

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

WRIT PETITION NO.5431 OF 2010

1. Gurudas Bapuji Marathe
Aged about 43 Years
R/o At Post Kelzar, Tlq. - Mul
District – Chandrapur.
2. Basanti d/o Somaji Korvate
Aged about 51 Years
R/o Babupeth, Ward No. 18
Near C.T.O. High School, Chandrapur
District – Chandrapur.
3. Satish Eknath Dange
Aged about 41 Years,
R/o Bengali Camp, Shastri Nagar
Behind Mahsul Colony, Mul Road,
Chandrapur. **PETITIONERS**

...V E R S U S...

1. State of Maharashtra
Through its Secretary,
Tribal Development Department
Mantralaya Mumbai 32.
2. Additional Commissioner of Tribal
Development, Nagpur.
3. Project Officer, Integrated Tribal
Development Project, Chandrapur.
4. Sevalal Shikshan Sanstha, Dhanoli
Through its Secretary,
Tlq. Korpana District Chandrapur.
5. Gopikabai Sangda Patil Madhyamik
Ashramshala, Through its Head Master
Rajura, District – Chandrapur.

6. Shri P. D. Gordhate
Aged about Major.

Delete as per
Court's order
dt. 13-6-2011

7. ~~Shri M.K. Thool~~
~~Aged about Major.~~

8. Shri P.B. Lade
Aged about Major.

9. Shri S.D. Burchunde
Aged about Major.

10. Shri N.G. Chahare
Aged about Major.

11. Shri M.P. Jadhav
Aged about Major

Respondents no. 6 to 11 are all
R/o, C/o Gopikabai Sangda Patil
Madhyamik Ashramshala, Rajura
District – Chandrapur.

..... **RESPONDENTS**

Mr. Rupesh G. Vaishnav, Advocate holding for Mr. Anand
Parchure, Advocate for Petitioners.
Mrs. Kalyani R. Deshpande, AGP for Respondents 1 to
3/State.

CORAM: **ROHIT B. DEO AND M. W. CHANDWANI, JJ.**

DATE: **19th JUNE, 2023.**

ORAL JUDGMENT: (PER ROHIT B. DEO, J.)

Heard Mr. Rupesh Vaishnav, the learned counsel
for the petitioners and Mrs. Kalyani R. Deshpande, the
learned Assistant Government Pleader for the respondents 1
to 3/State.

2. The petitioners are challenging the order dated 30.12.2009 rendered by respondent 3 – Project Officer, Integrated Tribal Development Project, Chandrapur which rejects the claim of the petitioners to absorption in respondent 5 – ashramshala. The reason recorded by the Project Officer to reject the claim is that the initial appointment of the petitioner is not in accordance with law.

3. Petitioner 1 was appointed as Kamathi at Adiwasi Loksewa Ashramshala, Kolsa on 09.11.1992 and his appointment was approved by respondent 3 – Project Officer vide order dated 09.06.1994.

4. Petitioners 2 and 3 were appointed as Cook in the same Ashramshala on 10.06.1991 and 01.07.1994 respectively. It is averred in the petition that the appointments of petitioners 2 and 3 were also approved by respondent 3 – Project Officer vide orders dated 09.06.1994 and 22.12.1994 respectively.

5. Petitioners aver that the appointments were done by following due process of law, and in clear, vacant and permanent posts.

6. Petitioners aver that earlier the High Court was approached in Writ Petition 983/1999 with the grievance that the salary was not paid. Petitioners further aver that the Project Officer issued order dated 10.12.1998 directing transfer of the students of the employer school to Government Post Basic Ashrams school since the Project Officer found the employer – school to be closed from 11.10.1998, which direction is challenged in Writ Petition 983/1999.

7. Petitioners state that respondent 1 issued Government Resolution dated 03.07.2006 and closed the employer – school and handed over the said school to respondent 5 – ashramshala.

8. The petitioners emphasize that the G.R. specifically mandates that the handing over is subject to the condition

that the existing working and qualified staff of the ashramshala should be absorbed in the transferee school.

9. According to the petitioners, the respondent 4 which manages respondent 5 ashrams school was reluctant to absorb the petitioners. The petitioners made representations to the respondents pointing out that in accordance with the conditions of transfer, respondent 5 was obligated to accommodate the existing and qualified staff of the ashramshala which was closed.

