

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

WRIT PETITION NO. 6224 OF 2020

1. Anil s/o Kacharu Kote
Age : 42 years, Occ. Service
2. Ajay s/o Appasaheb Kote
Age : 37 years, Occ. Service
3. Nilesh s/o Bhujangrao Salunke
Age : 45 years, Occ. Service
4. Mahesh s/o Madhukar Tak
Age : 40 years, Occ. Service
5. Sarjerao s/o Machindra Gore
Age : 40 years, Occ. Service
6. Jagdish s/o Suresh Bhosle
Age : 35 years, Occ. Service
7. Deepak s/o Shivaji Turkane
Age : 38 years, Occ. Service
8. Vilas s/o Sharad Dange
Age : 35 years, Occ. Service
9. Subhash s/o Annasaheb Barwant
Age : 35 years, Occ. Service
10. Dilip s/o Yosef Kolge
Age : 40 years, Occ. Service
11. Sanjay s/o Rajaram Shinde
Age : 40 years, Occ. Service
12. Deelip s/o Prasad Jang Bahadur Singh
Age : 50 years, Occ. Service

13. Arjun s/o Madhavrao Thore
Age : 38 years, Occ. Service
14. Deepak s/o Dnyandeo Jagtap
Age : 40 years, Occ. Service
15. Nilesh s/o Ashok Supekar
Age : 39 years, Occ. Service
16. Sachin s/o Madhukar Bhalerao
Age : 37 years, Occ. Service

All R/o. Shirdi, Tq. Rahata
District : Ahmednagar

.. Petitioners

Versus

1. The State of Maharashtra
Through the Principal Secretary for
Law and Judiciary Department
Mantralaya, Mumbai
2. Shree Saibaba Sansthan Trust, Shirdi
Through its Chief Executive Officer
Having its office at
Saibaba Sansthan Complex, Shirdi
Tq. Rahata, District Ahmednagar

.. Respondents

Mr. V. D. Hon, Senior Advocate a/w Mr. Ashwin V. Hon, Advocate for
the Petitioners.

Mr. D. R. Kale, In-charge G. P. for Respondent No. 1.

Mr. A. S. Bajaj, Advocate for Respondent No. 2.

**CORAM : S. V. GANGAPURWALA &
SHRIKANT D. KULKARNI, JJ.**

Date on which reserved for judgment : 08.06.2021.

Date on which judgment pronounced : 03.07.2021.

Judgment (*Per S. V GANGAPURWALA, J.*) :-

. Rule. Rule made returnable forthwith. With the consent of parties taken up for final hearing.

2. The petitioners are employed at respondent No. 2 through contractors. The present writ petition is filed with the following reliefs.

B) Issue a writ of certiorari or writ in the nature of certiorari to quash and set aside the Resolution dated 13.07.2020 (Exhibit “H”) and the consequential order dated 02.09.2020 (Exhibit “I”) passed by the Adhoc committee of Shree Saibaba Sansthan Trust, Shirdi.

C) Issue a writ of mandamus or writ in the nature of mandamus to the respondents to continue the petitioners and similarly placed 582 employees mentioned in the list annexed at Exhibit “A” to the petition, in service of Shree Saibaba Sansthan Trust, Shirdi in accordance with the Government Resolution dated 17.09.2019 of the State Government and that their services be not terminated and/or discontinued.

3. Under the Government Resolution dated 17.09.2019 the Government of Maharashtra directed that the skilled and unskilled employees under employment on contract basis for the period 2001 to 2004 of Shree Saibaba Sansthan Vishwast and working shall be appointed on consolidated salary of Rs. 5,913/- and Rs. 5,113/- respectively or on minimum wages whichever is more on the

sanctioned post as per the staffing pattern sanctioned under the Government Resolution dated 07.08.2009. It was further clarified by the Government in the said resolution that their status would be as contractual employees and they will not be entitled to seek permanency. Pursuant to the said Government Resolution the then Chief Executive Officer issued appointment orders to 598 employees. The Adhoc committee of the Trust under resolution dated 13.07.2020 decided to cancel the appointment orders. On the basis of the resolution passed by the Adhoc committee of respondent No. 2 the communication was issued on 02.09.2020 to take steps pursuant to the decision of the Adhoc committee. The resolution dated 13.07.2020 of the Adhoc committee and the consequential order dated 02.09.2020 is assailed in the present writ petition.

