

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 8998 OF 2017

VAISHALI WALMIKRAO BAGUL
VERSUS
PRERNA TRUST AND OTHERS

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Advocate for Petitioner : Shri Nitin Jagdale h/f Shri V.D.Salunke
Advocate for Respondent 1 : Shri B.R. Kawre
AGP for Respondents 2 & 3 : Shri S.M.Ganachari

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CORAM : PRASANNA B. VARALE & RAVINDRA V. GHUGE, JJ.
Dated: September 10, 2018

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PER COURT :-

1. Heard learned counsel for the respective parties.
2. The petitioner, by way of the present petition, prays for an appropriate directions to the respondents to grant approval to the petitioner for the post of Tailoring Instructor and to pay her regular salary and backwages.
3. Prayer clauses (B) and (C) of the petition read as under:-

"(B) To issue writ of mandamus or any other appropriate directions, the respondent may kindly be directed to grant approval to the petitioner for the post of Tailoring Instructor and to pay her regular salary and backwages.

(C) To issue writ of mandamus or any other appropriate direction in the like nature, the respondents may kindly be directed to pay salary and all other benefits for rendering services by the petitioner in respondent Trust / School w.e.f. 1.9.2009."

Prayer clauses (D) and (E) are the interim reliefs prayed by the petitioner.

4. Notice to respondents was issued in this petition on 20.7.2017. On 29.8.2018, this Court (to which one of us was the Party), has noted that since a very limited grievance is raised in the petition, the parties were put to notice that if it is convenient to this Court, the petition may be heard and decided at the admission stage itself. The learned counsel for respondent No.1 submits that the reply of respondent No.1 is ready. The same is taken on record. The learned AGP prays for some time on the ground that the instructions are awaited.

5. Considering the grievances raised in the petition, we are of the opinion that the petition can be heard and decided without waiting for the reply from respondent Nos.2 and 3.

6. It is submitted before us by the learned counsel for the petitioner, by inviting our attention to the document placed on record at Exhibit "A" that the petitioner was appointed by respondent No.1 in a School as

Tailoring Instructor in the year 2008. The proposal was submitted to the Social Welfare Officer for grant of an approval. Perusal of the order dated 23.1.2009 (Exhibit "A") clearly shows that there is a reference to the proceedings before the Commissioner, bearing Appeal No.2640 and the order dated 3.10.2008. The approval order also states that the approval granted to the petitioner is subject to the decision in the appeal and this approval is a temporary approval for the period of one year i.e. from 24.6.2008 to 30.4.2009. There is another approval order dated 4.8.2009 and it relates to the period from 15.6.2009 to 30.4.2010.

7. The order passed by the Competent Authority i.e. the Commissioner of Handicapped Welfare, Maharashtra State, Pune dated 10.8.2009 shows that one Shri Raosaheb Ghate preferred an appeal before the Commissioner. It was the submission of the appellant that the appellant is having 41% disability since his birth and the necessary certificate is also issued by the competent medical board. It was then submitted that the appellant was possessing the requisite qualification, namely, having the certificate issued for completing the course in Tailoring. It was then submitted that the appellant was appointed by respondent No.1 in it's school vide order dated 24.11.1997 and the appellant worked with the institution till 20.4.1999. An approval was also granted to the appellant and on 30.4.1999, respondent No.1 /

institute, without seeking any permission from the competent authority removed the appellant from his job.

8. Notice was issued by the Commissioner. Respondent No.1 institute filed say before the authority. Respondent No.2 / District Social Welfare Officer also filed the brief submission opposing the appeal. It would be necessary to state that the attention of the competent authority was invited to the factual aspect, namely, appointment of the present petitioner and approval granted to the petitioner. The competent authority in its observations and particular in the part of reasoning referred this factual aspect at Clause (5). The competent authority by observing that the institute failed to follow the requisite procedure, allowed the appeal by order dated 10.8.2009.

9. On 1.9.2009, on the basis of the order of the Commissioner in appeal, notice was issued to the petitioner and her services were terminated.

