

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

WRIT PETITION NO. 6172 OF 2007

1. Tukaram Narayan Ingale,
Age : 40 years, Occu.: Nil,
Tal. & Dist. Hingoli,
2. Tukaram Laxmanrao Pitale,
Age : 39 years, Occu.: Nil,
R/o. Rudrawadi,
Tal. Ahmedpur, Dist. Latur
3. Balaji Narayanrao Kalvale,
Age : 40 years, Occu.: Nil,
R/o.: Hadolti,
Tal. Ahmedpur, Dist. Latur

.. PETITIONERS

VERSUS

1. The State of Maharashtra,
Through its Secretary,
Tribal Development Department,
Mantralaya,
Mumbai 400 032
2. The Commissioner,
Tribal Development Department,
Nasik
3. The Additional Commissioner,
Tribal Development Department,
Nasik
4. The Project Officer,
Integrated Tribal Development Project,
Kinwat,
Dist. Nanded
5. Adivasi Magas Vargiya Shikshan
Prasarak Mandal, Kalamnuri
Through its President,
Amrutrao Shankarrao bothikar,
R/o. Bothi,
Tal. Kalamnuri, Dist. Hingoli

6. The Commissioner,
Maharashtra State Bureau of
Examination,
Pune 411 001

7. Shri Sadguru Datta Dharmik
Evam Paramartik Trust,
Indore,
Through Head Master,
Ashram School,
Sajanpuri,
Taluka Khamgaon,
District Buldhana

.. RESPONDENTS

(Respondent No.7 is added as per leave granted by
this Court dated 03.07.2012)

WITH
CIVIL APPLICATION NO. 12771 OF 2009
IN
WRIT PETITION NO. 6172 OF 2007

1. Tukaram Narayan Ingale,
Age : 40 years, Occu.: Nil,
R/o.: Lohara, Tal. & Dist. Hingoli

2. Tukaram Laxmanrao Pitale,
Age : 39 years, Occu.: Nil,
R/o. Rudrawadi,
Tal. Kalamnuri, Dist. Hingoli

3. Balaji Narayanrao Kalvale,
Age : 40 years, Occu.: Nil,
R/o.: Hadolti,
Tal. Ahmedpur, Dist. Latur

.. APPLICANTS

VERSUS

1. The State of Maharashtra,
Through its Secretary,
Tribal Development Department,
Mantralaya,
Mumbai 400 032

2. The Commissioner,
Tribal Development Department,
Nasik
3. The Additional Commissioner,
Tribal Development Department,
Nasik
4. The Project Officer,
Integrated Tribal Development Project,
Kinwat,
Dist. Nanded
5. Adivasi Magas Vargiya Shikshan
Prasarak Mandal, Kalamnuri
Through its President,
Amrutrao Shankarrao Bothikar,
Age : 47 years, Occu.: Agriculture,
R/o. Bothi,
Tal. Kalamnuri, Dist. Hingoli
6. The Commissioner,
Maharashtra State Bureau of
Examination,
Pune 411 001
7. Shri Sadguru Datta Dharmik
Evam Paramartik Trust,
Indore,
Through Head Master,
Ashram School,
Sajanpuri,
Taluka Khamgaon,
District Buldhana

.. RESPONDENTS

Mr. U.R. Awate, Advocate holding for Mr.S.B. Talekar,
Advocate for the petitioners/applicants
Mr. S.N. Morampalle, A.G.P. for the respondents/State
Mr. A.R. Nikam, Advocate for respondent No.6
Mr. V.D. Salunke, Advocate for respondent No.7

**CORAM : SUNIL P. DESHMUKH AND
SANGITRAO S. PATIL, JJ.**

DATE : 22nd November, 2017

ORAL JUDGMENT (PER : SUNIL P. DESHMUKH, J.):

Briefly referred to, petitioners had been appointed as teachers in the Ashram School run by respondent No.5 in the year 1994-95. They were enrolled to postal D.Ed. Course under the orders passed by this Court on 20th December, 2001 in W.P.No.3701 of 2001 and companion writ petitions. They were accordingly admitted to said course in 2001/2002. They completed said course by June, 2004.

2. Thereafter recognition of said school had been cancelled under orders of respondent No.2 - the Commissioner, Tribal Development, dated 11th March, 2005. As a fallout of the same, an order came to be passed by respondent No.2 on 17th December, 2005, directing cancellation of appointments of as many as five employees of the school run by respondent No.5 including present petitioners.

3. Vide order/communication dated 19th November, 2005 and 23rd December, 2005, admissions of petitioners to postal D.Ed. Course and their performances in the

same had been purportedly cancelled by respondent No. 4 - the Project Officer, Integrated Tribal Development Department.

