



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

REVIEW APPLICATION NO. 150 OF 2025
IN
WRIT PETITION NO. 6819 OF 2023

1. The State of Maharashtra
Through Its Secretary,
Social Welfare Department,
Mantralaya, Mumbai – 32.
2. The Commissioner for Welfare of
Handicapped, Maharashtra State,
3, Church Road, Pune – 411 001.
3. District Social Welfare Officer,
Zilla Parishad, Chandrapur,
Dist. Chandrapur.

...Applicants
(Orig. Respondent Nos. 1 to 3)

Versus

1. Surgreev s/o Rokdoba Mekle,
Age: 50 years, Occu: Retired,
R/o. Dhanegaon, Post Sonwati,
Tq & Dist. Latur.
2. Maharogi Seva Samiti, Varora,
At Anandvan, Tq. Varora,
Dist. Chandrapur
Through its Secretary;
3. Anand Andh Vidyalaya,
Anandvan, Tq. Varora,
Dist. Chandrapur – 442 914
Through its Head Master.

(Org. Petitioner)

(Org. Resp No.4)

(Org. Resp. No.5)
...Respondents

- Mr. Ruchir Wani, AGP for the Applicants/State
- Mr. K. P. Rodge, Advocate for Respondent No.1
- Mr. G. J. Pahilwan, Advocate for Respondent Nos. 2 and 3

CORAM : SMT. VIBHA KANKANWADI &
S. G. CHAPALGAONKAR, JJ
RESERVED ON : APRIL 29, 2026
PRONOUNCED ON : MAY 06, 2026

P.C.:

1. The Review Petitioners/Applicants seek review of order dated 06.03.2024 passed by this Court in Writ Petition No. 6819/2023 by which Applicants – Original Respondent Nos. 1 to 3 were directed to release financial benefits/salary dues to Respondent No. 1 – Original Petitioner from date he declared as surplus till date of his absorption along with continuity of service and consequential benefits for said period.

2. The Respondent No. 1 had instituted Writ Petition seeking direction against Applicants to release his salary for period from 24.08.2007 to 28.02.2019 along with continuity of service and pensionary benefits. It was contention of Respondent No. 1 that on 01.04.1997, he was appointed at Pratidnya Residential School, Latur. His services were approved by District Social Welfare Officer, however, on 24.08.2007, recognition of school was cancelled by competent Authority. The Petitioner was declared as surplus and his name was included in wait list for absorption in other school. First time in year 2016, Petitioner was given an order regarding his absorption in other school, however, he was not allowed to join. Lastly on 21.05.2019 he was

absorbed in a school and relieved on 16.01.2023 on acceptance of his proposal for voluntary retirement. This Court considered Petitioner's claim in terms of Rule 91(2) of Maharashtra Special School for Handicap Training Center Code, 2018 as well as exposition of law by this Court in case of *Rajendra Kondiba Gaikwad vs. State of Maharashtra* reported in *AIROnline 2016 Bom 2*, *Chandrakant Umakantrao Hulsurkar vs. The Commissioner of Handicap Welfare Maharashtra State Pune and Others*, Writ Petition No. 6434 of 2015 decided on 20.08.2018 & *Sindhudurg Zilla Shikshan Sanstha vs. Union of India and Others* reported in *2016 (1) ABR 801*.

3. Mr. Wani, learned AGP appearing for Applicants/State, submits that provision for absorption of surplus teacher is embodied in sub-rule (2) of Rule 25-A of Rules, 1981. The plain reading of aforesaid rule depicts that absorption in another school is not a matter of right. Rule 25-A gives new kind of protection or privilege to permanent employees of aided school. Sub-rule (2) of Rule 25-A lays down that if employees from aided school who are not directly responsible for de-recognition of school, has to be included in waiting list by competent Authority and such wait list candidates can be recommended to management on newly aided school or existing aided school, which are allowed to open new division. According to him, if closure of school is

under 25-A, there is no question of payment of any back wages. The employee becomes entitled only for placement in list of surplus candidates. He would submit that even on consideration of inter play of Rule 25A of Rules 1981 and Rule 91(2) of Code of 2018, upon absorption, teacher is not entitled to be paid salary till date of actual joining. In support of his contention, he relies upon observations of this Court in case of *Sayyad Manjur S/o Mujafar vs. State of Maharashtra and Others*, Writ Petition No. 1934/2017 decided on 03.10.2022.

4. Per contra, Mr. Rodge, learned Advocate appearing for Respondent No. 1, would submit that this Court has passed order relying upon exposition of law by this Court in various judgments, which are referred under Review. Apart from judgments referred, he submits that Division Bench of this Court in case of *Shantabai w/o. Kalappa Mankari vs. The State of Maharashtra and Others* (Writ Petition No. 7409/2014) & in case of *Narayan Dattu Panchal vs. The State of Maharashtra and Others* (Writ Petition No. 11968/2017) has granted similar benefit to employees who were kept in wait list for absorption after de-recognition of school. Mr. Rodge would further submit that principle of no work no wages cannot be applied in facts of present case as Petitioner was forced to stay away from duty although he was readily available for same.

5. Having considered submissions advanced by learned Advocates appearing for respective sides, we find that order under review is passed with reference to judgments of Division Bench of this Court in case of ***Rajendra Kondiba Gaikwad, Chandrakant Umakantrao Hulsurkar, & Sindhudurg Zilla Shikshan Sanstha*** (supra) wherein observations are made that once employee has been placed in list of surplus candidates, he would be entitled for continuity and salary. However, judgment of Division Bench of this Court in case of ***Sayyad Manjur S/o Mujafar*** (supra) was not brought to notice of this Court. In said judgment, this Court has considered inter play between Rule 25-A of Rules 1981 and Rule 91(2) of Code of 1981 along with observations of Full Bench of this Court in case of ***Kanhaiyyalal Sonbaji Gajbhiye vs. Bhartiya Jagruti Shikshan Sanstha Sawari (Jawahar Nagar) and Others, 2020 (6) Mh.L.J. 595***, wherein it has been observed that special teacher who accepted absorption under special scheme, same becomes fresh appointment. Further, it is observed that absorption of surplus teacher is not a matter of right and that upon absorption, teacher is not entitled to be paid salary till date of actual joining.

6. We find that while passing order under review, comprehensive decision rendered by Division Bench of this Court in case of ***Syed Manjur S/o Mujafar*** (supra) was not brought to notice of

this Court. Similarly, judgments relied by us while passing order under review do not consider inter play between Rule 91(2) of Code of 1981 and Rule 25-A of Rules 1981 as has been considered in case of *Syed Manjur S/o Mujafar* (supra).

7. We find that so as to maintain judicial discipline and to avoid conflicting decisions on issue as regard to entitlement of surplus teacher to receive financial benefits till date of his absorption, order under review needs to be recalled and matter needs to be placed before Court for reconsideration in light of judgment of this Court in case of *Syed Manjur S/o Mujafar* (supra).

8. In result, Review Application is partly allowed. Order dated 06.03.2024 passed in Writ Petition No. 6819/2023 is recalled. Matter to be placed for reconsideration afresh before appropriate Court.

9. Pending civil application stands disposed of.

(S. G. CHAPALGAONKAR, J.)

(SMT. VIBHA KANKANWADI, J)