10. Being aggrieved by the action of respondent No.1, the petitioner filed a Writ Petition in this Court bearing No.6244 of 2009. The learned Single Judge could not find any favour with the petitioner. Aggrieved by the order passed by the learned Single Judge, the petitioner preferred LPA No.295 of 2011. This Court in its detailed order found that the

competent authority, namely, the Commissioner without giving an opportunity to the petitioner had passed the order. The Division Bench was pleased to observe as under:-

"28. That the procedure followed in recruitment to the post has been to fill up a permanent post. Thus, an appointment pursuant to the advertisement cannot be said to have not created any kind of right in favour of the appellant - petitioner Smt. Bagul. Thus, one who is going to be victim of the said order, has all the rights which are absolute, natural and fundamental in nature to place his / her case for justice before an authority whose order would affect the person concerned.

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30. The position thus emerges that he had taken a chance before the competent authority after a long lapse and after not having been selected in the selection process evading responsibility to implead Smt. Bagul as a party to his complaint, with a view to obtain order behind her back, keeping the competent authority in dark. Factual position shows, right of respondent No.4 was not recognized in 1999 as absolute right by holding his termination illegal.

31. We, therefore, consider that on the whole, appellant - petitioner Smt. Bagul had been deprived of whatever right she had, behind her back without letting her an opportunity under a surreptitious action of respondent No.4 and hence, same is unsustainable."

(Emphasis supplied).

11. Resultantly, the Letters Patent Appeals were allowed by the Division Bench and the order passed by the learned Single Judge in Writ Petition Nos. 6244 of 2009 and 8139 of 2009, so also the order dated 10.8.2009 passed by the learned Commissioner, Handicap Welfare was also set aside.

12. The learned counsel for the petitioner submits that on 30.12.2015, the Secretary of the respondent No.1 institute, directed the petitioner to join her duties by referring to the order passed by the Division Bench in the Letters Patent Appeals and the petitioner by an application prayed the Honorary Secretary of respondent No.1 to permit her to join the duties. It seems that this application was dated 11.1.2016. Copy of the same is placed on record as Exhibit "L".

13. Learned counsel appearing for respondent No.1 invited our attention to the affidavit-in-reply and more particularly to the communication forwarded to the District Social Welfare Officer on 11.4.2016. The learned counsel submits that the District Social Welfare Officer was requested to grant an approval to the post of the petitioner in view of the order passed by this Court and also for the direction in respect of the monetary claim of the petitioner, regarding the salary and other emoluments. It is submitted that time and again the reminders were submitted to the District Social Welfare Officer but till date, no

action is taken by the District Social Welfare Officer.

14. Considering the above referred facts, in our opinion, the petition can be disposed off by directing the Commissioner / respondent No.3 to hear the parties, namely, the petitioner - Smt. Vaishali Walmikrao Bagul and Raosaheb Govind Ghate who has filed an appeal No.2650 before the Competent Authority, District Social Welfare Officer, Group A, Zilla Parishad, Aurangabad and Prerana Trust, Aurangabad.

15. The Division Bench has made it clear in its order dated 15.1.2013 that the petitioner was the victim of the order but the petitioner was not heard by the competent authority. As these are the rival claims and the competent authority has failed to grant an opportunity to the petitioner, there was a clear failure to observe the principles of natural justice by the competent authority and more particularly when the competent authority was appraised of the fact that the petitioner was appointed by respondent No.1 / institute and there was an approval order also passed in favour of the petitioner.

16. Accordingly, we direct respondent No.3 to hear the petitioner, respondent No.1, respondent No.2 and Shri Raosaheb Govind Ghate, R/o Parwati Niwas, Tarkeshwar Galli, Begumpura, Aurangabad. The parties may submit their written submissions before the authority within

two weeks from today. Respondent No.3 by hearing the above referred parties, shall pass appropriate orders within eight weeks from today.

17. With these directions, the petition is dismissed.

18. The learned AGP to communicate this order to respondent No.3.

(RAVINDRA V. GHUGE, J.)

(PRASANNA B. VARALE, J.)

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