

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

Writ Petition No. 934 of 2012

Smt. Kusum w/o. Vankat Mundhe,
Age : Major,
Occupation : Service,
R/o. Muli,
Taluka : Gangakhed,
District : Parbhani.

.. Petitioner.

versus

1. The State of Maharashtra,
Social Welfare Department,
Mantralaya, Mumbai
(through its Secretary).
2. The Social Welfare Officer,
Zilla Parishad, Parbhani,
Taluka & District : Parbhani.
3. Param Pujya Dr. Babasaheb Ambedkar
Shikshan Prasarak Mandal, Muli,
Taluka : Gangakhed,
District : Parbhani,
Through its President,
Shri Anant B. Mundhe,
at present R/o. Sujatha Colony,
Juna Pedgaon Road,
Parbhani.
4. Param Pujya Dr. Babasaheb Ambedkar
Shikshan Prasarak Mandal, Muli,
Taluka : Gangakhed,
District : Parbhani,
Through its Secretary.

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5. Sow. Tulsabai d/o. Yeswant Salve,
Age : Major,
Occupation : Nil,
R/o. village Muli,
Taluka : Gangakhed,
District : Parbhani.

.. Respondents.

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Mr. Ramesh I. Wakade, Advocate, for the petitioner.

*Mrs. S.G. Chincholkar, Assistant Government Pleader,
for respondent no.1.*

Mr. P.P. Dama, Advocate, for respondent no.2.

Mr. Ganesh Gadhe, Advocate, for respondent nos.3 and 4.

Respondent no.5 served (Absent).

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WITH

Writ Petition No. 938 of 2012

Shri Vankat s/o. Santaram Mundhe,
Age : Major,
Occupation : Service,
R/o. Muli,
Taluka : Gangakhed,
District : Parbhani.

.. Petitioner

versus

1. The State of Maharashtra,
Social Welfare Department,
Mantralaya, Mumbai
(through its Secretary).

2. The Social Welfare Officer,
Zilla Parishad, Parbhani,
Taluka & District : Parbhani.
3. Param Pujya Dr. Babasaheb Ambedkar
Shikshan Prasarak Mandal, Muli,
Taluka : Gangakhed,
District : Parbhani,
Through its President,
Shri Anant B. Mundhe,
at present R/o. Sujatha Colony,
Juna Pedgaon Road,
Parbhani.
4. Param Pujya Dr. Babasaheb Ambedkar
Shikshan Prasarak Mandal, Muli,
Taluka : Gangakhed,
District : Parbhani,
Through its Secretary.
5. Shri Namdeo s/o. Vithalrao Khandhare,
Age : Major,
Occupation : Nil,
R/o. village Muli,
Taluka : Gangakhed,
District : Parbhani.

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Mr. Ramesh I. Wakade, Advocate, for the petitioner.

*Mrs. S.G. Chincholkar, Assistant Government Pleader,
for respondent no.1.*

Mr. P.P. Dama, Advocate, for respondent no.2.

Mr. Ganesh Gadhe, Advocate, for respondent nos.3 and 4.

Respondent no.5 served (Absent).

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WITH**Writ Petition No. 8081 of 2013**

Param Pujay Shri Babasaheb Ambedkar
Shikshan Prasarak Mandal, Muli,
Taluka : Gangakhed,
District : Parbhani,
Through its President,
Shri Anant s/o. Babanrao Mundhe,
Age ; 63 years,
Occupation : President,
R/o. Sujatha Colony,
Juna Padegaon Road, Parbhani,
Taluka & District : Parbhani.

.. Petitioner.

versus

1. The District Social Officer,
Parbhani, Zilla Parishad,
Parbhani,
Taluka & District : Parbhani.
2. Venkat s/o. Santaram Mundhe,
Age : 51 years,
Occupation : Ex-employee,
R/o. village Muli,
Taluka : Gangakhed,
District : Parbhani.
3. Kusum w/o. Venkat Mundhe,
Age : 47 years,
Occupation : Ex-employee,
R/o. village Muli,
Taluka : Gangakhed,
District : Parbhani.
4. Namdeo s/o. Vithalrao Kandhare,
Age : 41 years,
Occupation : Service,
R/o. village Muli,

Taluka : Gangakhed,
District : Parbhani.

5. Tulsabai Yeshvantrao Salve,
Age : 48 years,
Occupation : Service,
R/o. village Muli,
Taluka : Gangakhed,
District : Parbhani.

6. The Commissioner
of Social Welfare
of State of Maharashtra.

.. Respondents.

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Mr. Ganesh A. Gadhe, Advocate, for the petitioner.

Mr. P.P. Dama, Advocate, for respondent no.1.

Mr. R.I. Wakade, Advocate, for respondent nos.2 and 3.

Respondent nos.4 and 5 served (Absent).

*Mrs. S.G. Chincholkar, Assistant Government Pleader
for respondent no.6.*

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

DATE : 31ST AUGUST 2015

ORAL ORDER (Per S.S. Shinde, J.) :

1. Heard learned Counsel for respective parties.

2. Writ Petition No. 8081 of 2013 is filed with following prayer :-

[A] By issuing writ of certiorari or any appropriate writ, order or direction, under Article 226 of the Constitution of India, this Hon'ble Court may kindly quash and set aside the impugned order passed by the District Social Officer, Zilla Parishad, Parbhani, dated 5-11-2012.

