

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

**CIVIL APPLICATION NO. 11568 OF 2017
IN
WRIT PETITION NO. 1509 OF 2014**

The State of Maharashtra and another .. Applicants

Versus

Maharana Pratap Shikshan Sanstha
Sevapur, Tahat Wadwal (Na). .. Respondent

**WITH
CIVIL APPLICATION NO. 11569 OF 2017
IN
WRIT PETITION NO. 1086 OF 2014**

The State of Maharashtra and another .. Applicants

Versus

Yeshwantrao Chavan Sevabhavi
Bahuuddeshiya Sanstha Latur .. Respondent

**WITH
CIVIL APPLICATION NO. 11577 OF 2017
IN
WRIT PETITION NO. 1603 OF 2014**

The State of Maharashtra and another .. Applicants

Versus

Yeshwantrao Chavan Sevabhavi
Bahuuddeshiya Sanstha Latur .. Respondent

**WITH
CIVIL APPLICATION NO. 11578 OF 2017
IN
WRIT PETITION NO. 1130 OF 2014**

The State of Maharashtra and another .. Applicants

Versus

Yeshwantrao Chavan Sevabhavi

Bahuuddeshiya Sanstha Latur .. Respondent

Shri S. V. Adwant, Special Counsel for Applicants/State in all matters.

Shri V. D. Salunke, Advocate for Respondents in all matters.

**CORAM : S. V. GANGAPURWALA AND
MANGESH S. PATIL, JJ.**

Closed for Orders on : 29.09.2017

Order Pronounced on : 01.11.2017

ORDER (Per S. V. Gangapurwala, J.) :-

. All these civil applications seek modification of the similar orders, as such are dealt with common order.

2. Present civil applications are filed by the original respondent Nos. 1 and 2 of the writ petitions. The applicants seek modification of the interim order passed by this Court and subsequently confirmed while admitting the writ petitions.

3. Present non applicants have filed writ petitions on the count that the non applicants are registered public trust and run handicap schools. According to the original writ petitioners, the State has issued Government Resolution dated 18.08.2004 for the purpose of determining the staffing pattern for the teaching and

non teaching staff in special schools for handicap. As per the staffing pattern provided vide G. R. dated 18.08.2004, the petitioners sought approval to the staff members appointed in the handicap schools. According to the original writ petitioners, these staff members are appointed on the posts admissible as per the G. R. dated 18.08.2004. The proposals are forwarded seeking approval to their appointments, but to no avail.

4. This Court initially on 18th March, 2014 had granted *ad-interim* relief in terms of prayer clause "B" and also directed the Principal Secretary or Secretary, Social Welfare and Special Assistance Department, Maharashtra State, Mantralaya, Mumbai to file affidavit. Subsequently, it appears that, the writ petitions are admitted and the interim order is continued till the final disposal of the writ petitions.

5. It also appears that, subsequently, the approval is granted to the appointments made by non applicants/original writ petitioners.

6. Mr. Adwant, the learned counsel for applicants submits that, pursuant to the orders of this Court provisional approval was granted to the employees appointed by original writ petitioners/non applicant institutions, however, there is development in the matter. The original respondent No. 3 in the writ petitions, in exercise of his powers re-visited his order

granting provisional approval. The institutions have filled in more posts than sanctioned. The Government has not sanctioned the posts as referable to G. R. dated 18.08.2004 relied by applicants. Unless and until the posts are sanctioned, institutions are not entitled to fill the posts. In fact, in some matters posts are surplus. The institutions have filled in the posts without following the substantive and procedural due process. The learned counsel submits that, the appointments have been made by the institutions in contravention of statutory and mandatory provisions. The said appointments are illegal and contrary to the orders passed by the Principal Seat at Bombay in P. I. L. No. 188 of 2010. The learned counsel further submits that, the institutions have violated the rules and instructions, more particularly Rule 43, 63 and 64 of the Special School Code, 1997. The appointments are made without publishing an advertisement. As the appointments are contrary to the statutory and mandatory provisions, the same should not inure to the benefit of the institutions. The interim order is obtained by the institutions by misrepresentation of facts and law and this Court can correct its own record. The learned counsel relies on the judgment of the Apex Court in a case of M. Thomas Vs. State of Kerala and another reported in (2000) 1 SCC 666.

