

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

WRIT PETITION NO.10149 OF 2014

1. Sambhaji s/o. Narayan Dewate,
Age: 49 years, Occup: Service
(presently nil), r/o. Ganga Colony,
Wadi (Bk.), Tq. & Dist. Nanded.
2. Govind s/o. Bhiwaji Gawale,
Age: 42 years, Occup: Service
(presently nil), r/o. Jawahar Nagar,
Tuppa, Tq. & Dist.: Nanded **PETITIONERS**

VERSUS

1. The State of Maharashtra
Through its Secretary,
Social Welfare, Cultural Affairs
and Sports Department,
Mantralaya, Mumbai-32.
2. The Commissioner for
Welfare of Physically Handicapped,
Maharashtra State,
3, Church Road,
Pune-411 001.
3. The Director of Social Welfare,
Maharashtra State,
Pune-1.
4. The Social Welfare Officer Group-A,
Zilla Parishad, Nanded
5. Deep Shikshan Sanstha,
Mukramabad, Tq. Mukhed
Dist.: Nanded, through its
President Shri Kailash Babuappa
Yampalle

6. Vishwakarma Residential School
for Handicapped, Jintur, Tq.Jintur,
Dist. Parbhani
Through its Head Master.
(Respondent No.6 is added as per
Court's Order dtd.22.02.2016)
7. Deep Shikshan Sanstha,
Nanded
Through its President
Shri Narayan Deorao Pawar,
r/o Vazirabad, Nanded
(Respondent No.7 added as per
Court's order dtd.30.03.2016) **RESPONDENTS**

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Mr.P.G.Rodge, Advocate for the petitioners
Mr.V.H.Dighe, AGP for respondent nos.1 to 3.
Respondent nos.4 to 7 served.

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**CORAM: S.S.SHINDE &
SANGITRAO S.PATIL, JJ.**

Reserved on : 21.07.2016
Pronounced on : 05.08.2016

JUDGMENT: (Per S.S.Shinde, J.):

1. Heard.

2. This Petition takes exception to the
impugned order / decision dated 30.06.2014
passed by respondent no.2 and further seeks
directions to respondent nos.2 to 4 to absorb

the petitioners in any other recognized school within stipulated period.

3. It is the case of the petitioners that petitioner no.1 is having qualification of S.C.C. and C.T.C. Petitioner no.2 has passed 7th standard. Both the petitioners belong to S.C. category. Petitioner no.1 came to be appointed in Vishwakarma Residential Handicapped school at Pandurangnagar, Nanded run by respondent no.5 society on the post of Art Teacher w.e.f. 15.06.1994 against a clear, vacant and sanctioned post by following due procedure. Petitioner no.2 came to be appointed on the post of Peon in the said school w.e.f. 15.06.1995. The said school run by respondent no.5 was receiving 100% grant-in-aid at the relevant time. From the dates of their initial appointments, the petitioners were in service in the said school till the refusal of registration to the said school by respondent no.3 by order

dated 24.05.1999. The District Social Welfare Officer, Nanded, by an order dated 25.06.1998, granted approval to the appointments of the petitioners as Art Teacher and Peon respectively, from 01.07.1996 to 31.03.1998 i.e. for two academic years. Thereafter, the District Social Welfare Officer, Nanded, by order dated 31.03.2011, granted approval in favour of the petitioners from 01.04.1998 to 28.04.1999. Thus, the petitioners attained the status of deemed confirmed employees in the said school having been served continuously for three years.

4. It is further the case of the petitioners that the service books of the petitioners in the said school were also prepared and the benefit of revised pay scale as per 5th Pay Commission had also been granted to them. Petitioner no.1 has also worked as Incharge Head Master of the said

school. Respondent no.3, by order dated 24.05.1999, refused to grant further registration to the said school run by respondent no.5 society and the said refusal / derecognition is not attributable to the petitioners, but the same is attributable to respondent no.5 society. Therefore, as per the decision of this Court in Writ Petition No.5744/2003 (Bhagwan Rambhau Gore Vs. State of Maharashtra and others) and Writ Petition No.43/2004 (Avinash Raghunath Walkikar & others Vs. State of Maharashtra & others), the petitioners are entitled for their absorption in any other recognized school as per the provisions of Rule 25-A of the Maharashtra Employees of Private Schools (Condition of Service) Rules (for short 'the said Rules'). Therefore, petitioner no.1 made representation on 25.08.2004 to respondent no.4 for absorption of the employees of the said school.

