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

WRIT PETITION NO.3215 OF 2000

Smt. Kalpana Sadashiv Misar,
Age: 35 years, Occu: Nil,
R/o. Karmad,
Tq. & Dist. Aurangabad ..PETITIONER

VERSUS

1. The State of Maharashtra,
through the Secretary,
Social Welfare Department,
Mantralaya, Mumbai
2. Lok Shikshan Prasarak Mandal,
115, Mahatma Gandhi Nagar,
Behind Fire Bridge, Station Road,
Aurangabad,
through it's Secretary
3. The Deputy Director of Social
Welfare Department (Handicapped
and Crippled person Rehabilitation),
Directorate of M.S.
Pune Region, Pune-1 ..RESPONDENTS

Mr Pradeep Deshmukh, Advocate h/f Mr A. D. Gadekar,
Advocate for petitioner;
Mr S. W. Munde, A.G.P. for respondent Nos.1 & 3;
Mr A. S. Deshpande, Advocate for respondent No.2

**CORAM : PRASANNA B. VARALE &
S.M. GAVHANE, JJ.**

DATE : 12th JUNE, 2018

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JUDGMENT : (PER : PRASANNA B. VARALE, J.)

Heard Mr Deshmukh learned Counsel appearing for petitioner, learned A.G.P. for respondent Nos.1 and 3 and Mr Deshpande, learned Counsel appearing for respondent No.2.

2. Mr Deshmukh, learned Counsel for petitioner submitted that the petitioner was appointed as a Special Teacher in the school run by respondent No.2 Society - Lok Shikshan Prasarak Mandal in the year 1995. The petitioner's services stood continued for the next academic years i.e. in the year 1996 and 1997. It is further submitted that respondent No.3 - Deputy Director of Social welfare approved the services of the petitioner. The petitioner was working with respondent No.2 - Institute in the school, namely, Anand Niwasi Mukbadhir Vidyalaya, Bhalgaon, till the year 1997, but received no salary for this period and by way of oral termination, the services of the petitioner came to be terminated without assigning any reason.

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3. Being aggrieved by the oral termination, the petitioner had approached the Deputy Director of Social Welfare Department, by way of presenting the appeal. The appeal was pending before the said authority and for considerable time, there was no decision in the appeal. As such, the petitioner left with no choice but to approach before this Court by filing Writ Petition No.3103 of 1999. The said writ petition filed by the petitioner was disposed of with directions to respondent No.3 to decide the appeal within stipulated period. The appeal was decided by respondent NO.3 on 13th August, 1999.

4. Mr Deshmukh, learned Counsel for the petitioner submitted that respondent No.3, without considering the facts in its proper perspective, only on the ground that the petitioner failed to comply with the requisite condition of prescribed qualification, disposed of the appeal, thereby causing serious prejudice to the petitioner. He further submitted that the petitioner was working

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without any break with respondent No.2 and she was ready to acquire requisite qualification but respondent No.2, without giving any opportunity to her, orally terminated her services. It was then submitted by Mr Deshmukh, learned Counsel that respondent No.3, on the ground that the Institute failed to obtain registration certificate under the Act, namely, the Persons with Disabilities Act, 1995 (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (for short "Act of 1995"), disposed of the appeal. He further submitted that respondent No.3 ought to have considered that obtaining the registration certificate was duty of respondent No.2 – Institute and for the fault of respondent No.2 – Institute, the services of the petitioner could not have been terminated. He further submitted that respondent No.2 was running school till filing of the petition, as such, he prayed for allowing the petition in terms of the prayers in the petition.

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5. Learned A.G.P. supported the order of respondent No.3 – Deputy Director, impugned in the petition. Learned A.G.P. submitted that respondent No.2 – Institute failed to obtain administrative approval for the appointment of the petitioner and respondent NO.2 also failed to obtain registration certificate, which is pre-requisite as per the Act of 1995. As such, no error is committed by respondent No.3 in disposing the appeal, by order dated 13th August, 1999.

