

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

WRIT PETITION NO.6965 of 2016

1. Shri Sadguru Banjara Seva
Sangh, Antharwan Pimpri [Tanda],
Tq. & Dist. Beed
Through its Secretary,
Sushil s/o. Dineshrao Pawar,
Aged; Major, Occ: Social Work,
R/o. Beed, Tq. & Dist. Beed.
2. Shivaji s/o.Pandurang Tonde,
The Headmaster,
Shri Sadguru Banjara Seva
Sangh Sanchalit
Prathamik Ashramshala,
Antharwan Pimpri [Tanda],
Tq. & Dist. Beed.
3. Shivraj s/o.Dhondiba Rautwad,
Aged: 27 years, Occ: Service,
R/o. Antharwan Pimpri [Tanda],
Tq. & Dist. Beed.

PETITIONERS

VERSUS

1. The State of Maharashtra,
Through the Secretary to the
Government of Maharashtra
in Social Justice & Special
Assistance Department,
Mantralaya, Mumbai-32.
2. The Divisional Deputy Commissioner,
Social Welfare Division,
Aurangabad.
3. The Assistant Commissioner,
Social Welfare, Beed.

4. Ganesh s/o. Arjun Kulkarni,
Aged: 35 Years, Occ: Service,
R/o. Plot No.83, Shivaji Nagar,
Behind Mourya Mangal Karyala,
Aurangabad, Tq.& Dist.Aurangabad

RESPONDENTS

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Mr.N.P.Patil Jamalpurkar, Advocate for the
petitioner

Mr.S.S.Dande, AGP for respondent nos.1 to 3 –
State.

Respondent no.4 served.

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

Reserved on : 25.01.2018

Pronounced on : 02.02.2018

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

1] This Petition is filed with the
following prayers:

- B. The order dated 19.03.2016, issued
by the respondent no.2 may please be
quashed and set aside to the extent
of the petitioners no.1 & 2, by
issuing appropriate writ, order or
direction in the like nature.

C. The respondents no.2 and 3 may please be directed to grant approval to the appointment of the petitioner no.3 as "Kamathi" w.e.f. the academic year 2013-2014.

D. OR IN THE ALTERNATIVE, the respondents no.2 and 3 may please be directed to grant approval to the appointment of the petitioner no.3 on a vacant post of Cook if the respondent no.4 is allowed to join and absorb on the post of "Kamathi".

2] Learned counsel appearing for the petitioner submits that, petitioner no.3, namely, Shivraj s/o.Dhondiba Rautwad, was appointed by petitioner no.1 on the post of Peon in Shri Sadguru Banjara Seva Sangh Sanchalit Prathamik Ashramshala [for the sake of brevity herein after would be referred as 'petitioner no.2'] on or before 15.06.2009. Respondent no.3, vide order dated 9th October, 2009, granted approval to the appointment of petitioner no.3 as Peon for the academic year

2009-2010. Again the said Authority granted approval on 21st October, 2010. It is submitted that, due to illness petitioner no.3 was absent for about three months in between 24th August, 2011 and 30th November, 2011. As no leave was sanctioned to petitioner no.3, for his absence for the aforesaid period, petitioner nos.1 and 2 filled in the post of Peon by appointing some other person. Thereafter, petitioner no.3 approached the management of petitioner no.1, and tendered his written apology for his absence. He also submitted an application on 1st December, 2013, requesting petitioner no.2 to allow him to resume duties. Accordingly, decision was taken by the management, in its meeting dated 15th November, 2013, to absorb petitioner no.3 on the post of Kamathi, which is reserved for scheduled Tribe. Thereafter, on 31.12.2014, petitioner nos.1 and 2 submitted proposal in the office of

respondent no.3 along with all necessary documents for grant of approval to the post of petitioner no.3 as "Kamathi" for the academic year 2013-14. Keeping in view the request of petitioner no.3, he was appointed on the post of "Kamathi", which is reserved for Scheduled Tribe category, which was vacant in petitioner no.2. However, said proposal was kept pending, and respondent no.2 directed petitioner nos.1 and 2 to allow respondent no.4, a surplus employee, to appoint on the post of 'Kamathi'. Petitioner no.2 submitted explanation to respondent no.2 that, already petitioner no.3 has been appointed on the post of 'Kamathi'. It is submitted that, in spite of said explanation, respondent no.2 issued show cause notice to petitioner nos.1 and 2 on 5th December, 2015, and asked them to absorb respondent no.4, else they would face action of cancellation of recognition of the school. Petitioner no.1

submitted explanation to the said show cause notice on 31.12.2015, stating that, the post of "Kamathi" is not vacant, and therefore, it is not possible to absorb respondent no.4.