4. Mr. Hon, learned senior counsel for the petitioners submits that the petitioners and 582 similarly placed employees are working with the Sansthan for approximately 16-20 years on contract basis. The regular committee of Sansthan had taken into consideration the services rendered by such employees and passed resolution on 19.11.2011 for absorbing the services of employees on regular establishment. The proposal was submitted to the Government for necessary approval on 08.12.2011. Though the proposal was submitted

on 08.12.2011 there was no response by the Government. The reminders were sent by the Sansthan on 27.01.2014 and 07.11.2015 requesting the State Government to consider the proposal for taking such employees on regular establishment. The State Government ultimately on 17.09.2019 passed a resolution approving the proposal of the Sansthan for taking 635 employees serving on contract basis to be accommodated on regular establishment. The Government has also fixed pay for their regular establishment under the said Government Resolution. The Sansthan through its Chief Executive Officer issued appointment orders to the petitioners and similarly placed employees on 02.01.2020 thereby confirming their services with the Sansthan as per the conditions mentioned in the Government Resolution dated 17.09.2019. After lapse of six months the Adhoc committee appointed by this Court held a meeting on 13.07.2020 and the subject of appointing the petitioners and such other 598 employees was considered. The committee passed the resolution on the same day to discontinue the services of the petitioners and similarly placed 598 employees. The Adhoc committee set aside the appointment orders issued to 598 employees with effect from 31.07.2020. The committee also took a decision to deduct 50% salary of 598 employees who were earlier working through the contractor. This act of the Adhoc committee is contrary to the provisions of law. The Adhoc committee

has overstepped its jurisdiction and power. The Adhoc committee could not have travelled beyond the Government Resolution dated 17.09.2019. On 02.09.2020 the Sansthan passed order of payment of their pay scale from August 2020. The Sansthan has deducted 50% of the amount from the salary of the petitioners and similarly placed employees. The services of the petitioners are regularized as per the Government Resolution dated 17.09.2019. The said Government Resolution is issued pursuant to the proposal of the Sansthan. The said proposal is submitted by regularly constituted committee. The Adhoc committee has not performed this function in accordance with Section 16 of Shree Saibaba Sansthan Trust (Shirdi) Act, 2004 (hereinafter referred as 'Trust Act'). The resolution dated 13.07.2020 is contrary to the Trust Act. The Adhoc committee could not have discontinued the services of the petitioners. The petitioners would suffer irreparably as they would be jobless. They are working for almost 16-20 years.

5. Mr. Bajaj, learned counsel for the respondent No. 2 submits that the petitioners are not Class III and Class IV employees as contended by them. The respondent No. 2 had appointed contractors who provide workers. The petitioners are working through the contractors. The classification as suggested by the petitioners as Class III and Class IV is not correct. The Sansthan has categorized them as skilled workers and

unskilled workers. It is true that on 19.11.2011 the proposal was submitted for taking the services of these employees who are working through the contractors since many years with the Sansthan on regular establishment and for that purpose proposal was submitted to the Government for approval. Pursuant to the said proposal the State Government on 17.09.2019 passed a resolution for taking 635 employees working through contractors from 2001 to 2004 and presently in employment as employees of the Sansthan directly on contract basis on fixed pay of Rs. 5913/- per month to skilled workers and Rs. 5113/- per month to unskilled workers or as per the Minimum Wages Act whichever is more. It was in pursuance to the Government Resolution dated 17.09.2019 the then Chief Executive Officer issued appointment orders dated 02.01.2020 to 598 employees on contract basis for 11 months only. The Adhoc committee by majority decision of three members ultimately on the opinion formed, resolved to cancel and set aside all the appointment orders issued to 598 employees with effect from 31.07.2020. It was further resolved to pay ex-gratia amount i.e. as salary to those 598 employees who were earlier working through contractors considering the Covid-19 situation. The contention of the petitioners that by virtue of Section 16 of the Trust Act their services are protected and that their services cannot be terminated is not correct.

6. The learned in-charge Government Pleader supports the stand of the petitioners and submits that on 17.09.2019 the Government has issued resolution regarding 635 contractual employees. The said Government Resolution was issued upon the proposal of the management committee of respondent No. 2 Sansthan. The Adhoc committee overstepped its jurisdiction. The Adhoc committee could not have passed the impugned resolution dated 13.07.2020. The same is beyond its powers, unjustified and invalid.

7. We have considered the submissions canvassed by the learned counsel for respective parties.

8. The Sansthan, at present is not functioning through validly constituted committee. The Adhoc committee has been constituted by this Court under its order dated 09.10.2019 in the Public Interest Litigation No. 120 of 2019 and the affairs of the Trust are looked into by the Adhoc committee. The chairman of the Adhoc committee is the Principal District and Session Judge, Ahmednagar.