4. Learned counsel for petitioners submits that persons whose names were included in order dated 17th December, 2005 of respondent No.2 namely, Mr. J.N. Jadhav, Mr. Y.K. Davale and a similarly situated person, namely, N.N. Nayak had preferred writ petition No. 7377 of 2007 wherein they had prayed for direction to respondents therein to absorb petitioners on their respective posts either in any, existing Ashram School, or a newly established school. Division Bench of this Court, vide judgment and order dated 9th September, 2009, disposed of the said writ petition, by granting the relief prayed for.

5. In present matter also, it is the same order dated 11th March, 2005 under which the school of respondent No.5 had been de-recognized and protection had been considered and extended to the employees therein by this Court. Further, this Court, under order dated 1st September, 2009, had stayed cancellation of admission and performance of present

petitioners in D.Ed. course and had directed petitioners to make representations, further directing respondent No.2 to consider the cases of petitioners for absorption.

6. Petitioners, accordingly had on 22.09.2009 made common representations to respondent No.2, requesting to absorb them as trained teachers. However, respondent No.2 under order dated 22th October, 2009 rejected representations submitted by petitioners, which has been placed on record along with C.A.No.12771 of 2009.

7. Perusal of judgment in aforesaid writ petition No.7377 of 2007 shows that majority of facts were similar in nature as are involved in the present case. This Court, in said matter, had observed that there had been resolutions passed by the Government on 6th December, 2005 and 25th September, 2006, by which various employees working in Ashram Schools in the State of Maharashtra, who do not possess necessary qualification, were directed to be regularized from the date of their appointment. It had been contended by petitioners therein that refusal to absorb them on the

ground that they were not qualified and the appointments were not made as per prescribed procedure of law, tantamount to discrimination and violative of Article 14 of the Constitution of India. It appears while deciding said writ petition, following background had been considered. The Court had then observed and directed as follows :-

“ 4. It is specific contention of the petitioners that vide Government Resolution dated 06th December, 2005 and 25th September, 2006, various employees working in Ashram School in the State of Maharashtra who do not possess necessary qualification, were directed to be regularized from the date of their appointment. It is the specific contention of the petitioners that, when the services of so many employees have been regularized by the State Government, the act of the respondent No. 2 in refusing to grant absorption of the petitioners on the ground that they were not qualified and the appointments were not made as per the prescribed procedure of law, amounts to giving discriminatory treatment and thus violates Article 14 of the Constitution of India.

5. In the reply filed on behalf of respondents, it is stated that, the withdrawal of the recognition of the school in which the petitioners were working was on 11th March, 2005. It is specifically submitted that the Government Resolution which is issued subsequently i. e. on 25th September, 2006 could not made applicable to the petitioners in as much as on the date on which the said Government Resolution was issued, the petitioners were no more in service and that Government Resolution is

only applicable to the employees who were in service on that date. We find that the explanation given by the Government, is not correct in law. It can be seen that in the order of derecognition itself the respondent No. 2 has specifically directed that, all employees working in the school run by respondent No. 5 should be absorbed in some other Government or government aided school. It is not in dispute that, services of such of the employees who were not possessing necessary qualification, who were appointed during the period when the petitioners were appointed have been regularized. When the services of similarly circumstanced persons were regularized by the State Government, the petitioners cannot be denied the benefit only on the ground that on the date on which the Government Resolutions were issued the petitioners were not in service. As already stated hereinabove, the order dated 11th March, 2005, which derecognizes respondent No. 5, protects service of petitioners and directs their absorption in some other Government or aided private school. In that view of the matter, we find that stand taken by the Government is discriminatory and as such violation of Article 14 of the Constitution of India. When the services of similarly circumstanced persons have been regularized, who even according to the respondents were not possessing necessary qualification, we do not understand, as to why the petitioners were not absorbed only on the ground that they do not possess necessary qualification, when specifically in the order dated 11th March, 2005, the services of petitioners were directed to be absorbed in some other Government or aided Ashram School.

6. *We therefore, direct the respondents No. 2 to 4 to absorb the petitioners in any existing or newly established Government or aided private Ashram school on the same terms and conditions. It is further*

directed that services of the petitioners will be regularized from the date on which the petitioners were appointed on the same terms and condition as stipulated in Government Resolution dated 06th December, 2005 and 25th September, 2006.

7. *However, it is made clear that, petitioners would not be entitled to claim any back wages. The orders of absorption shall be issued by the respondent No. 2 to 4 within a period of three months from today. On the petitioners being absorbed they would be at liberty to make representation to the respondent No. 2 to 4 for grant of continuity. Said representation would be considered in accordance with law and the aforesaid Government Resolutions.”*

8. The learned counsel for petitioners, during the course of hearing, has placed on record an order dated 7th December, 2010 passed by the Division Bench of this Court in Writ Petition No. 610 of 2006 and companion writ petitions, setting aside the order passed on 31st December, 2005 by respondent therein cancelling admission and performance of petitioners therein in D.Ed. course.

