

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

WRIT PETITION NO.1630 OF 2008

Gajanan Vishwanath Nawalkar,
Age: 31 years, Occ : Service,
R/o. Peth, Amrapurkar Galli,
Degloor, Tq. Degloor,
Dist. Nanded.

PETITIONER

VERSUS

1. The State of Maharashtra
Through its Principal Secretary,
Social Justice and Special Assistance
Division, Mantralaya, Mumbai.
2. The Commissioner,
Welfare for Handicap Person,
Maharashtra State, Pune.
3. The Social Welfare Officer,
Class-A, Zilla Parishad,
Nanded.
4. Prerana Shikshan Prasarak
Mandal, Degloor, Tq.Degloor,
Dist. Nanded.
5. The Headmaster,
Residential Dumb and Deaf
Vidyalaya, Degloor,
Tq. Degloor, Dist. Nanded.
6. The Administrator,
the Social Welfare Officer,
Zilla Parishad, Nanded.

RESPONDENTS

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Mr.V.Y.Patil, Advocate for the petitioner
Mr.S.J.Salgare, AGP for the Respondent Nos.1
and 2/State
Mr.R.K.Ingole, Advocate for respondent no.3.
Respondent no.6 served.
Notice of respondent nos.4 and 5, as per
order dtd.06.02.2018, is awaited.

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**CORAM: S.S.SHINDE &
S.M.GAVHANE, JJ.**

Reserved on : 24.02.2018
Pronounced on : 09.03.2018

JUDGMENT: (Per S.S.Shinde, J.):

1] Heard. Rule. Rule made returnable
forthwith, and heard finally with the consent
of the parties.

2] This Petition is filed with the
following prayer:

*B) Issue writ of certiorari or any
other appropriate writ, order or
directions, in the like nature
thereto quash and set aside the
impugned letter / order dated*

28.01.2008 passed by the Respondent No.2 Commissioner.

- C) Issue writ of mandamus or any other appropriate writ, order or directions in the like nature thereto direct the Respondents to grant approval to the post of petitioner as Special teacher who is working in Respondent No.5 School since from 2001 till today.*

3] It is the case of the petitioner that the petitioner belongs to 'Dhangar Caste', which is recognized as VJNT. The petitioner is having qualification of H.S.C., and he has also passed the D.Ed. in the month of March, 2001, in First Class. The petitioner has also undergone the training, and the Rehabilitation Council of India has issued the registration certificate to the petitioner as a Special Educator [Hearing Impaired] in August, 2001. On 04.05.2001, respondent nos.4 and 5 have issued an

advertisement in the newspaper for the post of Special Teacher. Therefore, the petitioner has applied for the said post and the Selection Committee constituted by respondent nos. 4 and 5 have selected the petitioner and appointed the petitioner as Special Teacher. The petitioner is working with respondent no.5 since the date of his initial appointment i.e. from 2001. At present, the petitioner is in service with respondent no.5. The petitioner is having good experience of teaching of Dumb and Deaf students. There are 10 sanctioned posts as per roster, and 9 posts are to be filled up by respondent nos. 4 and 5 and on one vacant post on which the petitioner has given appointment as a Special Teacher. On 28.01.2008, respondent no.2, without considering the service of the petitioner and without considering documentary evidence produced before him, has rejected the

proposal, seeking approval to the appointment of the petitioner as Special Teacher. The petitioner has made various representations to the respondent authorities and prayed for grant of approval to his post, but all the efforts are in vain.

4] Learned counsel appearing for the petitioner submits that the petitioner belongs to 'Dhangar' caste, which is included in VJNT category. In view of the advertisement, the petitioner was selected by the duly constituted Selection Committee and given appointment to the petitioner. The petitioner is working with respondent School as Special Teacher from 2001. The performance of the petitioner is satisfactory. No stigma is attached to his service. Therefore, respondent no.2 may kindly be directed to grant approval to the post of the petitioner as Special Teacher. The petitioner is working with respondent nos.4 and 5 without salary.

Though the management has forwarded the proposal for approval to the appointment of the petitioner as Special Teacher to respondent no.2, respondent no.2 has illegally turned down the request of the petitioner. Learned counsel appearing for the petitioner in support of his contention that interchangeability in reserved categories is permissible, placed reliance upon the judgments in the cases of *Shakuntala Ganpatsa Shirbhatate Vs. Industrial Weaving Co-operative society & others*¹ and *Shubhada Prabhakar Patil and others Vs. State of Maharashtra & others*². Learned counsel submits that the action on the part of respondent no.2 is illegal, arbitrary and the same is liable to be quashed and set aside.

5] On the other hand, learned counsel appearing for respondent no.3 relying upon the affidavit in reply filed on behalf of

1 1994 [1] Mh.L.J. 218

2 2009 [4] Mh.L.J. 788

respondent no.3 submits that, respondent nos.4 and 5 have not followed proper procedure. Respondent nos. 4 and 5 have not obtained no objection certificate from respondent no.3 as required for filling in the posts. The recruitment process carried out by respondent nos.4 and 5 should be in accordance with roster point register. It is submitted that one post of special teacher was meant for the Scheduled Caste as per the roaster, but respondent nos. 4 and 5 have filled in the said post from VJNT category. Respondent nos.4 and 5 must have called a representative from the office of respondent authorities as required under Special School Code, 1997, at the time of interview. But in the present case, respondent nos. 4 and 5 have not called such representative. Therefore, the appointment of petitioner itself is not valid as per the procedure. It is submitted that considering the factual

aspect and roster point register, respondent no.3 has not approved the appointment of the petitioner on the post of special teacher. The petitioner was threatening to proceed on hunger strike. Therefore, respondent no.3 has sought guidance from respondent no.2 Commissioner on 25.01.2008. After perusing the record and roster point register, respondent no.2 rejected the claim of the petitioner on 28.01.2008.

