

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 5628 OF 2016

Smt. Savita Shivkaran Ghule, **...PETITIONER**
Age- 28 years, Occu-Service,
R/o. Shree Nagnath Niwasi Vidhyalya Parli (V).
Tq. Parli (V), Dist. Beed

VERSUS

1. The State of Maharashtra **...RESPONDENTS**
Through its Secretary,
Social Welfare Department.
Mantralayal, Mumbai
2. The Director,
Directorate of VJNT, OBC &
SBC Welfare, State of Maharashtra,
3 Church Road, Pune,
3. Special District Social Welfare Officer,
Beed, Dist. Beed
4. Marathwada Ustod Kamgar Vikas Mandal,
Parli-Vaijnath, Tq. Parli-Vaijnath,
Dist. Beed.
5. The Regional Deputy Commissioner,
Social Welfare Department, Aurangabad Region,
Aurangabad

Mr.S.S. Jadhavar, Advocate for the petitioner
Mr.Ravi R. Bangar, Advocate for respondent No. 4
Mr. S.N. Kendre, AGP for the respondent/State

**CORAM : SUNIL P. DESHMUKH &
S.M. GAVHANE, JJ.**

DATE : 27-09-2019

ORAL JUDGMENT [PER: SUNIL P. DESHMUKH, J.]

. Rule. Rule made returnable forthwith. With the consent of the learned counsel for the parties the petitioner is heard finally.

2. The petitioner after following due selection process had been appointed as Assistant Teacher under an order dated 10-07-2008 initially on temporary basis. Similar orders were issued in her favour by respondent No.4 in the years 2009, 2010. On 13-06-2011 an order came to be issued by respondent No. 3 granting permanent approval to her appointment. Subsequently, under certain developments, the petitioner had been appointed as Hostel Superintendent under an order dated 29-10-2014 by respondent No. 4.

3. Suddenly, a purported show cause notice had been issued and received on 05-04-2016 by respondent No. 4, with reference to impugned order dated 23-03-2016 dubbing the petitioner's appointment as irregular claiming the same to be against a reserved post and there being no post available for accommodation of open category candidate.

4. Mr. Jadhavar, learned counsel contends that the assumption under impugned order at item No. 8 itself is against the facts as roster point at which the appointment has been appointed, in fact, had been for the candidate of NT-D category and the petitioner belongs to NT-D category. He further adverts to that

there is no dispute about the petitioner being belonging to NT-D category. Apart from aforesaid, he submits action, way down after granting permanent approval to her service with reference to a circular of 2009, would not be proper while statutorily services of petitioner had become permanent. Over and above this, he submits that in 2014, the petitioner had been appointed as Hostel Superintendent on a sanctioned post which is for open category and further adverts to that even said appointment has been permanently approved during pendency of this writ petition under order dated 25-07-2019, tendering across the bar photo copy thereof which is marked "X" for identification purpose.

5. Purporting to resist the petition, learned AGP submits that while an enquiry committee had been constituted, during enquiry, quite a few irregularities in appointments of employees of respondent No. 4 had surfaced and accordingly report had been prepared and action had been mooted. He submits that appointment orders relied on by the petitioner are deficient of showing her appointment is against NT-D category.

6. Having heard the learned counsel as aforesaid, it transpires that the petitioner being from NT-D category is not disputed and it is respondents' case that the post on which the petitioner had been appointed was meant for NT-D category. In such a case the reason appearing in Item No. 8 of the impugned order would hardly apply in petitioner's case. Apart from aforesaid, while the petitioner had been appointed as Hostel Superintendent

way back in 2014 and approval thereto has been granted under recent order dated 25-07-2019, passed during pendency of the writ petition, we do not consider that impugned order and show cause notice would be tenable against the petitioner. That apart, it appears that petitioner had never been heard during enquiry proceeding nor any explanation was solicited from him. On the score of breach of principles of natural justice as well, the impugned order is untenable.

7. In the circumstances, writ petition is allowed. Impugned order dated 23-03-2016 issued by respondent No. 2 to the extent of direction of cancellation of appointment of petitioner is quashed and set aside. Consequently, as very basis of show cause notice would not be available and show cause notice as well is rendered vacuous and ineffective and is accordingly quashed. Rule made absolute accordingly. Petition is disposed of.

[S.M. GAVHANE, J.]

[SUNIL P. DESHMUKH, J.]