

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

WRIT PETITION NO.6628 OF 2018

1. Arachana w/o Shrirang Patil
Age 39 years, Occu: Clerk
R/o Aurad (Shahajani),
Taluka Nilanga, District Latur.
2. Bankat s/o Bapurao Koyale
Age 52 years, Occu: Art Teacher,
R/o Aurad (Shahajani),
Taluka Nilanga, District Latur.
3. Hussain s/o Mainoddin Shaikh
Age 36 Years, Occu: Special Teacher
R/o Ausa, Tq. Ausa, Dist. Latur
4. Vijaykumar s/o Hanmantrao Jante,
Age 39 years, Occu: Special Teacher,
R/o Aurad (Shahajani),
Taluka Nilanga, District Latur.
5. Govind s/oTukaram Popalayath
Age 42 years, Occu: Art Teacher,
R/o Hali Handarguli, Tq. Udgir
District Latur.
6. Nandkumar s/o Gunderao Bhande
Age 40 years, Occu: Art Teacher,
R/o Davnagaon, Tq. Udgir, Dist. Latur
7. Kondiba s/o Sabngram Bande
Age 30 years, Occu: Helper,
R/o Dongargaon, Tq. Loha Dist. Nanded
8. Govind s/o Kalappa Mhetre
Age 38 years, Occu: Cleaner
R/o Aurad (Shahajani),
Taluka Nilanga, District Latur.
9. Shiraj s/o Baksusaab Shaikh
Age 35 years, Occu: Peon
R/o Sakol Javalaga
Tq. Devani District Latur

10. Abdul s/o Dastagir Mangrule
Age 37 years, Occu: Cleaner,
R/o Pandharpur, Tq. Devani, Dist. Latur
11. Baban s/o Namdeo Bhandare
Age 44 years, Occu: Security Guard,
R/o Aurad (Shahajani)
Tq. Nilanga, Dist. Latur
12. Kamal w/o Maruti Parit
Age 36 years, Occu: Caretaker
R/o Aurad (Shahajani)
Tq. Nilanga, Dist. Latur
13. Ranjit s/o Kishanrao Aglave
Age 46 years, Occu: Caretaker
R/o Tambaraspalli,
Tq. Biloli, Dist. Nanded
14. Pravin s/o Angad Kamble,
Age 44 years, Occu: Caretaker
R/o Aurad (Shahajani)
Tq. Nilanga, Dist. Latur
15. Tanaji s/o Bhagwan Suryawanshi
Age 34 years, Occu: Security Guard,
R/o Kelgaon, Tq. Nilanga Dist. Latur
16. Laxman s/o Raghunath Kurre
Age 41 years, Occu; Security Gaurd,
R/o Shambu Umaraga, Tq. Shirur
Anantpal, District Latur
17. Dnyaneshwar Sambhaji Mahanure,
Age 44 years, Occu: Peon
Tq/ Shambu Umaraga, Tq. Shirur
Anantpal, District Latur
18. Digambar Ramchandra Kawadwad
Age 45 years, Occu: Helper
R/o Tondar Tq. Udgir District Latur
19. Manohar s/o Vitthalrao Baswade
Age 38 years, Occu: Cleaner,
R/o Halgara Tq. Nilanga, District Latur
20. Bhairavnath s/o Madhukar Survase
Age 37 years, Occu: Security Guard,
R/o Madansuri Tq. Nilanga, Dist. Latur

