

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 11752 OF 2015

Sangita Vishwanath Nawale
@ Anita Balasaheb Aher,
Age 34 years, Occ. Unemployed,
R/o Kopargaon, Dist. Ahmednagar. ..Petitioner

Versus

1.The Commissioner For Persons
with Disability, Church Road,
Maharashtra State, Pune 1

2. The Zilla Parishad, Ahmednagar
Through its Chief Executive Officer,
Ahmednagar.

3. The District Social Welfare Officer,
Division-A, Zilla Parishad, Ahmednagar,
District Ahmednagar.

4. Lions Deaf, Dumb and Physically
Handicapped School, Kopargaon (Bet),
Nagar Manmad Road, Tq. Kopargaon,
District Ahmednagar through its
President.

5. Smt. Shobha Jaiwant Madale
Age 54 years, Occ. Service serving at
Lions Deaf, Dumb and Physically
Handicapped School, Kopargaon (Bet),
Nagar Manmad Road, Tq. Kopargaon,
District Ahmednagar

6. Divisional Commissioner,
Social Welfare Department,
Nashik Division, Nashik. ..Respondents

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Advocate for Petitioner : Shri Gawali Amol K.
AGP for Respondents 1 & 6 : Shri Munde S.W.
Advocate for Respondents 2 & 3 : Shri Shelke Shivaji T.
Advocate for Respondent 4 : Shri Kulkarni Sanket S.
Advocate for Respondent 5 : Shri Shri Khandagale P.P.

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CORAM : RAVINDRA V. GHUGE, J.

Dated: August 10, 2016

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ORAL JUDGMENT :-

1. Heard learned Advocates for the respective parties.
2. Rule.
3. By consent, Rule is made returnable forthwith and the petition is taken up for final disposal.
4. The petitioner is aggrieved by the order dated 19.9.2015, delivered by the Regional Deputy Commissioner, Social Welfare Department, Nasik.
5. The petitioner contends that she was appointed on 15.6.2008 on probation on the post of Head-Cook, which had fallen vacant. Applications were invited by the advertisement dated 8.6.2008 and by following the procedure laid down in Rule 9 of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 ("the said Rules"), interviews were held on 12.6.2008. Approval to the said appointment was granted on 5.8.2008. She has been illegally terminated w.e.f. 30.4.2009.

6. It is further submitted that the President of respondent No.4 School, informed the District Social Welfare Officer, by letter dated 23.6.2009 that the petitioner was an efficient employee and had rendered satisfactory service. The management recommends her confirmation in service.

7. By letter dated 4.7.2009, the District Social Welfare conveyed to the management that it should acquire the no objection certificate from respondent No.1 Commissioner. However, respondent No.1 did not approve the confirmation of the petitioner's service stating that it would amount to contempt of the order passed by this Court dated 24.6.2004 in Writ Petition No.43 of 2004. It is, therefore, submitted that as the petitioner had worked from 16.6.2008 till 1.7.2010, she deserves to be regularized in employment.

8. It is further contended that respondent No.5 could not have been appointed in place of the petitioner on 7.6.2010 as she has no right to dislodge the petitioner and occupy the post on which the petitioner was working.

9. It is further submitted that the order passed by this Court dated 24.6.2004 cannot be made applicable to the present case as the same does not in any way affect the rights of the petitioner,

inasmuch as, it would not create any right for the respondents / authorities to engage respondent No.5 in place of the petitioner. It is further contended that since the list referred to by this Court in its order dated 26.4.2004 is not maintained as per Rule 25A(2) of the said Rules, the said list has no sanctity.

10. The learned AGP appearing on behalf of respondent Nos. 1 and 6 relies upon the affidavit filed by the competent authority on 12.7.2006. He submits that the contents of paragraph Nos.5 and 8 of the affidavit in reply clearly indicate that the appointment of the petitioner was illegal. The respondents / authorities were bound to comply with the order of this Court dated 24.6.2004 and as such, respondent No.5, who was in the list maintained under Rule 25A, has been appointed.