10. On 16.05.2007 respondent 3 issued an order which states that the petitioners cannot be absorbed in the transferee school since the appointments are made without calling candidates from the office of the Employment Exchange and Social Welfare Office.

11. Since the petitioners were not heard by respondent 3 – Project Officer before passing the order dated 16.05.2007, petitioners 1 and 2 approached the High Court in

Writ Petition 2224/2007. The High Court disposed of Writ Petition 2224/2007 by directing the respondents 2 and 3 to grant hearing to the petitioners and to take a fresh decision.

12. Petitioner 3 was not a party to Writ Petition 2224/2007, and he, therefore, requested respondents 2 and 3 to grant hearing to him, along with petitioners 1 and 2. However, respondent 3 – Project Officer granted hearing only to petitioners 1 and 2 and again rejected the claim to absorption on the ground that the initial appointments were not made in accordance with law.

13. Petitioners aver that in view of the onward/permanent approval order, R-3 could not have held that the appointments of the petitioners were not made by following due process. Petitioners submit, that there is no categorical finding recorded that the appointments are illegal and what is observed in the order impugned is that the petitioners have not satisfied the authority that their appointment are in accordance with law.

14. Petitioners further submit that while R-3 has relied on Government Resolution dated 27.08.1996, the appointments of the petitioners were made between 1991 and 1994, rendering the said G.R. inapplicable. The petitioners further submit that for similar reasons G.R. dated 25.08.2005 is also not of any relevance.

15. Petitioners are assailing the appointments of respondents 6 to 11 on the establishment of respondent 5. However, for reasons which we shall spell out hereinafter, we may not be required to disturb the appointments of the private respondents.

16. We have perused the affidavit in response dated 25.04.2012 filed by respondent 3 – Project Officer. We may reproduce the relevant portion:-

2. This Respondent submits that the petitioners were initially appointed in the Adiwasi Loksewa Ashram School, Kolsa, Taluka Mool, Dist. Chandrapur. The appointment of petitioners has not been made by following the due procedure of law. The Tribal Department by its resolution dated

17.11.1992 permitted the Gondwana Lokseva Education Society, Borda to start the school at Kolsa. The recruitment of the non teaching staff has to be made in terms of the recruitment rules which provides that the names of the candidates have to be called from the Government Employment sponsored agency. That advertisement is also required to be published for recruitment.

3. This Respondent submits that in the present case the petitioners have not been appointed by following the due procedure of law. The petitioners are not in a position to show that their appointment has been made after the posts were advertised or the names were sponsored by the Employment Exchange or any other sponsoring agency. The petitioners have also not been able to produce any proof of their appointment in the concerned school. The services of the petitioner cannot be regularized as they have not been appointed after following the due procedure of appointment. The resolution dated 25.4.2006 pertains to the regularization of the services of the teachers and as a special case their services have been regularized. This resolution is not applicable to the case of the petitioner.

17. Petitioners then filed affidavit in rejoinder dated 18.11.2013 and the relevant portion reads thus:

3. The respondents are alleging that the appointment of petitioners is made without following due process of law and is against the Govt. Resolution dated

27/08/1996. Petitioner denies the aforesaid allegation of the respondents and submits that the Government Resolution dated 27/08/1996 cannot be made applicable to the petitioners as the appointment of petitioners is made prior to issuance of the said Government Resolution. It is submitted that the regular onwards approval has been granted to the appointment of petitioners and therefore petitioners are submitting that their services are required to be protected and as per condition no. 4 of the Govt. Resolution dated 3/7/2006 they may be accommodated in Ashram School run by the respondent no. 4 and 5 or in the event the posts are not available for the accommodation of petitioner in respondent 4 and 5 school then in any other Ashram School admitted to grants in aid facility.

18. In response to the rejoinder an additional affidavit in response is filed on 30.06.2014 reiterating that the appointments of the petitioners were made without following the due procedure.