In view of the aforesaid, this Court may modify the interim order passed in favour of non applicants/original writ petitioners

and recall the same.

7. Mr. Salunke, the learned counsel for non applicants/original writ petitioners submits that, the posts are made admissible and staffing pattern is fixed as per G. R. dated 18.08.2004. The said government resolution provides for staffing pattern of teaching and non teaching staff of the schools for handicapped. The appointments made are to the post admissible as per G. R. dated 18.08.2004. In fact, same are sanctioned posts as per G. R. dated 18.08.2004. According to the learned counsel in numerous matters interim orders are passed protecting the appointments made to the post as admissible in G. R. dated 18.08.2004.

8. The learned counsel further submits that, this Court initially asked the Principal Secretary to file the affidavit and by a detailed order granted *ad-interim* relief. After the affidavit was filed by the Secretary, this Court upon hearing the parties confirmed the *ad-interim* order passed by this Court and admitted the writ petitions. The interim relief was granted after hearing the parties and after receiving the affidavit. By change of lawyer, present applications would not be tenable. The learned counsel relies on the judgment of the Apex Court in a case of Tamil Nadu Electricity Board Vs. N. Raju Reddiar reported in (1997) 9 SCC 736.

9. The learned counsel submits that, all appointments are made in accordance with law after following due procedure.

10. It appears that, this Court on 18.03.2014 had considered the arguments and had passed interim order considering the order passed at the Principal Seat at Bombay and by a detailed order granted *ad-interim* relief in terms of prayer clause "B". After the affidavit was filed, this Court on 25th August, 2014 granted Rule and interim orders passed earlier were directed to be continued pending the hearing and final disposal of writ petitions.

11. It would appear that, in large number of matters involving same issues, interim orders are passed directing the respondents to grant provisional approval to the employees appointed by the handicap schools, if, the same are on the post admissible as per G. R. dated 18.08.2004. The posts are made admissible as per G. R. dated 18.08.2004. As such, if appointments are made on the post as are admissible as per G. R. dated 18.08.2004, the applicants/respondents in writ petitions are directed to grant provisional approval.

12. When this Court passed interim order directing the applicants/respondents in writ petitions to grant provisional approval to the appointments made by original petitioners/present non applicants, the same is on the terms that

the appointments are made on the posts as admissible as per G. R. dated 18.08.2004. The institutions in the writ petitions have represented that, those appointments are on the posts as admissible under G. R. dated 18.08.2004.

13. Present applicants/State cannot refuse them approval pursuant to the orders passed by this Court on the count that the said posts are not sanctioned by the Government. In fact, said posts are admissible as per G. R. dated 18.08.2004. The writ petitions are admitted and pending final hearing. In the light of that, an interim arrangement is made to grant provisional approval to the employees appointed by the institutions on the posts as are admissible as per G. R. dated 18.08.2004.

14. As such, it is made clear that, when this Court had directed the applicants/original respondents in writ petitions to grant provisional approval to the appointments made by the institutions, the same is on the premise that, the appointments are on the posts admissible as per G. R. dated 18.08.2004.

15. In view of that interim order directing to grant provisional approval to the employees of the writ petitioner/institutions is to the extent that the provisional approval is to be granted to the employees appointed on the post as admissible as per G. R. dated 18.08.2004.

16. Save and except the aforesaid observation, we do not think any modification is required in the order passed by this Court as sought to be modified/reviewed under present civil applications. The civil applications accordingly are disposed of. No costs.

[MANGESH S. PATIL, J.]

[S. V. GANGAPURWALA, J.]

bsb/Oct. 17