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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CIVIL APPLICATION NO. 5291 OF 2014
IN WP/8134/2012

ANIL GOVINDRAO KORDE
VERSUS
SIDDESHWAR KRIDA MANDAL, SILLOD AND OTHERS

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Advocate for Applicant : Shri Jadhavar Santosh S.

AGP for Respondent No.3 : Shri D.R.Korde.

Advocate for Respondent No.1 : Shri V.V. Bhavthankar.

Advocate for Respondent No.4 : Shri Shrinivas Shinde.

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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 08th December, 2015

Per Court:

1 Shri Jadhavar, learned Advocate for the Applicant, submits that the proposed amendment is set out from page 7 to 13 of the Civil Application. However, inadvertently on the basis of the subsequent events as proposed through the amendment, the prayer clauses to be added, have been left out. He, therefore, seeks leave to formulate the prayer clauses in the proposed amendment as they have been inadvertently left out.

2 Shri Shinde, learned Advocate for Respondent No.4, opposes

the leave as prayed above and relies upon paragraph 9 of the judgment of the Apex Court in the case of *Sarguja Transport Service vs. State Transport Appellate Tribunal, Gwalior*, **AIR 1987 SC 88 (1)** which reads as under:-

- “9. The point for consideration is whether a petitioner after withdrawing a writ petition filed by him in the High Court under Article 226 of the Constitution of India without the permission to institute a fresh petition can file a fresh writ petition in the High Court under that Article. On this point the decision in *Daryao's case (supra)* is of no assistance. But we are of the view that the principle underlying rule 1 of Order XXIII of the Code should be extended in the interests of administration of justice to cases of withdrawal of writ petition also, not on the ground of *res judicata* but on the ground of public policy as explained above. It would also discourage the litigant from indulging in bench-hunting tactics. In any event there is no justifiable reason in such a case to permit a petitioner to invoke the extraordinary jurisdiction of the High Court under Article 226 of the Constitution once again. While the withdrawal of a writ petition filed in a High Court without permission to file a fresh writ petition may not bar other remedies like a suit or a petition under Article 32 of the Constitution of India since such withdrawal does not amount to *res judicata*, the remedy under Article 226 of the Constitution of India should be deemed to have been abandoned by the petitioner in respect of the cause of action relied on in the writ petition when he withdraws it without such permission. In the instant case the High Court was right in holding that a fresh writ petition was not maintainable before it in respect of the same subject-matter since the earlier writ petition had been withdrawn without permission to file a fresh petition. We, however, make it clear that whatever we have stated in this order may not be considered as being applicable to a writ petition involving the personal liberty of an individual in which the petitioner prays for the issue of a writ in

the nature of habeas corpus or seeks to enforce the fundamental right guaranteed under Article 21 of the Constitution since such a case stands on a different footing altogether. We, however, leave this question open.”

3 The issue dealt with by the Apex Court in paragraph 9 is apparent from the above reproduced portion. The said ratio has nothing to do with the Applicant not formulating the prayer clauses in the proposed amendment by inadvertence. The ratio of the Apex Court in Sarguja Transport Service case (supra) pertains to Order 23 Rule 1 of the Code of Civil Procedure and the fundamental right guaranteed under Article 21 of the Constitution of India. The said ratio is, therefore, not applicable to the present case.

4 In the light of the above, leave to formulate the prayer clauses in the proposed amendment is granted.

5 I have heard the learned Advocates for the respective sides for quite sometime on the Civil Application for amendment.

6 Writ Petition No.8134/2012 challenging the judgment of the School Tribunal dated 03.09.2012 in connection with the termination of the Applicant dated 22.04.2009 w.e.f. 25.04.2009 is sub-judice before this

Court.

7 The Deputy Director of Education by the order dated 22.04.2013 has directed the Education Officer (Secondary), Zilla Parishad, Aurangabad to cancel the approval of service of the Applicant dated 19.03.2005.

8 The Applicant preferred Writ Petition No.5046/2013 before the Division Bench of this Court. By order dated 22.01.2014, the learned Division Bench of this Court has observed as under:-

“Upon a motion for withdrawal of the petition moved by the learned Counsel for the petitioner, on instructions from the petitioner, the same is granted. Petition stands disposed of as withdrawn.