11. Shri Shelke, learned Advocate appearing on behalf of respondent Nos.2 and 3 supports the impugned order. Shri Kulkarni, learned Advocate appears on behalf of respondent No.4 and submits that the appointment of the petitioner is pursuant to the advertisement and the interview and hence, no fault can be found in the conduct of respondent No.4.

12. Shri Khandagale, learned Advocate for respondent No.5 submits that her name was mentioned in the list and under the

orders of this Court dated 24.6.2004, she was absorbed in service.

13. I have considered the submissions of the learned Advocates.

14. There is no dispute that respondent No.4 published an advertisement in Daily Sarvmat on 8.6.2008. There is also no dispute that a person by name Suresh Walvi, claiming to be Social Welfare Officer, Zilla Parishad, has conducted the interviews.

15. It cannot be ignored that by letter dated 15.4.2008 the District Social Welfare Officer had informed respondent No.4 that the post of a Cook was to fall vacant on 30.4.2008 and as such, the said post had to be filled in with urgency. It was indicated that names of persons enlisted with the Employment Officer, Ahmednagar and the Tribal Development Project Officer, Rajur should be called for and thereafter, the committee of District Social Welfare Officer, Ahmednagar, Employment Officer, Ahmednagar and Tribal Development Project Officer, Rajur should be intimated that they would have to conduct the interviews for selecting the candidates. It appears from the record that no such committee was formed for conducting the interviews.

16. The petitioner was appointed by respondent No.4 vide order dated 15.6.2008. The order indicates that it was purely on

temporary basis that the petitioner was engaged and she would have no right to seek continuance in employment or permanency. Her service could be terminated without notice and without assigning reasons.

17. By recommendation dated 26.6.2009 respondent No.4 proposed confirmation of the petitioner to the District Social Welfare Officer. In response thereto, the said Officer by communication dated 4.7.2009 intimated the fourth respondent that the petitioner cannot be regularized and a Cook can be appointed only from amongst the persons enlisted for the said purpose. It is noteworthy that by order dated 24.6.2004, passed by the learned Division Bench of this Court in Writ Petition No.43 of 2004, the State of Maharashtra and the concerned authorities were directed to follow the list maintained under Rule 25A of the said Rules and absorb the candidates as per the seniority list qua the date of retrenchment.

18. This aspect is clear in the affidavit in reply filed by respondent No.1. It is submitted that all such employees, who were in employment of such schools, who have been retrenched, were maintained in a list under Rule 25A of the said Rules. The purpose for maintaining the list as per the seniority of the employees so retrenched, was in order to absorb them whenever a permanent vacancy arose. This aspect was brought to the notice of the learned

Division Bench and by its order dated 24.6.2004, the authorities were directed to follow the list and absorb the employees who were earlier retrenched. It is in this backdrop that respondent No.5 was absorbed on the post that had fallen vacant by the retirement of Smt. Mankarna Bhagwat Khillari on 30.4.2008.

19. In so far as the contention of the petitioner is concerned, that the said list was not maintained as per Rule 25A(2), this Court would not exercise jurisdiction to go into the said list, which was already a subject matter before the learned Division Bench of this Court in Writ Petition No.43 of 2004.

20. In any case, it does not appear that the petitioner was appointed by conducting interviews through a properly constituted Committee. Despite the directions of the District Welfare Officer, the President of respondent No.4 has issued the appointment order. So also, the said order was for engaging the petitioner purely on temporary basis.

21. The appellate authority, which has delivered the impugned order, has taken into consideration the entire correspondence and the circumstances in which the petitioner was appointed and upon her disengagement, respondent No.5 was absorbed. It appears from the order that respondent No.5 was earlier working in another School

at Kopargaon. She was entered in the list maintained under Rule 25A and when her turn came, the orders for her absorption were issued.

22. As such, I do not find that the impugned order could be termed as being perverse or erroneous. This petition being devoid of merits is, therefore, dismissed. Rule is discharged.

23. The petitioner makes a request that the unpaid wages for a portion of the service rendered by her with respondent No.4, be ordered. Shri Kulkarni submits that respondent No.4 has paid the salary to the petitioner as was admissible in law. Considering this disputed issue, the petitioner could be at liberty to avail of a remedy for recovery of unpaid wages, if any.

(RAVINDRA V. GHUGE, J.)

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