

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

WRIT PETITION NO.11282 OF 2016

- 1) Shriram s/o Ganpatrao Hambarde,
Age-46 years, Occu:Service,
R/o-Bhokar, Tq-Bhokar,
Dist-Nanded,
- 2) Datta s/o Pandurang Karpe,
Age-49 years, Occu:Service,
R/o-Dhanora, Tq-Bhokar,
Dist-Nanded,
- 3) Manjulabai Kinhalkar Girl's
High School, Bhokar, Dist-Nanded,
Through its Headmistress,
Surekha D/o Nayansingh Patil,
Age-49 years, Occu:Service,
- 4) Late Digambarrao Bindu Smarak
Samiti Bhokar, Tq-Bhokar,
Dist-Nanded, Through Secretary,
Shaikh Murad s/o Mehmood Manjaramkar,
Age-73 years, Occu:Agriculture.

...PETITIONERS

VERSUS

- 1) The State of Maharashtra,
Through Secretary,
School Education and Sports Department,
Mantralaya, Mumbai,
- 2) The Deputy Director of Education,
Aurangabad Division, Aurangabad,

- 3) The Education Officer(Secondary),
Zilla Parishad, Nanded.

...RESPONDENTS

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Mr.M.V. Ghatge Advocate for Petitioners.
Mr.S.Y. Mahajan, Additional Government
Pleader for Respondent Nos. 1 to 3.

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

DATE OF RESERVING ORDER : 13TH FEBRUARY, 2018

DATE OF PRONOUNCING ORDER : 24TH FEBRUARY, 2018

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

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

"A] The respondent authorities may kindly
be directed to show four posts of peon in
Petitioner No.3 Manjulabai Kinhalkar Girl's
High School, Bhokar and accordingly correct
the staff sanction and approval by showing
appointment date of petitioner no.1 and 2
as 11.7.98 and 1.7.2002,

B] The Respondents authorities may kindly be directed to grant approval to the services of petitioner No.1 and 2 w.e.f. 11.7.1998 and 1.7.2002 respectively with respondent No.3 school,

C] The respondent authorities may kindly be directed to release the consequential benefits of grant in pursuance of approval to the services of petitioner No.1 and 2 w.e.f. 11.7.1998 and 1.7.2002 respectively with respondent No.3 school"

2. It is the case of the Petitioners that Petitioner No.1 Shriram Hambarde was appointed as peon on 11th July, 1998 by following due process of law by Petitioner No.4 society. Petitioner No.2 - Datta Karpe was initially appointed with Junior College - Digambarrao Bindu Mahavidyalaya on 15th June, 1995 and thereafter he was transferred to Petitioner No.3 school w.e.f. 1st July, 2002. Since grant-in-aid was received from the year 1998-99, approval of staff was sought. The staff sanction clearly indicates that in all there were

four sanctioned posts for Class 5th to 10th, however when combined staff sanction was issued, the posts of Class IV employees were reduced to two posts. The Education Officer granted approval only to teaching staff and not to the posts held by Petitioner Nos.1 and 2, on the ground that Government Resolution dated 26th March, 2002 does not permit the same. Therefore, the Petitioners filed Writ Petition No.8575 of 2005. After considering the relevant documents, this Court remitted back the matter for fresh consideration to the Education Officer. It was specifically observed in Para 6 of the order that if four posts of peons are already sanctioned, Government Resolution dated 26th March, 2002 shall not apply to the case of the Petitioners and accordingly the Respondent Education Officer was directed to take decision. In pursuance to the above directions, the Respondent Education Officer vide communication dated 8th November, 2006 intimated the Petitioner school that approval to the

services of Petitioner Nos.1 and 2 is granted with effect from 14th August, 2006 which is shown to be their date of appointment. The Education Officer intimated that Petitioner No.1 Shriram Hambarde was appointed as Lab Assistant since 16th July, 1998 and hence his approval as peon is granted from 14th August, 2006 whereas Petitioner No.2 Datta Karpe was transferred on 1st July, 2002 which was not in accordance with Rule 41 of M.E.P.S. Rules and hence his approval is also given from 14th August, 2006.

3. The Petitioners contend that being aggrieved by above said order passed by the Education Officer, the Petitioners requested the Education Officer time and again for correction of date of approval, but he did not pay any heed to the same. However, a proposal was forwarded by the Education Officer to the State Government through Director of Education, Pune and it was intimated to the Petitioners that the same will be

considered as per further directions from the superior authorities. However no decision is yet taken, hence this Petition.

4. Learned counsel appearing for the Petitioners invites our attention to the grounds taken in the Petition and submits that the Respondent authorities are acting in arbitrary manner and not deciding the claim of Petitioner Nos.1 and 2 and illegally evolved their date of appointment as 14th August, 2006. Though the matter is remitted back for fresh consideration, the approval was not granted from the date of appointment. It is submitted that the Education Officer ought to have granted approval with effect from 11th July, 1998 and 1st July 2002 to the services of Petitioner Nos.1 and 2 respectively and accordingly consequential benefits ought to have been paid to the Petitioner Nos.1 and 2. Learned counsel submits that similarly placed persons have already received the benefits but

since the proposal of the Petitioners is kept pending the Petitioners are deprived of the legal benefits. He therefore submits that the Petition deserves to be allowed.

