

**(2020) 08 BOM CK 0002**  
**In the Bombay High Court**  
**Case No : Writ Petition No. 1625 Of 2017**

Asha Krishnaji Kulkarni

APPELLANT

Vs

State Of Maharashtra And Ors

RESPONDENT

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**Date of Decision :** 05-08-2020

**Acts Referred:**

Constitution Of India, 1950 — Section 226

**Citation :** (2020) 08 BOM CK 0002

**Hon'ble Judges :** S.S.Shinde, J;V.G. Bisht, J

**Bench :** Division Bench

**Advocate :** Pradeep J. Thorat, V.M.Mali

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## Judgement

V.G. Bisht, J

1. Heard learned counsel for the parties.

2. Rule. Rule made returnable forthwith. Learned counsel waives service on behalf of the respondents. By consent of the parties heard finally at the stage of admission.

3. By this petition under Article 226 of the Constitution, the Petitioner has approached this Court with following prayers :

â??(a) That this Honâ??ble Court be pleased to issue a Writ of Mandamus or any other Writ in the nature of Mandamus directing the Respondents

to release the Salary of the Petitioner for services rendered by the Petitioner of Special Teacher in the Deaf and Dumb School, Satara with effect

from 25th June, 2015.

(b) That this Honâ??ble Court be pleased to issue a Writ of Mandamus or any other Writ in the nature of Mandamus directing the Respondents to

complete the work of fixation of pay of the Petitioner and regularization of her

service book in a time bound manner.â??

4. The Petitioner was appointed as Special Teacher by Respondent No.5, namely, the Head Mistress, Deaf & Dumb School, Satara and Respondent

No.6, namely, the President Samta Shikshak Mandal, Satara. The said school is run by Respondent No.6 Trust. According to the Petitioner,

Respondent No.5 issued show cause notice dated 14/07/1998 calling upon the Petitioner to show cause why her service should not be terminated.

Despite submitting due reply to the said notice, Respondent No.5 terminated her services without conducting any enquiry. Pursuant to her complaint,

the Director, Social Welfare Directorate Maharashtra State vide order dated 15/07/1999 directed Respondent Nos.5 and 6 to reinstate the Petitioner in

service.

However, in the meanwhile, the Petitioner preferred Appeal No.97 of 1999 before the School Tribunal, Kolhapur challenging the order of termination

but the said appeal came to be dismissed in default.

5. The Petitioner filed Miscellaneous Application No.17 of 2011 in Appeal No.97 of 1999 for condonation of delay in filing the application for

restoration of Appeal No.97 of 1999. The School Tribunal vide order dated 1/10/2012 rejected the application. On 20/11/2012 the Petitioner preferred

Appeal before Respondent No.3 i.e. Regional Social Welfare Officer, Pune challenging the order of termination dated 19/06/1999 along with an

application for condonation of delay but the said application came to be dismissed. The Petitioner then preferred Writ Petition No.10575 of 2013 which

eventually came to be allowed.

6. The Petitioner then appeared before the Regional Deputy Commissioner, Social Welfare i.e. Respondent No.3. After hearing parties, Respondent

No.3 was pleased to allow the appeal by setting aside termination order dated 19/06/2015 with further direction to Respondent Nos.5 and 6 to reinstate

the Petitioner in service.

7. The Petitioner accordingly came to be reinstated in service as a Special Teacher with effect from 25/06/2015. Although she continued to work as a

Special Teacher, the Respondents failed to pay her salary after her reinstatement in service.

8. The Petitioner then made correspondence with Respondent No.5 regarding her fixation of salary and regularization of service book. Even District

Social Welfare Officer â?" Respondent No.4 issued a letter dated 29/12/2015 to the Commissioner of Persons with Disabilities i.e. Respondent No.2

stating that the Petitioner was illegally terminated from service on 19/06/1999 and that after joining service on 24/06/2015 till date the Petitioner has

not been paid her salary as she did not submit the proof of renewal of certificate by Rehabilitation Council of India (RCI). Respondent No.4 also

enquired whether salary of the Petitioner can be paid pending renewal of certificate by the Petitioner.

