

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CONTEMPT PETITION NO.255 OF 2012**

Kauthali Vidyalaya, Kauthali	Petitioner.
Versus	
Mr. Sanjay Kumar, Secretary	...Respondents.

**WITH
CONTEMPT PETITION NO.253 OF 2012**

Mungshi Vidyalaya, Mungshi	...Petitioner.
Versus	
Mr. Sanjay Kumar, Secretary	...Respondents.

**WITH
CONTEMPT PETITION NO.254 OF 2012**

Kasari Vidyalaya, Kasari	..Petitioner.
Versus	
Mr. Sanjay Kumar, Secretary	...Respondents.

**WITH
CONTEMPT PETITION NO.256 OF 2012**

Adv. Diliprao Sopal	
Vidyalaya, Surudi	...Petitioner.
Versus	
Mr. Sanjay Kumar, Secretary	...Respondents.

**WITH
CONTEMPT PETITION NO.257 OF 2012**

Sharadchandra Vidyalaya, Bari	...Petitioner.
Versus	
Mr. Sanjay Kumar, Secretary	...Respondents.

Mr. A.V.Anturkar, Sr. Adv. With Mr. V.S.Deokar, advocates for the Petitioners.

Mr.N.P.Deshpande AGP for the respondent nos. 2 to 4-State in CP Nos.255, 253 and 254 of 2012.

Mr. A.I. Patel, AGP for respondent nos.2 to 4 in CP Nos.256 and 257 of 2012.

**CORAM : SMT. VASANTI A.NAIK
& SHRI C.V.BHADANG, JJ.**

DATED : February 11, 2015.

P.C. :

Since the orders of which the contempt is alleged are identical and since it is the case of the petitioners that the respondents have deliberately disobeyed the same, the contempt petitions are heard together and are decided by this common order.

The petitioners have sought action against the respondents under the provisions of the Contempt of Courts Act, 1971 for willfully disobeying the orders dated 23.1.2003 and the subsequent orders passed by this Court in the contempt petitions filed by the petitioners as also the writ petitions filed by the petitioners in the year 2006.

According to the petitioners, the petitioners were entitled to the sanction of the posts of the senior clerk and the other non teaching staff in the schools run by the petitioners-societies on the basis of the Government Resolution dated 28.6.1994. The petitioners filed

applications before the Deputy Director of Education seeking sanction of the said posts. The Deputy Director of the Education had not decided the applications and hence while disposing of the writ petitions filed by the petitioners in the year 2002, this Court directed the respondents to take appropriate decision on the applications made by the petitioners after considering the Government Resolution dated 28.6.1994. This Court directed the respondents to decide the applications preferably within a period of three months. Nothing was heard in the matter and the petitioners filed contempt petitions against the respondents in the year 2003. This Court directed the respondents to comply with the orders in the writ petitions within a period of four weeks and disposed of the contempt petitions. Since the applications were not decided, the petitioners filed writ petitions in the year 2006 seeking a direction to the respondents to decide the applications after hearing the petitioners. The writ petitions were disposed of with the direction to the respondents to hear the petitioners and take a decision on the prayer for sanctioning the posts of non-teaching staff within a period of four months from the disposal of the writ petitions filed in the year 2006.

It is the case of the petitioners that the Deputy Director of Education called the petitioners for hearing on 25.6.2007. On 14.11.2007, the Deputy Director of Education wrote to the State Government that 18 posts could be sanctioned. The State of Maharashtra also approved all

the 18 sanctioned posts on 14.5.2012. Though the State Government and the Deputy Director of Education had decided to approve 18 posts, the said decision was not communicated to the petitioners. Since there was no communication to the petitioners of the decision, the petitioners have filed these contempt petitions seeking action against the respondents under the provisions of the Contempt of Courts Act, 1971.