3. The learned Counsel appearing for the petitioner submits that the order passed by the District Social Welfare Officer is without jurisdiction. He further submits that respondent nos.2 and 3 were removed from service after following proper procedure. It is submitted that the Managing Committee of the petitioner appointed respondent nos.4 and 5, in place of respondent nos.2 and 3. It is submitted that without hearing the petitioner, the District Social Welfare Officer proceeded to set aside the appointment order of respondent nos.4 and 5. The petitioner or respondent nos.4 and 5 were not heard. Therefore, the petitioner was constrained to file Writ Petition No. 4676 of 2011. After hearing Counsel appearing for the parties to the said petition, this Court directed the District Social Welfare Officer to take appropriate decision in respect of cancellation of appointment of respondent nos.2 and 3, and appointment of respondent nos.4 and 5. It is submitted that the issue of jurisdiction was raised in the said Writ Petition. Same was not answered. Liberty was given to the

parties to challenge the order passed by respondent no.1. Therefore, the learned Counsel appearing for the petitioner in W.P. No. 8081 of 2013 submits that the petition deserves to be allowed.

4. The learned Counsel appearing for respondent nos.2 and 3 submits that no proper procedure was followed while terminating their services. They have satisfactorily worked since their appointment till their services were terminated. It is submitted that the appointment of respondent nos.4 and 5 is illegal and, therefore, the District Social Welfare Officer rightly set aside the same. It is submitted that the petitioner has not paid salary from March 2009 to January 2010 and from June 2011 onwards, and also arrears as per VIth Pay Commission.

5. The learned Counsel appearing for respondent no.1, relying upon affidavit in reply filed by respondent no.1, submits that after hearing all concerned, issue was decided in respect of cancellation of appointment of respondent nos.2 and 3, and appointment of respondent nos.4 and 5.

6. We have given anxious consideration to the submissions advanced by the learned Counsel for the petitioner, the learned Counsel appearing for respondent no.1, the learned Counsel appearing for respondent nos.2 and 3, and the learned AGP appearing for respondent no.6. None present for respondent nos.4 and 5, though served.

7. in fact, respondent nos.4 and 5 appears to be really aggrieved persons by the impugned order passed by respondent no.1. However, they have not filed any petition, neither they are represented through Counsel or

present in person in this petition.

8. We have carefully perused the notice issued by the President of the petitioner - Institution, to respondent nos.2 and 3, another notice issued to respondent no.2 at Exhibit "C" (Page 17 of the compilation of the petition), and also another notice issued on 7th July 2008, to respondent no.3, by the petitioner - Institution. There is resolution at Exhibit "D" (Page 19), dated 15-7-2007, wherein it is resolved to authorize the President to appoint two candidates in place of respondent nos.2 and 3 since their appointment was cancelled with effect from 15th May 2007. Accordingly, it appears that the President of the Institution had given approval to the appointment of respondent nos.4 and 5.

9. Upon careful perusal of the material placed on record, allegations levelled against respondent nos.2 and 3 are general in nature. There are no any specific charges framed or points framed and after proper show cause, respondent nos.2 and 3 were asked to put forth their contention. In short, upon perusal of the material placed on record and in particular, documents at Exhibit "B" and Exhibit "D" at pages 16 to 18, it appears that no specific charges were framed and respondent nos.2 and 3 were asked to answer those specific charges. At one place, even it is mentioned that respondent nos.2 and 3 should file reply within 24 hours to the notice. Even in absence of any provision, the petitioner - Institution was bound to follow principles of natural justice, inasmuch as, there should have been specific framing of charges and giving opportunity to respondent nos.2 and 3 to answer the charges. This procedure is not followed and respondent nos.2 and 3 are removed from service.

10. It appears that the Division Bench of this Court, while disposing of Writ Petition No. 4676 of 2011, directed respondent no.1 to hear the petitioner, respondent nos.2 to 5 therein and then take decision. Accordingly, respondent no.1 has taken decision and held that cancellation of appointment of respondent nos.2 and 3 was illegal and appointment of respondent nos.4 and 5 was also illegal. In the first place, removal / cancellation of appointment of respondent nos.2 and 3, by the petitioner, is itself without adherence to the principles of natural justice and, therefore, such cancellation of appointment / termination has rightly been held illegal by the District Social Welfare Officer. Even on independent scrutiny, we are of the opinion that the petitioners did not follow the principles of natural justice and terminated services of respondent nos.2 and 3 though they are in service since 1986 and 1989, respectively.

11. In that view of the matter, we are of the considered view that Writ Petition No. 8081 of 2013 deserves no consideration. Hence, Writ Petition No. 8081 of 2013 is rejected.

12. So far as Writ Petition No. 934 of 2012 and Writ Petition No. 938 of 2012 are concerned, we direct the petitioners therein to file comprehensive representation to the District Social Welfare Officer, Zilla Parishad, Parbhani, about their grievance of salary which is raised in these two petitions, and upon filing such comprehensive representation, the District Social Welfare Officer, Zilla Parishad, Parbhani, shall take decision in accordance with law, as expeditiously as possible, however, within three months from the date of filing of representations.

(10)

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13. Writ Petition No. 934 of 2012 and Writ Petition No. 938 of 2012 are disposed of in the above terms.

(A.M. BADAR)
JUDGE

(S.S. SHINDE)
JUDGE

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