19. Petitioners then filed counter affidavit dated 07.07.2014 reiterating that the appointments were legally made and therefore, were approved. Further affidavit dated

16.01.2023 is filed by the petitioners in response to our order dated 05.01.2023 directing the petitioners to state on affidavit what were the petitioners doing for survival after the closure of the employer – school. The relevant portion of the said affidavit read thus:

8. *This Hon'ble Court vide order dated 05.01.2023 directed the Petitioners to state on Affidavit what they are doing for their survival after being ceased from the employment and also whether they are entitled for pensioner benefits. That Petitioner no. 1 during the entire period from October 1998 till today is not gainfully employed elsewhere and is unemployed. The Petitioner No. 1 during the harvest season worked as farm labourer on daily wage basis and as such has earned Rs. 150-200 per day during the harvesting seasons for his daily survival. For the rest of the time of the year the Petitioner No. 1 obtained petty loans and help from his friends and family. As such from 1998 till today the Petitioner No. 1 is living in a precarious condition and his entire career is dependent on the outcome of the instant petition.*
9. *The Petitioner No.2 during the entire period from October 1998 till today is not gainfully employed elsewhere and is unemployed. The Petitioner No.2 and her family is completely dependent on the meagre earnings of her husband.*

The Respondent No. 3 is also unemployed and during the entire period from October 1998 till today is not gainfully employed elsewhere. The Petitioner No.2 during the wedding season works as a helper to a local catering service on daily wages, but the same is irregular and so meagre that neither his nor his family's livelihood expenses can be covered from the same. As such from 1998 till today the Petitioner Nos. 2 & 3 are living in a precarious condition and their entire future is dependent on the outcome of the instant petition.

- 10. The Petitioner no. 1 and 3 as on today are of age 56 years and 54 years and as such can work till the age of superannuation if the instant Petition is allowed. It is pertinent to mention here that the initial appointment of the Petitioners was made in Ashram School which was receiving 100% grant in aid from the State Exchequer and as such upon superannuation/retirement, they are entitled to receive Pension and consequential benefits as per the Maharashtra Civil Services Rules. The Petitioner no.2 is now aged about 63 years. Although she has already attained the age of superannuation, she is entitled to arrears of salary and also to Pension as per old pension scheme.*

20. It is incontrovertible that the transferee school was bound to absorb the existing and qualified employees of

the Adiwasi Loksewa Ashramshala, Kolsa. It is not in dispute that the petitioners fall within the category of “existing employees”. The petitioners are held dis-entitled to absorption on the premise that the petitioners have not satisfied the authority that the appointments are made in accordance with law.

21. In our considered view, since the appointments of the petitioners were duly approved and the petitioners did render service for more than a decade, R-3 could not have rejected the claim for absorption on the ground that the initial appointment was not in accordance with the due process of law. The petitioners are Class-IV employee. R-3 burdened the petitioners with the onerous responsibility of proving that the school which was closed, followed the due process of law. We do not appreciate the approach of R-3. It was R-3 or his predecessor-in office who granted onward approval way-back in 1994. The presumption is that the onward approval was granted after being satisfied that the appointments have been made by following due process.

22. We are more than satisfied that the petitioners have suffered due to the illegal refusal of respondent 3 to ensure that R-5 absorbs the petitioners in service. We hold and declare that the petitioners were entitled to be absorbed on the establishment of R-5 school in accordance with the order of transferring the petitioner's employer ashramshala to R-5.

23. In so far as the relief which can be granted to the petitioners, the learned AGP Mrs. Deshpande fairly states on the basis of instructions received that permanent vacancies of Kamathi and Cook are available in the District. We, therefore, direct R-3 to ensure that petitioner 1 Gurudas Marathe and petitioner 3 Satish Dange are issued appointment orders in the vacancies available within the next two weeks. We further make it clear that for the purpose of pension the appointment orders shall be given effect from the date other existing and qualified employees of the Adiwasi Loksewa Ashramshala, Kolsa were absorbed at R-5 school. Petitioners 1 and 3 shall however not be entitled to any arrears or other monetary

benefit.

24. In so far as petitioner 2 is concerned, she has attained the age of superannuation. We, therefore, direct that she be considered as in continuous employment with effect from the date on which six others employees i.e. respondents 6 to 11 and the period from the said date till the date of superannuation shall be added to the earlier service tenure for the purpose of qualifying service. The pension of R-2 shall be fixed accordingly.

25. The petition is allowed in the aforestated terms.

(M. W. CHANDWANI, J.)

(ROHIT B. DEO, J.)

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