

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 4273 OF 2006

Balkrishna S/o Ramchandra Borale,
Age : 34 years, Occu.: Service,
R/o At Laxmi Niwas, Opposite Petrol Pump,
Udgir, Tq. Udgir, Dist. Latur

.. PETITIONER

VERSUS

- 1] The State of Maharashtra,
Through : Secretary, Social Justice,
Cultural Work & Special Grant Department,
Mantralaya's Extension Building,
Mantralaya, Mumbai - 400 032.
- 2] Commissioner of Handicapped
Welfare Department, Maharashtra
State, Pune
- 3] Chief Executive Officer,
Zilla Parishad, Latur,
Tq. & Dist. Latur
- 4] Director of Social Welfare Department,
Maharashtra State,
Pune - 01.
- 5] Special Social Welfare Officer,
Grade-A, Zilla Parishad,
Latur
- 6] Divisional Social Welfare Officer,
Latur Division, Latur
- 7] Secretary,
Anatpal Shikshan Sanstha,
Krishna Niwas, Nobel Colony,
Udgir, Tq. Udgir, Dist. Latur
- 8] Head Master,
Dyanvikas Niwasi Apang Vidyalaya
Udgir, Dist. Latur

.. RESPONDENTS

...
Mr. Sanjay Kolhare, Advocate for petitioner
Mr. S.M. Ganachari, AGP for respondents no. 1, 2 4 and 6
Mr. V.R. Sonwalkar, Advocate for respondents no. 3 and 5
...

CORAM : SUNIL P. DESHMUKH &
P. R. BORA, JJ.
DATE : 22-01-2018

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

1. Petitioner is before this Court aggrieved by inaction to sanction the post of Hostel Superintendent with effect from 01-04-1995 and to give to him the benefits accruing therefrom.

2. There is no particular dispute on the factual position that petitioner had been appointed as Hostel Superintendent in respondent no. 8 - Dyanvikas Niwasi Apang Vidyalaya, Udgir, run under the aegis of respondent no. 7 - Anatpal Shikshan Sanstha. Pursuant to aforesaid appointment, approval to said post appears to have been sought by respondents no. 7 and 8.

3. It is the case of the petitioner that sanction to the post had been given only on 26-12-2003 and subsequently, approval to his appointment had been given by respondent no. 5. There is also no dispute about that respondent no. 8 - school is governed by Special School Code for Schools for Handicapped, 1997 and under

the same, Rule 43 provides for appointment of appropriate staff and the staffing pattern provides for one Hostel Superintendent for each hostel holding either a Bachelor's degree or Diploma in Physical Education.

4. It appears that petitioner's school had been given permission by the concerned authorities on 31-03-1997 and had sanctioned about 8 posts therein, which did not include petitioner's post of Hostel Superintendent.

5. Learned counsel for petitioner submits that the Special Code for Schools for Handicapped, 1997 (for short "*Special School Code, 1997*") provides for a post of Hostel Superintendent for each hostel and that petitioner has been appointed as Superintendent in the hostel of respondents no. 7 and 8. While there is no dispute about that petitioner is having requisite qualification pursuant to the Special School Code, 1997, sanction and approval to the post of Hostel Superintendent had been due and incumbent and the benefits accruing therefrom pursuant its provisions. He submits there is no reason as to why said benefits should be denied to the petitioner. He further submits that in respect of special schools in the State, such post had been given sanction immediately along with permission. He purports to buttress his said submission by

sanction having been granted under order of respondent no. 4 in respect of school run by Ahilyadevi Holkar Educational Institution of Udgir.

6. Respondents no. 3 and 5 have filed their affidavit in reply to the petition in 2007, submitting that permission to run the school had been granted by the State Government in 1997 and had later sanctioned the post of Hostel Superintendent on 26-12-2003. Since there had been no sanction to the post, appointment of petitioner had not been earlier approved. Affidavit further refers to that the deponent had recommended the case of petitioner earlier in 2001 to the Commissioner, Handicapped Welfare, Maharashtra State, Pune, to sanction post of Hostel Superintendent. It is further purportedly pointed out that while granting permission in 1997, eight posts were sanctioned, which did not include post of Hostel Superintendent. This Court under its order dated 01-09-2017 in paragraph no.2, has observed thus :-

" 2. Learned A.G.P. to take instructions from the concerned Officer, whether under Rule 43 to 47 of Special School Code, such post of Hostel Superintendent was required to be sanctioned by the Government and if was required to be sanctioned, why such post was not sanctioned at the relevant time. The State Government shall file an affidavit to this effect within 2 weeks from today. In such affidavit the State Government shall also deal with the contentions raised by the petitioner in this Writ Petition. Copy of the affidavit-in-reply shall be served upon the petitioner as well as upon the learned Advocate representing respondent Nos. 3 and 5 simultaneously. It is made clear that no further extension would be granted."

7. Thereafter, the matter got adjourned on couple of occasions and the Court had to pass a stern order on 24-11-2017. Thereafter, the affidavit-in-reply came to be filed on behalf of respondents no. 1, 2, 4 and 6. Perusal of the affidavit shows that respondent no.8 school had been granted permission in 1997 and only eight posts were sanctioned and post where petitioner had been appointed that of Hostel Superintendent, had not been granted sanction. It had been sanctioned subsequently on 26-12-2003. The affidavit save and except reiterating that although the petitioner was appointed in 1995 on the post of Hostel Superintendent but till 26-12-2003, the post was not sanctioned by the Government and, therefore, approval had not been granted. The affidavit does not even by whisper reflect upon, as to whether pursuant to Rules 43 to 47 of the Special School Code, 1997, the post of Hostel Superintendent in respect of school of respondents no. 7 and 8 was required to be sanctioned. The affidavit further purports to deny the liability to pay salary and allowances from date of appointment till 26-12-2003 when the post of Hostel Superintendent had been sanctioned and appointment of petitioner had been approved. The affidavit-in-reply does not show as to why the post had not been sanctioned or for that matter, as to whether the same was required to be sanctioned in accordance with provisions of Rule 43 to 47 of

the Special School Code, 1997, as referred to under order dated 01-09-2017 passed by this Court.

8. Although learned AGP purports to resist the claim made that sanction atleast had been due from the date on which permission had been granted to respondent no. 8 school, he has not been able to resist the same giving any plausible reason. It has not been explained in affidavit-in-reply, as to why the benefit under the provisions of Special School Code, 1997 should be detained from giving to petitioner, as is claimed to have been given to school at Udgir, Dist. Latur. Affidavit is conspicuously silent in respect of the same.

9. In the circumstances, it emerges that there is no dispute that petitioner had been appointed in 1995 as Hostel Superintendent in the Handicapped school run under the aegis of respondent no. 7 and that permission to run the school had been given in 1997 by the State Government, sanctioning along the same, eight posts. It would also have to be referred to that the school is a residential school having a hostel and that Hostel Superintendent pursuant to the Special School Code, 1997, is required to be appointed.

10. In the circumstances, while there is no plausible reason coming forth to detain benefit of sanction to the Hostel Superintendent's post in respondent nos. 7 and 8 school, it would be expedient to allow the writ petition in terms of prayer clause (B) with a rider that the benefits of sanction to the post would not entitle petitioner to claim salary from respondents no. 1 to 6 till 26-12-2003, however, all other benefits accruing from such sanction shall flow to the petitioner till that day and onwards. The benefits should be computed for making payment to petitioner from 26-12-2003.

11. Rule is made absolute in above terms.

[P. R. BORA]
JUDGE

[SUNIL P. DESHMUKH]
JUDGE

arp/