

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

WRIT PETITION NO. 8247 OF 2019

Raje Sambhaji Bahuuddeshiya Sevabhavi
Sanstha, Dagadi Shahajanpur,
Tq. & Dist. Beed, Through its Secretary,
Shivaji Govindrao Chavan, Age 46 years,
Occ. Agriculture, R/o. Dagadi Shahajanpur,
Tq. & Dist. Beed

... **Petitioner**

VERSUS

- 1) The State of Maharashtra,
Through its Principal Secretary,
Social Justice and Special Aid Department
Mantralaya, Mumbai.
- 2) The Commissioner of Disabled Welfare
Maharashtra State, Pune.
- 3) The Divisional Deputy Commissioner,
Social Welfare Department,
Aurangabad, Dist. Aurangabad.
- 4) The Chief Executive Officer,
Zilla Parishad Beed.
- 5) The District Social Welfare Officer,
Zilla Parishad, Beed.
- 6) Suraj s/o Shivaji Chavan,
Age 25 years, Occ. Service as Clerk,
R/o. Rukmai Govind Matimand Niwasi
Vidyalaya, Pangari Road, Beed,
Tq. & Dist. Beed.
- 7) Shobha D/o. Sakharam Dhanwate @
Shobha w/o Shivaji Chavan,
Age 43 years, Occ. Service as Special
Teacher, R/o. Rukmai Govind Matimand
Niwasi Vidyalaya, Pangari Road, Beed,
Tq. & Dist. Beed.

- 8) Suresh s/o Dada Wakchaure,
Age 32 years, Occ. Service as Special
Teacher, R/o. Rukmai Govind Matimand
Niwasi Vidyalaya, Pangari Road, Beed,
Tq. &Dist. Beed.
- 9) Anil s/o Kailas Nehe,
Age 30 years, Occ. Service as Special
Teacher, R/o. Rukmai Govind Matimand
Niwasi Vidyalaya, Pangari Road, Beed,
Tq. &Dist. Beed.
- 10) Shivanjali d/o Mohan Vetel,
Age 26 years, Occ. Service as Cook,
R/o. Rukmai Govind Matimand
Niwasi Vidyalaya, Pangari Road, Beed,
Tq. &Dist. Beed.
- 11) Anil s/o Sakharam Dhanwate,
Age 37 years, Occ. Service as Care Taker,
R/o. Rukmai Govind Matimand
Niwasi Vidyalaya, Pangari Road, Beed,
Tq. &Dist. Beed.
- 12) Sachin s/o Asaram Kadam,
Age 25 years, Occ. Service as Care Taker,
R/o. Rukmai Govind Matimand
Niwasi Vidyalaya, Pangari Road, Beed,
Tq. &Dist. Beed.
- 13) Surendra Ramkisan Bhingale,
Age 31 years, Occ. Service as Care Taker,
R/o. Rukmai Govind Matimand
Niwasi Vidyalaya, Pangari Road, Beed,
Tq. &Dist. Beed.
- 14) Ankush s/o Bhaulal Mane,
Age 27 years, Occ. Service as Care Taker,
R/o. Rukmai Govind Matimand
Niwasi Vidyalaya, Pangari Road, Beed,
Tq. &Dist. Beed.
- 15) Sachin s/o Uttam Ufalakar,
Age 28 years, Occ. Service as Care Taker,
R/o. Rukmai Govind Matimand
Niwasi Vidyalaya, Pangari Road, Beed,

Tq. &Dist. Beed.

- 16) Jyoti D/o Bhaulal Mane,
Age 25 years, Occ. Service as Office Peon
R/o. Rukmai Govind Matimand
Niwasi Vidyalaya, Pangari Road, Beed,
Tq. &Dist. Beed.
- 17) Nitin s/o Uttam Ufalkar,
Age 22 years, Occ. Service as Care Taker,
R/o. Rukmai Govind Matimand
Niwasi Vidyalaya, Pangari Road, Beed,
Tq. &Dist. Beed.
- 18) Om s/o Uddhavrao Salunke,
Age 34 years, Occ. Service as Medical Officer,
Rukmai Govind Matimand
Niwasi Vidyalaya, Pangari Road, Beed,
Tq. &Dist. Beed.

