

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5778 OF 2014

Mahesh Prakash Mane and Ors. ... Petitioners

Vs

Union of India through Department of
Social Welfare and Ors. ... Respondents

Mr.S.S. Pakle i/b Mr.A.R.Belge for the Petitioners.

Mr.S.S.Panchpor, AGP for State-Respondent Nos.2 to 7.

Mrs.S.V. Bharucha with A. Singh for Respondent No.1.

Ms.S.A. Naik for Mr.P.D. Pise for Respondent No.9.

**CORAM : S.C. DHARMADHIKARI &
M.S.KARNIK, JJ.**

MONDAY, 7TH JANUARY, 2019

P.C. :

1 The writ petitioners who are three in number have filed
this writ petition seeking following reliefs :-

“(a) That this Hon'ble Court be pleased to exercise powers vested in it under Article 226 of the Constitution of India and issue a writ of Mandamus and/or Writ in the nature of Mandamus, order and direction directing Respondents to release the monthly salary of the Petitioner employees w.e.f. July 2012 and continue to pay the same in future from month to month in accordance with law namely MEPS Act, 1977 and Rules 1981;

(b) That pending the hearing and final disposal of this Petition, this Hon'ble Court be pleased to exercise powers vested in it under Article 226 of the Constitution of India and issue a writ of Mandamus and/or Writ in the nature of Mandamus, order and direction directing Respondents to release the monthly salary of the Petitioner employees w.e.f. July 2012 and continue to pay the same in future from month to month in accordance with law namely MEPS Act, 1977 and Rules, 1981."

2 The writ petition proceeds on the footing that there is a policy of absorption of these primary teachers employed in special schools and they would be absorbed in the services of non-special primary schools. The policy in that regard is framed by the State Government and copy of that is annexed to the writ petition. In that policy of 31st August, 2009 it is clearly stated that the Integrated Education Scheme was implemented in Maharashtra State from 1978. Admittedly this is a Central Government policy. The aim of the policy is to encourage the disabled or special students to take education with ordinary and normal children and thereby reduce the negative feeling in their mind. This is to give them confidence and to bring them on par with mainstream children. On the date of the policy, it is indicated that 90,000 special schools are established in the country wherein 2,00,000 special students are taking education. They are, thus, taking benefit of

the scheme. On every other parameters, these children are placed at par with able students. It is very clear that this is a policy to carry forward and implement the law enacted by the Parliament, namely, The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995. After this scheme was introduced and put in place, the Government realized that not all special schools have the necessary infrastructure and were not in a position to implement the policy. The petitioners claim that they have been appointed as special teachers and some of them are appointed before the cut-off date i.e. 1st March, 2009. They claimed to be in continuous service from the date of appointment. The salaries were not released save and except a paltry sum of Rs.1,500/- from February 2009 till date. Hence, there is a demand for salary and, at the same time, it is stated that the other policy of absorption of the teachers appointed in special schools is in place. That policy has not been implemented in its true letter and spirit. It is stated that by and in terms of this policy, the Government has frozen the date for absorption of the teachers who are not at fault for closure or non functioning of the special schools in which they were appointed. It is stated that the policy says that such of the teachers, who have been appointed prior to the cut-off date, namely, 1st March,

2009, alone would qualify for such absorption and in terms of the Government policy contained in the Government Resolution dated 15th September, 2010.

3 The three petitioners before us approached the Government for such absorption, but they complain that they were informed that their absorption is not automatic for entire record in their regard is unavailable. Even their personal details have not been maintained properly.

4 On such a writ petition, an affidavit-in-reply has been filed by the Deputy Secretary, School Education and Sports Department in which it is stated as under :-

“I say and submit that, from the information gathered by the Directorate of Education (Primary), it is obvious that, 595 units at the primary stage were approved by the Directorate before 01.03.2009. The Petitioners contend that, though they were not appointed before the cut of date i.e. 01.03.2009 and proposals for approval of their units were pending at various stages of the Government they have not been granted the benefits of absorption. It is submitted however that, the units on which the Petitioners were working were never approved by the Directorate of Education (Primary). I say that, since their proposals were never approved Directorate had no occasion to verify whether such teachers were actually appointed by the schools on its own on the dates as depicted by management of institution in the pending proposals. Moreover, the Government had no liability for paying salaries to teachers working on units which were not approved. It was in these circumstances that, the proposals of the Petitioners for absorption

were rejected vide letter dated 31.10.2012 addressed to the Director of Education (Primary) taking into consideration the Government Resolution dated 15.09.2010.

I say that, since the approval of Director of Primary was not granted to the petitioner till the date when Government of India (GOI) scheme stopped on 01.03.2009, the salary under the GOI scheme did not start to them. Therefore, they never became part of the scheme. Therefore question of their absorption do not arise.

