

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

WRIT PETITION NO.3656 OF 2016

Amol Bhagwan Marathe
Age-23 years, Occu-Service,
R/o. At/Post Sindkheda, Tq. Shindkheda,
Dist. Dhule

...PETITIONER

VERSUS

1. The State of Maharashtra
Through its Secretary,
Social Welfare Department
Mantralaya, Mumbai-400 032
2. The Social Welfare Officer,
Zilha Parishad, Dhule,
Tq. & Dist. Dhule
3. Janata Vidya Prasarak Sanstha,
Shindkheda, Tq. Shindkheda,
Dist. Dhule
Through its Secretary
Mrs. Meera Manohar Patil
Age-45 years, Occu-Secretary
4. Janta Hostel, Shindkheda,
Tq. Shindkheda, Dist. Dhule
Through its Superintendent

...RESPONDENTS

Mr.S.P.Brahme, Advocate for the petitioner
Mr.S.B.Yawalkar, AGP for respondent Nos. 1 and 2
Mr.R.C.Misal, Advocate h/f Mr.A.S.Sawant, Advocate for
respondent Nos. 3 and 4

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

RESERVED ON : 12.02.2018

PRONOUNCED ON : 11.04.2018

J U D G M E N T [PER: S.M. GAVHANE, J.]

. Rule. Rule made returnable forthwith. Heard finally with the consent of the parties. `

2. By this petition under Article 226 of the Constitution of India the petitioner has claimed following substantive reliefs:

C) This Court may be pleased to quash and set aside the letter/order dated 30.01.2016 bearing No.ZP/Employee Approval/Corrigendum/2015-16/168/2016 which is at Exhibit-'J' issued by the respondent No.2

D) This Hon'ble Court may be pleased to issue appropriate writ, order or directions to the respondents for restraining them from taking any coercive action against the petitioner like termination, stoppage of honorarium etc.

3. Case of the petitioner is that respondent No.3

is an educational institution which runs various schools and respondent No.4 hostel. Respondent No.2 is the supervising authority over respondent No.4. Respondent No.2 and respondent No.4 work under control of respondent No.1. According to the petitioner he was appointed as a Watchman and as such he is an employee with respondent Nos.3 and 4. He is rendering services on monthly honorarium of Rs.5000/-. His performance was satisfactory and there was no complaint. The appointment of the petitioner was approved on 11.09.2015. He received order dated 30.01.2016 issued by respondent No.2 revoking approval to his appointment without any enquiry or hearing. So also, respondent Nos.3 and 4 were not heard. It is contended that there was rivalry in two groups of the management. The appointments made by Mr. Manohar Patil, Chairman of respondent No.3 Institution are approved from time to time. One Rajendra Desale is the rival of Mr.Manohar Patil. Disputes are pending between them in the High Court. Mr. Rajendra Desale made application to respondent No.2 objecting the appointment of the petitioner. Hence approval granted to the appointment of petitioner was revoked. The petitioner apprehends termination of his service. Therefore, this petition.

4. The respondents have not filed reply.

5. We have heard learned Advocate appearing for the petitioner, learned AGP appearing for respondent Nos. 1 and 2, learned Advocate appearing for respondent Nos. 3 and 4 and learned Advocate appearing for the applicant/intervenor. With their assistance we have perused the pleadings in the petition and the documents produced by the petitioner in support of his contentions.

6. Since the respondents have not filed reply and controverted the contentions of the petitioner in the petition, it can be said that respondents have admitted the said contentions. Therefore, it is obvious that petitioner was appointed on 01.01.2015 as a Watchman on honorarium of Rs.5,000/- per month by respondent No.3 Institution to work in respondent No.4 hostel and approval was given to his appointment on 11.09.2015. The said approval was revoked by respondent No.2 Social Welfare Officer, Zilla Parishad, Dhule by order dated 30.01.2016. So also, it can be said that one Rajendra Desale is rival of Mr. Manohar Patil, Chairman of respondent No.3 Institution and on the application of Mr. Rajendra Desale to respondent No.3 objecting the appointment of the petitioner, the approval granted to

the petitioner's appointment was revoked.

7. It is clear from the pleadings in the petition that respondent No.4-hostel run by respondent No.3-Institution in which petitioner is serving and receiving grant-in-aid from respondent No.2. The letter dated 11.09.2015 (Exh-H) which is not in dispute shows that respondent No.2 Social Welfare Officer, Zilla Parishad, Dhule appointed the petitioner on 01.01.2015 as a Watchman and granted approval to the appointment of the petitioner on 02.01.2015 on honorarium of Rs.5,000/- per month. The order dated 30.01.2016 (Exh.J) of respondent No.2 shows that after approval was granted to the appointment of the petitioner as a Watchman one Rajendra Desale informed by letter to respondent No.2 that he is a Chairman of respondent No.3 Janta Vidya Prasarak Sanstha, Shindkheda and that no approval should be given to any post on proposal signed by anybody else except their proposal. Said order further shows that after receiving the letter of the Assistant Charity Commissioner, Dhule regarding Board of Directors of the Sanstha, the respondent No.2 had canceled approval granted to the appointment of the petitioner on finding that copy of resolution passed by Sanstha attached to the proposal regarding approval to the post of the petitioner is

illegal and it was found that Mr. Rajendra Desale is the Chairman of Sanstha. Thereupon, petitioner wrote letter dated 16.02.2016 (Exh.K) to respondent No.2 that action of canceling approval to his appointment is illegal and ex-parte since it has been taken without hearing him and requested to take back the order of canceling approval to his appointment since he has been honestly working as a Watchman.