... Respondents

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Advocates for Petitioner : Mr. S.S. Thombre
Addl.G.P. for Respondent Nos. 1 to 3 : Mrs. M.A. Deshpande
Advocate for Respondent Nos. 4 & 5 : Mr. K.B. Jadhavar
Advocate for Respondent Nos. 6 to 18 : Mr. R.J. Godbole

**CORAM : MANGESH S. PATIL &
SHAILESH P. BRAHME, JJ.**

**RESERVED ON : 17.07.2023
PRONOUNCED ON : 08.11.2023**

JUDGMENT : (PER : MANGESH S. PATIL, J.)

Heard. Rule. Rule is made returnable forthwith. The learned A.G.P. waives service for respondent Nos. 1 to 3. Mr. Jadhavar, learned advocate waives service for the respondent Nos. 4 and 5 and Mr. Godbole, learned advocate, waives service for the respondent Nos. 6 to 18. At the joint request of the parties, the matter is heard finally at the stage of admission.

2. The petitioner which is running a school for mentally challenged students on a Government aid is essentially aggrieved by the impugned communication dated 03.05.2019 whereby the approval granted to the

appointment of the teachers i.e. respondent nos. 6 to 18 vide a communication dated 10.05.2019 has been revoked and cancelled by the respondent No. 5-District Social Welfare Officer (DSWO) pursuant to a communication of the even date received by him from the respondent No. 2 who is the Commissioner of Disabled Welfare Maharashtra State, Pune.

3. The decision to cancel the approval/no-objection certificate for the appointments of the respondent nos. 6 to 18 is based on the premise that those were granted in ignorance and violation of the directions of this Court in Writ Petition No. 5744/2003 and 43/2004, wherein this Court had directed that wherever the special schools for the disabled governed by the Special School for Physically Challenged Code 1997 (hereinafter 'Standard Code of 1997') were either closed down or the permission to run the schools was revoked, the teachers employed therein should be absorbed by giving them priority/preference by preparing list of such surplus teachers at the level of the Commissionerate for Physically Challenged, and it is only if no person from the list is available that by obtaining a no objection certificate the special schools could recruit the teachers and only to such appointees the approval should be granted.

4. The learned advocate for the petitioner Mr. Thombre would submit that in fact the staffing pattern for the petitioner's school was approved by the Government on 31.03.2010. There were 34 sanctioned posts out of which the petitioner could fill in 26 posts in 2012. However, one of them who was the headmaster was terminated, whose appeal preferred under Section 9 of the Maharashtra Employees of Private Schools (Condition of Service) Regulation Act, 1977 (M.E.P.S. Act) is pending, whereas 18 other employees remained absent. Consequently, on 25.05.2014 an advertisement was published to fill in the vacant posts out of 34 sanctioned strength. On 29.05.2014 a letter was issued to the respondent No. 5-DSWO seeking permission to undertake the interviews to fill up the vacancies. Pursuant thereto the respondent No. 7 Shobha Sakharam Dhanwate @ Shobha w/o

Shivaji Chavan, respondent No. 8-Suresh s/o Dada Wakchaure and respondent No. 11 Anil s/o Sakharam Dhanwate were appointed on 14.07.2014, 15.07.2014 and 31.07.2014 respectively. A proposal was submitted to the respondent No. 5-DSWO for granting approval to their appointments. Even a reminder was issued but to no avail. Subsequently, the respondent no. 3 by a communication dated 13.05.2015 cancelled registration of the petitioner's school. The petitioner challenged that order in Writ Petition No. 1041/2017 which is still pending. By the interim order of this Court the school was allowed to run.

