IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CONTEMPT PETITION NO. 446 OF 2016
IN WP/12486/2015

ASHOK SAMBHAJI DALPE
VERSUS
ANAND KONDIBA GAIKWAD AND ANOTHER

WITH
CONTEMPT PETITION NO.783 OF 2016
IN WP/12486/2015
PRATIBHA NIKETAN EDUCATION SOCIETY, NANDED AND ANOTHER.
VERSUS
ASHOK SAMBHAJI DALPE AND ANOTHER.

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Advocate for Petitioner in CP/446/2016 and for Respondent No.1 in CP/783/2016 : Shri P.B.Salunke h/f Shri Salgare Vitthal G..

Advocate for Petitioner in CP/783/2016 and for Respondent No.1 in CP/446/2016 : Shri S.M.Kulkarni.

AGP for Respondents/ State : Shri S.P.Sonpawale.
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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 22nd December, 2016

Per Court:

1 On 23.09.2016 in the first Contempt Petition No.446/2016, I had issued notice to Respondent No.2, namely, Shri Shivaji Eknath Pawar, Education Officer (Secondary), Zilla Parishad, Nanded by passing the following order:-

"*1. The petitioner points out the direction issued by this Court at paragraph No. 35(c) in its order dated 02/04/2016 in WP No.12486/2015. Learned Advocate for respondent Nos. 1 and 3 submits that despite correspondence with respondent No.2 for seeking approval to the suspension of the petitioner so as to ensure the payment of subsistence allowance, respondent No.2 has not implemented the order of this Court. Similarly, respondent No.2 has not nominated a State Awardee Teacher on the Enquiry Committee of the Management.*

2. In the light of the above, issue notice to respondent No.2, returnable on 18/10/2016, Respondent No.2 shall file an affidavit in reply on or before 18/10/2016 and shall not seek extension of time."

2 An affidavit in reply is filed on 24.11.2016 by the said Education Officer. It is stated in paragraph 3 that the School Management has forwarded the proposal in respect of suspension allowance on 21.11.2016 and he has forwarded the same to the Superintendent, Pay and Provident Fund Unit (Education), Nanded on 23.11.2016. The Superintendent, Pay and Provident Fund Unit (Education), Nanded sanctioned the salary grants on 23.11.2016. An affidavit is also filed in the second Contempt Petition No.783/2016 by the same Education Officer dated 16.12.2016 which indicates that the order of according approval to the suspension of the employee is granted on 15.12.2016. As such, the sanction is accorded on 15.12.2016.

3 It is pointed out that the same Education Officer was the Respondent before the learned Division Bench in Writ Petition Nos.7385/2016 and 7422/2016. Observing the conduct of the said Education Officer, the learned Division Bench by it's order dated 22.07.2016, observed in paragraph 6 that "*In our prima facie opinion, it appears that the Education Officer has made calculated attempt to pass the impugned order dated 16.05.2016 so as to favour Respondent No.4 thereby totally ignoring the fact that the petition filed by Respondent No.4 is not only rejected simplicitor, but the same is rejected with the reasoned order*." It is then observed in paragraph 7 that "*In the circumstances, this is a fit case where the Education Officer / Respondent No.3 deserves to be dealt with by issuing a suo-moto notice to Respondent No.3, returnable on 11.08.2016 as to why appropriate action/ proceedings should not be initiated against him for misleading and misinterpreting the order passed by this Court on 02.05.2016 thereby, making an attempt to get over the order of rejection passed by this Court in Writ Petition No.5808/2015*." It is then ordered in paragraph 9 that "*Till the next date of hearing, we direct the Deputy Director of Education, Latur to withdraw the charge of the Education Officer/ Respondent No.3. However, his other service conditions shall remain unaffected*.".

4 It is informed that the charge of the said Education Officer Mr.Pawar was withdrawn by the competent authority on 22.07.2016 and the said statement was recorded by the learned Division Bench in it's order dated 11.08.2016. Subsequently, the learned AGP states, on instructions, that an apology tendered by Mr.Pawar was accepted and the charge was then re-handed over to him on 24.10.2016.

5 The learned AGP submits that Mr.Pawar, who is personally present in the Court, is tendering an unconditional apology and seeks pardon.

6 Insofar as the second Contempt Petition No.783/2016 is concerned, it is apparent from the contents of the affidavit in reply filed and the directions of this Court that despite the communication dated 21.06.2016 and the reminder dated 29.06.2016 followed by yet another reminder dated 08.08.2016, Mr.Pawar did not initiate any action. When confronted in the open Court, he instructed the learned AGP to state, initially, that he had not received the communications dated 21.06.2016 and 29.06.2016. He then made a further statement that those two documents were received by his office, but he may not have read those documents.

7 The affidavit in reply does not indicate in any manner that the said two documents were not brought to his notice, inasmuch as it is not stated as to who suppressed those documents from him. It appears that it is only after this Court passed the earlier order that he has promptly issued the sanction to the suspension by letter dated 15.12.2016 which he was expected to do several months ago.

8 In the light of the above, I deem it proper to award the punishment of stoppage of one increment permanently. However, the learned AGP submits, on instructions, that Mr.Pawar is tendering an unconditional apology and submits that such an act would never happen again. In order to scale down the punishment, I put it to the learned AGP that I am inclined to impose fine of Rs.10,000/-. Upon taking instructions, it is submitted that Mr.Pawar prays that he would suffer fine rather than stoppage of one increment permanently.

9 In the light of the above, Contempt Petition No.783/2016 is disposed of by recording the statement of Mr.Pawar, who shall deposit an amount of Rs.10,000/- (Rupees Ten Thousand) in this Court on or before 06.01.2017. The said amount shall be paid from his salary account and it would be donated to the Advocates Association of Bombay High Court, Bench at Aurangabad.

10 Copy of this order be placed before the Chief Executive Officer, Zilla Parishad, Nanded and an entry be made in the Service Book of Mr.Pawar.

11 Contempt Petition No.446/2016 shall stand over to 13.01.2017. To be heard along with Contempt Petition (stamp) No.38291/2016.

kps (**RAVINDRA V. GHUGE, J.**)