

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 5629 OF 2016

Dhananjay S/o Bhimrao Satbhai,
Age-36 years, Occu:Service,
R/o-Shri nagnath nivasi vidyalaya,
Sant Tukaram nagar, Parali V.
T-Parli, Dist-Beed.

...PETITIONER

VERSUS

- 1) The State of Maharashtra,
Through it's Secretary,
Social Welfare Department,
Mantralaya, 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, Parali Vaijnath,
Tq-Parali Vaijnath, Dist-Beed,
- 5) The Regional Deputy Commissioner,
Social Welfare Department,
Aurangabad Region, Aurangabad.

...RESPONDENTS

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Mr.Santosh S. Jadhavar Advocate for Petitioner.
Mr.S.S. Dande, A.G.P. for Respondent Nos.1 to 3 & 5.
Mr. R.R. Bangar Advocate for Respondent No.4.

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

DATE : 26TH SEPTEMBER, 2019

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

1. Rule. Rule made returnable forthwith. Heard learned counsel for the appearing parties finally, by consent.

2. The petitioner takes strong exception to the impugned order dated 23rd March, 2016 wherein his case appears to have been considered at item-4 as well as item 6 thereof.

3. Learned counsel Mr. Santosh Jadhavar takes us through documents annexed to the petition. He refers to initial appointment order of the petitioner dated 5th June, 2010 effective from 15th June, 2010 and particularly to that appointment of the petitioner had been on open post. He draws our attention to the fact that thereafter similar order in 2011 had been issued and to these two appointments approval had been granted under communication dated 17th February, 2012.

Learned counsel further refers to order dated 25th September, 2012 granting permanent approval to petitioner. He submits that appointment of the petitioner has been on a clear, vacant, sanctioned open post and petitioner has been working since then without seeking any benefit that he belongs to NT(D) category. He submits that suddenly show cause notice dated 5th April, 2016 had been received by the petitioner from respondent No. 4 communicating that pursuant to an enquiry and order dated 23rd March, 2016, his services would be brought to an end and his explanation was sought.

4. He submits that going by observations at items 4 and 6 of the impugned order and reasons thereunder, those would be hardly attributable to the petitioner. He submits that very strange rationale has been applied to disturb permanent appointment of the petitioner. He submits that impugned observations under items 4 and 6 are with reference to erroneous assumptions and it had been not taken into account that the petitioner has not been appointed as a candidate from NT(D) reserved category and had been appointed on the open post. Petitioner had been given permanent approval accordingly

under the order referred to above. Whereas, reason given under the impugned order is that petitioner's appointment would be in excess of admissible posts. Petitioner has been appointed in the year 2010 in open category and had been granted approval accordingly and not as NT(D) category candidate. Item 4 shows that appointment of the petitioner is shown to be from reserved category, however, he submits that these observations are not only incompatible with but also are contrary to record and facts. There is no material which would justify reasons referred to under items 4 and 6. He submits that since show cause notice is issued with reference to items 4 and 6 has no factual basis, the petition deserves to be allowed.

5. The impugned action is on the basis of report of enquiry committee. It does not appear that any opportunity was given to the petitioner in said proceedings. Considerations at items 4 and 6 of the impugned order are without any basis and without reference to facts. Factual position as referred to in the writ petition particularly that petitioner has been appointed in the year 2010 as open category candidate and had been granted permanent approval appear to have been overlooked and/or ignored and/or not brought forth. Such a position is not disputed

in the present petition. Looking at foregoing events, facts and averments, the impugned order and communication are rendered untenable.

6. In view of aforesaid, the petition is granted in terms of prayer clauses (B) and (C) to the extent of the petitioner and is disposed of. Rule is accordingly made absolute.

(S.M. GAVHANE, J.)

asb/SEP19

[SUNIL P. DESHMUKH, J.]