6] We have heard learned counsel appearing for the parties at length. With their able assistance, we have perused the pleadings and grounds taken in the Petition, annexures thereto and also reply filed by respondent no.3 and annexures thereto. Upon careful perusal of the affidavit-in-reply filed by respondent no.3, it appears that the post on which the petitioner has been appointed, was reserved for candidate / candidates from the Scheduled Caste category.

It is also brought on record in the said reply that, respondent nos. 4 and 5 advertised the post without seeking permission from the office of respondent no.3, and also without calling the representative from his office for the interview as required under the Special School Code, 1997. Therefore, we do not find any reason to interfere in the impugned letter/order. The reasons mentioned in the impugned letter/order are in consonance with the relevant record of the petitioner's case as maintained by respondent nos. 4 and 5, and the office of respondent no.3. It is true that the petitioner is from VJNT category, however, the post was reserved for candidates from the Scheduled Caste category.

7] It appears that the Petition was taken up for admission on 2nd April, 2008, and notices were issued to the respondents. It was observed in the order that till next

date, petitioner's services shall not be terminated. We have carefully perused the orders passed by this Court time to time, and till 16th June, 2011. However, it appears that the said interim order was not continued. The Petition was dismissed by the Division Bench [Coram : Smt. Nishita Mhatre & Shri M.T.Joshi, JJ.], since no steps were taken to serve the unserved respondents as earlier ordered by the court. Thereafter, it further appears that the application was filed for restoration of the petition, and accordingly, on 28th September, 2012, the order dated 16.06.2011 was recalled and the Petition was restored to its original file. However, it is not clear, whether the interim relief was continued or not? It appears that on 30th March, 2015, none appeared for the petitioner, however, the Petition was adjourned as a last chance. When the matter was taken up for hearing on 13th April, 2015,

the Division Bench [Coram: S.V.Gangapurwala and A.I.S. Cheema, JJ.] passed the following order:

Initially the matter was dismissed as objections were not removed, the same was restored on 28th September, 2012. On 30th March, 2015 when the matter was called out none appeared for the petitioner. However, in the interest of justice the matter was adjourned to 13th April, 2015. Today also when the matter is called out none appears for petitioner. It appears that, petitioner is not interested in prosecuting the present petition. Writ Petition is dismissed. No costs.

8] It appears that on 27th July, 2016, the application filed by the petitioner for restoration of the Petition was allowed, and accordingly, the Petition was restored to its original file. Thereafter, on 25th November, 2016, the Division Bench [Coram : R.M.Borde &

Sangitrao S. Patil, JJ.] has observed that, interim relief, if any, to continue and matter was adjourned by four weeks. It appears that on 6th September, 2017, the Division Bench [Coram : R.D.Dhanuka & Sunil K.Kotwal, JJ.] observed that, interim relief, if any, to continue till the next date, and thereafter again on 4th October, 2017, this Court observed that interim relief granted by this Court is extended till next date. Therefore, the manner in which the petitioner has prosecuted the Petition, cannot be countenanced. Apart from it, on merits also, the Writ Petition deserves no consideration.

9] Learned counsel appearing for the petitioner during the course of argument placed reliance upon the judgments of the Supreme Court in the cases of *Shakuntala Ganpatsa Shirbhatate* [cited *supra*] and *Shubhada Prabhakar Patil* [cited *supra*] and contended that since the candidate from the

Scheduled Caste was not available, the petitioner, who is from VJNT category, has been appointed, and in view of the relevant Rules and aforesaid Judgments, interchangeability to fill in the teaching post from a person belonging to the other reserved category, is permissible. Neither there are specific pleadings in the Petition in that respect, nor such exercise was undertaken by the respondents, which is required under the relevant Rules and procedure, and therefore, we are unable to persuade ourselves to grant any relief on the basis of such rule of interchangeability. However, we make it clear that, it will be open for the petitioner and respondent nos.4 and 5 to apply for interchangeability and if respondent nos.1 to 3 agree for such interchangeability, the dismissal of this Petition shall not be construed as an impediment for undertaking said exercise. It

appears that the petitioner has rendered services in respondent nos.4 and 5. It further appears that the petitioner has not been paid salary. Respondent no.3 shall ensure that the petitioner receives salary from respondent nos.4 and 5 for the period for which he has worked. It will be open for respondent no.3 to take all possible steps including coercive action, if necessary, against respondent nos. 4 and 5; if they have not paid salary to the petitioner or they are not paying his salary regularly. If the petitioner is in continuous service since his appointment, his services shall not be terminated by respondent nos.4 and 5 in case he has acquired the status as permanent employee. However, his salary should be paid by respondent nos.4 and 5 from their accounts. We hold that respondent no.3 has rightly refused to grant approval to the services of the petitioner.

10] In the light above, the Petition
stands dismissed. Rule stands discharged.

[S . M . GAVHANE]
JUDGE

[S . S . SHINDE]
JUDGE

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