21. Digambar s/o Bhimrao Gaikwad,
Age 38 years, Occu: Clerk,
R/o Halgara, Tq. Nilanga, Dist. Latur
22. Santosh s/o Babruwan Hanmante
Age 32 years, Occu: Helper
R/o Kavathala Tq. Devani, Dist. Latur
23. Sunita w/o Dadarao Mulkhede
Age 37 years, Occu: Caretaker
R/o Udgir, Tq. Udgir, Dist. Latur
24. Shirish s/o Surendra Jadhav
Age 44 years, Occu: Special Teacher,
R/o Tondchir, Tq. Udgir, Dist. Latur
25. Fayyaz s/o Ahmed Shaikh
Age 42 years, Occu: Special Teacher
R/o Udgir, Tq. Udgir, District Latur
26. Ashok s/o Gundappa Badihaveli,
Age 43 years, Occu: Art Teacher,
R/o Udgir, Tq. Udgir, Dist. Latur
27. Yashwant s/o Mareppa Mane
Age 45 years, Occu: Art Teacher,
R/o Udgir Tq. Udgir, Dist. Latur,
28. Vishnukant s/o Balaji Kanwate,
Age 37 years, Occu: Teacher,
R/o Wadhavana (Bujruk)
Tq. Udgir, District Latur
29. Gorakh s/o Tukaram Popalayath
Age 33 years, Occu: Caretaker
R/o Hali Handarguli Tq. Udgir
District Latur
30. Sanjay s/o Taterao Mane
Age 42 years, Occu: Cleaner
R/o Madansuri Tq. Nilanga, Dist. Latur
31. Sunil Manikrao Suryawanshi
Age Major, Occu: Service,
R/o C/o- Rajivgandhi Niwashi Matimand
Vidyalaya, Aurad (Shahajani)
Tq. Nilanga, Dist. Latur

... Petitioners

Versus

1. The State of Maharashtra
Through its Principal Secretary
Social Justice and Special Assistance
Department, Mantralaya, Mumbai 32.
 2. The Commissioner for Persons with
Disabilities, Maharashtra State, Pune.
 3. The Zilla Parishad, Latur
(Through its Chief Executive Officer)
Latur
 4. The Social Welfare Officer,
Group-A, Zilla Parishad, Latur
 5. Vidhyabhushan Yuvak Mandal,
Bulandnagar, Tq. Udgir, Dist. Latur
Through its President/Secretary,
 6. Chandrasagar Bahuuddeshiya Sevabhai Sanstha,
Aurad (Shahajani) Tq. Nilanga, Dist. Latur
Through its President/Secretary
 7. The Headmaster,
Swami Ramanand Teerth Mukhbadhir Vidyalaya,
Aurad (Shahajani), Tq. Nilanga, Dist. Latur
 8. The Headmaster,
Rajiv Gandhi Nivasi Matimand Vidyalaya,
Aurad (Shahajani), Tq. Nilanga, Dist. Latur
 9. The Headmaster,
Indira Gandhi Resident apang Vidyalaya,
Aurad (Shahajani), Tq. Nilanga, Dist. Latur
- .. Respondents**

Ms P. S. Talekar, i/by S.B.Talekar & Talekar and Associates,
Mr. S.B. Yawalkar, Addl. Govt. Pleader for Respondent Nos. 1 & 2
Mr. S.S. Thombre, Advocate for respondent No.5,
Mr. V.D. Salunke, Advocate for respondent No.6.

WITH
WRIT PETITION NO.1100 of 2019
WITH

CIVIL APPLICATION NO. 10873 OF 2019

1. Chandrasagar Bahuuddeshiya Sevabhai Sanstha,
Aurad (Shahajani) Tq. Nilanga, Dist. Latur
Through its Secretary
Usha D/O Laxman Bhalke
Age 30 Years, Occu: Agri & Business
R/o Aurad Shahajani Tq. Nilanga
District Latur

... Petitioners

Versus

1. The State of Maharashtra
Through its Principal Secretary
Social Justice and Special Assistance
Department, Mantralaya, Mumbai 32.
2. The Hon'ble Minsiter,
Social Justice and Special Assistance
Department, Mantralaya, Mumbai 32.
3. The Commissioner Handcap Welfare
Maharashtra State, Pune.
4. The Deputy Commissioner,
Social Welfare, Latur Region, Latur
5. The District Social Welfare Officer,
Zilla Parishad, Latur, Dsit. Latur
6. Vidhyabhushan Yuvak Mandal,
Bulandnagar, Tq. Udgir, Dist. Latur
Through its Secretary,
Sanjay Digambar Muley,
R/o As above.

.. Respondents

Mr. R. R. Mantri, Advocate i/by Mr. V.D. Gunale
and Mr. S.B. Gastagar, Advocates for the petitioner
Mr. S.B. Yawalkar, Add. G.P. for respondent Nos. 1 to 4
Mr. S.S.Thombre, Advocate for respondent No.6

CORAM : S. V. GANGAPURWALA
AND
ANIL S. KILOR, JJ.
RESERVED ON : 17th October, 2019

PRONOUNCED ON : 20Th March, 2020

JUDGMENT (Per Anil S. Kilor, J.)

