

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.11206 OF 2014

Solapur Zilla General Kamgar Sangh ..Petitioner

versus

State of Maharashtra & Ors. ..Respondent

Mr. Neel Girish Helekar for the Petitioners.

Mr. Manish Pabale, AGP for the Respondent Nos.1 and 2.

Mr. S.G.Surana for the Respondent No.3.

**CORAM : A.S. OKA &
SMT.ANUJA PRABHUDESSAI, JJ**

DATED : 10TH MARCH 2017

ORAL JUDGMENT (PER A.S. OKA, J)

1. Rule. The learned AGP waives service for the first and second Respondents. The learned Counsel appearing for the third Respondent waives service. Considering the narrow controversy involved in the petition, the same is forthwith taken up for final disposal.

2. There are only two substantive reliefs sought in this petition under Article 226 of the Constitution of India, in terms of prayer clauses (a) and (b) which read thus:

“a) that this Honourable Court may be pleased to issue a writ of mandamus or writ in the nature of mandamus or any

other suitable direction or order directing the Respondent No.3 to pass a resolution approving the service rules, if not already passed and for a further direction to submit it to the Respondent No.2 for its post facto sanction.

b) that this Honourable Court may be pleased to issue a writ of mandamus or writ in the nature of mandamus or any other suitable direction or order directing to Respondent No.2 to consider and sanction the service rules at the earliest.”

3. The Pandharpur Temples Act, 1973 (for short “the Temples Act”) was enacted by the State Legislature in relation to the famous and historic temple of Vitthal and Rukmini at Pandharpur in District Solapur. As per the provisions of the Temples Act, the third Respondent Committee has been established under Section 21 thereof. The issue raised by way of this petition concerns finalization of the Service Rules of the employees on the establishment of the third Respondent.

4. Our attention is invited to Section 38 of the Temples Act which reads thus:-Approximately Rs. 18,34,

“38. (1) The Executive Officer shall draw his pay and allowances from the consolidated funds of the State and shall be the servant of the State Government and his

conditions of service shall be such as may be determined by the State Government.

(2) The other Officers, servants and other persons appointed under this Act shall be Officers and servants of the Committee and their conditions of service including pay and allowances shall be such as may be determined by the Committee with the approval of the Charity Commissioner and their pay and allowances shall be paid from the temples fund.

(3) There shall be paid every year out of the temples fund to the State Government such amount as the State Government may determine on account of pay, pension, leave and other allowances of the Executive Officer.”

5. Our attention is invited to the various documents annexed to the petition. There is a letter dated 25th October, 2013 addressed by the learned Charity Commissioner of Maharashtra State to the Secretary of Solapur Zilla Kamgar Sangh, in which there is a reference to a Resolution dated 3rd December, 1996 passed by the third Respondent for granting approval to the Service Rules as well as Public Provident Fund Rules. It is further stated that as far as the conditions of the service of the employees is concerned, it is the State Government which has the power to approve the same and therefore, a copy of the Resolution

passed by the third Respondent and the Service Rules of the year 1999 were being forwarded to the State Government. There is a letter dated 18th June, 1997 addressed by the learned Charity Commissioner of Maharashtra State to the Secretary of the Law and Judiciary Department of the State of Maharashtra in which it is mentioned that Service Rules of the Employees of the third Respondent will have to be approved under sub-Section (2) of Section 38 of the Temples Act by the State Government. The learned Counsel appearing for the third Respondent invited our attention to the letter dated 13th October, 2015 addressed by the Chief Executive Officer of the third Respondent to the Desk Officer of the Law and Judiciary Department of the State Government. The said letter is by way of reply to the letter dated 30th June, 2015 addressed by the Law and Judiciary Department. Against point no.1, it is mentioned in the said letter that the Service Rules of 2015 along with staffing pattern of the third Respondent has been submitted to the State Government for approval. A request was made by the letter dated 13th October, 2015 to the State Government to grant approval to the staffing pattern and to the Service Rules of the year 2015. By a Government Resolution dated 29th November, 2016, the State Government approved the staffing pattern of the third Respondent. Clause 9 of the Government Resolution provides that to the posts approved under the staffing pattern, the Rules prepared by the third Respondent with the approval of the State Government will apply.

The proposal submitted by the third Respondent was for grant of approval to the staffing pattern as well as the approval to the Service Rules. By the said Government Resolution dated 29th November, 2016, the State Government has only approved the staffing pattern. Clause (1) of the said Government Resolution is that the third Respondent shall frame Rules as regards the posts covered by the staffing pattern approved by the State Government laying down educational qualifications, powers and duties of each post, and while making recruitment, the Service Rules shall be meticulously followed.

6. Under Sub-Section (1) of Section 37 of the Temples Act, the Chief Executive Officer is required to prepare a schedule setting forth the duties, designations and grades of the Officers and employees who may in his opinion constitute the establishment of the third respondent and embody his proposals with regard to the salaries and allowances payable to them. It is provided that such schedule and the list of persons who may perform the services in rotation shall come into force on approval of the third Respondent Committee. As stated earlier, now there is an approval granted by the State Government to the staffing pattern, though strictly speaking it was not necessary for the Committee to seek the said approval.

7. Under Sub-Section (1) of Section 38, it is provided that the

Executive Officer of the third Respondent shall draw his pay and allowances from the consolidated fund of the State and shall be a servant of the State Government. Therefore, it provided that his conditions of service shall be such as may be determined by the State Government.

8. Sub-section (2) of Section 38 provides that the other Officers, Servants and other persons appointed under the Temples Act shall be the Officers and Servants of the Committee and their conditions of service including pay and allowances shall be as may be determined by the Committee with the approval of the learned Charity Commissioner. Their pay and allowances are payable from the Temples fund.

9. Thus, in the light of sub-Section (2) of Section 38, the Service Rules drafted by the third Respondent will have to be approved by the learned Charity Commissioner of the State Government and not by the State Government.

10. We, therefore, propose to direct the third Respondent to forward the Service Rules of the year 2015 to the learned Charity Commissioner of the State of Maharashtra for his approval. If the Service Rules do not include pay and allowances of members of the staff of the third Respondent as per the approved staffing pattern of the State

Government, a proposal shall be also submitted by the third Respondent to the learned Charity Commissioner for approval of the pay and allowances of the Officers, Servants and other persons appointed by the third Respondent.

11. Considering the fact that for a long time, the Service Rules of the third Respondent have not been approved, we propose to request the learned Charity Commissioner to take a decision on the proposal in a time bound schedule.

12. Accordingly, we dispose of the petition by passing following order:-

- i) We direct the third Respondent to forward the Service Rules of the year 2015 to the learned Charity Commissioner of the State of Maharashtra for his approval within a period of two weeks from the date on which this Judgment and Order is uploaded;
- ii) If the Services Rules do not include pay and allowances payable to the Officers, Servants and the other persons appointed under the Temples Act, the proposal containing details of pay and allowances payable to them shall also be forwarded along with the Service Rules to the learned Charity Commissioner for his approval;
- iii) We request the learned Charity Commissioner of the State of

Maharashtra to look into the Service Rules as well as the schedule of Pay and Allowances forwarded by the third Respondent, and to take appropriate decision on the prayer made by the third Respondent for granting approval as expeditiously as possible and preferably within a period of three months from the date on which the proposal is submitted by the third Respondent in his Office;

- iv) The learned Charity Commissioner of the State of Maharashtra shall act upon an authenticated copy of this Judgment and Order.
- v) Rule is made partly absolute in above terms.

(SMT. ANUJA PRABHUDESSAI, J)

(A.S. OKA, J)