

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**WRIT PETITION NO. 1071 OF 2008
WITH
CIVIL APPLICATION NO.958 OF 2014
WITH
CIVIL APPLICATION NO.957 OF 2014
IN
WRIT PETITION NO. 1071 OF 2008**

Pramod Raghunath Bamane & Ors. ...Petitioners
V/s.
State of Maharashtra & Ors. ...Respondents

**WITH
WRIT PETITION NO. 1859 OF 2012**

Mrs.Naseem Hasan Jamadar ...Petitioner
V/s.
The State of Maharashtra & Ors. ...Respondents

**WITH
WRIT PETITION NO.3993 OF 2011**

Vijaykumar Panditrao Vanire ...Petitioner
V/s.
Prince Shivaji Maratha Boarding
House & Ors. ...Respondents

**WITH
WRIT PETITION NO. 10887 OF 2017**

Shri.Pramod Ragnath Bamane ...Petitioner
V/s.
The State of Maharashtra
Through Principal Secretary & Ors. ...Respondents

Mr.J.P. Kharge for the Petitioner in WP No.10887 of 2017 and WP No.1071 of 2008.

Mr.S.S. Kanetkar for the Petitioner in WP No.1589 of 2012.

Mr.K.S. Bapat a/w Mr.T.R. Yadav for the Petitioner in Writ Petition No.3993 of 2011.

Mr.S.B. Kalel, AGP for the Respondent-State in WP No.1071 of 2008, CAW 958 of 2014 and 957 of 2014 and WP No.1859 of 2012.

Mrs.R.M. Shinde, AGP for the Respondent in WP No.3993 of 2011.

Mrs.S.D. Vyas 'B' Panel Counsel for Respondent-State in WP No.10887 of 2017.

**WITH
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION NO. 712 OF 2012

Sangita Ramchandra Parab	...Petitioner
V/s.	
Bhartiya Vidya Bhavan & Ors.	...Respondents

**WITH
WRIT PETITION NO.713 OF 2012**

Ramdas Mahadeo Manjrekar	...Petitioner
V/s.	
Dr.Antonio D'Silva Trust & Ors.	...Respondents

**WITH
WRIT PETITION NO. 715 OF 2012**

Arun Ramu Patil	...Petitioner
V/s.	
Sharadashram Vidyamandir & Ors.	...Respondents

**WITH
WRIT PETITION NO.936 OF 2012**

Ashok Ghanshamdas Bhavani	...Petitioner
V/s.	
Swami Vivekananda Education Society, Mumbai & Ors.	...Respondents

**WITH
WRIT PETITION NO. 1208 OF 2012**

Daudka A. Ramnarasayya ...Petitioner
V/s.
Anjuman-I-Islam, Mumbai & Ors. ...Respondents

Mr.Mihir Desai, Senior Advocate for the Petitioner.

Ms.Jyoti Chavan, AGP for Respondent Nos.3 and 4.

Mr.Ravte Kailash Sakharam-Inspector, Vocational & Education & Training, D.V.E.T., present.

**CORAM : S.C. DHARMADHIKARI &
SMT.BHARATI H. DANGRE, JJ.**

DATE : 19th DECEMBER 2018

P.C.:

1. In all these petitions, the grievance was that the petitioners were, at the relevant time, working and posted as Workshop Assistants.

2. Later on, the posts were abolished and the petitioners were facing loss of employment.

3. When these petitions were filed and in some of them a request was made to grant interim relief, from the Roznamma, it appears that an order of status-quo was passed.

4. That order made the task difficult for both the petitioners as also the respondents.

5. Since there was no post available as Workshop Assistant and all the petitioners were to be absorbed as Junior Clerks, then, merely because the order of status-quo was passed, would not revive the post of the Workshop Assistant, nor the petitioners can report for duties as Workshop Assistant.

6. In this utter confusion, later on, these petitions appeared before us and in one of the Writ Petition which was on our board, we have passed a detailed order. Pursuant to that detailed order of 17.12.2018 the learned AGP Mr.Kalel, has taken instructions and has placed an affidavit.

