

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

WRIT PETITION NO. 6695 OF 2014

- 1] Trimbak s/o. Mohanrao Patil,
Age: 37 Years, Occ: Service,
R/o. Manohar Education Society's
Residential Blind Welfare Training
& Rehabilitation Center [Workshop]
Swami Samartha Nagar,
Dhanegaon, Tq. & Dist. Nanded
- 2] Pruthviraj s/o. Gangaram Pardeshi,
Age: 32 Years, Occ. Service,
R/o. Manohar Education Society's
Residential Blind Welfare Training &
Rehabilitation Center, Swami Samartha
Nagar, Dhanegaon,
Tq. & Dist. Nanded

PETITIONERS

VERSUS

- 1] The State of Maharashtra,
Through the Secretary,
Social Justice Department,
Maharashtra State, Mantralaya,
Mumbai
 - 2] The Commissioner for
Welfare of Disabled Persons
Maharashtra State,
Church Road, Pune
 - 3] The District Social Welfare Officer
[Gourp-A], Zilla Parishad, Nanded
Dist. Nanded
- [copy to be served on Govt. Pleader
at High Court of Bombay, Bench at
Aurangabad]

- 4] The Secretary,
Manohar Education Society, Wazar
C/o. Residential Blind Welfare Training
& Rehabilitation Center [Workshop],
Swami Samartha Nagar, Dhanegaon,
Tq. & Dist. Nanded

RESPONDENTS

...

Mr. Sanjay A. Wakure, Advocate for the Petitioner
Mr. S.Y.Patil, Advocate for the Respondent No.4
Mr. S.B.Ghatol Patil, Advocate for the Respondent No.3
Mr. N.B.Patil, AGP for the Respondent – State

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WITH**WRIT PETITION NO. 10054 OF 2012**

- 1] Parmeshwar s/o. Tanaji Shelke,
Age: 30 Years, Occu. Service as Sweeper,
R/o. Khanapur, Tq. & Dist. Osmanabad
- 2] Sachin s/o. Babruwan Jagtap,
Age: 29 Years, Occ. Service as Watchman,
R/o. Saramkundi, Tq. Washi,
Dist. Osmanabad

PETITIONERS**VERSUS**

- 1] The State of Maharashtra,
Through the Secretary,
Social Justice Department,
Mantralaya, Mumbai-32.
- 2] The Commissioner for Disabled Persons,
Maharashtra State, Church Road, Pune
- 3] The District Social Welfare Officer,
[Group A] Zilla Parishad, Osmanabad
[Copy to be served upon G.P.
High Court of Bombay bench at Aurangabad]
- 4] The President / Secretary,
Akhil Bhartiya, Apang Kalyan Prasarak Mandal,
Osmanabad, Dist. Osmanabad

RESPONDENTS

...
Mr. Sanjay A. Wakure, Advocate for the Petitioner
Mr. K.J.Ghute Patil, Advocate for the Respondent No.3
Mr. B.S.Shinde, Advocate for the Respondent No.4
Mr. N.B.Patil, AGP for the Respondent – State
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**CORAM: S.S.SHINDE &
P.R.BORA, JJ.**

Reserved on : 27.04.2015
Pronounced on: 30.04.2015

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

1] Writ Petition No.6695/2014 is filed with
following prayers:

- B] By issuing writ or mandamus or any other appropriate writ, order or directions in the like nature, the respondents no.1 to 3 be directed to pay salaries of posts of petitioners i.e. Watchman and Sweeper, as per their basic scale from the Government grants, by holding the Govt. Resolution dtd. 18.8.2004 issued by Social Welfare & Sports Department, as null and void.
- C] By issuing writ of mandamus or any other appropriate writ, order or directions in the like nature, the respondents no.1 to 3 be directed to pay the arrears of salaries of petitioners as per their basic pay-scale since their approval of respective posts.

2] Writ Petition No.10054/2012 is filed with following prayers:

B] By issuing writ of mandamus or any other appropriate order or direction in like nature of writ, the respondent no.1 to 3 be directed to pay salaries of posts of petitioners i.e. sweeper, watchman as per their basic scale and from the government grants by holding the Govt. Resolution dtd. 18-8-2004 issued by social welfare, cultural and sports department, as null and void.

C] By issuing writ of mandamus or any other appropriate order or direction in like nature of writ, the respondent no.1 to 4 may kindly be directed to pay the arrears of salary to the petitioners w.e.f. May, 2003 onwards as per revised pay scale and to continued to pay the same regularly.

3] It is the case of the Petitioners that, they are working on the post of Watchman and Sweeper respectively. They are treated differently from other employees, whereby the salary grants of entire employees are disbursed by the Government, however, only the petitioners are said to be paid 50% salary of basic pay, that too, by the Society itself. According to the Petitioners, this

amounts to discrimination between the Petitioners vis-a-vis other employees, working in the Respondent No.4 School.

It is further the case of the Petitioners that, being qualified for the post of Watchman and Sweeper, they applied for the said post, and they were selected and appointed for the said respective posts, vide appointment orders dated 01.07.1997, 01.07.2002, 11.06.2003 and 17.06.2003 respectively. Their appointment is in accordance with the relevant Rules and Procedure prescribed. It is further submitted that, the posts on which petitioners are working, are said to be contractual, though the permanent approval is granted to these posts. The petitioners' salary is not paid from the Government Grants, and same is payable by the Respondent No.4 itself, that too, 50% of basic pay. It is further the case of the Petitioners that, in similar Schools for handicapped students, the posts of Watchman and Sweeper are approved, and their salary grants are disbursed by the Government, so also in the very similar Schools / Workshops the salaries for the post of Watchman and Sweeper are paid by the Government.