The contempt petitions were heard by this Court from time to time and since the decision of the State Government was not conveyed to the petitioners, the Additional Chief Secretary, Department of Primary Education and Sports was directed to remain present in the Court. The Additional Chief Secretary was personally present in the Court on 8.10.2013. The Additional Chief Secretary clarified that the files were put up before him way back in April, 2012 and he endorsed thereon that a decision be taken. It was conveyed that he had endorsed his decision on the file. It was conveyed that the Government, essentially, the Department of Finance thought that there were severe financial repercussions of the decision and hence, all norms were required to be considered. The matter was then referred to the High Power Committee and was placed before the Chief Minister for final decision. This Court adjourned the matter so as to consider the correctness of the statement made by the Additional Chief Secretary and it was conveyed to this Court on the next date of hearing that the State Government had amended the

Government Resolution dated 28.6.1994 by the Government Resolution dated 23.10.2013.

It is stated on behalf of the respondents that in view of the subsequent Government Resolution dated 23.10.2013, it would not be possible to consider the applications of the petitioners on the basis of the Government Resolution dated 28.6.1994. It is stated on the basis of affidavit that by the Government Resolution dated 23.10.2013, the earlier Government Resolution has been superseded and revised criteria has been laid down for sanctioning of the posts of non-teaching staff. It is stated that the respondents have the highest regard for the orders of the Court and the decision was taken in the matter on 14.11.2007 and the same was communicated to the petitioners. It is stated that the actual decision of sanctioning additional posts of non-teaching staff could have been taken by the High Power Committee headed by the Hon'ble Chief Secretary and since large financial implications were involved, the matter was pending before the High Power Committee. It is stated that the High Power Committee was considering the factual situation and statistics along with the financial position of the State to sanction the posts throughout the State. It is stated that in the aforesaid background, immediate action could not have been taken by the High Power Committee. It is also stated in the affidavit that after considering the financial condition of the State Government, the subsequent Government

Resolution dated 23.10.2013 was issued. It is stated that in the aforesaid background, it cannot be said that the respondents have willfully and deliberately flouted the orders passed by this Court from time to time. It is stated that in the aforesaid background, the posts of non-teaching staff cannot be sanctioned on the basis of Government Resolution dated 28.6.1994.

On hearing the learned counsel for the parties and on a perusal of the affidavit-in-reply filed on behalf of the respondents from time to time it appears that an action cannot be taken against the respondents under the provisions of the Contempt of Courts Act, 1971 for willfully disobeying the orders of this Court in the writ petitions filed in the year 2002, contempt petitions filed in the year 2003 and the writ petitions filed in the year 2006. As soon as the writ petitions filed in the year 2006 were decided, the petitioners were heard and the Deputy Director of Education conveyed the decision to the petitioners. Thereafter, the matter was placed before the High Power Committee as the same could have decided the applications for sanctioning the posts of the non-teaching staff. It appears that the matter was pending before the two departments of the Government and since the same had huge financial implications, a decision was taken in the matter and the Government Resolution dated 23.10.2013 was brought into effect. In the aforesaid

background, the respondents cannot be held to be guilty of willful disobedience of the orders passed by this Court on the ground that the Government Resolution dated 28.6.1994 was not considered while taking the decision in the matter. In view of subsequent development, i.e., the issuance of the Government Resolution dated 23.10.2013, it would not be possible for this Court to direct the respondents in the contempt petitions to take a decision on the applications of the petitioners on the basis of the Government Resolution dated 28.6.1994. Though we find that there was some delay on the part of the respondents in taking an action in furtherance of the orders passed by this Court from time to time, it cannot be said that the said inaction or delay was intentional and deliberate. The respondents can not be held guilty for contempt unless it is established that the respondents have deliberately and willfully disobeyed the orders of this Court. We do not find any material to show that there was willful and deliberate disobedience of the orders. In the absence of willful or deliberate disobedience, the contempt petitions cannot be proceeded further.

In view of the aforesaid, the contempt petitions are disposed of with no order as to costs. The notice stands discharged.

(C.V.BHADANG, J.)

(MRS. VASANTI A.NAIK, J.)