9. Respondent No.2, on its part, issued letter dated 24/02/2016 to Respondent No.1 through the Social Justice and Special Assistance Department

seeking clarification as to whether the Petitioner can be paid her salary pending renewal of the certificate issued by R.C.I.

10. On 20/06/2016, Respondent No.5 issued a letter addressed to the Petitioner stating that she has joined back in service from 25/06/2015 after a gap

of about 17 years and had not renewed R.C.I. certificate for a period of 17 years and hence her salary cannot be released. Further, as the post of the

Junior Clerk in Respondent No.5 â?" School is vacant since June 2010 her service book cannot be completed/regularized and the same will be delayed.

11. The Petitioner, lastly, contends that after joining back in service of Respondent No.5 she completed C.R.E. courses recommended by R.C.I.

Although she continuously worked on the post of Special Teacher from 25/06/2015 to 31/07/2016 she has not received any salary, therefore, the petition with above noted prayers.

12. We have perused the affidavit in reply and additional affidavit of Respondent Nos.1 to 4 as also affidavit in rejoinder of the Petitioner.

13. Respondent No.3, namely, Regional Deputy Commissioner, Social Welfare, Pune Division, Pune and Respondent No.4, namely, District Social

Welfare Officer, Satara in their affidavit in reply submitted that according to the Rehabilitation Council of India Act, 1992 the Professional Worker like

Special Teacher, Rehabilitation Psychologist, Mobility Teacher, Physiotherapist, Speech Therapist, Instructor etc. who are working with disable people

must have obtained RCI certificate prior to employment/ appointment. It is also binding upon the professional to renew the said certificate after certain

intervals. Renewal of the certificate by the professional like Petitioner is one of

the basic eligibility criteria in view of Rule 48 of the School Code for Handicapped Schools, 1997.

14. According to Respondent Nos.3 and 4, Respondent Nos.5 and 6 did not forward proposal for inclusion of the name of the Petitioner in the Samaj Sevartha Vetan Pranali to Respondent No.4 and therefore Respondent No.4 could not process the name of the Petitioner. Respondent Nos.5 and 6 submitted proposal dated 13/06/2016 to Respondent No.4 by informing therein that the Petitioner has produced the receipt of proposal sent for getting RCI certificate renewal and further requested to create a special teacher's post in favour of the Petitioner in the Samaj Sevartha Vetan Pranali. After scrutiny of the documents alongwith the letter dated 13/06/2016, Respondent No.4 vide its letter dated 30/06/2016 forwarded the proposal of the Petitioner to Respondent No.3 for further necessary action. Respondent No.3, on its part, then forwarded the said proposal to Respondent No.2 for further necessary action. Respondent No.2 then sent said proposal to Respondent No.1 for taking decision. As and when Respondent No.1 takes decision on the said proposal, Respondent No.4 will include name of the Petitioner in the Samaj Sevartha Pranali and her salary will be released accordingly.

15. It appears that during the pendency of petition this Court vide order dated 27/06/2017 had directed Respondent No.1 to decide proposal in respect of appointment of the Petitioner and also ordered release of salary of service rendered by the Petitioner as Special Teacher of Deaf and Dumb School.

16. Respondent No.1, on its part, filed affidavit-in-reply and submitted that registration certificate under Rehabilitation Council of India Act, 1992 for special educator in special schools is the basic qualification, without which the person appointed on the said post stands disqualified. Furthermore, as the Petitioner is not holding valid registration certificate under Rehabilitation Council of India Act, 1992, she is not entitled to receive salary and allowances nor does she stand qualified for the administrative approval under Special School Code, 1997. Based on this, the Petitioner is not legally entitled for salary and allowances from the Government Exchequer. Therefore, pursuant to aforesaid provisions, vide letter dated 21/04/2017, Respondent No.1 has rejected the demand of the Petitioner stating therein that

for want of valid registration certificate under Rehabilitation Council of India Act, 1992 and renewal thereof, Respondent No.1 is not in position to pay salary and allowances to the Petitioner for the said period as prayed for.

