

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

WRIT PETITION NO. 663 OF 2017

Vishnu S/o. Tukaram Mundhe,  
Age : 43 years, Occu : Nil,  
R/o. Bhandari Colony, Gangakhed,  
Tq. Gangakhed, Dist. Parbhani.

...Petitioner

Versus

1. The State of Maharashtra,  
Through the Secretary,  
Social Welfare Dept. Mantralaya,  
Mumbai.
2. The Commissioner,  
Handicap Welfare, Maharashtra State,  
3, Church Road, Pune-1.
3. The Social Welfare Officer,  
Block-A, Zilla Parishad,  
Parbhani.
4. Kisan Kranti Shikshan Sanstha,  
Through its President/Secretary,  
Bhagwati Nagar, Near Bus Stand,  
Gangakhed, Tq. Gangakhed,  
Dist. Parbhani
5. The Head Master of  
Parampujya Purushottam Maharaj-  
Matimand Vidyalaya  
Bhagwati Nagar, Near Bus Stand,  
Gangakhed, Tq. Gangakhed,  
Dist. Parbhani.

...Respondents

Mr. J.M. Murkute, Advocate for Petitioner.  
Mr. G.O. Wattamwar, AGP for Respondent Nos 1 to 3  
Mr. R. R. Kakani, Advocate for Respondent No. 4

**CORAM : P.B. VARALE AND  
MANISH PITALE, JJ.**

**DATE: 23<sup>rd</sup> AUGUST, 2018**

**ORAL JUDGMENT (Per P.B. Varale, J. )**

1. At the outset, Mr. Murkute, the learned counsel appearing for the petitioner orally prayed for amendment to the petition. Learned counsel Mr. Murkute submits that though there is sufficient record placed on record to submit that the petitioner worked with respondent Nos.4 and 5 till 01.03.2013, inadvertently in prayer clause (E) reference to the date 01.03.2013 is missed and the petitioner be permitted to amend the petition by adding the words in prayer clause (E) to 01.03.2013 after the words Rs. 15,743/- per month. The oral prayer is allowed. The amendment be carried out forthwith.

2. Heard the learned Counsel Mr. Murkute for the petitioner, the learned AGP Mr. Wattamwar for respondent Nos. 1, 2 and 3, learned counsel Mr. Kakani appearing for

respondent No. 5. Though the respondent is duly served, none appears for respondent No.4.

3. Brief facts giving rise to the present petition can be summarized as follows :-

The petitioner approached the institute respondent No. 4 with a request to appoint him on the post of Peon. The copy of the application submitted to the President and Secretary of respondent No.4 institute is placed on record at Exhibit 'B'. The petitioner was appointed by order dated 17.06.2007 as Peon on the pay scale of Rs.2550-3200. It is stated in the appointment order that the appointment is for a period of three years and it is a temporary appointment. Then the order states that the appointment is subjected to the renewal of the licence granted to respondent No.4 institute. A Resolution is also passed on 23.03.2010 in the special meeting. It is stated in the Resolution that the petitioner is working in this school for the last two years and his proposal be submitted to the State Government for approval. Then, there are subsequent order dated 01.08.2010 and a proposal submitted to the District Social Welfare Officer dated 20.03.2010. A document placed on

record at Exhibit "G" shows that the Commissioner of the Handicapped Welfare Department by exercising the powers, renewed the licence granted to respondent No. 4 institute. This is a communication dated 23.12.2008. The petitioner also placed on record the copies of attendance sheet, wherein, the name of petitioner finds place in the list of non-teaching employees.

