



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 1961 OF 2015

Ashok s/o Gundappa Badihaveli,
Age 39 years, Occ. Service as Art Teacher
in Swami Ramanand Tirth Residential
School for Deaf and Dumb, Aurad
Shahajani, r/o. Aurad Shahajani,
Tq. Nilanga, Dist. Latur.

... Petitioner

VERSUS

- 1) The State of Maharashtra
Through its Secretary,
Social Justice and Special Assistance
Department, Mantralaya Mumbai-32.
- 2) The Commissioner for Welfare of
Handicapped, Maharashtra State,
3, Church Road, Pune-1.
- 3) Deputy Commissioner of Social Welfare
Latur Region, Latur.
- 4) The Social Welfare Officer Group-A,
Zilla Parishad, Latur.
- 5) Chandrasagar Bahu-Uddeshiya
Sevabhavi Sanshta, Aurad
Shahajani, Tq. Nilanga, Dist.
Latur, Through its Secretary.
- 6) Swami Ramanand Tirth Residential
School for Deaf and Dumb, Aurad
Shahajani, Tq. Nilanga, Dist. Latur
Through its Headmaster.
- 7) Vidyabhushan Yuvak Mandal,
Buland Nagar, Udgir,
Through its Secretary,
Sanjay D. Mule, Age 60 years,
Occ. Service, R/o. Nai Abadi
Udgir, Tq. Udgir, Dist. Latur

... Respondents

...

WITH

WRIT PETITION NO. 1962 OF 2015

Nandkumar s/o Gunderao Bhande,
Age 36 years, Occ. Service as Art
Teacher in Indira Gandhi Residential
School for Handicapped, Aurad Shahajani,
R/o. Aurad Shahajani, Tq. Nilanga,
Dist. Latur.

... **Petitioner**

VERSUS

- 1) The State of Maharashtra
Through its Secretary,
Social Justice and Special Assistance
Department, Mantralaya Mumbai-32.
- 2) The Commissioner for Welfare of
Handicapped, Maharashtra State,
3, Church Road, Pune-1.
- 3) Deputy Commissioner of Social Welfare
Latur Region, Latur.
- 4) The Social Welfare Officer Group-A,
Zilla Parishad, Latur.
- 5) Chandrasagar Bahu-Uddeshiya
Sevabhavi Sanshta, Aurad
Shahajani, Tq. Nilanga, Dist.
Latur, Through its Secretary.
- 6) Indira Gandhi Residential School
for Handicapped, Aurad Shahajani,
Tq. Nilanga, Dist. Latur, through
its Headmaster.
- 7) Vidyabhushan Yuvak Mandal,
Buland Nagar, Udgir,
Through its Secretary,
Sanjay D. Mule, Age 60 years,
Occ. Service, R/o. Nai Abadi
Udgir, Tq. Udgir, Dist. Latur

... **Respondents**

...

Advocate for Petitioners : Mr. K.P. Rodge h/f Mr. P.G. Rodge
A.G.P. for Respondent nos. 1 to 3 : Mr. K.N. Lokhande
Advocate for Respondent no. 4 : Mr. P.R. Tandale
Advocate for Respondent no. 5 : Mr. V.D. Gunale

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

RESERVED ON : **21.06.2024**
PRONOUNCED ON : **08.07.2024**

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

These are identical matters with identical reliefs. The petitioners have been serving as Art Teachers, initially appointed in the respondent no.6 residential school which was being run by respondent no. 5-Education Society on non grant basis but was subsequently started receiving grant in aid from September 2003. Later on the school was transferred and is now being run by respondent no. 7-management.

2. In order to avoid repetition, with the consent of both sides, the matters are heard finally at the stage of admission.

3. Rule. Rule is made returnable forthwith. Learned A.G.P. waived service for respondent nos. 1 to 3. Learned advocate Mr. Tandale waived service for respondent no. 4. Learned advocate Mr. Gunale waived service for respondent no. 5.

4. Apparently there has been no dispute about the fact that the petitioners were appointed by respondent no. 5-management as Art Teachers in respondent no. 6 school way back on 01.01.2000 and 1.10.1999 respectively. Respondent no. 6 is a residential school for deaf and dumb and was earlier governed by the Special Code for Handicapped Schools, 1990 and Revised Code 1997 (hereinafter 'Old Code'). There were three posts of Art Teachers admissible to the school till September 2003. The three

schools being run by respondent no. 5, apart from respondent no. 6 school, started receiving grants from October 2003.

5. The issue that gives rise to these petitions is as regards a new staffing pattern framed by the State Government for schools for handicapped vide a government resolution dated 18.08.2004. Under the new policy, only one art teacher was admissible, and consequently, respondent no. 3 by the impugned communication dated 30.08.2014 expressly declined the petitioners request for recognizing their services as art Teachers against the posts which were vacant and admissible under the Old Code and for arrears of salary from 26.09.2003 to 30.12.2006.

6. At the outset, it is necessary to note that the learned advocate for the petitioners, considering the fact that the claim of the petitioners for arrears of salary after a long slumber of about eight years being stale and time barred, expressly on instructions submitted that the petitioners would not be claiming the arrears but persist with the request to tag their services discharged by them as Art Teachers against the staffing pattern recognized under the Old Code since inception.

