

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

WRIT PETITION NO.2219 OF 2014

Nitin s/o. Prabhakar Patil,
Age 42 Years, Occu: Service,
R/o. Muk-Badhir Niwasi Vidyalaya,
Pimpalgaon Hareshwar,
Tq. Pachora, Dist. Jalgaon

PETITIONER

VERSUS

- 1] The State of Maharashtra,
Through Secretary, Social Justice
and Special Help Department,
Maharashtra State,
Mumbai-32.
(Copy to be served on G.P.
High Court of Bombay)
- 2] The Commissioner Handicapped
Welfare, Maharashtra State, Pune
- 3] The District Social Welfare Officer,
Zilla Parishad, Jalgaon,
Tq. and Dist. Jalgaon
- 4] Maji Vidyarthi Sangha,
Pimpalgaon Hareshwar Sanchalit,
Muk-Badhir Niwasi Vidyalay,
Pimpalgaon Hareshwar, Tq.Pachora,
Dist. Jalgaon
Through its Headmaster.

RESPONDENTS

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Mr. A.D.Pawar, Advocate for the Petitioner
Mr. A.V.Deshmukh, AGP for the Respondent Nos.1 and 2
Respondent Nos.3 and 4 served.

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**CORAM: S.S.SHINDE &
P.R.BORA, JJ.**

Date of Order: 29.01.2016

PER COURT: [Per S.S.Shinde, J.]:

1] By way of filing present Writ Petition under Article 226 of the Constitution of India, petitioner seeks direction to respondents to place him in the pay scale of Rs.4500-7000/- as per the 5th Pay Commission, and Rs. 5200-20200/- Grade Pay 2800/- as per 6th Pay Commission along with arrears and other consequential benefits that might have accrued in favour of petitioner. He also seeks declaration to the effect that, the Government Resolution dated 04.12.2009 is violative of Article 14, 16 and 39 [D] of the Constitution of India, to the extent that, it is not provided the pay scale of trained Hostel Superintendent i.e. Rs.4500-7000/- in the 5th Pay Commission and Rs. 5200-20200 grade pay Rs.2800/- in 6th Pay Commission as per Hostel Superintendent of Social Welfare Department and Tribal Development Department.

2] The learned counsel appearing for the petitioner submits that, in spite of there being a Special School Code for Handicapped, 1997, thereby providing for granting the pay scale of Rs.1200-2040/- to Hostel Superintendent, the initial pay scale of Rs.950-1500/- was

granted to the petitioner. In fact, the petitioner passed qualification of B.A. B.P.Ed., even before appointing him as Hostel Superintendent in respondent No.4 School. In spite of passing said qualification, he is not getting pay scale i.e. Rs.1200-2040/- meant for trained Hostel Superintendent, which is given by the Special School Code for Handicapped, 1997. He further submits that, the order dated 09.04.2013, thereby refusing to grant the pay scale of trained Hostel Superintendent in favour of petitioner, even though the special enactment i.e. the Special School Code for Handicapped, 1997, provided for the pay scale of trained Hostel Superintendent i.e. Rs.1200-2040, is not legally sustainable.

3] It is further submitted that, respondent No.3 submitted a proposal dated 22nd February, 2010, with favourable recommendation for granting pay scale / benefits in favour of the petitioner, however, respondent No.2 has wrongly rejected prayer of the petitioner for revised pay scale. It is submitted that, since the petitioner's services are governed by the Special School Code for Handicapped, 1997, he deserves to be granted pay scale as prayed by him in this Petition. Therefore, relying upon the pleadings in the Petition, annexure

thereto, the provisions of the Special School Code for Handicapped, 1997, the learned counsel appearing for the petitioner submits that, the Petition may be allowed.

4] The respondent Nos.1 and 2 have filed affidavit-in-reply and stated that, the provisions of the Special School Code for Handicapped, 1997, are not applicable in the case of petitioner, inasmuch as the petitioner was appointed in the Year 1995, when the provisions of the Special School Code for Handicapped, 1990 were in force, and the initial pay scale granted to the petitioner was as per the provisions then existing in the said Code, 1990. Therefore, the petitioner cannot seek relief, placing reliance upon the provisions of the Special School Code for Handicapped, 1997. Therefore, relying upon the averments in the affidavit-in-reply, the learned AGP appearing for the respondent – State submits that, the Petition may be rejected.

5] We have given careful consideration to the submissions of the learned counsel appearing for the petitioner, and the learned AGP appearing for the respondent – State. With their able assistance, perused the pleadings in the Petition, annexure thereto, averments in

the affidavit-in-reply, and other documents and the relevant Government Resolutions placed on record, and we are of the opinion that, the petitioner was appointed when the provisions of the Special School Code for Handicapped, 1990 were in force, and therefore, he was placed in the pay scale of Rs.950-1500/- as provided in the said Code. Therefore, at the relevant time, the petitioner's appointment was keeping in view the provisions of the Special School Code for Handicapped, 1990. It further appears that, the appointment of the petitioner came to be approved by the respondent No.3 with effect from 13th February, 1995. Therefore, the petitioner was appointed and the approval to his appointment was granted when the provisions in the Special School Code for Handicapped, 1990 were in force.

6] In that view of the matter, in our considered view, the petitioner is not entitled for any relief as prayed in the Petition, hence Petition stands rejected.

[P.R.BORA]
JUDGE

[S.S.SHINDE]
JUDGE