

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

WRIT PETITION NO. 5298 OF 2007

1. Vishwanath s/o. Laxmanrao Maneri,
Age 32 years, Occu. Service,
R/o. New Kavsar, Paithan,
Tq. Paithan, Dist. Aurangabad.
2. Dattu s/o. Shatrughun Dabhade,
Age 37 years, Occu. Service,
R/o. Jaikwadi, Nath Nagar, Paithan,
Tq. Paithan, Dist. Aurangabad.
3. Shivaji s/o. Vithalrao Dukare,
Age 26 years, Occu. Service,
R/o. Jaikwadi, Nath Nagar,
Tq. Paithan, Dist. Aurangabad.
4. Baby d/o. Laxmanrao Bondre,
Age 30 years, Occu. Service,
R/o. Jaikwadi, Nath Nagar,
Tq. Paithan, Dist. Aurangabad.

....Petitioners.

Versus

1. The State of Maharashtra,
Through : Secretary,
Social Welfare Department,
Mantralaya, Mumbai.
2. The Commissioner for Handicapped,
Through : The District Social Welfare
Officer, Zilla Parishad, Aurangabad.
3. Apang Niwasi Vidyalaya, Jaikwadi (North),
Nathnagar, Paithan,
Through : Headmaster.
4. Mahavir Shikshan Prasarak Mandal,
Jaikwadi, Nathnagar, Uttar,
Tq. Paithan, Dist. Aurangabad.

....Respondents.

Miss. Salunke h/f. Mr. V.D. Salunke, Advocate for petitioners.

Mrs. D.S. Jape, AGP for respondent Nos. 1 and 2.

Mr. R.S. Sarvadnya, Advocate for respondent No. 3.

**CORAM : T.V. NALAWADE AND
K.L. WADANE, JJ.
DATED : MARCH 9, 2018.**

JUDGMENT : [PER T.V. NALAWADE, J.]

1) The petition is filed under Article 226 of Constitution of India for issuing direction to respondents to grant/sanction full pay scale applicable to the posts, which were held by the petitioners with effect from their date of appointment. Both the sides are heard.

2) The submissions made show that according to the petitioners, petitioner No. 1 was appointed as Watchman by respondent Management in the year 1997, petitioner No. 2 was appointed on 1.4.2000 as Sweeper, petitioner No. 3 was also appointed as Sweeper, but on 15.6.2003 and petitioner No. 4 was appointed as Assistant (मदतनीस) on 12.2.1996. All of them were appointed in the pay scale of Rs.750/- p.m. It is not disputed by the petitioners that from the year 1996 to 1997, there were different pay scales for different posts and consolidated salary was paid to the petitioners and the appointments were temporary in nature.

3) By issuing Government Resolution ('GR' for short) dated 18.8.2004, the State Government came with policy to create staffing pattern for the schools which were created for handicapped students

and also for the hostels annexed to such schools. Not only staffing pattern was created, it was made clear that the posts which were shown in the staffing pattern will only be available, sanctioned and the eligibility condition which were mentioned in the G.R. will be applicable for appointing staff on those posts.

4) The aforesaid scheme introduced by the Government in the year 2004 was made applicable to the new and old schools to the extent of the staffing pattern. If some schools were being run prior to the date of GR, the persons who were working in such schools were to be continued with same service condition, but after their retirement, their posts were not to be filled and for filling the posts, the scheme given in this GR was made applicable. The scheme provided that to 113 schools to which the Government was giving grant-in-aid with effect from 2004-2004 the posts were to be created as per the staffing pattern and if the posts were already filled by the institution, then the approval to those posts was to be given, but subject to the eligibility conditions like the age of employee on the date of his employment by the institution. To other employees who were to be appointed in future, another scheme was prepared and that was of giving appointment on contract basis. They were to get 50% of the amount of gross salary which was payable to regular employee on that post. The present posts were to be filled

on contract basis. On the basis of this scheme, the learned counsel for petitioner submitted that as all the petitioners were already appointed by the respondent management, they were entitled to get appointments in regular scale and not the appointment on contract basis, but they are given appointment on contract basis. The petitioners want the appointments in regular pay scale from the date of aforesaid appointments.

5) The submissions made and the record show that the respondent institution came to be registered first time in the year 2000. Thus, school, if any, was started by the institution had no permission of the State Government. This circumstance cannot be ignored. No record is produced to show the exact date on which the permission was granted by the State Government to start this school. Some record is produced to show that subsequently, there was renewal of permission and in that record, the date is shown of certificate of permission as 13.1.2000. The permission was given on 8.2.2007 for the period of three years and for 50 students.

6) One more point is involved like the reservation. For giving approval to the appointments made, it was necessary to consider not only the staffing pattern created in aforesaid G.R., but also the reservation policy of the State Government. Thus, the

conditions were required to be fulfilled for getting the benefit of aforesaid portion of GR of giving regular appointments on the posts which could have been sanctioned as per the scheme.

7) The submissions made show that the petitioners accepted the appointment on contract basis after coming into force of the scheme prepared by the aforesaid GR. The petition came to be filed in the year 2007. Thus, on one hand, the petitioner accepted appointments on contract basis and there are aforesaid circumstances and on the other hand, in case of appointments of the two petitioners made, it can be said that the institution itself was not in existence prior to year 2000. Due to all these circumstances and latches, this Court holds that the directions claimed cannot be given. The learned counsel for petitioners placed reliance on some observations made by this Court while deciding **Writ Petition No. 7879/2004 [Makarand Bhikaji Bagade and Ors. Vs. State of Maharashtra and Anr.]**. The facts of that case were totally different. This Court holds that the observations in that case can be of no use to the petitioners in the present matter. In the result, the petition stands dismissed. Rule stands discharged.

[K.L. WADANE, J.]

[T.V. NALAWADE, J.]

ssc/