



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.13261 OF 2019

Shri Vidyasagar Dnyanoba Gaikwad,
age 45 years, Occ. Service as Special Teacher,
R/o C/o Chhatrapati Shivaji Maharaj
Residential Matimand School, Walandi,
Tq. Deoni, Dist. Latur

Petitioner

Versus

1. The State Of Maharashtra
Through It's Secretary
Social Justice and Special Assistance,
Department, Mantralaya, Mumbai – 32.
 2. The Competent Authority And Commissioner
For Handicap Welfare,
Maharashtra State, Pune.
 3. The District Social Welfare Officer,
Grade-I, Zilla Parishad, Latur.
Tq. & Dist. Latur.
 4. Shri Sangameshwar Shikshan Prasarak Mandal,
Shirur Anantpal, Tq. Nilanga, Dist. Latur.
 5. Shri Chhatrapati Shivaji Maharaj
Residential Matimand School, Walandi,
Tq. Deoni, Dist. Latur.
Through it's Headmaster
- Respondents

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Advocate for the Petitioner : Mr. A.V. Indrale Patil
AGP for Respondents no.1 : Mr. S.J.Salgare
Advocate for Respondents nos.2 and 3 : Mr. S.V. Adwant
Advocate for Respondent no. 3 : Mr. S.S.Manale
Respondent Nos.4 and 5 are Served.

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

Reserved on April 24, 2024

Pronounced on May 08, 2024

JUDGMENT :- (Per S.G. Chapalgaonkar, J.)

1. The petitioner has approached this Court under Article 226 of the Constitution of India, impugning the order/communication dated 24.10.2017 issued by respondent no.3, thereby cancelling the approval granted to his appointment on the post of Special Teacher, on establishment of respondent no.5-School.

2. Mr. A.V. Indrale Patil, learned advocate appearing for the petitioner submits that respondent no.4-Educational Institution runs respondent no.5-School for the specially able children. On 6.5.2007 respondent nos.4 and 5 issued an advertisement inviting applications from the eligible candidates for appointment on the spot of special teacher. Petitioner responded to such advertisement and after going through selection process came to be appointed vide order dated 15.6.2007. The proposal seeking approval to his appointment was forwarded by respondent nos.4 and 5. However, no decision was taken.

3. Mr. Patil would further submit that the respondent/Management had approached this Court vide writ petition no.448 of 2015 raising grievance that respondent authorities are not granting approval to 4th post of Special Teacher which would be admissible as per the applicable

staffing pattern prescribed under Government Resolution dated 18.8.2004. This Court admitted the said writ petition vide order dated 18.2.2015 and directed respondents to grant provisional approval to appointment of additional Teacher in tune with Government Resolution dated 18.8.2004. Pursuance of the aforesaid interim order, respondent no.3 granted approval to the appointment of the petitioner vide order dated 5.3.2015. Surprisingly, vide impugned order dated 24.10.2017, giving reference to the communication dated 28.1.2017, issued by the Commissioner, Handicapped Welfare, approval granted to the appointment of the petitioner has been cancelled.

4. Mr. Patil would submit that before passing the impugned order, neither petitioner was served with any show cause notice nor was he granted opportunity of hearing. Even, Management of School was not heard. Consequently, the impugned order is passed in utter violation of the principles of natural justice. Resultantly, Petitioner has suffered great prejudice. His salary has been blocked, though he is continuously working with the school. In support of his contentions, he places reliance on the order passed by this Court in Writ Petition nos.7831 of 2019 with connected petitions dated 14.10.2019 wherein this Court quashed and set aside the similar orders.

5. Mr. S.V. Adwant, learned advocate appearing for respondent nos.2 and 3, relying on the affidavit-in-reply filed by Mr. Santosh Trimbakrao Naikwadi, District Social Welfare Officer, Zilla Parishad, Latur dated 24.4.2024, submits that appointment of the petitioner has been made without

following due process of law. The Management has appointed the petitioner, although the post was not available. Any such illegal appointment cannot be approved by the respondent authorities. No vested right has been created in favour of the petitioner on the basis of provisional approval to his appointment granted in pursuance of interim order of this Court, particularly, when such order of approval is now rescinded under impugned communication dated 24.10.2017. The state authorities are not obliged to pay the petitioner whose appointment is contrary to the statutory scheme. In support of his contentions, he relies upon compilation of 48 reported judgments.

6. Mr. Adwant would further submit that Writ Petition at the behest of the petitioner would not be maintainable under Article 226 of the constitution of India since the Writ Petition No.448 of 2015 filed by the Respondent Management is still pending adjudication before this Court and approval to petitioner's appointment was granted in pursuance of the interim order passed in that petition. He would further submit that the petitioner has already filed one more petition i.e. WP No.2461 of 2017 alongwith others and claimed for release of salary in pursuance of his appointment and consequential approval. In this background, present petition is liable to be dismissed.

7. Mr. Manale, learned advocate appearing for respondent no.3 adopts the submissions advanced on behalf of respondent no.2.

8. Learned AGP also adopts the same line of contentions in tune with Mr. Adwant.

9. We have considered the submissions advanced on behalf of the respective parties. We have perused the record tendered into service.