7. This further affidavit which is affirmed by the incharge Joint Director, Vocational Education and Training, Regional Office, Pune in turn says that the Government Resolution dated 22.05.2008 declares that the post of the Workshop Assistant has lapsed. Therefore, the petitioner is absorbed on the post of Junior Clerk. The petitioners in that petition of 2008 particularly styled as Writ Petition No.1071 of 2008-Mr.Pramod Raghunath Bamne and others

filed a Civil Application No.959 of 2014 in this Writ Petition in which a direction was issued to them to report for duty on the post of the Junior Clerk within two weeks from the date of the order, namely, 01.09.2017. The petitioner has reported for duty from 01.09.2017.

8. Then, in paragraph No.3 and 4 this affidavit it is stated as under:-

*“3. I further says that as per the Government Resolution dated 26.03.2004 issued by the Finance Department, in sub para 16-E of Annexure III it is stated that, the pay scale of the surplus employees absorbed in lower post required to be protected and his previous pay scale be continued. Accordingly, though the petitioner is absorbed in lower post of Junior Clerk, his pay scale of the post of Workshop Assistant is protected and the same is continued. Hereto annexed and marked as **Exhibit-1** is copy of the Government Resolution dated 26.03.2004 and **Exhibit 2** is copy of the pay fixation of the petitioner.*

4. I say that, the petitioner at present drawing the salary of Workshop Assistant though he is working as Junior Clerk. There is no financial loss of salary to the petitioner.

9. Similar affidavit is filed in each of these petitions. The

issue involved is common. The challenge is to the Government Resolution dated 22.05.2008 whereunder the posts of Workshop Assistant were declared to be lapsed. In other words, now they are non-existent.

10. The services of each of these petitioners have been protected. The question was whether their pay-scales were protected or not and which were drawn earlier as Workshop Assistant.

11. With the above clarification on oath and in paragraph Nos.3 and 4 of this affidavit it is undisputed that now the pay-scales are also protected. Additionally, Mr.Kalel takes instructions from the officials of the Department present in Court and they confirmed that the petitioners pay-scales as Workshop Assistant have been protected though their absorption is as Junior Clerk.

12. A typical working or calculation has been also placed on record with this affidavit which, according to the AGP, denotes that the pay-scales are protected and infact the petitioners have benefited.

13. Now there are some peripheral issues and which we need not address. They are peculiar to the petitioners and that the petitioners have to make up their mind whether to accept the absorption and with the protection of their pay-scales or make any additional demand including fitment (Assured Career Progression Scheme Benefit) in appropriate pay-scales. They would therefore have to accept the absorption with the protection as above without prejudice to their rights and contentions or otherwise is entirely left to them. If each of them is accepting it without prejudice to their rights and contentions, then, for their incidental and ancillary relief including the fitment, which is kept open and they can agitate the same firstly by approaching the authorities and if they fail then their grievances, can be agitated in appropriate legal proceedings.

14. We dispose of each of these petitions by accepting the above reproduced statements as undertakings given to this Court. In the event the pay-scales are now made admissible but as prevailing previously, then, the respondents shall, but for the contested issues, extend all benefits flowing from such protection.

15. Needless to clarify that once the pay-scales have been protected, there is no question of any recovery from the petitioners.

There is no question of excess amount paid to the petitioners. The recovery proceedings therefore are quashed and set aside.

16. Mr.Kalel, invites our attention to our earlier order and to submit that in the said order passed in Writ Petition No.1071 of 2008, we were little harsh on the two employees who were and present in the Court on that date. The directions in that order to their seniors and superiors to issue memo and to launch disciplinary proceedings against them be therefore be recalled is the request.

17. After hearing Shri.Kalel, and because he assures and persuades us as well that these officers would remain present in Court only when they are fully prepared to answer court's queries and instructing the AGP properly and completely, we drop the proposed actions as against these officers. However, they are cautioned that they should be careful in future and in the event they walk into the Court without proper preparation and are found not giving complete cooperation and full instructions to the learned AGP, we would not hesitate to revive the proposed action as against them or in that event we would not hesitate to impose a punishment in Court itself.

18. The Writ Petitions are disposed of. The Civil Applications do not survive.

19. Needless to clarify that in the event, after absorbtion, the petitioners are posted as Junior Clerks at far off places, then, the respondents should give them joining time of two months. No extension would be granted.

20. In the event any of the petitioners have retired from service, then, their pension papers be processed and their pension be fixed in the absorbed post of Junior Clerk but bearing in mind that their pay-scales as Workshop Assistant are protected by the Government.

(SMT.BHARATI H. DANGRE, J.)

(S.C. DHARMADHIKARI,J.)