

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.1606 of 2018

Magdum Dagdu Pathan and Ors. ... Petitioners

Vs

The Regional Deputy Commissioner,
Social Welfare, Pune Region, Pune and Ors. ... Respondents

WITH
WRIT PETITION NO.10783 OF 2018

Shree Shivshakti Shikshan Prasarak Mandal,
Tembhurni and Anr. ... Petitioners

Vs

Magdum Dagdu Pathan and Ors. ... Respondents

Mr.S.G.Kudle for the Petitioners in WP No.1606 of 2018 and for
Respondent Nos.1 to 3 in WP No.10783 of 2018.

Mr.S.S.Panchpor, AGP for Respondent Nos.1 to 4 in WP No.1606 of
2018 and Respondent Nos.4 to 7 in WP No.10783 of 2018.

Mr.Pravin Korgantiwar, Social Welfare Officer, Regional Deputy
Commissioner Office, Pune present.

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

TUESDAY, 11TH DECEMBER, 2018

P.C. :

1 Heard both sides.

2 Rule. Respondents waive service. By consent, rule is made returnable forthwith.

3 Pursuant to our earlier order, we have perused the entire record. The record reveals that the impugned order has been passed by the Regional Deputy Commissioner, Social Welfare, Pune Division, Pune.

4 He has, in the impugned order itself, referred to the direction of this Court dated 13th December, 2017. That is the order/direction of this Court in earlier Writ Petition, namely, Writ Petition (St.) No.9181 of 2017.

5 That earlier Writ Petition challenged the order dated 16th March, 2017. The said order is quashed and set aside by the Division Bench and this Court directed the three employees, who have filed Writ Petition to appear before the Regional Deputy Commissioner and the Regional Deputy Commissioner thereafter was to pass a reasoned order.

6 The complaint of Mr.Kudle appearing in support of this Writ Petition on the earlier occasion and today, reiterates that this Regional Deputy Commissioner, while passing the impugned order, made no reference to the voluminous documentary evidence produced before him on behalf of these petitioners. These petitioners are not the only teachers who have been termed as “surplus” or whose appointments have been termed as “illegal”. In fact, the order dated 3rd November, 2014, which has been cancelled by the impugned order, in categorical terms says that Shree Shivshakti Shikshan Prasarak Mandal, Taluka Madha, District Solapur manages a primary Ashram School at Tembhurni, Taluka Madha, District Solapur. On 2nd May, 2014, it is the Assistant Commissioner, Social Welfare, Solapur who forwarded the proposal for approving the appointments of the petitioners. In fact, he sought permanent approval by referring to the educational qualifications of these three teachers and it is clear that the permanent approval was granted on 17th June, 2010.

7 The order dated 3rd November, 2014 proceeds on the footing that for this primary Ashram School, sanctioned staff strength for the Academic Year 2009-2010 is twenty seven. For the Academic

Year 2010-2011 to 2013-2014, appointment of eleven out of these twenty seven was approved. Apart from these eleven, sixteen others have been rendered surplus. Thus, this order refers to the twenty seven employees, out of which permanent approval was granted to eleven. We do not understand whether this primary Ashram School had sixteen permanent employees whose services were not approved or these sixteen teaching staff was surplus being over and above the twenty seven. Apart from the fact that the figure twenty seven denotes the 'teaching' and 'non teaching' staff both, then, it is not clear as to how sixteen teachers have been rendered as surplus and services of thirteen out of them were approved. It is only the three petitioners before us who were left out of consideration. Meaning thereby, their services remained to be approved. By the order dated 3rd November, 2014, the same Regional Deputy Commissioner who has passed the impugned order in categorical terms states that these persons should get the benefit of the earlier order dated 17th June, 2010. Pertinently, in this order it is stated that the employees have been rendered surplus because the students strength has gone down. They were appointed on the basis of the students strength of 2009. The order proceeds on the footing that once the other teachers and at par with these three are the

beneficiaries of the approval order or permanent approval in their favour, then, even these teachers who have satisfactorily completed their probationary period, should be granted similar benefits. It is on this footing that the order of 3rd November, 2014 has been passed.