5. On the other hand, learned Additional Government Pleader relying upon the affidavit in reply filed on behalf of Respondent No.3, submits that earlier the Petitioners have filed Writ Petition No.8575 of 2005 and this Court disposed of the said Petition directing the Education Officer to consider the proposal of the Petitioners afresh in accordance with law and take decision within stipulated period. It is submitted that in pursuance to the said directions, the then Education Officer considered the proposal of the Petitioners and took decision vide order dated 8th November, 2006. The Education Officer (Secondary), Zilla Parishad, Nanded considered necessary documents and record and granted approval to the services of Petitioner Nos.1 and 2 from 14th

August, 2006 for the post of peon, on certain conditions. It is submitted that after lapse of about ten years, the Petitioners cannot say that approval should have been granted from 1998 and 2002 respectively. The decision had already taken in the year 2006 and approval is granted from 14th August, 2006. It is submitted that the present Petition is filed in the year 2016 and on this ground alone the Petition is liable to be dismissed.

6. So far as Petitioner No.1 is concerned, learned Additional Government Pleader submits that the school committee passed resolution on 14th August, 2006 and Petitioner No.1 was appointed as peon for the first time. Thus, it is clear that Petitioner No.1 was appointed as peon in the year 2006. So far as Petitioner No.2 is concerned, it is submitted that initially he was appointed as a peon in the senior college and thereafter on 1st July, 2002 he was transferred to the secondary

school, contrary to the provisions of Rule 41 of the Maharashtra Employees of Private Schools (Condition of Service) Rules, 2008 (for short "MEPS Rules"). Therefore approval was rightly granted in favour of the Petitioner Nos.1 and 2 from 14th August, 2006 and not from the date of their appointments. It is submitted that management is aware that from the beginning only two posts were sanctioned on the said two posts and already two persons have been working in Class-IV category since 1995. Therefore, the prayer of Petitioners that the approval should be granted from the date of their appointments cannot be considered. Therefore, he submits that the Petition be rejected.

7. We have carefully considered the submissions of the learned counsel appearing for the Petitioners and learned Additional Government Pleader appearing for the State. With their able assistance, we have perused the grounds taken in

the Petition the annexures thereto, and the reply filed on behalf of the Respondents.

8. Admittedly, the Petitioners filed Writ Petition No.8575 of 2005. In the said Writ Petition, direction was sought to grant approval to the appointment of Petitioner Nos.2 and 3 therein, i.e. Petitioner Nos.1 and 2 herein. The further direction was sought to pay the salary of the Petitioners. Another prayer was to direct the Respondents to show four posts of peon in joint staff sanction approval, which were approved. The Division Bench of this Court (CORAM: P.V. HARDAS AND D.G. KARNIK, JJ.) by Judgment and order dated 1st August, 2006, disposed of the said Petition by giving directions to the Respondents to examine the proposal of the Petitioner Nos.2 and 3 therein afresh and decide the same within a period of four weeks from the date of order. Pursuant to the said directions, by the communication/letter dated 8th November, 2006, the Education Officer (Secondary),

Zilla Parishad, Nanded granted approval to the services of the Petitioner Nos.1 and 2, however, with effect from 14th August, 2006.

9. In the present Petition, it is the case of the Petitioner Nos.1 and 2 that the approval to their appointment ought to have been granted from the date of their appointments i.e. 11th July, 1998 and 1st July, 2002 respectively. Thus, the Petition raises disputed questions of facts and it is not desirable to undertake the exercise of adjudication of disputed questions of facts while exercising the writ jurisdiction.

10. It is contended on behalf of the Petitioners that Petitioner No.3 - Headmistress of Manjulabai Kinhalkar Girl's High School, Bhokar has addressed a representation/ proposal dated 5th August, 2016 to the Education Officer(Secondary), Zilla Parishad, Nanded, seeking approval to the services of Petitioner Nos.1 and 2 from 16th July,

1998 and 1st July, 2002 respectively, which is not yet decided.

11. In that view of the matter and when the Education Officer has already approved the services of Petitioner Nos.1 and 2 way back in the year 2006, we are of the opinion that the directions can be issued to the Education Officer to decide the aforesaid representation/proposal within stipulated time.

12. In the peculiar facts of this case, we direct the Education Officer (Secondary), Zilla Parishad, Nanded to decide the representation/proposal submitted by Petitioner No.3 on 5th August, 2016, copy of which is annexed at Page No.43 to the Petition, as expeditiously as possible, however in any case within eight weeks from today in accordance with law after considering the entire record, the relevant policy laid down by the Government of Maharashtra,

and communicate the decision to the Petitioners. We further direct the Education Officer(Secondary), Zilla Parishad, Nanded that, if the claim of Petitioner Nos.1 and 2 appears to be genuine and acceptable, in that case further necessary steps in the matter be taken.

13. With the above observations and directions the Writ Petition stands disposed of.

[S.M. GAVHANE, J.]

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[S.S. SHINDE, J.]