



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.562 OF 2021

- 1 Pradnya Niketan Shikshan Sanstha,
Deglur, Dist. Nanded.
Through it's Secretary,
Rajesh Madhavrao Lonikar,
Age 46 yrs., Occ. Agri.,
R/o Udgir, Tq. Udgir, Dist. Latur.
- 2 Prabudha Dattatray Gaikwad,
Age 35 yrs., Occ. Teacher,
R/o Udgir, Tq. Udgir, Dist. Latur.
- 3 Sau. Amrapali Rajesh Lonikar,
Age 33 yrs., Occ. Special Teacher,
R/o Udgir, Tq. Udgir,
Dist. Latur.

... Petitioners

... Versus ...

- 1 The State of Maharashtra,
Through Secretary,
Social Justice and Special Assistance
Department,
Mantralaya, Mumbai.
- 2 The Commissioner,
Handicap Social Welfare,
Maharashtra State,
3, Church Road, Sadhu Vaswani Chowk,
Pune.
- 3 Regional Deputy Commissioner,
Social Welfare Department,
Latur Division, Gul Market, Latur,
Tq. & Dist. Latur.

- 4 District Social Welfare Officer,
Zilla Parishad, Latur.

... **Respondents**

...

Mr. V.D. Salunke, Advocate for petitioners

Mr. N.S. Tekale, AGP for respondent Nos.1 to 3

Mr. S.S. Manale, Advocate for respondent No.4

...

**CORAM : SMT. VIBHA KANKANWADI &
S.G. CHAPALGAONKAR, JJ.**

RESERVED ON : 21st FEBRUARY, 2024

PRONOUNCED ON : 07th MARCH, 2024

JUDGMENT : (PER : SMT. VIBHA KANKANWADI, J.)

1 Rule. Rule made returnable forthwith. Heard learned Advocates for the parties finally, by consent.

2 The petitioners challenged the impugned order dated 01/07.10.2020 passed by respondent No.3, thereby refusing to grant DCPS account to petitioner Nos.2 and 3 and consequential prayer to direct the respondents to pay their due salary since the date of their appointments.

3 Petitioner No.1 is a registered Trust which runs schools in rural

areas for physically handicapped, mentally retarded and deaf and dumb students. Petitioner Nos.2 and 3 came to be appointed after adopting due procedure. It is contended that the Government granted permission to start the school in the year 1989 and the school is getting grants since 1992. Initially the permission was granted to 45 residential students and 15 non residential students, thereby in all 60 students. In 2015 one of the Art Teachers expired and in 2017 one Special Teacher got retired. The fact of vacancy was communicated to respondent No.4 and permission was sought to fill up the vacancy by advertisement. Accordingly, the advertisement was issued. Petitioner No.2 was selected and appointed on the post of Art Teacher by order dated 04.02.2015 and petitioner No.3 was selected and appointed as a Special Teacher by order dated 14.07.2017. The petitioners had applied for No Objection to respondent No.2 Commissioner to fill up the said posts in due course and accordingly, the No Objection has been given by respondent No.2 on 24.11.2017. Since the date of appointment petitioner Nos.2 and 3 are continuously working in the school at Udgir. Respondent No.4 has given approval to their services by order dated 31.03.2018. An application was given to respondent No.4 requesting him to grant account number of DCPS to petitioner Nos.2 and 3. In the meantime, respondent No.3 by order dated 24.07.2015 directed petitioner No.1 to appoint one Smt. Shobha Pandharinath Shinde as Art Teacher on compassionate ground,

though she was age barred, in the said school, whereas one Lahu Sonkamble was claiming appointment on the post of Art Teacher. The petitioner No.1 institution challenged the said order dated 24.07.2015 by filing writ petition before this Court bearing Writ Petition No.6007 of 2015. By a common Judgment on 05.12.2016 it was held that the order of appointment in favour of Smt. Shobha Shinde was illegal. That order was set aside and the Writ Petition No.10514 of 2015 filed by Lahu Sonkamble came to be dismissed. Petitioner Nos.2 and 3 have right to get DCPS account and in absence of the same they are not getting salary. Therefore, institution gave letters, however, no action was taken. Again a representation was made and the reminder was sent. But the said proposal came to be rejected by the impugned order. Hence, this petition.