5. It is further the case of the petitioners that in view of the decision of this Court in Writ Petition No.5744/2003 (Bhagwan Rambhau Gore Vs. State of Maharashtra and others) and Writ Petition No.43/2004 (Avinash Raghunath Walkikar & others Vs. State of Maharashtra & others), respondent no.2 issued Circulars and Instructions from time to time for absorption of surplus employees of the de-recognized handicapped schools and by issuing letters called necessary information from all the Zilla Parishads as regards vacant posts in the recognized schools. After the orders were passed by this Court in Writ Petition No. 5744/2003 (Bhagwan Rambhau Gore Vs. State of Maharashtra and others) and Writ Petition No.43/2004 (Avinash Raghunath Walkikar & others Vs. State of Maharashtra & others), the respondent authorities prepared the list of the closed down handicapped schools and

workshops due to cancellation of registration certificate and they have also prepared the list of the employees, who were working in the said closed down schools and also recommended the names of such employees for their absorption in the other schools. As per the information gathered by them, most of the employees of the said list have been absorbed by the respondent authorities and continued their services. However, the respondents did not consider the claim of the petitioners. In the meanwhile, the derecognized handicapped school wherein the petitioners, who were working, came to be transferred to new management under the Government directions, and shifted the earlier Vishwakarma Residential School for handicapped from Pandurang Nagar, Nanded wherein the petitioners were serving to Jintur, Dist. Parbhani, and since then the said school is running at Jintur.

6. It is further the case of the petitioners that though, the petitioners have preferential right to be absorbed in respondent no.6 school, but respondent no.6 school did not allow the petitioners to join the said school, and the respondent authorities also did not take any effective steps / decision for absorption of the petitioners.

7. It is further the case of the petitioners that in response to the representation dated 25.08.2004 and also as per the instructions issued by respondent no.2, since respondent no.4 did not forward the proposal to respondent no.2 for absorption of the petitioners, petitioner no.1 by representation dated 13.07.2009 requested respondent no.4 to forward proposal for absorption of petitioners and other surplus employees of the said school run by respondent no.5. Again, the petitioners by

representation dated 29.12.2009 requested respondent no.4 to submit proposal to respondent no.2 for their absorption.

8. It is further the case of the petitioners that respondent no.4 submitted proposal on 06.01.2010 before respondent no.2 for absorption of the petitioners. However, respondent no.2 neither considered the said proposal, nor communicated anything to the petitioners for more than two years. Therefore, the petitioners preferred Writ Petition No.913/2013 (Sambhaji Narayan Dewate and another Vs. The State of Maharashtra) before the High Court seeking directions for their absorption. The High Court, by order dated 22.04.2014, was pleased to dispose of the said Writ Petition by directing respondent no.2 to decide the said proposal dated 06.01.2010 on or before 30.06.2014. Thereafter, as per the directions of this Court, respondent no.2 proceeded to decide

the said proposal and accordingly, by order dated 30.06.2014, respondent no.2 rejected the said proposal on the ground that the said proposal has been submitted belatedly after lapse of 11 years, and no explanation is given in regard to steps taken for getting the petitioners absorbed in the transferred school and started by respondent no.2 in the year 2004 at Jintur, District Parbhani. It is further observed that the petitioners and the office of respondent no.4 seem to have disinterested in the absorption process and the claim of the petitioners, and the proposal submitted by respondent no.4 are time barred.