5. Mr. Thombre would then submit that in the meanwhile another attempt was made to fill in 18 vacant posts. A letter was issued to the respondent no. 5 DSWO seeking permission to undertake the recruitment. The interviews were taken and 11 candidates were given appointment on contract basis for 11 months. A proposal was submitted to the respondent No. 5-DSWO for grant of approval to their appointment. A reminder was also issued. Again a letter was issued to him seeking approval to the appointment of the teacher and to provide available teachers from the wait list if any on 24.01.2019. By the communications dated 20.02.2019 and 07.03.2019 the respondent No. 2-Commissioner of Disabled Welfare granted no-objection certificates in respect of 14 posts and 5 posts on the respective dates. However, no objection certificate granted to the petitioner was cancelled by the impugned communication.

6. He would submit that since the respondent No. 6 to 18 were appointed by following due process of law and even the authorities had accorded no objection, it could not have been subsequently revoked and cancelled. There was no illegality in their appointment. The attempt was made to fill in the vacancies from the sanctioned strength. The authorities in spite of communication from the petitioner never bothered to consider the request for the initial three appointments of the respondent nos. 7, 8 and 11. Another recruitment had taken place with prior intimation to the respondent

No. 5 DSWO and after considering everything that the petitioner had given appointment. The impugned action is arbitrary and against the principles of natural justice and grossly illegal. The impugned communication be struck down and the position prior thereto be restored and the authorities be directed to grant approval to the appointments as was requested by the proposals dated 14.07.2014 and 14.12.2016.

7. Mr. Godbole the learned advocate for the respondent nos. 6 to 18 would support the petition relying upon the affidavit in reply filed on their behalf. He would submit that these respondents were appointed after following due process under intimation to the respondent no. 5-DSWO. The authorities never bothered to consider the proposals submitted by the petitioner on 14.07.2014 and 14.12.2016. He would submit that all these respondents were appointed prior to 2018. No permission or no objection certificate of the authorities was required as a precondition for undertaking the recruitment process. A new Special Code was brought in to effect as per the Government resolution dated 18.07.2018 and it is only thereafter that by virtue of Rule 40(5) prior permission is required.

8. The learned advocate Mr. Jadhavar for the respondent nos. 3 and 4 would submit that by virtue of Rule 39 of the Maharashtra State Special School and Training Center Code 2018 the vacancies in the special schools are mandatorily required to be filled in by way of absorption of the surplus teachers and other staff. The petitioner had recruited the respondent nos. 6 to 18 without such prior permission and the appointments were illegal.

9. The learned A.G.P. submits that considering the allegations regarding rampant irregularities in the process of issuing no objection certificates for recruitment the aided special schools, a three member committee was constituted by the Government pursuant to the report submitted by the respondent no. 2-Commissioner of Disabled Welfare and consequently the impugned communications were issued staying execution and operation of

the no objection certificates issued to the petitioner on 20.02.2019 and 07.03.2019. The impugned communications merely suspend the no objections issued earlier and those have not been revoked or cancelled but the issue would be considered depending upon the enquiry being conducted. She would further submit that so far as the respondent no. 6 to 18 are concerned, the approval sought to their appointment has been sought retrospectively. The petitioner has committed serious illegality ignoring the rights of the erstwhile employees and the petition be dismissed.

10. The learned A.G.P would also advert our attention to the additional affidavit in reply filed on behalf of the respondent nos. 2, 3 and 5. She submitted that pursuant to the order passed by this Court in Writ Petition No. 43/2004 dated 24.06.2004, the employees of the special schools are governed by Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 by virtue of Rule 63(1) of the Standard Code of 1997. She would then submit that in Writ Petition No. 5744/2003 by order dated 20.07.2007, this Court had directed that register of the surplus teachers be maintained at the State level and the recruitments could be undertaken by the special schools subject to the initial attempt for absorbing the surplus teachers from that list. It is in obedience of the directions that no objections issued to the petitioner were found to be in violation of the directions and their operations have been stayed by the impugned communication.