I say that, the order passed dated 02.02.2015 by this Hon'ble High Court at Aurangabad Bench in Contempt Petition No.234 of 2014 in Writ Petition No.10544 of 2012 and this Hon'ble High Court directed the State Government to decide ***“the proposal seeking approval to the appointments of the petitioners on its own merits expeditiously, preferably within two (2) months from today and if the approvals are granted to the said proposal then shall consider the petitioners for absorption as per the Government Resolution dated 15.09.2010, expeditiously”***. Hereto annexed and marked as ***Exhibit R-1***. The proposals of the Petitioner is under consideration. I say that, as mentioned in para 5, the number of unapproved special teachers were increased from 134 to 183. The proposal of these special teachers are being scrutinized and present Petitioners name is included in the list of 183 teachers at serial no.20, 21 and 24 respectively. The decision will be taken as soon as these names are verified with concurrence of planning and Finance Department & with approval of the cabinet. Since, there is additional financial liability on state treasury.”

5 Despite the above, the affidavit says that the Government is making sincere and genuine efforts to consider the cases of absorption of unapproved special teachers. At the same time, it is mentioned that the number of unapproved teachers has been inflated from 134 to 183. The petitioners are in list of such 183 teachers and their names are listed at Sr.Nos.20, 21 and 24. The decision with regard to their

proposal for absorption would be taken as expeditiously as possible and with concurrence of Department of Planning and Finance. There is, thus, an additional financial burden on the Government.

6 We refrain from expressing any opinion on this issue for the affidavit-in-reply clearly indicates that the Department of School Education and Sports and, particularly, the Director of Education (Primary) does not have the data or the details. Thus, whether the petitioners are part of the scheme has not been clarified to them. The affidavit categorically says that the question of petitioners' absorption does not arise.

7 In the affidavit-in-rejoinder, the petitioners proclaim that their appointments have been made in terms of the scheme. They say that the Government circular dated 15th September, 2010, the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 and the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Rules, 1981 govern their appointment.

8 They relied upon the Government Resolution dated 15th September, 2010 and claimed that the appointments have been made prior to the cut-off date.

9 It is claimed that there is a communication from the Government itself, copy of which is at page 85 of the paper-book, signed by the Education Officer (Primary), Zilla Parishad Sangali, which shows that petitioner No.1 was appointed in Vidyamandir Prashala, Miraj. He has been appointed, according to the petitioners, much prior to this cut-off date. However, a perusal of page 85 reveals that the School Management forwarded the proposal in relation to the petitioner to the Block Education Officer on 11th December, 2008. The said officer then forwarded this proposal to the Deputy Director of Education for the concerned region on 18th February, 2009. Then, this Directorate forwarded the proposal on 12th June, 2009. The date of appointment is taken to be 16th June, 2008. Though a positive recommendation is made in his favour, it is evident that the affidavit-in-reply before us does not indicate that all appointments are in order.

10 In the above circumstances and when the parameters of writ jurisdiction are clear, we will not be in a position to issue a positive order. We are not mandated to issue any order when this is a policy matter. In the policy, a cut-off date is prescribed. The prescription of the cut-off date is not an issue or matter of challenge. It is claimed that the petitioners' case falls within the parameters of the policy decision. We are clear in our mind that in writ jurisdiction no policy decision can be challenged, save and except on limited grounds. This Court does not frame any policy nor reframes any existing policy. In matters of implementation of existing policy, if there is a complaint of arbitrariness, discrimination and *mala fides*, then, the Court ensures that the benefit of the policy should not be denied to persons who are otherwise eligible and deserving. We are not clear as to whether the Government is inclined to take a decision in favour of the petitioners. Had that been the case, the communication from the original record would not have been relied upon. In fact, in the latest communication of 4th January, 2019, it is stated that the Maharashtra Government through the concerned Ministry has informed the Director of Education (Primary), Maharashtra State that the scheme itself came to an end on 1st March, 2009. It is clear from this communication that on the date of

closure of the scheme, the proposal of 183 special teachers was pending for final recommendation. There are no other teachers awaiting such absorption and the certificate issued on 6th June, 2018 and prior to that the list of such teachers and 183 in number, forwarded by the communication dated 30th May, 2012, indicates that there are no supporting documents. Thus, the Government wants complete details with regard to the educational qualification, the Aadhar Card number, the photograph and related documents so as to consider the proposal of these teachers for absorption.

11 Once this is a clear position and emerging from the record in relation to the petitioners, then, we cannot grant any relief in this petition save and except a direction to the Government to expedite the process, which is referred to in its own affidavit, and take a final decision thereon as expeditiously as possible. Let that decision be taken positively within three (3) months from today. In the event it is not so taken and communicated to the petitioners, on the petitioners bringing to the notice of this Court that the delay in decision is intentional, this Court will not hesitate to initiate proceedings in contempt or issue such other directions as are permissible in law, including to prosecute the

officials responsible for the delay. This Court then can pass very drastic orders, including depriving some of the authorities and officers of their salary and other monetary benefits.

12 The writ petition is disposed of with these directions.
There will be no order as to costs.

[M.S. KARNIK, J.]

[S.C. DHARMADHIKARI, J.]