4. The perusal of the petition further shows that the petitioner filed Writ Petition No. 7443 of 2013 in this Court and the grievance of the petitioner was that the petitioner submitted a representation before the authority and the same was pending before the authority for considerable long period. By order dated 20<sup>th</sup> February, 2014, the Division Bench of this court was pleased to direct respondent No. 2 i.e. the Commissioner, Handicap Welfare Department to take decision on the representation as expeditiously as possible and preferably within a period of four months from the date of order. In view of the order passed by the Division Bench of this Court, the competent authority scrutinized the claim of the petitioner by order dated 20/24/08.2015, the Commissioner decided the

representation. It was submitted before the Commissioner that the petitioner was working with the institute till 2012 and some time in month of June 2012. The Institute objected the petitioner to sign the muster roll on the ground that respondent institute was yet to receive the renewal of licence/certificate. The competent authority i.e. the Commissioner issued notice to the concerned parties. Written submissions and documents were placed before the competent authority. Opportunity of hearing was granted and by hearing the parties on 03.02.2015 finally, the competent authority - Commissioner found that the institute appointed the petitioner without following the proper procedure. The Commissioner then found that the institute also failed to obtain the necessary prior permission from the Department to appoint the petitioner and appointed the petitioner on a post which was not sanctioned. As such, the State Government cannot be fastened with a burden to pay the salary and other emoluments to the petitioner.

5. Learned Counsel for the petitioner submitted that sufficient material is placed on record and same would indicate that the petitioner worked with respondent Nos. 4

and 5 initially for the period from 01.08.2010 to 31.12.2011 on a salary @ Rs.14,495/- per month and from 01.01.2012 to 01.03.2013 @ Rs.15,743/- per month. The learned counsel submitted that the attendance register clearly shows that the petitioner was appointed by the institute on the post of Peon. He was attending the school and was discharging his duty as Peon. Learned counsel Mr. Murkute also invited our attention to the representation made to the Social Welfare Officer and submitted that respondent No.4 prohibited the petitioner to attend the school from March, 2013 orally. Mr. Murkute further submitted that it was falsely submitted to the petitioner that the licence granted to respondent No. 4 is not renewed and on that ground, the petitioner was not permitted to sign muster roll. Learned counsel Mr. Murkute then fairly submitted that his only grievance is against respondent Nos. 4 and 5 for non-payment of the salary for the period in which the petitioner worked with respondent No.4. Learned counsel Mr. Kakani opposes the petition. It is submitted by the learned counsel Mr. Kakani appearing for the respondent No.5 that respondent No.4 being institute, is the proper authority to disburse the payment of salary to the petitioner and

respondent No.5 is merely an employee in this school run by respondent No.4.

6. On going through the record, we find that the notice issued by this court is accepted on behalf of respondent No.4 on his behalf as well as on behalf of respondent No.5, the statement reads that respondent No.4 accepts the notice for himself and for his brother. Interestingly enough, the material placed on record and more particularly, page 26 Exhibit 'F' of the petition shows that respondent Nos. 4 and 5 are the brothers namely, Mr. Subhashrao M. Deshmukh and Kishanrao Madhavrao Deshmukh. Considering the sequence of the events referred by us above, we are of the clear opinion that respondent No. 4, who is duly served is purposely avoiding to appear before this Court when he accepts the notice for himself and respondent No. 5. This attempt of respondent No. 4 is nothing but to frustrate the claim of the petitioner. We cannot permit such an act. Learned counsel Mr. Murkute was justifying in submitting that as the Commissioner by considering all the materials, arrived at a conclusion that the burden cannot be fastened on State Government, but as

the petitioner worked with respondent No. 4 for considerable long period, and there are the documents placed on record of his appointment, his attendance in this school. Respondent No.4 by remaining absent before this Court in spite of a notice duly served, denied the rightful claim of the petitioner. As we have referred to the material about the appointment of the petitioner in this school, the resolution passed by the institute, the attendance sheet, the representation before the Commissioner, the order of the Commissioner, we arrived at a conclusion that the learned counsel for the petitioner made out case for the petitioner. Resultantly, we allow the petition in terms of prayer clause (E).

7. The Writ Petition is accordingly disposed of.

**( MANISH PITALE, J. )**

**( P.B.VARALE, J. )**

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