6. Mr Deshpande, learned Counsel appearing for respondent No.2 vehemently opposed the petition. He submitted that the facts stated in the petition and submitted before this Court are not in consonance with the record. He further submitted that the petitioner was never appointed by following due procedure but she submitted an application to the Institute.

7. Our attention is invited to the application submitted by the petitioner, which is

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placed on record along with affidavit-in-reply. Learned Counsel Mr Deshpande further submitted that as the application filed by the petitioner, seeking an opportunity to work in the Institute as an Honorary Teacher to get experience, she was appointed. Our attention is also invited to the endorsement on the application by the President of the Society. The endorsement clearly reads that the petitioner be given an opportunity subject to discussion with the Social Welfare Officer and it is made further clear that Institute can offer only an honorarium to the petitioner.

8. Rejoinder affidavit is also filed by the petitioner. The petitioner, by way of rejoinder affidavit, placing reliance on the certificate, issued by a private institute also made claim that the her appointment was made by following due procedure and appointment was approved.

9. On the rival contentions raised by the learned Counsel for the respective parties, we have

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gone through the material placed on record, the appointment letters issued to the petitioner for the year 1995-1996 and 1996-1997, which clearly show that these appointments were clearly on temporary basis. The petitioner was unable to place on record any material to show that her appointment was made by following due procedure. On the contrary, reply affidavit filed by respondent No.2 – Institute shows that the petitioner submitted an application to the Secretary of the Society on 25th June, 1995. It is stated in the application by the petitioner that she is not possessing any diploma or has not obtained any training so as to teach the students of special category, more particularly deaf and dumb. It is further stated in the application that, if opportunity is granted to the petitioner, she will be in a position to teach the students and experience gained by her, would help her in future. It is also stated that the petitioner was not requesting for any fixed pay or salary but she was ready to work with the Institute as a teacher on an honorarium basis. The

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application is signed by the petitioner.

10. The petitioner then by filing rejoinder affidavit, has not disputed about submitting the application to the Institute seeking her appointment on honorarium basis and it is also not disputed by the petitioner that she has stated in the application that she was not possessing any diploma or has not undergone a training so as to teach to the special students. In view of this fact, the claim of the petitioner that she was possessing requisite qualification, clearly fails.

11. The other submission of the petitioner is that her appointment was approved is, also not supported by any approval order granted by the competent authority. The appointment orders issued to the petitioner are clearly on temporary basis. Though the petitioner wanted to place reliance on the certificate, perusal of the said certificate, issued by the private institute, who had conducted training for certain State level dance training

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program in the year 1996 and this certificate is hardly of any assistance to the petitioner.

12. The perusal of the order passed by the respondent No.3 - Deputy Director of the Social Welfare Department shows that he found that the petitioner was not possessing requisite qualification, appointment of the petitioner by the Institute itself was bad in law. The Deputy Director, in his order observed that the Institute failed to obtain requisite certificate from the competent authority to run the special school. The Deputy Director further observed that an opportunity was granted to respondent No.2 - Institute to comply the requisite condition for obtaining registration certificate and inspite of such opportunity, the institute failed to comply with the requisite criteria and hearing was taken for grant of registration certificate and Institute failed to comply with the requisite criteria, prayer of it to grant registration certificate was rejected. The Deputy Director further observed

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that as respondent No.2 was not possessing requisite certificate, the school which was being run by the Institute itself was legally non-existent and on this ground, the prayer of the petitioner in the appeal was also rejected and appeal was disposed of.

13. In view of above referred facts, we are of the opinion that the petition is thoroughly meritless. No error is committed by respondent No.3. The claim of the petitioner itself is unsustainable. Thus, the petition, being thoroughly meritless, deserves to be dismissed and same is dismissed accordingly. Rule is discharged.

(S. M. GAVHANE)
JUDGE

(PRASANNA B. VARALE)
JUDGE