2. *All the issues, touching the issue of termination of the petitioner, are kept open.”*

9 The Applicant has specifically contended in paragraph 2 of the memo of the Civil Application as under:-

“2. Applicant submits that, in the mean while, the Deputy Director of Education, Aurangabad Division, Aurangabad, vide order dated 22.04.2013, has directed the present respondent No.3 to cancel approval granted to the appointment of applicant. Said order was challenged before this Hon'ble Court in Writ Petition No.5046/2013. After hearing the parties, the Division Bench had expressed view that since the petitioner was no more in service, there was no propriety to consider challenge to the order

directing cancellation of approval granted to the appointment of petitioner and further expressed that validity of the said order can be considered in the proceeding challenging the termination order i.e. present Writ Petition. In that view of the matter, petitioner sought permission to withdraw the said petition and accordingly, said Writ Petition i.e. Writ Petition No.5046/2013 was disposed as withdrawn vide order dated 22.01.2014. The Hon'ble Division Bench has specifically observed that all the issues, touching the issue of termination of the Petitioner, are kept open.”

10 Shri Jadhavar, learned Advocate for the Applicant, submits that the direction dated 22.04.2013 by which the Education Officer (Secondary) is instructed to cancel his approval would affect the outcome of his pending Writ Petition No.8134/2012 since, if he succeeds in the said Writ Petition, the issue of reinstatement would crop up and the Respondents are likely to take a stand that because the approval has been cancelled subsequent to his termination, he cannot be reinstated until the order dated 22.04.2013 is set aside.

11 Shri Jadhavar further submits that the contentions set out in paragraph 2 of the Civil Application which are reproduced above have not been contradicted by any of the Respondents. Moreover, the learned Division Bench of this Court has kept all the issues touching the issue of termination of the Applicant open. He, therefore, submits that subsequent

order dated 22.04.2013 needs to be challenged and hence, the Applicant prays for amendment to the petition so as to bring the subsequent events on record and challenge the subsequent order dated 22.04.2013.

12 Shri Bhavthankar and Shri Shinde, learned Advocates appearing for Respondent Nos.1 and 4, respectively, jointly submit that the order dated 22.04.2013 passed by the Deputy Director of Education has nothing to do with the order of termination of the Applicant and the impugned judgment of the School Tribunal. The Applicant had raised all the contentions against the said order dated 22.04.2013 before the learned Division Bench in Writ Petition No.5046/2013 which have not been accepted by the learned Division Bench. They, therefore, submit that this Civil Application deserves to be rejected since the Applicant is trying to draw benefit which was not directly granted to him by the learned Division Bench.

13 I have considered the submissions of the learned Advocates. The order dated 22.04.2013 is subsequent to the order of termination of the Applicant/ Petitioner as well as the rejection of his appeal on 03.09.2012. It is possible that if the Applicant succeeds in the petition and is held entitled for reinstatement, the Respondents are likely to raise a ground that an employee whose approval has been cancelled by the

Education Officer, cannot be reinstated in service.

14 It is held by this Court in *St.Ulai High School vs. Devendraprasad Jagannath Singh*, 2007 (1) Mh.L.J. 597 (Full Bench), and in *Hindi Vidya Bhavan, Mumbai and others vs. Presiding Officer, School Tribunal, Mumbai*, 2007(6) Mh.L.J. 563, that lack of approval would not render the appointment of a teacher invalid.

15 It appears from the order dated 22.01.2014 passed by the learned Division Bench of this Court that the petition filed by the Applicant was disposed of as withdrawn and all the issues touching the termination of the Applicant are kept open. It means that the Applicant was granted liberty to raise all the issues as the Applicant may deem fit and proper while assailing the order of termination. The Applicant finds that the order dated 22.04.2013 passed by the Deputy Director of Education directing the Education Officer (Secondary) to cancel his approval, is connected with his termination.

16 In the light of the above, this Civil Application is allowed. The proposed amendment, namely, adding Respondent No.6, paragraphs 16-A to 16-G and 17-A with grounds there below and the prayers, placed on record in the Civil Application, shall be brought on record in the memo of

the petition on or before 08.01.2016. Within two weeks thereafter, the Respondents are at liberty to file their additional affidavit in reply.

17 After the amendment and the pleadings of the Respondents are complete in the petition as directed above, list Writ Petition No.8134/2012 for admission on 27.01.2016. Needless to state, all the contentions of all the litigating sides are kept open.

(RAVINDRA V. GHUGE, J.)