9. Division Bench, while deciding writ petition No. 610 of 2006, on 7th December, 2010, had observed thus -

“ 20. The facts in the present cases are almost identical with the facts in the said case. The petitioners herein were admitted to the course, there was an

ample opportunity with the respondents to scrutinize their documents. Not only that, the petitioners were permitted to prosecute their studies and thereafter also allowed to appear for the examination. Not only that, but the petitioners have also successfully cleared their examinations and obtained the Diploma in Education. It is thus clear that once the appellants were allowed to appear for the examination and results were declared, there was no authority with the respondents to cancel the admission subsequently, for any infirmity which should have been looked into before giving the petitioners permission to appear for the examination.

Neither the learned AGP nor the counsel appearing for other respondents are in a position to point out any provision of law which may permit the Government to cancel the admission, once the petitioners are permitted to undergo the course and appear for the examination.

21. *No doubt that fraud vitiates everything as it goes to the root of the matter and affects the very solemnity of the proceedings. Had the respondents been in a position to point out any fraudulent activities at the behest of the petitioners, then, things would have been otherwise. As we have held hereinabvoe, the respondents have utterly failed to substantiate the allegations regarding fraud. In that view of the matter, we find that the present case is squarely covered by the judgment of the Apex Court, cited supra. ”*

10. Perusal of order dated 22nd October, 2009 shows that petitioners herein had not been considered to be confirmed employees, they are not eligible for benefits of regular employment and as such, would not be qualified for absorption, also referring to that, since their admission and performance in D.Ed. course have been cancelled and since the matter is pending before the High Court, petitioners cannot be considered as trained employees.

11. Although aforesaid are reasons which have weighed with the commissioner while rejecting the representations made, yet the respondents have not been in a position to show whether the observations can be sustained in the face of interim order passed by this court, particularly whereunder there had been interim relief granted staying operation of order cancelling admission of petitioners to D.Ed. Courses. Perusal of the reply by the respondents also shows that as a matter of fact the petitioners' appointments were being approved from time to time till 2002. It is not disputed that present petitioners are employees of the same institution as that of employees / petitioners in writ petition No.7377 of 2007. As a matter of fact order dated 17th December, 2005 comprises names of two petitioners in writ petition No. 7377 of 2007. The respondents are also not in the position to show eligibility and qualifications possessed by the petitioners can in any way be treated differently from the other employees of the institution viz., petitioners in writ petition No. 7377 of 2007. In the circumstances, the petitioners' case would be required to be measured by the same scale and yardstick in the absence of any distinguishing factor.

12. It has further been informed that pursuant to the order passed in Writ Petition No. 7377 of 2007, petitioners therein have been absorbed in other schools.

13. We, under the circumstances, do not consider that the rejection of representations by petitioners for absorption under order dated 22nd October, 2009, is compatible with emerging position and as such, is untenable. In the facts and circumstances of present case, petitioners will have to be meted out with a treatment on par with the treatment given to the petitioners in Writ Petition No. 7377 of 2007 for all the factual aspects and as such, deserve to be treated similarly in law and facts. We, therefore, deem it appropriate to allow the writ petition.

14. Mr. V.D. Salunke, learned counsel for respondent No.7, however, states that some of the employees of school run by respondent No. 5 have been absorbed since the posts were available pursuant to the directions of the school. Rest of the posts have been already filled in during recruitment process from time to time and as such, it may not be possible for respondent No.7 to accommodate petitioners.

15. Learned counsel for petitioners, on instructions, fairly states that petitioners are not intending to restrict their absorption in respondent No.7 school, however, point out that quite a few of employees of the school run by respondent No.5 have been absorbed in said school subsequently by respondent No.5.

16. In the circumstances, we follow same course as has been adopted in order dated 7th September, 2009 passed in Writ Petition No. 7377 of 2007 and pass following order :-

O R D E R

(i) We direct respondents No. 2 to 4 to absorb the petitioners in any existing or newly established Government or aided private Ashram school on the same terms and conditions as referred to in judgment and order in W.P.No. 7377 of 2007. It is further directed that services of the petitioners will be regularized from the date on which they were appointed on the same terms and condition as stipulated in Government Resolution dated 06th December, 2005 and 25th September, 2006.

(ii) However, it is made clear that, petitioners would not be entitled to claim any back wages. The orders of absorption shall be issued by the respondent No. 2 to 4 as expeditiously as possible preferably within a period of six months from today. On the petitioners being absorbed they would be at liberty to make representations to respondent No. 2 to 4 for grant of continuity. Said representation would be considered in accordance with law and aforesaid Government Resolutions.

(iii) Rule is made absolute in aforesaid terms. There will be no order as to costs.

(iv) Civil Application stands disposed of.

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

Sd/-
[**SUNIL P. DESHMUKH**]
JUDGE