



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

WRIT PETITION NO. 2669/2021

Pushpa Ambadas Bargat,
Aged 49 yrs., Occ. Special Teacher,
R/o. Shastri Nagar, Muthe Layout,
Buldhana, Tah. & Dist. Buldhana.

.... Petitioner

VERSUS

1. The State of Maharashtra through
its Secretary, Social Justice and Special
Mantralaya, Mumbai – 32.
2. The Commissioner,
Physically Handicapped Welfare,
Maharashtra State-3 Church Road,
Pune-01.
3. Regional Dy. Commissioner
Social Welfare Department, Amravati,
Tah. & Dist. Amravati.
4. Director,
Social Welfare Department, Pune.
5. District Social Welfare Officer,
Zilla Parishad, Buldhana.
6. The Secretary/President,
Physically Handicapped &
Rehabilitation Society, Buldhana,
Tah. & Dist. Buldhana.

7. Priyanka Babaso Mali,
Aged 30 yrs., Occ. Special Teacher,
C/o. Shashikant Jatkari, Basweshwar
Nagar, Post Sagwan, Buldhana,
R/o. Buldhana, Tah. & Dist. Buldhana.

....RESPONDENTS

Mr. Nitin Bargat, Advocate for petitioner.
Mr. N.R. Patil, AGP for respondent Nos. 1 & 5.
Mr. M.O. Shukla, Advocate for respondent No.6.
Mr. R.V. Gahilot, Advocate for respondent No.7.

CORAM : VINAY JOSHI AND
SMT.M.S. JAWALKAR, JJ.

DATE : 27.09.2024

ORAL JUDGMENT : (PER VINAY JOSHI, J.)

Heard.

2. This petition is under Article 226 of the Constitution of India seeking to quash impugned order dated 20.08.2019 passed by respondent No.3 Regional Deputy Commissioner, Social Welfare Department, whereby sanction to the petitioner's post with retrospective effect has been rejected. Likewise, the petitioner also seeks to quash administrative approval to the appointment of respondent No.7 on the post of "Special Teacher".

3. The petitioner has completed 12th Standard, M.A., B.Ed and also passed eligibility test. The petitioner has completed diploma in Training of the Teacher of the Deaf and Dumb School. The petitioner belongs to Nomadic Tribe (“N.T.”). The petitioner has applied to the respondent No.6 for appointment to the post of “Special Teacher”. After interviewing, the petitioner, she was appointed by respondent No.6 on the post of “Special Teacher” vide resolution dated 07.06.2001. The petitioner was appointed on said post with effect from 15.07.2001, to which she joined on 20.07.2001. The petitioner has undergone requisite training and after completion of probation period, urged for grant of status of permanency. Time and again, the petitioner’s proposal was forwarded, however sanction was not accorded. Initially, the sanction was refused by respondent No.2 vide communication dated 12.01.2016 informing to the respondent No.5 District Social Welfare Office that the sanction cannot be accorded since prior permission was not obtained from respondent No.2 Commissioner, Physically Handicapped Welfare, Maharashtra State.

4. It is petitioner’s contention that fresh proposal was also moved by passing resolution. According to the petitioner,

respondent No.2 has also granted no objection to the post of petitioner, however vide impugned communication, proposal was rejected stating that petitioner was over age on the date of granting sanction. It is petitioner's contention that said decision was against the guidelines issued by the State Government. The petitioner contended that the respondents have shown extra favouritism to respondent No.7 by appointing her as a "Special Teacher". Therefore, the petitioner seeks for setting aside the impugned communication as well as challenged the appointment of respondent No.7 on the post of Special Teacher.

5. The respondents have resisted the petition by contending that the impugned orders were passed on 20.08.2019 and 26.02.2020 and thus, there is inordinate delay in raising the challenge. The petitioner is seeking retrospective approval to her appointment for the post of "Special Teacher" which cannot be granted. The petitioner's proposal was first time received by respondent No.2 in the year 2016, but it was rejected as requisite No Objection Certificate ("NOC") from the department of Physically Handicapped Welfare was not obtained. It is contended that the

petitioner did not challenge the said communication and therefore, it has attained finality.

