 have suffered the rigours of litigation.

15 Respondent No.3/ Management cannot be absolved of it's duty to comply with the directions of this Court dated 17.07.2008. Having deliberately avoided the compliance of the order, renders Respondent No.3/ Management liable for being penalized in the form of costs.

16 Since I am inclined to direct Respondent No.3 to comply with

the order of this Court dated 17.07.2008, that I am not going into the report of the Three Members Committee of the Social Welfare Department dated 15.09.2008 as there is likelihood that I may make certain observations. In fact, Respondent No.2 as well as Respondent No.5, should have declined to consider the proposal of Respondent No.4 alone since the Management had failed in complying with the directions of this Court dated 17.07.2008. Be that as it may, both the Petitioner and Respondent No.4 deserve to be compensated for having been made to suffer lengthy litigation.

17 In the light of the above, this Writ Petition is partly allowed. The impugned order dated 15.06.2009 passed by Respondent No.5/ Appellate Authority is quashed and set aside. Appeal No.1/2009 stands disposed of. The order dated 20.08.2008 passed by the Social Welfare Officer/ Respondent No.2 herein is also set aside with a direction to Respondent No.3/ Management to forward the proposals of the Petitioner as well as Respondent No.4 to Respondent No.2/ Authority for a fresh decision. It is made clear that Respondent No.3 shall scrupulously comply with these directions.

18 I am issuing the following directions to Respondent No.2/

Authority for considering and deciding the proposal of the Petitioner and Respondent No.4 as follows:-

- (a) Respondent No.3/ Management shall submit a fresh proposal of the Petitioner as well as Respondent No.4 within four weeks from today, to Respondent No.2/ Authority.
- (b) The litigating parties shall appear before Respondent No.2 at 11:00 am on 23.11.2015 and shall abide by the dates of hearing as may be posted by Respondent No.2.
- (c) Respondent No.2 shall consider, whether, Respondent No.3/ Management had acted fraudulently in mentioning the Petitioner as an Instructor from 01.01.1996 in it's proposal to the RCI.
- (d) Respondent No.2 shall consider the effect of the proposal and the certificate submitted by Respondent No.3 to the RCI wherein the Petitioner, Shri R.M.Chavan and Shri L.D.Suryawanshi have been shown as Instructors.
- (e) Respondent No.2 shall consider the report dated 15.09.2008 submitted by the Three Members Committee of the Social Welfare Department, Zilla Parishad, Nanded while deciding the proposal.
- (f) The Petitioner as well as Respondent No.4 shall be permitted

to submit their written notes of arguments for addressing the mind of Respondent No.2.

- (g) Respondent No.2 shall also scrutinize whether, the Petitioner and Respondent No.4 have in fact performed their duties as a Teacher (Instructor).
- (h) Respondent No.2 shall also consider as to whether, the Petitioner can be said to have been working as a Social Rehabilitation Worker w.e.f. 07.10.1999 when the said post was created by the State Government on 18.08.2004.
- (i) Respondent No.2 shall decide the proposals on or before 30th day of January, 2016.
- (j) In the event, Respondent No.2 arrives at a conclusion that the Petitioner as well as Respondent No.4 along with Shri L.D.Suryawanshi and Shri R.M.Chavan, were all working as Instructors, it shall then conclude that the junior most amongst the four is rendered surplus and issue necessary directions as may be permissible in law.

19 Respondent No.3/ Management shall pay costs of Rs.25,000/- (Rupees Twenty Five Thousand) each, to the Petitioner and Respondent No.4 on or before the 06th day of November, 2015, failing

which the appropriate Authority shall cause a deduction from the grants of Respondent No.3 and disburse the costs to the Petitioner and Respondent No.4.

20 Rule is, accordingly, made partly absolute in the aforesaid terms.

(RAVINDRA R. GHUGE, J.)