

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

Writ Petition No. 9320 of 2016

Shri Swami Samarth Apang Seva
Mandal

... Petitioner.

V/s.

The State Government of Maharashtra
and others

... Respondents.

Mr. T.D. Deshmukh with Mr. Sagar Kursija a/w. Mr. Ronak Utagir
for the Petitioner.

Mr. Aditya R. Deolekar, AGP for Respondent Nos. 1,2 and 4.

Mr. Anand S. Kulkarni for Respondent No.3.

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**CORAM : NITIN JAMDAR, AND
M.M. SATHAYE, JJ.**

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P.C. :

Heard learned counsel for the parties.

2. The Petitioner – Society registered under the Societies Act conducts various special schools for teaching and imparting training to students who suffer from disabilities. Respondent No.1 is the State of Maharashtra through Social Justice and Special Assistance Department. Respondent No.2 is the Commissioner, Respondent Nos.3 and 4 are District Social Welfare Officers in Solapur and Osmanabad.

3. The Petition was filed in respect of four teachers. Thereafter, as recorded in the order dated 24 April 2024 the cause of only one

teacher remained i.e. of Srinivas Itkar. The petition is continued only in respect of teacher Srinivas Itkar.

4. The Petitioner is aggrieved by the decision dated 18 April 2016 and 26 May 2016 taken by Respondent No.2 – Commissioner of Handicap Welfare. The Petitioner had submitted a proposal for appointment of Srinivas Itkar in Shri Balaji School, Solapur on 16 August 2012. Thereafter, again on 5 November 2012 and 9 November 2012 request was made to grant permanent approval to the appointment of Srinivas Itkar as Special Teacher in Shri Balaji School. Respondent No.3 by order dated 3 June 2015 approved the appointment of Srinivas Itkar with effect from 15 June 2011. Thereafter, an order came to be passed in Writ Petition No.5410/2013 pursuant to which Respondent No.2 called upon the Petitioner to remain present in hearing. The Petitioner submitted the written say. Thereafter, by the impugned order dated 18 April 2016 and others, the approval granted to the appointment of Srinivas Itkar was cancelled/rejected.

5. Challenging these orders, the Petitioner is before this Court. Reply affidavit is filed by the Respondent – District Social Welfare Officer.

6. The learned counsel for the Petitioner submitted that the Petitioner had appointed Shri Itkar after making various requests to the Respondents to make suitable candidates available to fill up the

vacancies and since there was no response, Srinivas Itkar had to be appointed as a Special Teacher in the interest of education. The learned counsel contended that earlier teacher abandoned her service. Thereafter, for almost period of three years to prevent loss to the students, vacancy was filled in by appointing Shri Srinivas Itkar. The learned counsel for the Petitioner relied upon the decision of the Division Bench rendered in the case of *Raje Sambhaji Bahuuddeshiya Sevabhavi Sanstha v/s. The State of Maharashtra*¹ (Aurangabad Bench) to contend that prior permission of the authorities was not a pre-condition for undertaking the recruitment process and this was only a matter of practice.

7. An enquiry was conducted by the Social Welfare Officer pursuant to the order passed by this Court in Writ Petition No.5410/2013. Before the District Social Welfare Officer, the argument of the Petitioner was that inspite of repeated requests seeking no objection, no steps were taken and, therefore, Mr. Itkar came to be appointed. The argument advanced today before us that, it was not necessary to take permission, was not taken anytime in the proceedings.

8. In the impugned order it is stated that there was a backlog for reserved candidate. The regular process was not followed while appointing Mr. Itkar. As per the order passed in Writ Petition No.5744/2003 (Aurangabad Bench), appointments had to be made

¹ WP No.8247/2019 dated 8.11.2023

as per the list of surplus teachers, which also was bypassed. In the reply affidavit, it is stated that appointment of Shri Itkar was fraud and deliberately to favour him, all the procedure has been bypassed. It is stated that complaints were received from the employees of the Petitioner and various appeals were pending in respect of their illegal termination. It is placed on record, which is not denied that, Srinivas Kashinath Itkar is son of Kashinath Itkar who retired as Medical Social Worker with the District Social Welfare Department. His wife Laxmibai is the President of the Petitioner Institution. The present petition is filed through Laxmibai Kashinath Itkar. Respondents have alleged that Kashinath Itkar was aware of the procedure and using his position and knowledge alongwith the Petitioner Laxmibai Itkar has misrepresented the authorities in obtaining an appointment bypassing on the procedure.

9. In view of this conduct of the Petitioner, we are of the opinion that it disentitles the Petitioner from any equitable relief. It is informed that Srinivas Itkar continues to work with the Petitioner – School. The approval of his appointment stands cancelled as far back as in April 2016. There is no interim order operating in this petition. If the Petitioner - Society continues to engage Srinivas Itkar, it will entirely be on its responsibility as regards salary etc.

10. Writ Petition is accordingly rejected.

(M.M. SATHAYE, J.)

(NITIN JAMDAR, J.)