6. It is disputed that no objection was granted on 16.12.2017 by respondent No.2 for grant of petitioner's proposal. It is contended that the said no objection was for filling up one post of "Special Teacher" as per approved reservation, but it was not granted specifically as regards to the petitioner. It is contended that there were several deficiencies in the proposal for which vide communication dated 25.04.2019 hearing was scheduled on 04.05.2019, however the petitioner remained absent. The respondents would submit that on the date of forwarding proposal for approval the petitioner was barred by age hence the impugned communication cannot be faulted.

7. It is respondents' contention that the petitioner was never permanently employed on vacant post. Her appointment was purely on temporary basis and time to time separate appointment orders have been issued on. On each year, the petitioner has applied a fresh, on which year-wise appointment has been granted. There was no permanent vacant post available with respondent No.6 School, therefore, on temporary basis, petitioner was

appointed. The petitioner's entire claim is based on NOC received by respondent No.2, but it was for a post without mentioning the name of petitioner. It is respondents' contention that respondent No.6 has followed the due procedure while filling up vacant post by issuing advertisement. In said recruitment process, three candidates have appeared including petitioner and respondent No.7. Since the petitioner secured highest score, her proposal was forwarded for approval, however it came to be rejected as the petitioner was barred by age to be appointed on permanent post. As the respondent No.7 has secured second position, she was absorbed and accordingly approval was granted. It is contended that permanent approval issued in favour of respondent No.7 dated 04.02.2021 was not under challenge and thus, the petition carries no merit.

8. Most of the facts are not in dispute that the petitioner was appointed in the year 2001 purely on temporary basis. The respondents have produced various orders to show that time to time the petitioner was appointed on temporary basis. It reveals that there was no permanent vacancy hence the petitioner was appointed on temporary basis. Though the petitioner contended that respondent No. 2 has issued NOC dated 16.12.2017, however it

reveals from the communication that it was for filling up one post of Special Teacher. Pertinent to note that no objection was not issued for petitioner's appointment. It reveals that after sanction of post, public advertisement was issued, on which recruitment process was conducted. The petitioner along with respondent No.7 participated in the process. The respondents have produced record of the recruitment process showing that petitioner scored highest whilst respondent No.7 was second highest. The proposal was also sent, however it was rejected as the petitioner was overage. The learned counsel appearing for respondents took us to Clause 4-A of the Special School Code applicable to the disabled. It provides upper age for fresh appointment as 45 years only. Undisputedly, at relevant time, petitioner was above 45 years of age. The petitioner has also disputed the entire recruitment process by contending that her signature was forged. The petitioner contended that she never participated in recruitment process. According to the petitioner, false record is created. She has filed handwriting expert's report, however in writ jurisdiction said disputed question cannot be gone into.

9. It reveals from the record that initially there were several deficiencies in the petitioner's proposal for which she was called for personal hearing, but she did not appear. Rule 4-B of the said Code specifies that upper age can be relaxed by respondent No.2 in cases of female ex-service man and the person having experience.

10. The learned counsel for respondents has rightly relied on the decision of the Supreme Court in case of ***Secretary, State of Karnataka and others Vs. Umadevi (3) and others, (2006) 4 SCC 1*** to contend that temporary employee could not claim permanency after expiry his/her term of appointment. The temporary employee would not be entitled for absorption merely on the strength of her continuation. It reveals that since there was no vacancy, the petitioner was time to time appointed on temporary basis. After sanction of the post, recruitment process was conducted, in which petitioner was selected at Serial No.1, however since she was age barred, her proposal was rejected. Rule 4-B of the said Code leaves discretion with the Authority to relax the condition of age. Moreover, it reveals that hearing was not given to the petitioner. In the circumstances, it is appropriate that the matter requires

reconsideration by considering the long standing services rendered by the petitioner on the said post.

11. In view of above, impugned order dated 20.08.2019 rejecting the petitioner's approval is quashed and set aside. The matter is relegated to respondent No.3 Regional Deputy Commissioner, Social Welfare Department, Amravati for fresh consideration in the light of above observation, after hearing the petitioner. The said exercise shall be completed within three months from the date of appearance of the petitioner.

12. Petition stands dispose of in above terms.

(SMT.M.S. JAWALKAR, J.)

(VINAY JOSHI, J.)