4] As per the Government Resolution dated 18th August, 2004, in several Schools the posts of watchman and sweeper [who are serving in handicapped sheltered workshop] are altogether treated differently, because they are required to be paid by the Society itself, that too, only 50% of their basic salary, though their posts are approved posts. It is further the case of the petitioners that, in Writ Petition No.2527/2002, the High Court issued 'Rule' in the said Writ Petition and directed the Government to pay salaries for the post of Watchman and Sweeper, vide order dated 26th August, 2002. It is further the case of the petitioners that, in one similar School namely Mahatma Phule Handicapped Workshop, Loni Khurd, District Nanded run by the Society – Dr. Babasaheb Ambedkar Shikshan Prasarak Sanstha, the full salaries for the posts of watchman and sweeper are paid from the salary grants received by the Government.

It is further the case of the Petitioners that, the Respondent No.4 though is under obligation as per the Government Resolution dated 18th August, 2004 to pay 50% of basic pay to the petitioners, the Respondent No.4 itself is escaping from its responsibilities, on the ground of non

availability of funds. In the aforesaid background, it is the contentions of the learned counsel appearing for the Petitioners that, the Petitioners are facing severe financial hardship, therefore, the Petitions deserve to be allowed.

5] The affidavit in reply filed on behalf of the Respondent Nos. 1 and 2. In para No.3 of the said affidavit in reply, it is stated that, the petitioners are claiming relief to grant them regular pay scale. It is further stated in para No.4 of the said affidavit in reply that, vide Government Resolution dated 23.03.2006, the workshop i.e. Vocational Training Center wherein the Petitioners are working, was accorded sanction on grant in aid basis by the Government, whereby the Management of the Respondent No.4 was directed to fill up the posts in consonance with new staffing pattern, vide Government Resolution dated 18th August, 2004. It is further stated that, as per the new staffing pattern, the posts of watchman and sweeper have been sanctioned to the Respondent No.4 and the Respondent No. 4 has to fill up the said posts pursuant to the new staffing pattern. It is further stated that, the orders passed in Writ Petition No.2557/2002 are interlocutory, which may not be applicable in the facts and circumstances of the present

case. In para No.6 of the said affidavit in reply, it is further stated that, the approval is given to the staffing pattern in the year 2006, and therefore, after lapse of 6 Years, the claim of the Petitioners for regular pay scale on the respective posts is time barred. It is further stated in para No.7 that, the pay scale, in view of the Government Resolution dated 18th August, 2004, against each of the respective posts have been decided by the High Power Committee of the State in consultation with the Finance Department of the State, therefore, the Respondent No.4 is bound to recruit candidates for respective posts pursuant to the new staffing pattern and pay scale mentioned therein. It is further stated in para No.8 that, it is clearly mentioned in the Government Resolution dated 18th August, 2004 that, the Petitioners are only entitled to get consolidated salary @ 50% of basic pay and dearness allowance of regular pay scale for the respective posts. Moreover, the salaries payable to them are to be borne by the Respondent No.4 Institution.

6] The learned counsel appearing for the Respondent No.4 submits that, unless grants are received from the Government, it is not possible to pay salary to the petitioners.

7] The learned AGP submits that, the posts occupied by the Petitioners are approved on non-grant basis, as it is evident from the Government Resolution dated 18th August, 2004 issued by the Social Justice, Cultural, Sports and Special Assistance Department, Government of Maharashtra. The learned AGP submits that, the Division Bench of this Court in Writ Petition No. 2557/2002 was dealing with altogether different factual scenario inasmuch as the Government Resolution dated 11th September, 2000, was governing the field at the relevant time, and therefore, this Court directed the Respondents to pay salary of the employees of the said School.

8] We have considered the submissions of the learned counsel appearing for the Petitioners, learned counsel appearing for the respondent No.4, and the learned AGP appearing for the respondent Nos. 1 and 2, and we are of the opinion that, Petitions suffer from latches inasmuch as exception is taken to the Government Resolution dated 18th August, 2004, and also to the approval of the staffing pattern by the Respondent Authorities in the Year 2006, and the Petition is filed in the Year 2012. Upon considering

the material placed on record, it is abundantly clear that, the services of the petitioners are governed by the Government Resolution dated 18th August, 2004 and staffing pattern on the basis of the said Government Resolution, and subsequent approval granted by the respondent Authority in the Year 2006.

9] Upon considering the case of the Petitioners on merit, we are not inclined to entertain the prayers of the Petitioners to set aside the Government Resolution, which is issued way back in the Year 2004, and the Petition is filed in the Year 2012. In view of the provisions of the said Government Resolution, the Petitioners are entitled to get consolidated salary @ 50% of basic pay and dearness allowance of regular pay scale for the respective posts and the salaries payable to them are to be borne by the Respondent No.4 Institution.

10] In that view of the matter, in our opinion, no relief can be granted to the Petitioners. So far grievance of the Petitioners against Respondent No.4 for non-payment of salary is concerned, the Petitioners can take steps including filing of civil suit for recovery or they can file representation

with the Government Authorities, which has granted recognition to the Respondent No.4 School, for not paying the consolidated salary to the petitioners, for years together, as contended by the petitioners.

11] Therefore, in the light of the discussion in the foregoing paragraphs, Petitions lack merits, hence rejected. We make it clear that, dismissal of the Petitions shall not be construed an impediment in filing the comprehensive representation to the State Government, requesting therein for grants, and for redressal of the petitioner's grievances. In case such representations are filed by the Petitioners or the Respondent No.4, the Respondent State Government shall consider the same in accordance with the Government policy.

Sd/-
[P.R.BORA]
JUDGE

Sd/-
[S.S.SHINDE]
JUDGE

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DDC