

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

WRIT PETITION NO.9390 OF 2014

Magas Samaj Seva Mandal,
Vasant Nagar, Devtala,
Tq-Ausa, Dist-Latur,
Through its Authorized Trustee
and Treasurer-
Shri Vikas Dhanraj Chavan,
Age-34 years.

...PETITIONER

VERSUS

- 1) The State of Maharashtra,
Through its Secretary,
Social Justice Department,
Mantralaya, Mumbai-400032,
- 2) Regional Deputy Commissioner,
Social Welfare,
Latur,
- 3) Assistant Commissioner,
Social Welfare,
Latur,
- 4) Kakasaheb Digambar Nimbalkar,
Age-42 years, Occu:Service,
C/o-Vimukt Jati Seva Primary
Aashram School, Devtala,
Tq-Ausa, Dist-Latur.

...RESPONDENTS

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Mr.N.P. Patil-Jamalpurkar Advocate for
Petitioner.

Mr.S.B. Yawalkar, Additional Government
Pleader for Respondent Nos. 1 to 3.

Mr.A.V. Patil-Indrale Advocate for
Respondent No.4.

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

DATE OF RESERVING ORDER : 30TH JANUARY, 2018

DATE OF PRONOUNCING ORDER: 6TH FEBRUARY, 2018

ORDER [PER S.S. SHINDE, J.]:

1. This Petition under Article 226 of the
Constitution of India is filed with following
substantive prayers:

"(B) To quash and set aside the
impugned communication/order dated 23rd
September, 2014 issued by Respondent
No.3 (EXHIBIT-"C") by issuing a writ of
mandamus/certiorari, orders, directions
or any other appropriate writ, as the
case may be,

(C) To hold and declare that the action taken by Respondent No.3 against the Petitioner management in withholding the monthly salary of September-2014 of its employees, is illegal and unwarranted,

(F) To direct Respondent Nos. 2 and 3 to accord permission/approval to the transfer order dated 30th June, 2014 of Respondent No.4.

2. It is the case of the Petitioner that it is an educational society, which runs a secondary school under the name and style as "Shantiniketan Secondary Ashram School, at Devtala, Tq-Ausa, Dist-Latur" and a primary school, namely, "Vimukta Jati Seva Primary Ashram School at the same place. Respondent No.4 was serving on the post of peon in Shantiniketan Secondary Ashram School. However, on administrative ground the Petitioner society transferred the services of Respondent No.4 from Shantiniketan Secondary Ashram School, Devtala to

Vimukta Jati Seva Primary Ashram School, Devtala, on the post of *Madatnis*, vide order dated 30th June, 2014. It is the case of the Petitioner that the posts of peon and *Madatnis* are equivalent. Pursuant to the order issued by the Petitioner, Respondent No.4 resumed his duties on the transferred place. Thereafter the Petitioner management had submitted a proposal to Respondent No.2 seeking approval to the said transfer of Respondent No.4. Thereafter by letter dated 4th July, 2014, Respondent No.4 put forth his grievance before Respondent No.3 - Assistant Commissioner that the said transfer is unjust and therefore the same may be cancelled. By order dated 23rd September, 2014, Respondent No.3 - Assistant Commissioner directed the Petitioner management to cancel the said transfer of Respondent No.4 since the same is contrary to the provisions of the Rules and the service conditions of both the posts i.e. Peon and *Madatnis*, otherwise the salaries of all the employees

working in Shantiniketan Secondary School will be withheld. As the Petitioner management had not cancelled the transfer of Respondent No.4, from September, 2014, Respondent No.3 withheld the salaries of all the employees working in Shantiniketan Secondary School. Hence this Petition.

3. Learned counsel appearing for the Petitioner submits that the order dated 23rd September, 2014 passed by Respondent No.3 is arbitrary and contrary to the Maharashtra Employees of Private Schools (Conditions of Service) Rules, (for short "MEPS Rules"). It is submitted that as per provisions contained in Rule 41 of the MEPS Rules, it is permissible for a management of the school to transfer its employee from one school to another school and only precaution to be taken is that by such transfer, the pay and grade pay of such employee should not be adversely affected. In the present case, both

the posts i.e. Peon and Madatnis carry same pay scale and grade pay and they fall in Class-IV category and therefore the transfer of Respondent No.4 is just, proper and as per the Rules. Therefore, it is prayed the Petition deserves to be allowed.

