

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

WRIT PETITION NO.6380 OF 2020

Rajashree Shivraj Patil,
Age. 55 years, Occu. Service,
R/o C/o Kai. Prakash Kamble Secondary
Ashram School, Dongar-Shelki Tanda,
Tq. Udgir, Dist. Latur

...Petitioner

Versus

1. The State of Maharashtra,
Through it's Secretary,
Social Welfare & Special Assistant
Department,
Mantralaya, Mumbai.
2. Regional Deputy Commissioner,
Social Welfare Department,
Latur Division, Latur.
3. Special District Social Welfare Officer,
Latur, Dist. Latur.
4. Shradamata Shikshan Prasarak Mandal,
Somnathpur,
Tq. Udgir, Dist. Latur.
Through its Secretary,
Shrirang Gyanoji Kamble,
Age: 60 years, Occu : Social Work,
R/o: Somnathpur,
Tq. Udgir, Dist. Latur.
5. Kai. Prakash Kamble Secondary Ashram
School, Dongar-Shelki Tanda,
Tq. Udgir, Dist. Latur.
Trough its Head Master

...Respondents

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Advocate for Petitioner : Mr. Santosh S. Jadhavar
AGP for Respondent Nos. 1 to 3 : Mr. S. B. Yawalkar
Advocate for Respondent Nos. 4 & 5 : Mr. P. V. Barde
...

**WITH
WRIT PETITION NO.4819 OF 2020**

Shardamata Shikshan Prasarak Mandal,
Somnathpur,
Tq. Udgir, Dist. Latur
Through its Secretary,
Shrirang Gyanoji Kamble,
Age: 60 years, Occu : Social Work,
R/o: As above

...Petitioner

Versus

1. State of Maharashtra,
Through Secretary for
Social Justice and Special Assistant
Department,
Mantralaya, Mumbai.
2. State of Maharashtra
Through Secretary for
Vimukt Jati, Nomadic Tribes and
Other Backward Class and Special
Backward Classes Welfare Department,
Mantralaya, Mumbai
3. Directorate of
Vimukt Jati, Nomadic Tribes and
Other Backward Class and Special
Backward Classes Welfare Department,
3, Janpath Marg, Pune
4. Regional Commissioner,
For Social Welfare Department,
Latur Division, Latur
Tq & Dist.: Latur
5. Rajashri Shivraj Patil
Age: 55 years, Occu: Service,
R/o: C/o: Kailasvasi Prakash Kamble
Secondary Aashram School,
Dongarshelki Tanda,
Tq. Udgir, Dist. Latur

...Respondents

...

Advocate for Petitioner : Mr. P. V. Barde
AGP for Respondent Nos. 1 to 4 : Mr. S. B. Yawalkar
Advocate for Respondent No. 5 : Mr. Santosh S. Jadhavar

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**CORAM : RAVINDRA V. GHUGE AND
S. G. MEHARE, JJ.**

DATE : 29th SEPTEMBER, 2021

ORAL JUDGMENT : [PER : RAVINDRA V. GHUGE, J.]

1. Rule. Rule made returnable forthwith and heard finally by the consent of the parties.

2. By the first petition, the petitioner has sought reliefs in terms of prayer clauses 35(B) and 35(C) as under :-

"B) By issuing writ of certiorari or any other appropriate writ, order or direction, the Judgment and Order dated Nil passed by respondent No.2, rejecting claim of the petitioner for permanent approval to her appointment as an Assistant Teacher in respondent No.5 school, communicated alongwith covering letter dated 20.06.2019, so also the Judgment and Order dated 20.09.2019 passed by respondent No.1, dismissing appeal of the petitioner, may kindly be quashed and set aside.

C) By issuing writ of mandamus or any other appropriate writ, order or direction, the respondent No. 1 to 3 may kindly be directed to grant permanent approval to the appointment of the petitioner as an Assistant Teacher in respondent No.5 school and to pay her salary from the salary grants payable to the respondent No.5 school from the academic year 2010-11 and to continue to pay her salary in future from the salary grants payable to respondents No.5 school."

