

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO.6433/2016

1. Saraswati Mandir,
through its Secretary,
office at Kalyan Mukh Badhir
Vidyalaya, Tulshibag Road,
Reshimbag, Nagpur.
2. Kalyan Muk Badhir Vidyalaya,
through its Head Master,
Tulshibag Road, Reshimbag,
Nagpur.

..Petitioners.

..Vs..

1. Appellate Authority and
Deputy Commissioner,
Social Welfare Department,
Nagpur.
2. District Social Welfare Officer,
Civil Lines, Nagpur.
3. Yashwant Madhukarrao Kayande,
aged about 57 Yrs., Occu. Nil,
R/o 80, Madhumalti, Parate
Nagar, Sonegaon, Nagpur - 25.

..Respondents.

 Shri A.D. Mohgaonkar, Advocate for the petitioners.
 Shri A.M. Kadukar, A.G.P. for respondent Nos.1 and 2.
 Mrs. S.W. Deshpande, Advocate for respondent No.3.

CORAM : Z.A. HAQ, J.

DATE : 31.1.2018.

ORAL JUDGMENT

1. Heard Shri A.D. Mohgaonkar, Advocate for the petitioners, Shri A.M. Kadukar, A.G.P. for respondent Nos.1 and 2 and Mrs. S.W. Deshpande,

Advocate for respondent No.3.

2. **Rule.** Rule made returnable forthwith.

3. The petitioner / employer has challenged the order passed by respondent No.1 exercising its powers under the Special School Code for Handicapped Schools. The respondent No.1 has held that the order of termination of service of respondent No.3 / employee is bad in law and has directed the management to reinstate the respondent No.3 / employee with continuity of service and back-wages.

4. The learned Advocate for the petitioners has submitted that the respondent No.1 / Appellate Authority could not have exercised the adjudicatory powers as the Special Code is not an enactment by the Legislature, but is a compendium of the directions issued under Article 162 of the Constitution of India, and adjudicatory powers cannot be conferred by the executive order. To support the submission, reliance is placed on the following judgments:

(i) Judgment given by the Hon'ble Supreme Court in the case of *the Secretary, Sh. A.P.D. Jain Pathshala and others V/s. Shivaji Bhagwat More and others* reported in **(2011) 13 SCC 99**,

(ii) Judgment given by this Court at Aurangabad Bench in Writ Petition

No.7389/2014 (Mahadeo S/o Shriram Sarode V/s. Regional Deputy Commissioner, Social Welfare Department, Amravati and Appellate Authority, Amravati Division, Amravati and others) on 19th October, 2015,

(iii) Judgment given by this Court in Writ Petition No.3044/2011 and other connected matter (Balkrishna S/o Raghunath Jadhav V/s. The State of Maharashtra, through the Secretary, Social Welfare Department, Mantralaya, Mumbai and others) on 16th July, 2013 and

(iv) Judgment given by this Court in Writ Petition No.3155/2008 (Vasantrao S/o Baburao Lende and others V/s. State of Maharashtra, through its Secretary, Department of Social Welfare and Culture, Mantralaya, Mumbai and others) on 27th March, 2017.

5. The learned A.G.P. and the learned Advocate for respondent No.3 have not been able to controvert the legal position, however, the Advocate for respondent No.3 has submitted that if the impugned order is set aside, then the respondent No.3 / employee be permitted to take recourse to appropriate remedy according to law.

6. Considering the proposition of law laid down in the above judgments, following order is passed:

(i) The impugned order is set aside.

(ii) The appeal filed by the respondent No.3 before the Appellate

Authority and Deputy Commissioner, Social Welfare Department, Nagpur is dismissed.

The writ petition is **allowed** accordingly.

In the circumstances, the parties to bear their own costs.

It is clarified that as the impugned order is set aside on the ground that it is passed by an Authority, which had no jurisdiction to entertain and decide the appeal, the respondent No.3 / employee will be at liberty to take recourse to appropriate remedy according to law, for redressal of his grievance.

C.A.W. NO.224/2018

In view of disposal of writ petition, this application filed by the respondent No.3 / employee for directions to the petitioners and the respondent No.2, does not survive and is **disposed** accordingly. No costs.

JUDGE