11. Having considered the rival submissions and having perused the papers, we proceed to decide the matter.

12. There cannot be a dispute about the fact that the petitioner's school and the service conditions of the employees were governed by the Standard Code of 1997. Admittedly, the Standard Code 1997 is replaced by the Special Code of the year 2018, taking into consideration the provisions of the Right of Children to Free and Compulsory Education Act, 2009 and the Rights of Persons with Disability Act, 2016, by expressly superseding the

Standard Code 1997. Since the respondent nos. 6 to 18 were admittedly recruited by the petitioner prior to the Special Code of 2018 when the Standard Code of 1997 was in operation, the legality of their appointment will have to be considered on the basis of the Standard Code of 1997 and to the extent of their appointment, the Special Code of 2018 would have no relevance. The provisions therein cannot be applied retrospectively *inter alia* to the appointment of the teachers covered by Rule 39 and 40 of the latter Code which provides for the provisions in respect of staffing pattern and recruitment of the teachers. Consequently, it is only if the impugned action could have the basis under the Standard Code of 1997 it will be sustainable.

13. Under the Standard Code of 1997, so far as the staffing pattern and the appointment of the teachers is concerned, provisions were made in Chapter 3. After providing for staffing pattern in Rule 43 to 47, Rule 48 provided for recruitment of special teachers and specifically laid down that the special teachers should be appointed in accordance with the provisions of Central Act of 1992. Rule 49 thereafter provided minimum and maximum age for recruitment of an employee and mandated reservation policy to be followed in respect of the backward classes as well as differently abled candidates. Conspicuously, the Standard Code of 1997 did not lay down any other provision as far as the eligibility and recruitment of the staff, teaching as well as non-teaching was concerned. It did not expressly require any prior permission of any authority to be obtained before undertaking recruitment.

14. The whole emphasis in the additional affidavit in reply filed on behalf of the respondent nos. 2, 3 and 5 is on the orders of this Court in Writ Petition No. 43/2004 and 5744/2003 which read as under :

Order in Writ Petition No. 43/2004 :

“1. Heard learned counsel for respective parties.

2. We have perused the rule 63(1) of the Standard Code applicable to the Deaf and Dumb School which states that the service conditions as provided in Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 and rules made there under are applicable. Therefore after closure of the school, the respondent Nos. 2, 4 and 5 are under obligation to prepare the list of retrenched employees on account of closure of the school under Rule 25-A of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981. Mrs. A.V. Gondhalekar, learned A.G.P. states that as per the said provisions, these authorities will include the name of the petitioner in the said list of retrenched employees, maintained under Rule 25-A of the Rules of 1981 provided that they are the employees working in the aided institution and are permanent employees. Therefore, that part of the grievance of the petitioners redressed.

3. Mr. Varma, learned counsel for the petitioners further submitted that the selection process has been initiated by the respondent nos. 3 and 4 by issuing advertisement for recruitment of staff and therefore, until the petitioners names are included in the waiting list, the said process should be stopped. We find that the recruitment will have to be made on the basis of seniority and hence the persons who are already on the waiting list prepared under Rule 25-A of Rules of 1981 will have to be absorbed as per their seniority qua the date of retrenchment. Therefore, after inclusion of the names of the petitioners in the said list to be maintained under Rule 25-A of Rules of 1981, the claim of the petitioners will have to be considered for absorptions on the basis of seniority of the retrenched employees. Thus, the grievance of the petitioners in respect of immediate appointment is ill founded.

4. The third grievance made by Mr. Varma, learned counsel for the petitioners is in respect of the arrears to pay and salary of the petitioners. We find that the claim is in between the management and the petitioner and the petitioners have an independent alternate remedy available for recovery of the arrears of their salary. We, therefore, do not desire to entertain this petition for recovery of the pay and salaries of the disputed period.

With these observations, writ petition stands disposed of”.

Order in Writ Petition No. 5744 of 2003 :

“1) The Director, VJNT, OBC, Spl. B.C. Welfare, Maharashtra State, Pune, who is holding additional charge of the post of Commissioner for Persons with Disabilities, Maharashtra State, Pune, namely Shri. B.I. Sasane, is present in the Court.