8. Learned Advocate appearing for the petitioner submits that the impugned order dated 30.01.2016 (Exh.J) passed by respondent No.2 canceling approval granted to the appointment of the petitioner is illegal and liable to be set aside. To support said submissions he has relied upon the decision of this Court (Coram: Anoop V. Mohta and Smt. Bharti H. Dangre, JJ.) in Writ Petition No.8818/2017 (Shishir Liladhar Lele Vs Satish Pradhan Dnyansadhana College of Arts, Commerce and Science) dated 14.08.2017 and decision of this Court (Coram: B.R.Gavai & Riyaz I. Chagla, JJ.) in writ petition No.10133/2016 with connected matters (Shivaneesh Deshpande Vs State of Maharashtra and others) dated 01.08.2017. In the case of Shivaneesh (Supra) in paragraph No.6 it was observed as under:-

6. “We find that it will not be necessary for us to go into the merits to find out as to whether the reasons given by the Education Officer in the affidavit are correct or not. We find that the petitions deserve to be allowed on short ground that by the impugned order, Respondent Education Officer has set aside the order passed by the earlier Education Officer. As such, the impugned order revokes the approval granted by the earlier order passed by the predecessor in the office of the Respondent Education Officer. By now, it is settled principle of law that unless the power of review is specifically or by necessary implication provided, the authority cannot review its own order. No doubt, if an order is obtained by exercising fraud, it would stand vitiated. However, it is not the case of the respondent-Education Officer that petitioners have obtained their initial orders by fraudulent means. It is further observed in the said order as under if the earlier Education Officer had granted approval to the petitioners' appointment, may be erroneously, the same cannot be made a ground to recall the same and pass contrary order, unless a case of fraud, misrepresentation or suppression is made out. Particularly, when most of the petitioners have already put in their services for 11 years, the impugned orders would amount to penalizing them for no fault on their part.”

Rule was made absolute in terms of prayer clause (b).

9. In the present case, it is the case of the petitioner that Mr. Manohar Patil is the Chairman of respondent No.3. Mr. Rajendra Desale is rival of Mr. Manohar Patil. Disputes are pending in the High Court between them. Mr. Rajendra Desale made application to respondent No.2 objecting to the appointment of the petitioner. It appears from Exh.E copy of Criminal Application No.5338/2013 that said application is filed by Mr. Manohar Patil against the State and Mr.Rajendra

Desale claiming to be the President of Janta Vidya Prasarak Mandal, Shindkheda to quash and set aside Crime No.92/2013 registered at Shindkheda Police Station, Dist. Dhule for the offences punishable under Sections 120(B), 406, 409, 419, 420, 465, 466, 468 and 471 of the Indian Penal Code against the applicant Mr. Manohar Patil. Thus, it appears that Mr. Rajendra Desale and Manohar Patil are not in good terms and Mr. Manohar Patil is the President of respondent No.3 Sanstha and Mr. Rajendra Desale claims to be the President of said Sanstha. It appears that as per the order dated 06.03.2014 parties to the above said criminal application were directed to maintain status-quo regarding administration of the Trust until further orders and awaiting the admission of the second appeal and the said application was admitted.

10. As said earlier respondents have not filed reply to the present writ petition and controverted the contention of the petitioner and raised the contention that the petitioner has obtained approval to his appointment by fraudulent means. Moreover, on perusal of the impugned order dated 30.01.2016 and letter dated 16.02.2016 of the petitioner to respondent No.2 it is clear that approval granted to the appointment of the petitioner was canceled on the application of Mr.

Rajendra Desale without hearing the petitioner. So also, as per Government Resolution dated 23.08.2017 no show cause notice was given to the petitioner and the Sanstha before passing the impugned order of canceling approval granted to the appointment of the petitioner. Considering all these circumstances and the fact that there was no ground to re-call the order of approval granted to the appointment of the petitioner by respondent No.2 the impugned order canceling approval granted to the appointment of the petitioner is liable to be quashed and set aside and some directions are required to be given to the respondents. Therefore, following order is passed:

ORDER

I. The impugned order /letter dated 30.01.2016 bearing No.ZP/Employee Approval/Corrigendum/2015-16/168/2016 issued by respondent No.2 is quashed and set aside.

II. Respondent No.2 is directed to consider afresh the aspect regarding revoking approval given to the appointment of the petitioner after issuing show cause notice to the

petitioner and Sanstha and giving them an opportunity of hearing and then to take decision in accordance with law within three months from the date of receipt of this order.

III. Till the decision as above is taken respondents are restrained from taking any coercive action against the petitioner like termination and stoppage of honorarium.

IV. Rule is made absolute in above terms. The writ petition stands disposed of. No costs.

[S.M.GAVHANE, J.]

[S.S.SHINDE, J.]