4. Learned Additional Government Pleader appearing for the State, referring to the affidavit-in-reply filed on behalf of Respondent No.3, submits that the duties and responsibilities of the post of Peon in Secondary Ashram School are altogether different from the duties and responsibilities of the post of *Madatnis* in Primary Ashram School. It is submitted that post of Peon is on the establishment of Secondary Ashram School and post of *Madatnis* in Primary Ashram School is on the establishment of Hostel wing of Ashram School and a person working on the post of *Madatnis* has to do the work of cooking, cleaning utensils and other maintenance work with

regard to preparation of food for the inmates of the said Ashram school. It is further submitted that working days and holidays attached to the posts of Peon and *Madatnis* are totally different. It is submitted that as per Rule 31 of MEPS Rules, the management is empowered to transfer an employee on the same post, however in the present case the management had transferred Respondent No.4 on a different post, which is not permissible in law. It is submitted that the payment of all the employees of Secondary Ashram School has been paid up-to February, 2015 and thereafter also the payment of salary of the employees is being paid regularly. Therefore, it is submitted that the Petition may be rejected.

5. Learned counsel appearing for Respondent No.4, referring to the affidavit-in-reply, submits that Respondent No.4 was working as Peon in Shantiniketan Secondary Ashram School, Deotala since the year 2000 and the petitioner society

with malafide intention and so as to harass him, transferred his services on the post of *Madatnis* in Vimukta Seva Primary Ashram School with effect from 1st July, 2014. It is submitted that the said transfer order is per-se illegal and bad in law since the nature of work for the post of Peon and Hostel *Madatnis* is altogether different. Therefore Respondent No.4 made a representation in that respect to the competent authorities. Pursuant to the said representation, the Assistant Commissioner, Social Welfare, Latur, after going through the facts, circumstances and legal position issued the directions dated 23rd September, 2014 to the petitioner society to cancel the said transfer order. It is submitted that the nature of duties for the post of Peon and *Madatnis* are altogether different. The service benefits such as travelling allowance is admissible for the post of Peon, however the said service benefit is not admissible to the post of Hostel *Madatnis*. Therefore the transfer order is

illegal. It is submitted that there is no substance in the challenge raised by the Petitioner to the action of the Assistant Commissioner, Social Welfare, Latur. The said action is perfectly legal and proper in the facts and circumstances of the case. Therefore, it is submitted that the Petition deserves to be dismissed.

6. We have given careful consideration to the submissions of the learned counsel appearing for the Petitioner, learned Additional Government Pleader appearing for the State and learned counsel appearing for Respondent No.4. We have carefully perused the relevant provisions of the MEPS Rules, the Government Resolutions placed on record and also the replies filed by the respective Respondents. It is stated by Respondent No.3 in his affidavit that the duties and responsibilities of the post of Peon in Secondary Ashram School are different from the duties and

responsibilities of the post of *Madatnis* in primary Ashram School. The working days and holidays for the posts of Peon and *Madatnis* are totally different, the service benefits are also different.

7. In that view of the matter, the transfer of Respondent No.4 employee from the post of Peon to *Madatnis* could not have been made, since prima facie it appears that there is a difference in nature of duties and monetary benefits on account of travelling allowance etc. Therefore the action of the Petitioner management to transfer the services of Respondent No.4 from the post of Peon to the post of *Madatnis* is not in accordance with law. For the reasons afore stated, we are not inclined to entertain the Petition.

8. However, we do not approve the direction in the impugned order dated 23rd September, 2014 to stop the salary grants of the employees and

staff members working in the Secondary Ashram School run by the Petitioner management. Now, it is stated by Respondent No.3 in the affidavit that salaries of the employees of the Secondary Ashram School are being paid regularly.

9. We direct the Petitioner management to take immediate steps to restore the services of Respondent No.4 on the post of Peon, in case the services of Respondent No.4 are not yet restored to the post of Peon, and redress the grievance raised by him in his representation dated 4th July, 2014.

10. With the above observations, the Writ Petition stands rejected.

[S.M. GAVHANE, J.]

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[S.S. SHINDE, J.]