2) It is pointed out that, the exercise as required under Rule 25A of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981, has not been carried out earlier. Under these circumstances, we direct that the Commissioner for Persons with Disabilities shall prepare the list of teachers which is to be maintained under Rule 25A of the said Rules, read with Rule 63 of the Special Code applicable to the handicapped persons. Such a register shall be prepared at State level within two weeks and he shall see that such a register is prepared at District level within one week. The said register shall be prepared on the basis of date of derecognition and closure of the schools. Since earlier this exercise was not regularly made by the Commissioner for Persons with Disabilities, he is therefore, directed to publish District and call for the objections, if any and after deciding the objections, final list shall be prepared and shall be submitted to this Court by 13th August, 2004.

3) Stand over till 13th August, 2004.”

A bare perusal of these observations would reveal that it was observed that by virtue of Rule 63(1) of the Standard Code 1997, the service conditions of the employees of the special schools would be according to the provisions of the M.E.P.S. Act and it is in the light of such observation that the respondents-authorities were directed to prepare a list of surplus teachers or retrenched employees to be maintained as per Rule 25A of the M.E.P.S. Rules and it was further directed that if any retrenchment was to take place it could be on the basis of the seniority and such employees would be entitled to absorption on the basis of such seniority. Having noticed that such directions issued in Writ Petition No. 43/2004 were not followed that the aforementioned order was passed in Writ Petition No. 5744/2003. As can be noticed, neither of these two orders of this Court expressly touched

the aspect regarding the modalities to be followed while undertaking recruitment processes by the special schools which were regulated by the provisions of the Standard Code of 1997.

15. Pertinently, rule 63 of the Standard Code 1997 merely declare that the services of the teaching and non-teaching staff of the special schools under that Code would be governed by the rules which were applicable to the employees of the Government aided and unaided schools, that is M.E.P.S. Act and the rules framed there under.

16. Rule 64 of the Standard Code 1997 thereafter laid down that the teaching and non-teaching employees of the special schools would be appointed by the school committee either by getting the candidates from the Social Welfare Department, Tribal Development or District Employment Office. It also enabled recruitment to be undertaken by way of publication of advertisement by following due process and by undertaking interviews. It also required that such appointments made pursuant to the advertisement and the process would have to be thereafter approved by the District Social Welfare Officer, else such appointees were not entitled to claim salaries and allowances. Prior permission of the authorities was clearly not a precondition for undertaking the recruitment process albeit, there seemed to be a practise of obtaining a no objection from the authorities for which the petitioner had put up the proposals and pursuant to which the no objections were granted but were subsequently stayed by the impugned communications. However, by no stretch of imagination the observations of this court in Writ Petition No. 43/2004 and 5744/2003 can be interpreted to lay down any mandate of requiring any prior permission of the authorities before the special school could undertake the recruitment process under the Standard Code, 1977. It is quite apparent that the Special Code of 2018 now requires by virtue of Rule 39 and 40 that recruitment by the special schools should be undertaken only with a prior no objection certificate of the authorities and it could not be undertaken without absorption of the

surplus teachers.

17. Consequently, the no objections granted to the petitioner vide communications dated 20.02.2019 and 07.03.2019, could not have been legally stayed by the impugned communications dated 03.05.2019, and 23.05.2019 albeit, it would always be open for the respondent authorities to undertake a scrutiny if they had any doubt about the appointments.

18. It was not a fact situation that the no objection certificates granted long back were sought to be cancelled or revoked. The no objections were granted in the month of February and March of 2019 and soon thereafter were stayed by the two impugned communications in May 2019. In the light of the above, the respondent-authorities are entitled to undertake a scrutiny in respect of the appointments made by the petitioner of respondent nos. 6 to 18 on its own merits, which course would always be open for them. However, they cannot refuse to grant approval to the appointments on the ground that there was no prior permission obtained from them before undertaking the recruitment process.

19. The Writ Petition is partly allowed. The impugned communications are quashed and set aside. The respondents shall consider the proposals dated 14.07.2014 and 14.12.2016 on their own merits as expeditiously as possible and in any case within four months from today. However, those shall not be refused on the ground that there was no prior permission obtained by the petitioner before undertaking the recruitment process.

20. Rule is made absolute in above terms.

(SHAILESH P BRAHME, J.)

(MANGESH S. PATIL, J.)

mkd/-