

(2017) 11 BOM CK 0113
In the Bombay High Court
Case No : 11968 of 2017

Narayan Dattu Panchal

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 30-11-2017

Acts Referred:

Constitution of India, Article 14, Article 21, Article 226, Article 227 - Appointment of Commission to inquire into and report on the administration of

Citation : (2017) 11 BOM CK 0113

Hon'ble Judges : R. M. Borde, Vibha Kankanwadi

Bench : DIVISON BENCH

Advocate : B. R. Warma, Ujjwal Agrawal, A. R. Kale

Judgement

1. Rule. Rule made returnable forthwith and heard learned advocates for the parties appearing finally, by consent.
2. By this writ petition, the petitioner has invoked the jurisdiction of this Court under Article 14, 21, 226 and 227 of the Constitution of India, for issuance of writ of certiorari or for directions for quashing and setting aside the order dated 20-09-2012 and for releasing of his salary for the period between 26-09-2007 to 27-03-2012.
3. The factual matrix leading to the petition are that, the petitioner joined the services as Watchman in June, 1990 with school by name Kailaswasi Rangoji Ghate Orthopedic Handicap Residential School, Hanegaon Tq. Deglur District Nanded, which was a special school. The school was functioning on non grantsinaid basis. The grants were accorded by respondent No.1 State for the first time in 1995-1996. The said school came to be closed from 20-11-2000 as some discrepancies were found in the inspection conducted by the officers of respondent No.2. Respondent No.2 had prepared list of surplus employees working in the special school at the State level. The petitioner was waiting for his

absorption since December, 2000. He had visited the office of respondent No.2 time and again with the request of absorption. Ultimately an order of absorption came to be passed in his favour on 26-09-2007 by respondent No.2. He was asked to join school at Paturda District Buldhana by the order dated 26-09-2007. He went to the said school for joining but the school authorities did not allow him to join.

4. The said fact was brought to the notice of respondent No.2 by way of representations by the petitioner on 10-12-2007, 19-12-2007, 17-03-2008 and 08-08-2008. Without verifying the said fact and taking further steps for absorption, the respondent No.2 asked the school at Paturda Dist. Buldhana on 09-05-2008 as to why they have not allowed the petitioner to join the services. The school informed respondent No.2 that the post of Watchman is not sanctioned in the said school. Copy of the staffing pattern was attached to the letter dated 26-05-2008. It was also requested in the said letter that, if the petitioner is directed to be absorbed as Watchman then post should be sanctioned. However, there was no response thereafter by respondent No.2.

5. The petitioner therefore approached this Court by filing writ petition No.7239 of 2009. Thereafter this Court directed to respondent No.2 to inform what steps were taken in the matter. The petitioner received letter of appointment on 17-03-2012 in the school of respondent No.4 at Chikhaldara District Amravati. The petitioner joined his services there on 27-03-2012. Taking note of the said progress, the said writ petition was disposed of by this Court. However, at the time of disposing of the petition, this Court directed the respondent No.2 to decide the representation made by the petitioner on the issue of salary, independently.

6. The respondent No.2, without hearing petitioner, rejected his representation on 20-09-2012. It is stated by the the petitioner that, it was legal obligation of the respondent No.2 to monitor and supervise the judicial orders/ directions and respondent No.2 was the competent authority to issue absorption orders in respect of surplus employees. After the petitioner joined the services at Chikhaldara, he served for years but due to health problem, he retired from the service on July, 2015.

7. The petitioner has submitted that, the right of absorption and joining the duties was created in his favour by order dated 26-09-2007 issued by respondent No.2, which could not be implemented because of inaction on the part of the authorities and the casual approach of respondent No.2. He has submitted that, he is not claiming the backwages period from 2004 to 2007 as he was out of employment but he is claiming salary from September 2007 to 27-03-2012 by quashing the order issued by respondent No.2 on 20-09-2012.