1. Rule. Rule made returnable forthwith. By consent of the parties, the petition is taken up for final disposal.
2. In both these petitions, the petitioners are challenging the recovery of an amount to the tune of Rs.2,02,95,479/- from the petitioners in both the petitions, as per the orders dated 27.07.2017 issued by the respondent No.2 commissioner and order dated 06.04.2018 issued by the Hon'ble Minister Social Justice, State of Maharashtra. Hence, both the petitions are taken together.
3. The facts leading to the present petitions are that the petitioner in Writ Petition No.1100/2019 is an Education Society, running respondent Nos.7 to 9 special schools (in Writ Petition No.6628/2018). The petitioners in Writ Petition No.6628/2018 are teaching and non teaching employees of said Respondent No.7 and 8 Special Schools.
4. The parties are referred as per their status in Writ Petition No.6628/2018.
5. Respondent No.5 society shifted the respondent Nos. 7 to 9 Special schools from Aurad Shahajani, Taluka Udgir to Udgir District Latur as per the Resolution passed by the General Body

of Zilla Parishad.

6. The inspections of the said schools, had been conducted from time to time after shifting the said schools from Aurad Sahajani to Udgir.

7. On the said shifting the residents of Aurad Shahajni had approached to this Court by filing Writ Petition No.6092/2012, challenging transfer of Respondent Nos. 7 to 9 Special Schools from Aurad Shahajani to Udgir.

8. This Court, vide judgment dated 10th October, 2012, restrained the management from running the said three special schools at Udgir and observed that if the management wants to run the schools, run at Aurad.

9. This Court further directed the State Government to make immediate alternate arrangement, if the management is not willing to run the said schools at Aurad. This Court, also directed to close down the said three schools at Udgir and called explanation from the Commissioner for Welfare of the handicapped, Maharashtra State, Pune, to explain the circumstances under which the two orders date 06.08.2012 and 11.08.2012, were passed.

10. The respondent Commissioner, thereafter conducted the

hearing and cancelled the registration certificate of Respondent No.5 society, vide order dated 25.03.2013, on the ground that the respondent No.5society has committed several illegalities while running respondent Nos. 7 to 9 special schools.

11. Thereafter, the management/administration of the said three special schools, has been transferred to respondent no.5 society by respondent No.1 State of Maharashtra on 05.07.2013.

12. After the said transfer of management, the petitioners made representations to the concerned authorities for payment of arrears of salary for the period between 01.11.2011 to 01.11.2013, which was withheld due to illegalities committed by respondent no.5 society.

13. Accordingly the request of the petitioners was accepted and arrears of salary to the tune of Rs.2,02,95,479, paid to the petitioners and it was directed to recover the said amount from the respondent No.7 to 9 special schools and management, vide order dated 27.07.2017 issued by the Chief Executive Officer, Zilla Parishad, Latur.

14. The said order of recovery was challenged before the respondent No.1 State of Maharashtra. The State of Maharashtra confirmed the order dated 27.07.2017 and maintained the order of recovery against respondent Nos. 7 to 9

special schools. The said two orders are under challenge in the present petition.

15. Heard Ms. P S Talekar, learned counsel for the petitioners in Writ Petition No.6628/2018, Shri R.R. Mantri assisted by Shri V.D. Gunale, learned counsel for the petitioners in Writ Petition No.1100/2019, Shri S.B. Yawalkar, learned Additional Government Pleader for the State, Shri S.S.Thombre, the learned counsel for respondent No.5 Society.

16. Ms. P S Talekar, learned counsel for the petitioners in Writ Petition No.6628/2018, vehemently argued that the recovery initiated against respondent Nos.7 to 9 Special Schools is without following the principles of natural justice and without verifying the complaints made by the then education society Vidybhusan Yuvak Mandal, Respondent No.5.

17. She further argues that the respondent No.5 society made false complaint against the release of salary of the petitioner employees with an intention to harass the petitioner employees, whereas the said society has no right to interfere into the functioning of the said three special schools after the said schools transferred to respondent No.6 society.

18. The learned counsel for the petitioners further submits that the petitioners are the permanent employees and they had

worked for the period for which the arrears of salary was paid to the petitioners.

19. She points out that withheld salary of the petitioners has been paid after hearing the petitioners and the respondent No.5-society. Therefore, such recovery is illegal, since before initiating such enquiry no show cause notice has been issued and no hearing was granted. Hence, the impugned action is in violation of principles of natural justice.