3] Again respondent nos. 2 and 3 issued notice to petitioner nos.1 and 2 on 7th January, 2016, asking them to absorb respondent no.4. Petitioner nos.1 and 2 submitted reply, and shown willingness to appoint respondent no.4 on the post of Cook, which is vacant in the Ashram School run by it, instead of his absorption on the post of "Kamathi" as directed by respondent no.2. Another option was given by the management that, they are willing to absorb respondent no.4 on the post of "Kamathi", but at the same time they should be allowed to absorb petitioner no.3 on the post of Cook, and further approval should be granted for such appointment of petitioner no.3 on the post of Cook. However, respondent no.2 has refused to

recall the impugned order passed on 19th March, 2016. Hence, this Writ Petition is filed.

4] Learned AGP appearing for the respondent-State relying upon the averments in the affidavit in reply filed on behalf of respondent nos.1 to 3 submits that, petitioner no.3 was appointed as Peon at Antharwan Ashram School Pimpri, Taluka and District Beed from 15.06.2009. Initially, temporary approval was granted by order dated 15.06.2009 and subsequently on 21.10.2010. In condition no.4 of the approval order, it is specifically mentioned that, employee is required to submit validity certificate as contemplated in Government Resolution dated 16.05.2007. However, petitioner never submitted validity certificate to the office of respondents. Petitioner no.3 was working as Peon, who remained absent without any leave/permission since 23.08.2011. Petitioner

no.3 has made request to the management. Pursuant to the request, the management had passed a Resolution on 01.12.2013 and the petitioner no.3 was appointed as Kamathi and the management had submitted proposal for approval to the office of Assistant Commissioner, Social Welfare, Beed. Considering the said proposal, the Assistant Commissioner, Social Welfare, Beed has forwarded the said proposal vide letter dated 16.10.2015 to the office of the Regional Dy. Commissioner of Social Welfare, Aurangabad. Petitioner no.3 was remained absent from 23.08.2011, during that period the management had appointed one employee as Peon. Considering this aspect, the original post of petitioner no.3 was already filled up by the management. Therefore, there was no vacancy of the post of Peon.

5] It is further submitted that, thereafter on 01.09.2011, one Suresh Vilas

Kamble was appointed as Kamathi. He has worked till 31.05.2013. His services were approved by the authority, however, he has tendered his resignation and his resignation was accepted by the management. Considering this vacancy and considering the request of petitioner no.3, the management vide Resolution dated 01.12.2013 appointed petitioner no.3 as Kamathi. Considering this fact, appointment of petitioner no.3 was a fresh appointment. Before appointment of petitioner no.3, the management has not followed due procedure of law and also prior permission was not obtained by the management from the concerned authority. Therefore, the appointment of petitioner no.3 is not legal.

6] It is further submitted that, by Government Resolution dated 16.10.2012, the Government has imposed ban on recruitment. In the said Government Resolution, it is specifically mentioned that, unless and until

the surplus employees are absorbed, the permission for new appointment cannot be granted. Therefore, the appointment of petitioner no.3 is without following due process of law and contrary to the aforementioned Government Resolution. By order dated 24.04.2015 in Writ Petition No. 2282/2014 and Civil Application No.9089/2014, the employees who became surplus due to de-recognition of Primary Ashram School, Keligavan, Taluka Badnapur, District Jalna, are absorbed in the various schools as per the directions given by this Court and considering the letter issued by the Director of Social Welfare, Pune, dated 24.07.2015 and letter dated 27.07.2015 issued by the Deputy Commissioner, Social Welfare, Aurangabad. As mentioned above, the employee of aforementioned school Mr.Ganesh Arjun Kulkarni is absorbed in the petitioner-School at Antharvan Pimpri on the post of Kamathi.

By letter dated 19.03.2016 Mr.Ganesh Kulkarni is absorbed in the petitioner-school and now he is working there. Considering the same, there is no vacant post available in the petitioner-management.

7] We have considered the submissions of the learned counsel appearing for the petitioners, and learned AGP appearing for the respondent-State. With their able assistance, we have carefully perused the pleadings, and grounds taken in the Petition, reply filed by respondent nos.1 to 3, and the various documents placed on record. We have carefully perused the impugned order, and we are of the opinion that, the directions given by respondent no.3 to absorb respondent no.4, needs no interference, inasmuch as, petitioner nos.1 and 2 have appointed petitioner no.3 on the post of 'Kamathi', without following proper procedure and advertising the post. Therefore, such

appointment contrary to the established procedure, cannot be countenanced and approval to such appointment can not be given. The contention of the learned counsel appearing for the petitioners that, they are ready to offer the post of Cook to respondent no.4 or they should be allowed to appoint petitioner no.3 on the post of Cook, and in that case, they are ready to absorb respondent no.4 on the post of 'Kamathi', is devoid of any merits. The Petition raises disputed questions of facts, and therefore, it is not desirable to entertain this Petition. We have carefully perused the reply filed by respondent nos.1 to 3, and in our considered view, the Petition deserves no consideration, and accordingly, the same stands rejected.

[S.M.GAVHANE]
JUDGE

[S.S.SHINDE]
JUDGE