3. The petitioner was appointed as an assistant teacher in

respondent No.5 school, which was receiving 100% grant-in-aid, with effect from 10-06-2006. The petitioner was continued in service vide an appointment order dated 12-07-2007 for the academic year 2007-2008. The said appointment was approved by respondent No.3 for the said academic year, vide order dated 30-01-2008. As such, the service of the petitioner from 10-06-2006 till the end of the academic year 2008, was approved by the Special District Social Welfare Officer, Latur.

4. The petitioner claims that she completed two years in service which were treated as a probation period and she was appointed as an assistant teacher on permanent basis vide the order of appointment dated 31-05-2008. She claims that she should have been granted approval on permanent basis. However, the Special District Social Welfare Officer continued to grant approval on year to year basis till the academic year 2009-2010. In view of such approvals granted by respondent No.3, the petitioner was paid her salary from the salary grants till academic year 2009-2010.

5. The petitioner claims, on the basis of the order dated 06-02-2015, that she continued from the academic year 2010-2011 with a temporary approval and by order dated 06-06-2015, her service from academic year 2011-2012 till academic year 2014-2015 were again approved on temporary basis. She submits that

after 2010, she has not been paid her regular salary.

6. The petitioner submits that since she was tired out by the respondents, she approached this Court by filing Writ Petition No. 5730 of 2018 praying for permanent approval to her appointment and payment of her salary. By the order dated 21-01-2019, this Court recorded in paragraph Nos. 4, 5, 6 and 7 as under :-

"4. In case the respondent-school is a Post Basic Ashram School, then MEPS Rules apply. The amendment is introduced on 08.07.2008 enhancing the reservation to 52%. The reservation as on the date of appointment of the petitioner shall have to be considered. Before the amendment came into force, the petitioner became a deemed permanent employee. The said aspect was also required to be considered by the authorities. The same appears to have been not considered.

5. The Management shall submit fresh proposal seeking permanent approval to the appointment of the petitioner. The respondent shall consider the reservation as on the date the petitioner is appointed and shall take decision on the proposal seeking permanent approval within three months from today.

6. It is not disputed that, the petitioner is working on the said post. The petitioner -management shall submit fresh salary bills in respect of the payment of the salary to the petitioner from 2010-11 to 2014-15. On receipt of the same, the decision shall be taken within two months on the said salary bills.

7. Depending upon the decision given on the proposal seeking permanent approval, the further steps be taken immediately."

7. The learned counsel for the petitioner submits that after

this Court once again sent her back to the door steps of the respondents, the second respondent–Regional Deputy Commissioner, Social Welfare Department, rejected her appeal on the ground that she was appointed against a post reserved for the scheduled tribe, vide impugned order dated 20-06-2019.

8. The petitioner then approached the Principal Secretary, State of Maharashtra for Scheduled Castes and Scheduled Tribes Department, challenging the above stated order. Though it was recorded that the petitioner was appointed from the open category on 12-06-2007 and was qualified for such appointment, the permanent approval was refused as there was a backlog.

9. The learned advocate representing respondent No.4 Educational Institution (the petitioner in the second petition), submits that respondent No.5 school was handed over to his management by way of a legal transfer on 09-09-2014. He had then clarified to the Government that he would not be responsible for any complications that may arise on account of any disputed issue including the issue of appointment of teachers. He submits that this Respondent has filed Writ Petition No. 4819 of 2020 (the second petition herein) for challenging the same order passed by the Principal Secretary dated 20-09-2019 by which the entire salary burden has been placed on the shoulders of his establishment and

an administrator has been appointed on his institution.

10. Having considered the submissions of the learned counsel for the respective sides and having gone through the available record threadbare, we do not find that the appointment of the petitioner was against any reserved category. She was appointed from the open category. If the erstwhile management has created a mess, as regards the reservation applicable, the petitioner cannot be held responsible, since she had neither applied from the reserved category nor does she belong to the reserved category. She belongs to the open category and had applied for employment from the said category. We also find that, on the date of appointment of the petitioner, there were five assistant teachers who were appointed and out of which four belonged to the reserved category. The petitioner was the only candidate appointed from the open category.

