

FARAD CONTINUATION SHEET NO.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD

Office Notes, Office
Memoranda of Coram,
appearances, Court's
orders or directions
and Registrar's orders

Court's or Judge's orders

WRIT PETITION NO. 446 OF 2014

SHANTABAI GOVINDRAO MUNDKAR
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

...

Advocate for Petitioner : Mr.Rodge Pratap G.
AGP for Respondents/State: Mr.S.B. Pulkundwar.
Advocate for Respondents: Mr.S.R. Chaukidar for R/7,
Mr.Panpatte V.S. for R/4

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CORAM : S.S. SHINDE & M.T. JOSHI, JJ.

Dated: SEPTEMBER 11, 2015

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Heard learned Counsel for the petitioner. He submits that, record is available with the management, the Education Officer has filed incorrect affidavit and has made incorrect statements in his affidavit. It is submitted that the entitlement of the petitioner is being taken away by raising technical plea that record is not submitted by the management. Therefore, according to the learned Counsel for the petitioner, respondents may be directed to produce the record before this Court and it is only thereafter, the prayer of the petitioner can be considered.

2 Learned Counsel for the respondent No.7 management submits that there was no any record available in custody of respondent No.7.

3 The learned Counsel for respondent No.4 invited our attention to the affidavit-in-reply and submits that the statement made in paragraph 3 of the affidavit is in the light of office record maintained by respondent No.4.

4 We have heard learned Counsel for the petitioner, learned Counsel for respondents No.4 and 7 and the learned AGP for respondent / State. Paragraph 3 of the affidavit-in-reply filed by respondent No.4 reads, thus:

“3 I say that upon examination of record available with deponent office and enquiries made in the respondent Nos.4 and 5 offices, the following things would reveal, etc.

(a) The writ petitioner was in the employment with respondent nos.4 and 5 upto 1987;

(b) From 1987 onwards the writ petitioner was continuously absent without permission;

(c) It further transpired that writ petitioner had open D.Ed.college and was serving there as Principal and also was President of the said Institution;

(d) One Shri Aglave was appointed in place of writ petitioner as Head Master. Upon enquiries made with the said Shri Aglave it was conveyed that the writ petitioner's husband has not handed over the complete charge and necessary record pertaining to the

services of husband of the petitioner;

(e) The permission granted to respondent no.5 – Institution was withdrawn by the State Government because of mismanagement in the year 2003;

(f) The permission was restored in 2011;

(g) Upon enquiries made with present as well as past Head Master it transpired that the complete record was not handed over by husband of the petitioner to either Institution or concerned head Master.

(h) There is possibility of availability of concerned record with writ petitioner only.”

5 The statement made by the respondent No.4 in the affidavit-in-reply is on oath. The said statement has been made after verification of the record. The contention of the Counsel for the petitioner that the statement made by the Education Officer in the affidavit-in-reply is *de hors* the record and is not in accordance with the record, is a disputed question of fact.

6 Therefore, in our opinion, such adjudication cannot be undertaken by this Court. Leaving open the remedy to the petitioner, as available in law, for adjudication of such a disputed question of fact, this writ petition stands rejected.

(M.T. JOSHI, J)

(S.S. SHINDE, J)