4 Affidavit-in-reply on behalf of respondent Nos.1 to 4 has been filed by Mr. Sunil Nagesh Khamitkar, the District Social Welfare Officer, Zilla Parishad, Latur. According to him, the appointment of petitioner Nos.2 and 3 is illegal and, therefore, DCPS account number cannot be given to them. A re-joinder has been filed by the petitioner. It is said that the appointment of petitioner No.3 is as per roaster i.e. from the reserved category. Reliance was placed on the decision in **Umed Pariwar vs. The State of Maharashtra and others**, Public Interest Litigation No.188 of 2010 before the Principal

Seat decided on 05.03.2013, which has then culminated in the Government Resolution.

5 Heard learned Advocate Mr. V.D. Salunke for petitioners, learned AGP Mr. N.S. Tekale for respondent Nos.1 to 3 and learned Advocate Mr. S.S. Manale for respondent No.4.

6 It will not be out of place to mention here that during the pendency of the present petition respondent No.2 has issued an order dated 26.12.2023 in respect of petitioner No.3 stating that she has been given DCPS account number. Thereafter, again a letter is given by respondent No.3 to respondent No.4 on 20.02.2024 reiterating that DCPS account number has been given to petitioner No.3, but as regards petitioner No.2 is concerned, it is said that he turns out to be the surplus teacher. According to Government Resolution dated 18.08.2004 sanctioned post for Art Teacher is only one for 25 students. The intake of the school was 60 and, therefore, for 50 students there should be two Art Teachers, thereby he turns out to be the extra Teacher and, therefore, DCPS account number cannot be given to him.

7 As aforesaid, as regards petitioner No.3 is concerned, the purpose of the petition is served. Now, the question is only in respect of petitioner No.2. The intake capacity of the school is 60. For 50 students as

per the said Government Resolution dated 18.04.2004, permissible number of Art Teacher would be two. However, here, taking into consideration 10 more students the next category would appear and there should be one more sanctioned post for Art Teacher. In fact, if we consider the staffing pattern granted in the year 1995 while admitting 60 students posts of three Art Teachers were permitted. There was no basis for the observations in order dated 20.02.2024 that the permissible limit is only two. It appears that respondent No.3 had not considered the staffing pattern granted in the year 1995 itself to the petitioners.

8 When petitioner No.2 came to be appointed by order dated 04.02.2015, it is the categorical statement on behalf of petitioner No.1 that communication was given to respondent No.4 permitting them to fill up the vacant post. Respondent No.4 has approved the services of respondent No.2 as well as respondent No.3 by order dated 31.03.2018. Perusal of those orders would definitely show that he had considered the staffing pattern before issuing those orders. Therefore, when a competent authority had come to the conclusion that the appointment of petitioner No.2 was proper i.e. by adopting proper procedure, then at the time of granting DCPS account number respondent No.3 could not have gone to the extent to scrutinize whether the order passed by respondent No.4 was correct or not. Since the

services of petitioner No.2 were already approved, it was the act of only granting DCPS account number. Almost on the similar facts when permission is granted and DCPS account number is given to petitioner No.3, there was in fact no reason for respondent No.3 to reject the proposal.

9 For the aforesaid reasons, the writ petition deserves to be allowed. Hence, following order.

ORDER

1 The Writ Petition stands allowed.

2 The impugned order dated 01/07.10.2020 passed by respondent No.3 as well as the order passed on 20.02.2024 by respondent No.3 stand quashed and set aside to the extent of petitioner No.2.

3 Respondent Nos.2 and 3 are directed to grant DCPS account number to petitioner No.2 within a period of 15 days from today and to take further steps to pay his due salary as per law, within a period of one month from the date of granting DCPS account number.

4 Rule is made absolute in the above terms.

(S.G. CHAPALGAONKAR, J.)

(SMT. VIBHA KANKANWADI, J.)

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