9. It appears that the regular committee in the year 2011 passed the resolution for regularizing services of the persons working through contractors since many years. The said proposal was forwarded to the Government. Subsequently, reminders were also issued and eventually

on 17.09.2019 the Government of Maharashtra issued the Government Resolution. Under the said Government Resolution the Government passed an order for appointing 635 skilled and unskilled employees on contractual basis as per the staffing pattern sanctioned under the Government Resolution dated 17.08.2009 on payment of Rs. 5913/- per month to skilled workers and Rs. 5113/- per month to unskilled workers or as per the Minimum Wages Act whichever is more. It is further clarified in the said Government Resolution that their appointment would remain on contractual basis. They will be termed as contractual employees and shall not be entitled to claim permanency. It further appears that under the Government Resolution dated 17.08.2009 the staffing pattern has been sanctioned.

10. It further appears that in furtherance of the Government Resolution dated 17.09.2019 the Chief Executive Officer of respondent No. 2 issued appointment orders to 598 such contractual employees. At the relevant time when the appointment orders were issued by the Chief Executive Officer to such 598 employees the regular committee was not functioning and the Adhoc committee constituted by this Court was managing the affairs of the Sansthan. The Chief Executive Officer could not have on its own issued appointment orders to 598 employees without the concurrence of the committee. The Chief Executive Officer

functioning at the relevant time exceeded its authority in directly issuing appointment orders to these 598 employees without consultation and concurrence of the Adhoc committee.

11. The Adhoc committee in its meeting dated 13.07.2020 passed the resolution to discontinue the services of such 598 employees appointed by the Chief Executive Officer. The relevant minutes of the meeting and resolution No. 360 dated 13.07.2020 is as under :

“ The Ad-hoc Member PDJ & District Session Judge, Ahmednagar Shri. Anekar, Addl. Commissioner Shri. Deelip Swami and Asstt. Charity Commissioner Smt. Geeta Bankar had taken following decision after due discussion.

This subject was discussed in detail and each member has expressed views.

This committee, while deciding Subject 1, 2, 43 and 63 on the agenda of the Ad-hoc Committee Meeting dt. 11.05.2020, has thoroughly examined the entire record of the Trust, the scheme of the Shree Sai Baba Sansthan Trust (Shirdi) Act, 2004 and the powers of the Chief Executive Officer to appoint employees.

This Committee has already found that the then Chief Executive Officer could not have appointed employees directly on the Sansthan on contract basis because such power is vested with the Committee constituted under Section 13(4) of the Shree Sai Baba Sansthan Trust (Shirdi) Act, 2004. Since such appointment on contract basis is a policy decision, it ought to have been presented before the Ad-hoc Committee, constituted by Hon'ble High Court.

This Committee has also found that the Sansthan has failed to follow the Government Resolution dt. 07.08.2009, more particularly the terms and conditions under which the said staffing pattern (आकृतीबंध) was approved. The Committee has also found that while issuing Government Resolution dt. 17.09.2019, the Government has called upon the Sansthan to follow Government Resolution dt. 07.08.2009 of which the reference is found at serial no. 2 under the caption “वाचा.”

It is not the case of Sansthan before this Committee that Committee has followed Government Resolution dt. 07.08.2009 by preparing service rules, qualification of entry, promotion etc. In fact Committee has been constituted for preparation of such rules and even this Ad-hoc Committee has given extension to the said Committee to complete the remaining work. In the above background, therefore, the appointment orders issued by the then Chief Executive Officer (Shri. Deepak Muglikar) is a piece of paper and cannot be termed as an order under the authority of the Committee as envisaged under section 13(4) of the Act.

Some of the members of this Committee tried to suggest that ex-post facto approval could be granted to the said order. However, on thorough examination of this proposal, the Committee is unanimous in refusing to grant such ex-post facto approval, more particularly when Government Resolution dt. 07.08.2009 has not been followed by the Trust. In addition to it, giving such ex-post facto sanction for such acts would be protecting the illegality and therefore, should not be approved at the hands of Ad-hoc Committee.

Consequently, the Ad-hoc Committee has unanimously resolved to cancel and set aside all the appointment orders issued to 598 employees with effect from 31st July, 2020. This is in the light of the fact that due to Covid-19 situation the

Committee has resolved to pay exgratia amount i.e. 50% of the salary to those 598 employees who were earlier working through the contractor. Therefore, the said employees are not likely to be financially affected.

The Committee has also resolved to extend liberty to the Sansthan to submit proposal in this regard as per their choice after due study of various Government Resolutions issued by the Government.

The Committee Member & CEO Shri. Arun Dongre (IAS) has expressed his factual views as below :

As per GR dated 17.09.2019 of L&J Deptt. Govt. of Maharashtra, the persons working on the establishment of contractor 635 employee are allowed to be taken on Sansthan establishment.

As per the GR 598 eligible employees are taken from the establishment of Contractors to Sansthan establishment by an order of CEO dated 02.01.2020. The appointment was given as per GR hence post facto sanction by Ad-hoc committee should be given.”