9. The learned counsel appearing for the petitioners submits that respondent no.2 did not appreciate that the petitioners and also respondent management are continuously persuading respondent no.4 and respondent no.2 by making representations. He invites

our attention to the copies of the representations, which are placed on record. It is submitted that as per the directions issued by respondent no.2 on 21.04.2007, respondent no.4 has not taken any steps for allowing the petitioners to join the Residential Handicapped School started by respondent no.5 society at Jintur, District Parbhani and/or for absorption of the petitioners in any other recognized school. The said aspect has not been taken into consideration by respondent no.4. It is submitted that the petitioners are declared as surplus and their legitimate claim for absorption cannot be turned down by assigning unsustainable reasons by respondent no.2. It is submitted that the impugned order is passed without application of mind by respondent no.2 and is without considering the case of the petitioner on merits. It is submitted that the Division Bench of the

Bombay High Court Bench at Aurangabad in the case of *Shivkumar Meherbabu Shriramwar & others Vs. The State of Maharashtra* in Writ Petition No.2216/2013 decided on 16.09.2015 has considered the claim of the petitioners therein, who were removed from the service in the year 1999 and directed the respondents therein to consider the prayer of the petitioners therein for absorbing them in the services of the respondents.

10. On the other hand, the learned AGP appearing for respondent – State relying upon the reasons assigned by respondent no.2 in the impugned communication submits that respondent no.2 has rightly turned down the request of the petitioner for absorption on the ground that there was inordinate delay in approaching the respondent authorities by the petitioners and also the earlier school wherein the petitioners were serving.

11. In spite of giving sufficient opportunity to the respondents, none of the respondents has filed reply. Therefore, pleadings / grounds taken in the Petition remained uncontroverted on behalf of the respondents and presumption can be in favour of the petitioner that the said pleadings / grounds have been accepted by the respondents.

12. We have given careful consideration to the submissions of the learned counsel appearing for the petitioners and the learned AGP appearing for the respondent – State. With their able assistance, perused the pleadings in the petition, annexures thereto and the documents placed on record by the parties. It appears that respondent no.2 has negatived the claim of the petitioners on the ground of delay and concluded that the prayer of the petitioners for absorption is

time barred. Upon perusal of the copies of documents placed on record by the petitioners, it appears that various posts were sanctioned by the office of the District Social Welfare Officer, Nanded in respondent no.6, by his letter dated 25.06.1998 addressed to the President / Secretary / Director of respondent no.6 school. It further appears that petitioner no.1, who is from S.C. Category was appointed as Art Teacher in the pay scale of Rs.1200-2040/-. Petitioner no.2 namely Govind Bhiwaji Gawale, who is from S.C. category was appointed as Peon in the pay scale of Rs.770-1150. It is evident from the documents placed on record that the approval was granted to his appointment by the District Social Welfare Officer, Nanded. It further appears that staffing pattern was approved for as many as 8 posts including the posts on which the petitioners were appointed for the period

from 01.04.1998 to 28.04.1999 by the District Social Welfare Officer.

13. It further appears from the order passed by the Director of Social Welfare, Maharashtra State, Pune on 24.05.1999 (Exhibit-B Page 18) that the respondent school did not fulfill the requirements for registration and also there were inadequate number of students and therefore, the said authority rejected the application for registration of the said school. It further appears from the perusal of the letter written by the Headmaster of the said school to the District Social Welfare Officer on 25.08.2004 that the respondent school received the approval for three years and therefore it was requested to make applicable the recommendations of 5th Pay Commission in respect of the employees working in the said school. There was also a request made by the employees, who were working in the said

school, which was closed due to rejection of approval to the registration of the said school by the Director of Social Welfare, Maharashtra State, Pune. Therefore, the request is made in the said letter to absorb all the employees in some other schools. It is further stated in the said letter that due to closure of the school, the employees are on the verge of starvation. It further appears from the perusal of the letter written by the Commissioner, Social Welfare, Maharashtra State, Pune to the Social Welfare Officer, Zilla Parishad and also to the Special Social Welfare Officer, Bombay that the Bombay High Court Bench at Aurangabad in Writ Petition No.5744/2003 [Bhagwan Rambhau Gore Vs. State of Maharashtra and others] and Writ Petition No.43/2004 [Avinash Raghunath Walkikar & others Vs. State of Maharashtra & others] issued directions to the said authority to prepare common seniority list of

the employees who were working in the schools, which are already closed down. It further appears that in the said letter there is a reference of the said Writ Petitions and also directions issued by the High Court to prepare common seniority list of such teachers and absorbed them as per the seniority. Therefore, the instructions were issued to the various Ashram Schools not to make fresh appointments without prior permission / approval of the respondent authorities. It was informed that the appointments made without seeking approval in that case appropriate action will be taken against erring Officer and also against the said school. It is specifically mentioned in the said letter that in case the school is closed down and transferred to some other institution the employees working in the said school, are required to be absorbed in the transferred school, and the school at

transferred place cannot go ahead with fresh recruitment of staff.