7. The learned advocate for the petitioners would advert our attention to the correspondence between respondent nos. 1 to 4 *inter se*. He would point out that no dispute has ever been raised by any of the respondents that the petitioners were appointed under the Old Code. He would also advert our attention to the stand being taken by respondent nos. 2 to 4 in their affidavit in reply that till the policy was changed by a government resolution dated 18.08.2004, the petitioners were appointed against the vacant posts of Art Teachers admissible according to the Old Code. He would submit that in spite of such change in policy, the authorities are bent upon in applying the government resolution dated 18.08.2004 retrospectively, which they could not have done. For the purpose of counting the service, the service discharged by the petitioners under the Old Code prior to 18.08.2004 should

have been considered by the authorities even if, for whatever reasons the petitioners' claim for arrears of salaries was not tenable. The authorities could not have questioned their initial appointment by applying the staffing pattern which was brought into effect at a later point of time.

8. Per contra, the learned A.G.P. would oppose the petitions by referring to the stand of respondent nos. 2 to 4 in their affidavit in reply. He would submit that no fault can be found with the impugned communication, applying the staffing pattern evolved by the government resolution dated 18.08.2004 and the impugned communication dated 30.08.2014.

9. The learned advocate Mr. Gunale would support the petitioners.

10. A bare look at the impugned communication dated 30.08.2014 would demonstrate that even respondent no. 4 has been expressly admitting the fact that the school -respondent No. 6 was being run by respondent no. 5-management and the petitioners have been serving there as art teachers and the school started receiving grants with effect from 26.09.2003. It also expressly admits the position that according to the Old Code, the staffing pattern provided posts of two art teachers against 40 students. However, by virtue of the government resolution dated 18.08.2004, it has been brought down to one art teacher for 40 students.

11. Same is the stand in the affidavit in reply filed on behalf of the respondent nos. 2 to 4.

12. This clearly demonstrates that till the government resolution dated 18.08.2004 was issued there were two posts of art teachers admissible against 40 students. Even the order issued by respondent no. 4 dated 08.07.2009 (Exh. J) mentioned the fact that the petitioners were appointed even before the government resolution dated 18.08.2004 was passed. Even in these communications/orders it has been expressly mentioned that these petitioners' initial appointment is of 01.01.2000 and 01.10.1999

respectively.

13. It is equally important to note that subsequent to issuance of the government resolution dated 18.08.2004, by the order dated 20.09.2004, the respondent no. 2 who is the Commissioner for Welfare of Handicapped, issued an order *inter alia* expressly mentioning in clause 3 that even while granting approval to some of the appointments made by respondent no. 5, respondent no. 4 -District Social Welfare Officer should take into account the criteria of age limit as was provided under the Old Code in respect of such employees of respondent no. 6, who were working since prior to 18.08.2004. Meaning thereby that respondent nos. 1 to 4 are alive to the fact that respondent no. 5 management has been running respondent no. 6 - school under the Old Code and there could be employees working there since before 18.08.2004.

14. If such is the state of affairs, one fails to understand as to how the staffing pattern which had come into being with effect from 18.08.2004 would regulate the working of respondent no. 6 school. As is indicated herein above, the impugned communication expressly admits that under the Old Code, two posts of art teachers were admissible. It has also mentioned herein above that even respondent no. 4 – District Social Welfare Officer has been admitting the fact that the petitioners have been working since prior to 18.08.2004. It was imperative, therefore, that the staffing pattern under the Old Code ought to have been followed.

15. In this regard it is equally important to note that by a communication dated 04.03.2005 (Exh. 'G'), respondent no. 2 by a general circular addressed to the District Social Welfare Officers across the State issued certain guidelines regarding granting of approvals to the employees in 113 Special Schools, which were bought on grant. In paragraph no. 1 it was mentioned that the Old Code was brought into effect from 27.08.1997. The eligibility and qualification criteria in respect of the employees appointed

and working under the Old Code should be examined in accordance with the Old Code of 1997 and it is only to the employees appointed after 18.08.2004, their eligibility and qualification should be examined in accordance with the government resolution dated 18.08.2004. This clearly demonstrates that respondent nos. 2 to 4 have been alive to the fact that in respect of the special schools being run under the Old Code, there could be employees working on non grant basis, and the staffing pattern provided under the Old Code was not exactly the same under the government resolution dated 18.08.2004.

16. If such is the anomalous position, we have no manner of doubt that respondent nos. 1 to 4 could not have applied the new staffing pattern while considering the issue regarding approvals to be granted to the employees like the petitioners, who were appointed prior thereto, when the staffing pattern was different. This being the precise issue, the impugned communication refusing to recognize the earlier service of the petitioners, which they had rendered while the respondent no. 6 school was not receiving grant and applying the government resolution dated 18.08.2004 is grossly unjustified. It is the basic tenet of a service jurisprudence that conditions of service cannot be altered to the disadvantage of an employee. This is what has happened, which needs to be set right.

17. As has been observed earlier, as far as arrears of salaries is concerned, the petitioners have withdrawn the plea. The impugned communication dated 30.08.2014 being grossly illegal needs to be set aside with a direction to respondent no. 4 to reconsider the individual cases of the petitioners for grant of approval from their initial date of appointment by applying the staffing pattern as was in existence prior to 18.08.2004.

18. The Writ Petitions are partly allowed. The impugned communication dated 30.08.2014 is quashed and set aside. Respondent no. 4 shall pass a fresh order, in the light of the above observations for granting approval to

the petitioners' appointment from the initial date of their appointment, as expeditiously as possible and in any case within six weeks.

19. It is made clear that in case the respondent no. 4 requires some permission to be obtained from respondent nos. 2 and/or 3, he may do so and the latter shall be obliged to grant permission/pass appropriate order in the light of above observations.

20. Rule is made absolute in above terms.

(SHAILESH P. BRAHME, J.)

(MANGESH S. PATIL, J.)

mkd/-