12. It appears that the Adhoc committee was of the view that the Government Resolution dated 07.08.2009 has not been followed and in the Government Resolution dated 17.09.2019 the Government has called upon the Sansthan to follow the Government Resolution dated 07.08.2009. The Adhoc committee was of the opinion that the rules are not framed. Unless the rules are framed as required under Government Resolution dated 07.08.2009 the appointment order could not have been issued by the Chief Executive Officer.

13. Under the Government Resolution dated 07.08.2009 the Government had sanctioned staffing pattern subject to the terms and conditions enumerated in the said Government Resolutions. The Government directed the managing committee of the Sansthan to prepare the service rules for the various posts and obtain sanctioned staffing pattern from the Government and before appointing any person on the post, the rules shall be scrupulously followed. The service rules contemplated under the Government Resolution dated 07.08.2009 seeks to provide for a qualification, responsibilities and duties of each post. The promotional channel is to be fixed. The pay scale of each post shall be fixed in the rules. The Government further directed that 2908 posts shall be permanent and about 1918 posts shall be filled in on contractual basis. The appointments shall be for 11 months and shall be renewed every year.

14. We have asked the learned counsel for the petitioners and the respondents that whether the appointment of these 598 persons made by the Chief Executive Officer under the appointment order dated 02.01.2020 were on post sanctioned as per the Government Resolution dated 07.08.2009. The learned counsel were unanimous that the appointments of these 598 persons were on sanctioned post as per the Government Resolution dated 07.08.2009.

15. We are also apprised that, the recruitment rules are not sanctioned or finalized by the Government. The Adhoc committee is appointed by this Court. In such a scenario, the Chief Executive Officer could not have without the concurrence and consultation of the Adhoc committee directly issued appointment orders to these 598 employees certainly the then Chief Executive Officer exceeded his authority.

16. The apprehension of the Adhoc committee may be justifiable. Back door entry is not the legal way of entering into employment. It needs to be considered that respondent No. 2 through its managing committee had passed resolution to regularize such employees working since 2001 and sent the proposal for sanction/approval. The Government did not accept the said proposal in its entirety. Under the Government Resolution dated 17.09.2019 directed to appoint those employees on contractual basis without claim of permanency or regularization and on consolidated salary.

17. It is also not disputed by the respondents that the petitioners and similarly situated 598 employees to whom the appointment orders are issued were working from 2001 to 2004 through the contractors with the Sansthan. The Government Resolution dated 17.09.2019 is issued basically to accommodate the employees working from 2001 to 2004

on contractual basis with the Sansthan, as they are working for almost 16-20 years.

18. It appears that to ameliorate the condition of contractual employees working since 2001, the resolution was passed by the management committee of the Sansthan in the year 2011 for regularizing the services of such employees. Under the Government Resolution dated 17.09.2019 the Government instead of regularizing their services and/or making them permanent issued directions to appoint them on contractual basis as employees of Sansthan for 11 months and these persons would not be entitled to claim permanency or regularization. As these persons appointed would remain on contractual basis and on consolidated salary, certainly, they would not be entitled for any promotional cadre. Their salaries are also fixed under the Government Resolution dated 17.09.2019. In view of that, non framing of service rules would not be an impediment for appointing these persons on contractual basis. The Government probably had taken into consideration the long standing services rendered by these persons through the contractors with the Sansthan and appointed them on a fixed consolidated salary.

19. In view of the above, we hold that the petitioners and the 598 persons are entitled to be appointed if eligible as per the Government

Resolution dated 17.09.2019 on the consolidated salary as fixed in the said Government Resolution for 11 months on contractual basis certainly with the condition that they will not be entitled to claim permanency and regularization. The petitioners seeking benefit of the Government Resolution dated 17.09.2019 cannot travel beyond the terms and conditions of the said Government Resolution.

20. In the light of the above, though we hold that the erstwhile Chief Executive Officer could not have issued the appointment orders to the 598 persons and the Adhoc committee's resolution was not illegal, considering that the Government had partially accepted the resolution of the Sansthan while issuing Government Resolution dated 17.09.2019 and considering overall scenario of the matter as discussed supra, we direct that these 598 persons issued with the appointment orders by the Chief Executive Officer on 02.01.2020 be continued as contractual employees without any claim for permanency and regularization and as per the terms and conditions of the Government Resolution dated 17.09.2019 on the consolidated salary fixed by the Government under its Resolution dated 17.09.2019 and to that effect the impugned resolution by the Adhoc committee dated 13.07.2020 would not be operative.

21. Rule accordingly made absolute in above terms. No costs.

(SHRIKANT D. KULKARNI)
JUDGE

(S. V. GANGAPURWALA)
JUDGE

PS.B.