8. Heard learned counsel appearing for the petitioner. He has specifically contended that, the petitioner is claiming salary for the period, right has been created in his favour as the respondent No.2 had directed his absorption in

September, 2007. In spite of having knowledge that the petitioner cannot be absorbed at Paturda Dist. Buldhana, further steps were not taken by the respondent No.2. He relied on the decision in Writ Petition No.7409 of 2014 decided by this Court on 30th October, 2015 in respect of the employee of the same residential school where the petitioner was earlier working. In the said petition, the petitioner therein is held to be entitled to get the salary for the intervening period.

9. The learned counsel for the respondents submitted that, the claim of the petitioner was rejected in 2012 yet he has filed the petition in 2017, and therefore, it suffers from delay. Furthermore, the order passed by respondent No.2 is correct as there is no provision for giving salary to an employee during the period of absorption.

10. The facts are not much in dispute. The special school in which the petitioner was working came to be closed down after inspection by the officers of respondent No.2. The petitioner was serving as Watchman, and therefore, he cannot be said to be a person who could have been responsible for the closure of the school/ institution. The respondent No.2 had prepared list of surplus employees after the closure of special schools, and therefore, it was the duty of the respondent No.2 to make efforts for their absorption. The petitioner came to be absorbed for the first time on 26-09-2007 with the school situated at Patturda District Buldhana, however the authorities at that school had not allowed the petitioner to join. He had brought the said fact to the notice of the respondent No.2 by his representations dated 10-12-2007, 19-12-2007, 17-03-2008 and 08-08-2008, copies of which has been produced on record. Thereafter, it appears that the respondent No.2 had called upon the school at Paturda to explain the nonabsorption of the petitioner with them. The fact was then clarified by the school that, there is no sanctioned post of Watchman with them. Thereafter also the respondent No.2 has not offered any other post or appointment to the petitioner with any other institution. Only by way of indulgence in Writ Petition No.7239 of 2009 when this Court directed the respondent No.2 to inform the steps taken by him, order of absorption, appointment of the petitioner with the respondent No.4 school at Chikhaldara District Amravati came to be passed on 17-03-2012, accordingly the petitioner has joined the services there.

11. The questions those cropped up in respect of the petitioner and similar employees was, whether employee of special school terminated on account of abolition of posts due to closure of the said school is entitled for absorption in another special school, whether on account of refusal by the school where such employee is directed to be absorbed, coupled with inaction on the part of the State authorities to see that such employee is permitted to be joined in such special school, whether such employee becomes entitled for salary from the date of order of absorption apart from right to get such order of absorption executed. The said questions have been answered by this Court in Writ Petition No.7409 of 2014. The petitioner therein was serving as "Molkarin" in the same school where

the petitioner was serving i.e. Kailaswasi Rangoji Ghatе Orthopedic Handicap Residential School, Hanegaon Tq. Deglur District Nanded. After examining the relevant provisions under the Special School Code, 1977 coupled with Maharashtra Employees of Private Schools (Conditions by Service) Regulation Act 1981, this Court has come to the conclusion that despite attempt on the part of the petitioner to resume the duties offered by way of absorption, when the other school does not allow, then the salary for the said period till the absorption are required to be paid. Therefore, those reasons given in the said writ petition are applicable here. In this case also the petitioner became surplus because of the closure of the school, there was no fault on his part for the closure of the school. He had attempted to join his service after the letter of absorption on 26-09-2007 but he was not allowed, and therefore, the order that was passed by respondent No.2 on 20-09-2012, is illegal, arbitrary and unjustified.

12. The fault of delay and latches will not come in way of the petitioner for the simple reason that the cause of action for the petitioner is recurring. A note will have to be taken that, the petitioner was serving as a Watchman and due to health ground he was required to retire. He was declared medically unfit due to the Chronic Renal Failure Anemia, and therefore, writ petition deserves to be allowed as follows. ORDER

- 1) The respondents State Authorities are directed to release salary of the petitioner for the post of Watchman from 26-09-2007 till 27-03-2012.
- 2) The arrears of salary be paid to the petitioner within period of four (4) months from today.
- 3) Rule made absolute in above terms. There shall be no order as to costs.