8 Taking advantage of the directions of this Court, *prima facie*, the whole matter is sought to be reopened by this Regional Deputy Commissioner, Pune Division, Pune. However, by the impugned order, he does not recall the order of 17th June, 2010. He only recalls his own order of 3rd November, 2014. While recalling that order of 3rd November, 2014, he says that on 16th October, 2012, the then Regional Deputy Commissioner, Social Welfare, Pune Division, Pune had approved the services of the present petitioners. This he did, by ignoring those sixteen persons who were already rendered surplus. They have not been assisted in any manner. In other words, the order passed in favour of the present petitioners ignores the backlog in appointments of backward class candidates and also the claims of surplus employees. With all this and when the appointments made including that of the petitioners before us were illegal and disciplinary proceedings have been initiated against the concerned officials, then,

why the order dated 17th June, 2010 has not been recalled was not clarified even during the course of oral arguments.

9 We have perused the original records and with the assistance of both counsel. We find that the learned AGP after handing over the original record, has been fair enough to state that it would speak for itself. The record does not indicate that there was any backlog in the appointments of backward category candidates. The record does not indicate that those who granted the approval to the petitioners' services were not authorised or empowered to do so. The record also indicates that on 17th June, 2010 when the order was passed by the then Regional Deputy Commissioner, Social Welfare, there was no authority vesting in him or her. Thus, we find a selective approach being adopted and there is a patent discrimination insofar as the present petitioners are concerned.

10 There is substance in the complaint of Shri Kudle that when this Court passed an order on 16th March, 2017 in the earlier Writ Petition, the authorities were expected to apply their mind. Instead, what the petitioners are visited with is virtually an exercise of review. That exercise of review was undertaken simply because the petitioners

approached this Court against the wrong and illegality inflicted on them. Mr.Kudle invited our attention to paragraph 21 of the Writ Petition No.1606 of 2018 to urge that these petitioners on earlier occasion filed Writ Petition No.5881 of 2016. However, at the instance of the present respondents, the matter was referred to the first respondent-The Regional Deputy Commissioner, Social Welfare, Pune Region, Pune for taking a decision in respect of payment of salary within a period of two months. That period already expired. The final order in this Writ Petition has been passed on 16th March, 2017 and there was a subsequent challenge in the form of Writ Petition No.14156 of 2017. That came to be disposed of by the order of 13th December, 2017. The direction was given to decide the petitioners' case as regards confirming their permanent approval, but what the petitioners have found is that instead of taking that decision, the petitioners are visited with the impugned order. This is to get over a possible consequence and, namely, of contempt of this Court's earlier orders. Thus, because the petitioners have approached this Court and are seeking payment of their salaries or rather arrears thereof, they are now being harassed and their appointments and the approvals thereto are reopened. While reopening that issue, the authorities have been selective, in the sense,

the permanent approvals granted to the petitioners' appointment alone have been cancelled. The beneficiaries other than the petitioners remained untouched.

11 When we pointed out all this to the learned AGP and he found it difficult to sustain the impugned order, he seeks time to take instructions. He wants to speak to the concerned officials. At the same time it is fairly indicated that insofar as the backlog, approval and other issues and matters are concerned, the decision making power vests in respondent No.3. It is faintly suggested that it is the respondent No.3, who requested the first respondent to look into the matter and take a appropriate decision. This is a case of passing the buck from one person to another. It is not a matter where the power is usurped and if wrongs are committed earlier, a genuine and *bona fide* attempt is made to correct them. This is shirking of responsibilities totally.

12 In the above circumstances, we do not accede to the request of the learned AGP and grant him adjournment to speak to the concerned officials, for we do not know to whom he wants to speak and who is the authority empowered in law to take decision of this nature. Once the discrimination is writ large and is noticeable on the face of it,

then, we will not allow the mandate of Article 14 and 16 of the Constitution of India to be flouted in this manner. The impugned order is ex-facie discriminatory and falls foul of the mandate of Constitution of India. It cannot be sustained. It is vitiated by non-application of mind as well for no reference is made to the records and to the version of the petitioners at all. Hence, the Writ Petitions succeed. The Rule is made absolute.

13 The impugned order dated 12th January, 2018 is quashed and set aside. All consequential benefits shall follow, including the release of arrears of salary. We direct that such arrears be released as expeditiously as possible and, in any event, within three (3) months from today. If they are not so released, they shall carry interest at the rate of 8% per cent per annum from the date they are due and payable till payment with costs quantified at Rs. Twenty Five Thousand, which liability shall also be borne by respondent Nos.1 and 3 in equal proportion. The State may release these amounts, but if there is a delay, the interest and cost would be initially borne by the State Government. However, it is empowered to recover it from the salaries of respondent Nos.1 and 3.

14 All concerned to act on an authenticated copy of this order.

[SMT. BHARATI H. DANGRE, J.] [S.C. DHARMADHIKARI, J.]