

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

CRIMINAL APPLICATION NO. 5142 OF 2013

Ganesh s/o. Maharu Zope **....Applicant.**

Versus

Chandrakant Hari Badhe & Ors. **....Respondents.**

Mrs. U.C. Agrawal, Advocate for applicant.

Mr. N.K. Kakade, Advocate for respondent Nos. 1 and 2.

Mr. R.P. Phatke, APP for State.

WITH
CRIMINAL APPLICATION NO. 5141 OF 2013

Ganesh s/o. Maharu Zope **....Applicant.**

Versus

Kalyansing Mohansing Patil & Anr. **....Respondents.**

Mrs. U.C. Agrawal, Advocate for applicants.

Mr. P.R. Patil, Advocate for respondent No. 1.

Mr. R.P. Phatke, APP for State.

CORAM : T.V. NALAWADE, J.
DATED : 26th February, 2015.

ORDER :

1. Both the applications are filed under section 439 (2) of Criminal Procedure Code for relief of cancellation of anticipatory bail granted in favour of respondents of the two proceedings. In a private complaint filed by the present applicant, a direction was given by the learned J.M.F.C. to make

investigation under section 156 (3) of Cr.P.C. On the basis of that direction, the crime was registered for offences punishable under sections 468, 471, 420, 120-B, 34 etc. of I.P.C. In that crime, the learned Additional Sessions Judge has granted the relief. Both the sides are heard.

2. The main allegation of the present applicant, who is at present the President of one educational institution, trust that respondent Chandrakant Badhe was Chairman of School Committee for some time and he created false record of giving appointment to his son-in-law i.e. Bhagwat Madhukar Patil in the school of the trust. There is allegation against the respondent of the other proceeding that he was Head-Master and he helped Shri. Badhe in creation of false record. It is the case of the applicant that no resolution was passed to give appointment to Bhagwat Patil on the post of Shikshan Sevak in meeting of August 2004. False copy of so called resolution was sent to the Government department. An approval was obtained for this appointment of education department. There is also allegation that false numbers of outward registers were given when such correspondent was made. There is allegation that initial appointment of Bhagwat Patil on the post of teacher on Clock Hour Basis (C.H.B.) itself is illegal and it was not approved by the

education department, but an attempt was made by Shri. Chandrakant Badhe to legalize the thing by creation of false record. It is contended that no advertisement was published for filling the post of teacher on C.H.B. and Bhagwat Patil was not qualified as he was not B.Ed. at the relevant time. His appointment on C.H.B. post was never approved by the education department.

3. It is contended that when Chandrakant Badhe vacated the post of Chairman of the school committee and complainant Ganesh Zope became Chairman of the committee, the complainant realized that such false record was created and then he filed the report and so, the delay was caused. Copies of relevant record are produced.

4. The learned Additional Sessions Judge first granted relief in favour of Head-Master and then the similar relief was granted to Chandrakant Badhe also by observing that relief was granted already to Head-Master. The Additional Sessions Judge has observed that everything is the matter of record and no purpose will be served by arresting and giving custody of the respondents to police. It is also observed that the main dispute is decided against the institution and the removal of Bhagwat

Patil from service by the complainant is set aside and so, the protection needs to be given.

5. This Court has carefully gone through the record regarding the dispute which was taken up to Supreme Court. It appears that after vacating the post of Chairman of School Committee by Chandrakant Badhe, proceedings were filed under section 41-E of Bombay Public Trust Act against the complainant and after that, real dispute started. After filing of that proceeding, Bhagwat Patil was removed from service without holding departmental inquiry. When this order was challenged in School Tribunal, School Tribunal set aside that order. This decision is upheld up to the Supreme Court. The observations made by this Court in Writ Petition show that the entire record was considered and it is observed that during tenure of the complainant correspondence was made with education department and in view of that correspondence, the appointment of Bhagwat Patil was confirmed and he became teacher when his initial appointment was for the post of Shikshan Sevak on probation basis. These proposals were sent subsequent to vacating the post by Chairman by Chandrakant Badhe and when the complainant had become Chairman of the school committee. The complainant has been Chairman of the

trust right from the beginning and it can be said that in the year 2002, due to the complainant, Chandrakant Badhe could become Chairman of the school committee. This institution runs only one school. In view of these circumstances, it cannot be said that it was not within the knowledge of the complainant that Bhagwat Patil is son-in-law of Chandrakant Badhe, Bhagwant Patil was initially appointed on C.H.B. even when no approval was given by education department and then he was appointed on the post of Shikshan Sevak when he got B.Ed. degree.

6. The submissions made show that till the appointment of Bhagwat Patil on the post of Shikshan Sevak, nothing was paid to him for working on C.H.B. Thus, institution did not lose anything. Similarly in the aforesaid decisions given by School Tribunal, High Court and Supreme Court, it was made clear that Bhagwat Patil will not be entitled to get anything in respect of the period prior to the date of his appointment as Shikshan Sevak. Thus, it cannot be said that whatever was done by Chandrakant Badhe from the year 2002 to 2006 was not within the knowledge of the complainant. Ordinarily, such trust makes appointments as per their choice though some procedure is shown to be followed. This Court had observed in writ petition that the procedure for appointment was followed. It can be said

that when the dispute started between Chandrakant Badhe and complainant and they were interested in taking control over institution, the aforesaid steps were taken against Patil and when they failed, the complaint came to be filed. Though in the so called original record shown to this Court by the learned counsel for the complainant, there was no such resolution for giving appointment on the post of Shikshan Sevak, such correspondence was made during regime of Badhe and then when Badhe vacated the post, the correspondence was made by the complainant. If something illegal was done, it can be said that action can be taken against both, Badhe and the complainant. The submissions made show that the investigation is completed, chargesheet is filed and even charge is framed. In view of these circumstances, this Court holds that it is not desirable to interfere in the orders made by the learned Additional Sessions Judge.

7. In the result, both the applications stand rejected.

[T.V. NALAWADE, J.]

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