11. The learned AGP submits that the matter may be relegated to the respondent authorities for reconsideration. He vehemently opposes the petition submitting that if the erstwhile management has done a wrong or has indulged in an irregularity, the new management which has succeeded the earlier management should shoulder the sins committed by the earlier management. Shri Barde, hastens to oppose saying that his management has not

been the culprit and it is the Social Welfare Department under whose very nose, the purported irregularity may have occurred and for which, his management cannot be blamed.

12. Be that as it may, continued litigation has almost tired out the petitioner despite being not at fault. The candidate, who had applied from the open category, appointed on a post which was not reserved for any category, having worked from 2006 to 2021 and is without salary since the academic year 2010-2011, appears to have suffered a lot. The impugned order is perverse and erroneous.

13. This petition is, therefore, allowed in terms of prayer clauses (B) and (C). The impugned order dated 20-09-2019 is quashed and set aside to the extent of refusal to the grant approval to the petitioner. The permanent approval shall be issued by the competent authority – respondent No.3, on or before 30-10-2021.

14. Since the appointment of the petitioner has been granted permanent approval, her outstanding salaries from the academic year 2010-2011 till the beginning of the academic year when the school was transferred to respondent No.4, shall be paid by the department of the first respondent. Her salary scales shall be calculated and shall be paid lump sum, on or before 30-11-2021.

After respondent No.5 school was taken over by respondent No.4 management from 09-09-2014, the salary of the petitioner shall be paid from the salary grants of respondent No.4 and such amounts shall be calculated so as to be paid till the month of September, 2021, by way of arrears, on or before 31-12-2021. Her regular salary shall be paid to her from the month of October, 2021 without interruption from the salary grants, as respondent No.4 is a 100% grant-in-aid institution. Rule is made absolute accordingly.

Writ Petition No.4819 of 2020 :-

15. Respondent No.4 management in the above stated first petition is the petitioner in this petition, partly challenging the same order dated 20-09-2019, to the extent of the appointment of the administrator and the stoppage of the grants, vide prayer clause 12[A], which reads as under :-

“A] By issuing appropriate writ, order, direction or any other appropriate order in nature of writ, Hon’ble High Court may be pleased to quashed and set aside the judgment and order dated 20.09.2019 and 11.03.2020 passed by Chief Secretary for Vimukt Jati, Nomadic Tribes, Other Backward Class And Special Backward Classes Welfare Department”

16. Considering our conclusions recorded in the foregoing paragraphs of this judgment, with regard to the first petition, the said petitioner teacher has been granted permanent approval along with all salary benefits. Having concluded that, neither the

petitioner teacher nor the new management have played any role in violation of the reservation roster by the erstwhile management of the school which appointed the petitioner teacher. It is apparent that the blame, as regards the debacle of the erstwhile management and the mess that it may have created with the reservation roster, cannot be attributed to the new management. The new management can, however, be directed to ensure that the backlog is filled up in future appointments. By the impugned order, the Principal Secretary has directed the appointment of an administrator on the present petitioner management. Due to the COVID-19 pandemic, no appointment was made and no administrator has taken charge, as per the contention of the present petitioner.

17. Considering our conclusions as noted above and by imposing the condition on the present petitioner management, that the backlog in the reservation shall be filled in by and through future appointments, which condition shall be scrupulously followed and implemented, the impugned order to the extent of the appointment of the administrator to the extent of this petitioner is quashed and set aside.

18. The petition is, therefore, partly allowed and Rule is made partly absolute.

19. We make it clear that any violation of the above condition imposed upon the new management would be a good ground for the competent authorities to initiate steps against the management.

(S. G. MEHARE, J.)

(RAVINDRA V. GHUGE, J.)