20. Shri Mantri, learned counsel for the petitioner in Writ Petition No.1100 of 2019, in addition to the arguments made by Ms. Talekar, submits that the Hon'ble Minister under political pressure brought by the Secretary of the Institution, is intending to transfer the said three special schools to earlier Management.

21. He also submits that the respondent authorities are acting in highhanded manner without following due procedure of law either in the matter of recovery of salary paid to the employees or in the matter of re-transfer of all the three special schools to the earlier management.

22. Learned A.G.P. for respondent Nos. 1 to 4 and Shri Thombre, learned counsel for respondent No.5 supports the action of recovery of amount and initiation of process of transfer of these special schools to earlier management i.e.

respondent no.5.

23. To consider the rival contentions of the parties, we have gone through the record and the impugned orders of recovery and also the proceeding initiated by Hon'ble Minister in relation to transfer of respondent Nos.7 to 9 special schools to respondent no.5 earlier management.

24. The impugned order issued by the respondent Commissioner, dated 27.07.2017, shows that on a complaint received by Hon'ble Minister, in respect of financial irregularities committed while transferring the respondent Nos. 7 to 9 school, the Chief Executive Officer, Zilla Parishad, Latur, was directed to make detailed enquiry and submit the report to the Government. The respondent Commissioner further observes that the report is yet not submitted by the Chief Executive Officer. However, by observing that some irregularity was committed in payment of salary to the petitioners to the tune of Rs.2,02,95,479/-, the Chief Executive Officer was directed to recover the said amount from the school and the employees.

25. There is no dispute that the said order of recovery has been issued by the respondent commissioner behind the back of petitioners in both the petitions and without giving show cause notice and opportunity of being heard in relation to impugned

action.

26. The said order also shows that some complaints were received by the Hon'ble Minister, however there is no mention in the order whether those complains were brought to the notice of the concerned parties and explanation sought from the concerned parties or not.

27. The enquiry which was directed to be conducted by the Chief Executive Officer, Zilla Parishad Latur, the report of the same has not been submitted by the Chief Executive Officer, Zilla Parishad Latur. The said fact speaks for itself that the without waiting for the report or without supplying the copies of complaints and other relevant documents, recovery has been initiated.

28. Record further shows that the respondent Nos. 6 management preferred an appeal before the Hon'ble Minister, against the order dated 27.07.2017, issued by the respondent Commissioner. The Hon'ble Minister, vide its order dated 06.04.2018, maintained the recovery of salary paid for the period 01.11..2011 to 01.11.2013.

29. The Hon'ble Minister failed to consider that the respondent Commissioner before passing the impugned order, dated 27.07.2017, failed to issue show cause notice to the

concerned parties including petitioners in both the petitions and also failed to grant opportunity of being heard.

30. Thus, in view of the said fact, it is clear that the Hon'ble Minister has not applied its mind and failed to consider that the order of Commissioner suffers from non-observance of principles of natural justice.

31. The Hon'ble Supreme Court of India in the case of ***Nisha Devi vs. State of Himachal Pradesh and others, reported in 2014 (16) SCC 392***, has held that:

"Trite though it is, we may yet again reiterate that the principle of audi alteram partem admits of no exception, and demands to be adhered to in all circumstances. In other words, before arriving at any decision which has serious implications and consequences to any person, such person must be heard in his defence".

32. Thus, in view of the above well settled law in respect of principles of *audi alteram partem*, we have no hesitation to hold that while passing order dated 27.07.2017 and order dated 06.04.2018, the hearing has not been granted and thereby principles of natural justice not followed in the present matter. Thus, we hold that both the impugned orders are illegal and the same are liable to be quashed and set aside.

33. Accordingly, we set aside the impugned order dated 27.07.2017 and order dated 06.04.2018.

34. The respondent authorities if so desire, are free to take fresh decision relating to recovery of amount and transfer of schools, after following due procedure of law and the principles of natural justice by giving sufficient opportunity to the concerned parties to defend their case.

35. Accordingly petitions are partly allowed in above terms and the same are disposed of.

36. Rule is made partly absolute.

(ANIL S. KILOR, J.)

(S.V.GANGAPURWALA, J.)

JPC