14. Sum and substance of the said letter is that the High Court directed to prepare common seniority list of all the employees who had served in the schools which were already closed down and thereafter absorb those employees as per the seniority. It further appears that respondent authorities have taken steps to prepare common seniority list of surplus teachers from the closed handicapped, deaf and dumb and visually challenged students for the purpose of their absorption in some other schools. The petitioners' names find place in the said list of surplus employees declared from the respondent no.6 school. It appears that the said list was prepared somewhere in the year 2007-08 and since then the petitioners are awaiting their absorption. It further appears

that the Headmaster of respondent no.6 school had further written letter to the District Social Welfare Officer on 20.07.2009 requesting therein for absorption of the employees who are declared surplus from respondent no.6 school. There is also reference in the said letter that the approval was granted to the said school for consecutive three years. It further appears that there is also another letter written by the Headmaster to the Commissioner, Handicapped, Maharashtra State, Pune on 20.07.2009 requesting absorption of all the surplus employees. There is also letter written by the present petitioners and also one employee on 29.12.2009 to the Social Welfare Officer, Zilla Parishad, Nanded for their absorption in some other schools. There is a letter written by the Social Welfare Officer, Group-A, Zilla Parishad, Nanded to the Commissioner, Handicapped Welfare,

Maharashtra State, Pune on 06.01.2010 by which the said Officer forwarded proposal for necessary action at the end of the said Commissioner for absorption of the surplus teachers from respondent no.6 school. Therefore, upon perusal of the pleadings in the Petition and the copies of the documents placed on record, there is no manner of doubt that the petitioners and also the Headmaster of respondent no.6 school were continuously pursuing the cause and requesting their absorption in some other schools. It appears that there is total non-application of mind by respondent no.2 to the facts of the case and in a mechanical manner, respondent no.2 rejected the request of the petitioners and other similarly situated employees, who were working in the said school and whose names have been included in the list of surplus teachers prepared by the respondents on the ground that their prayer is belated and time

barred, and therefore, the same cannot be considered.

15. In the light of the discussion hereinabove, we quash and set aside the impugned order / decision dated 30.06.2014 passed by respondent no.2, and we direct respondent no.2, to consider the claim of the petitioners on merits after hearing the petitioners and also similarly situated persons and keeping in view their service record and the fact that their names have already been included in the list of surplus employees prepared by the respondent authorities in pursuance of the directions issued by this High Court in Writ Petition Nos.5744/2003 and 43/2004. We make it clear that respondent no.2 shall not assign the same reasons, which are assigned in the impugned communication, and take decision on the claim of the petitioners on merits. The petitioners are awaiting their absorption

since long, therefore, we direct respondent no.2 to take decision after hearing the petitioners and also all concerned including the Headmaster as expeditiously as possible, however, within 10 weeks from today and communicate the said decision to the petitioners and the concerned respondents. The petitioners and respondent no.6 shall appear before respondent no.2 in his office on 16th August, 2016. Respondent no.2 shall allow the petitioners and also respondent no. 2 to place on record the copies of the documents, if any, and after summoning the record of the office of the Social Welfare Officer, Zilla Parishad, Nanded as well as the Special Social Welfare Officer, Nanded, take a decision on the same day or may fix further date for hearing and for taking decision. However, the entire exercise has to be completed as expeditiously as possible, however, within 10 weeks from today.

16. The Petition is partly allowed. The Writ Petition is disposed of on above terms.

Sd/-
[**SANGITRAO S.PATIL**]
JUDGE

Sd/-
[**S.S.SHINDE**]
JUDGE

DDC