10. The undisputed factual matrix, which is relevant for deciding controversy in this petition, can be narrated as under :-

- i. Respondent nos.4 and 5 appointed the petitioner as Special Teacher assuming that post of the Special Teacher is available as per the staffing pattern prescribed in terms of the Government Resolution dated 18.8.2004.
- ii. Respondent authorities were reluctant to grant approval to the appointment of the petitioner.
- iii. The Management of the School approached this Court by filing Writ Petition no.448 of 2015 seeking directions against the respondents authorities to approve one Special Teacher appointed by them with respondent no.5 School.
- iv. On 18.2.2015 this Court granted Rule in the Writ Petition no.448 of 2015 and by way of interim arrangement directed respondents authorities to grant provisional approval to appointment made, in view of staffing pattern prescribed under Government Resolution dated 18.8.2004.
- v. On 5.3.2015 respondent no.3 granted approval to appointment of the petitioner subject to final outcome of Writ Petition no.448 of 2015.
- vi. On 24.10.2017 respondent no.3 cancelled his own order granting approval in favour of the petitioner, giving reference to a communication made by respondent no.2 in this regard.

- vii. Neither respondent no.2 nor respondent no.3 had issued any show cause notice or granted opportunity of hearing to the petitioner or school Management before passing the impugned order.
- viii. Writ Petition No.448 of 2015 filed by the Management is still pending and interim orders dated 18.2.2015 still stands as it is.
- ix. Respondents authorities have not moved this Court either for modification of the order dated 18.2.2015 or for final hearing of writ petition No.448 of 2015.

11. The aforesaid sequence of events would clearly demonstrate that provisional approval granted in favour of the petitioner was in deference to interim directions issued by this Court under order dated 18.2.2015 passed in Writ Petition No.448 of 2015. Respondent No.3 had acted upon such directions and issued order dated 5.3.2015 granting approval to the appointment of the petitioner. Abrupt action of cancellation of approval is taken under the impugned order dated 24.10.2017 on the basis of instructions given by respondent no.2. Apparently, the impugned order is contemptuous. As long as the directions of this Court under order dated 18.2.2015 in Writ Petition no.448 of 2015 subsists, it was not permissible for the respondents to revert back and withdrew approval granted in favour of the petitioner. Even, otherwise, such an order is passed without following the principles of natural justice. Once approval is granted to petitioners appointment, right has been created in his favour. However, without issuing notice to him, approval has been withdrawn after more than 31 months. Pertinently, approval granted under order dated 18.2.2015 was provisional in nature and subject to outcome of Writ Petition no.448 of 2015.

However, the impugned order records series of reasons in support of cancellation of approval ignoring effect and purport of the interim directions given by this Court.

12. At this stage, Mr. Adwant, learned advocate appearing for respondent no.2 relies upon the Judgment of the Supreme Court in case of *DharamPal Satyapal Limited Vs. Deputy Commissioner of Central Excise, Guahati and others reported in (2015) 8 Supreme Court Cases 519* to contend that the rule of the principles of natural justice is flexible in nature and no straight jacket formula can be applied. The Authority is competent to determine “*whether such rule has application in the facts of the particular case.*” If authority has reason to believe that in a given situation grant of hearing would not change ultimate conclusion, then no legal duty to supply a hearing would arise. If non-grant of hearing has not caused any prejudice to the person, technical violation of the facet of the natural justice would not nullify the order. He would therefore submit that, in the facts of the present case, when petitioners appointment itself was illegal, respondent no.3 was competent to withdraw approval.

13. Although, there cannot be dispute to the proposition of law espoused in case of **Dharam pal (supra)**, we find that when appointment of the petitioner was approved under the orders of this Court and, interim directions leading to such approval are still in force, abrupt withdrawal without granting an opportunity of hearing is certainly unwarranted in the facts and situation of the case. It is not a case where approval was granted on the basis of manipulated documents

or it was outcome of fraud or misrepresentation. In fact, approval to petitioners appointment was granted under orders of this Court. Respondent Authorities, instead of seeking revival/modification of interim directions issued by this Court or seeking final disposal of the pending writ petition, proceeded to cancel provisional approval, which cannot be sustained in law.

14. So far as maintainability of present writ petition is concerned, we find that present petition is based on subsequent cause of action dated 24.10.2017, by which approval granted in favour of the petitioner came to be withdrawn. Earlier writ petition is filed by the Management. Dispute in that matter is regarding staffing pattern to be approved by the Government in pursuance of the Teacher - Pupil ratio laid down in the Government Resolution dated 18.8.2004. The petitioner is not party in that writ petition although, he is beneficiary of the interim orders passed therein. Petitioner is prejudiced by the impugned order dated 24.10.2017. Therefore, he has every right to seek redressal of his grievance by invoking writ jurisdiction of this Court.

15. So far another writ petition No.2461 of 2017 filed by the petitioner and others is concerned, prayer is for release of regular salary. Therefore, although Writ Petition no.448 of 2015 filed by the Respondent/Management, WP no.2461 of 2017 filed by the petitioner seeking release of salary is interlinked with the present petition, the cause of actions and reliefs claimed are independent. Hence, there is no bar to maintain the present writ petition.

16. In light of the aforesaid observations, writ petition deserves to be allowed. Hence, we proceed to pass the following order.

ORDER

- i. Writ petition is partly allowed.
- ii. The impugned order dated 24.10.2017 issued by the District Social Welfare Officer, Grade-I, Zilla Parishad, Latur - Respondent No.3 is quashed and set aside.
- iii. The provisional approval granted to the appointment of the petitioner vide order dated 18.2.2015 is restored, subject to the orders that would be passed in Writ Petition no.448 of 2015 pending before this Court.
- iv. The petitioner shall be at liberty to prosecute his prayers regarding arrears of salary or regular salary, independently.
- v. Writ Petition is accordingly disposed off. Rule is made absolute in above terms. No costs.

(S. G. CHAPALGAONKAR)
JUDGE

(SMT. VIBHA KANKANWADI)
JUDGE

aaa/- (f)

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