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

WRIT PETITION NO.2699 OF 2005

Rajesh s/o Marotirao Suryawanshi & ors. ..PETITIONERS

VERSUS

The State of Maharashtra & ors. ..RESPONDENTS

Mr V.G. Sakolkar, Advocate for petitioners;
Mr B.V. Virdhe, Asstt. Government Pleader for respondents no.1 & 2

**CORAM : S. V. GANGAPURWALA
AND N.W. SAMBRE, JJ.**

DATE : 14th September, 2016

ORAL ORDER :

The petitioners are working with respondent no.5 – training centre run by respondent no.4. The same was meant for physically handicapped persons. The said institution was granted recognition by the State Government vide order dated 5th October, 1987. It is submitted that since the said date, the said institution was being run, the said institution was receiving 100% salary and non-salary grants. The petitioners further state that respondent no.2 – competent authority had also granted certificate of registration as per section 52 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (hereinafter referred to as “Act 1995”). The said certificate granted under section 52 of the Act 1995 was revoked on 17th April, 2003.

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2. The respondent – institution preferred an appeal on 29th September, 2003 before the State Government. By order dated 27th January, 2004, the said appeal is allowed and the order cancelling the registration certificate is set aside. The salary bills of the petitioners for the period 1st April, 2003 to 6th May, 2004 were submitted. The same is refused in view of the Government Resolution dated 27th October, 2004. The petitioners rely upon section 53 (2) of the Act 1995.

3. Learned A.G.P. states that during the period the certificate was not in force, the petitioners were not entitled for the salary grants, in view of the Government Resolution dated 27th January, 2004. According to the learned A.G.P., during the said period the institution was not supposed to function.

4. Before we proceed to deal with the contentions of either of the parties, it would be appropriate to refer to the relevant provisions of section 53 of the Act 1995, which runs as under :-

“(1)

(2) Where a certificate in respect of an institution has been revoked under sub-section (1), such institution shall cease to function from the date of such revocation :

Provided that where an appeal lies under section 54 against the order of revocation, such institution shall cease to function -

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- (a) where no appeal has been preferred immediately on the expiry of the period prescribed for filing of such appeal, or
- (b) where such appeal has been preferred, but the order of revocation has been upheld, from the date of the order of appeal."

5. Reading section 53 (2) of Act 1995, it is manifest that the institution shall cease to function from the date of revocation of the certificate, if no appeal has been preferred immediately on the expiry of the period prescribed for filing of such appeal or where such appeal has been preferred but the order of revocation has been upheld, from the date of the order of appeal. Proviso to sub-section (2) of section 53 of the Act 1995 casts an exception. When the appeal is filed within the prescribed period of limitation and subsequently it stands allowed, the institution does not cease to function though the certificate was revoked, as the appeal having been allowed, the certificate being restored. The mandate of section 53 (2) of the Act 1995 is clear and unambiguous. The Government Resolution dated 27th January, 2004 relied upon by the respondents would be of no avail for the reasons that the same cannot override the provisions of the statute and the order of the revocation is prior to the Government Resolution dated 27th January, 2004. Prior to the said Government Resolution, the appeal was already filed and was pending.

6. In view of above, the impugned communication dated 5th January, 2005, is quashed and set aside. The respondents shall process the salary

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bills of the petitioners as submitted and if there is no other impediment, shall make the payment for the period 1st April, 2003 to 6th May, 2004. The same shall not be rejected on the ground that during the said period the certificate of registration was revoked. The salary bills shall be processed expeditiously, preferably within nine months from today.

Rule accordingly made absolute in above terms. No costs.

(N.W. SAMBRE, J.)

(S.V. GANGAPURWALA, J.)

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