17. It is next submitted that, on the contrary to the aforesaid legal position, the management is under legal obligation to pay salary and allowances to the Petitioner from its own funds and not from grants, for the period in which the management has availed services of the Petitioner without following due process of law and violating the aforesaid rules and regulations.

18. The Petitioner on her part by filing rejoinder controverted the contentions of Respondent Nos.1, 3 and 4 and denied that on resumption her duty on 24/02/2015 she has not applied for renewal of certificate issued by Rehabilitation Council of India. According to her after resumption of her services on 24/06/2015 she attended necessary courses which are required for the purpose of renewal of Rehabilitation Council of India certificate and upon successful completion of courses the Rehabilitation Council of India is required to renew the certificate issued to her and said renewal is in progress.

19. Respondent Nos.3 and 4 by way of additional affidavit submitted that the Petitioner has produced certificate of registration under Rehabilitation Council of India and the date of renewal is 13/06/2018. Exhibit-1 is the copy of the renewal certificate issued by RCI dated 13.06.2018 and not for the period 25.06.2015 till 13/06/2018.

20. According to Respondent Nos.3 and 4, as the Petitioner was not having requisite qualification from 25/06/2015 till 12/06/2018 the Respondent Government authorities are not legally bound to pay salary and allowances for the said period during which the Petitioner did not have renewed certificate issued by Rehabilitation of India. However, the Petitioner has tendered renewed certificate of RCI which is valid from 13/06/2018 till five years. As the Petitioner has already retired on 31/10/2019 on account of superannuation, the Petitioner is only eligible for salary with effect from 13/06/2018 till date of superannuation. In this regard, the Respondent has already passed the order dated 03/03/2020 allowing salary and allowances with effect from 13/06/2018 till date of superannuation i.e. 31/10/2019.

21. Mr.Thorat, learned Counsel for the Petitioner submitted that, admittedly, the Petitioner continuously worked as Special Teacher in Respondent

No.5 - School from 25/06/2015 till 31/07/2016 for which the Petitioner has not been paid any salary and as such she is required to be given salary for

the work done by her. The Petitioner has completed necessary courses for renewal of R.C.I certificate.

22. Mr.Mali, learned AGP, on the other hand, has reiterated the submissions raised in the affidavit in reply.

23. Perusal of the petition would show that pending termination of service, the Petitioner had no source of income to complete training program of

C.R.E and to get renewed R.C.I. certificate. The whole blame cannot be attributed to the Petitioner. Rather, Respondent Nos.4 and 5 must be held

responsible in putting the Petitioner in precarious condition. The blame must be squarely placed at the door of Respondent Nos.4 and 5 inasmuch as

the said termination order eventually came to be set aside with order of reinstatement of the Petitioner and in consequence the Petitioner resumed her

services on 25/06/2015.

24. It can scarcely be disputed that the Petitioner did not render service as a Special Teacher, on the contrary, her services were availed and utilized

by Respondent Nos.4 and 5 knowing fully well that the Petitioner was not having renewed certificate required to be issued by R.C.I. on the date of

resumption of service on 25/06/2015. We are not unmindful of the fact, as pleaded by the Petitioner, that after resumption of service she attended

necessary courses which were required for purpose of renewal of Rehabilitation Council of India certificate. Even she completed the said courses

successfully and secured certificate of Renewal of Registration on 13/06/2018. This is nowhere challenged by the Respondents.

25. Viewed in this light, it will be far more fruitful for Respondent Nos.1 to 4 to reconsider the proposal pertaining to the Petitioner's salary/wages

for the period as claimed by her afresh. We therefore pass the following order :

ORDER

(i) Respondent Nos.1 to 4 are directed to reconsider afresh the issue of release of salary of the Petitioner for the services rendered by her as Special

Teacher in Deaf and Dumb School with effect from 25/06/2015 within a period of four weeks from the date of receipt of this order.

(ii) We further direct the Respondents to complete fixation of pay and regularization of service book of the Petitioner within eight weeks from the date

of reconsideration of issue of release of salary of the Petitioner by Respondent Nos.1 to 4.

(iii) Rule is made absolute in the aforesaid terms. No costs.