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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.6241 OF 2016

Kakde Vikram Genbhau	...Petitioner
V/s.	
The State of Maharashtra & Ors.	...Respondents

WITH
WRIT PETITION NO.6244 OF 2016

Suphekar Satish Tukaram	...Petitioner
V/s.	
The State of Maharashtra & Ors.	...Respondents

Mr.P.B. Shah i/b Mr.K.P. Shah for the Petitioners.
Mr.A.R. Metkari, A.G.P. for the State – Respondent Nos.1 to 3.
Mr.Sarang Aradhya for the Respondent No.4.

CORAM : R.D. DHANUKA, J.
DATE : 11TH JULY, 2016.

P.C. :-

1. By consent of parties, both the writ petitions were heard together and are being disposed of by a common order.
2. Rule. Learned counsel appearing for the respondents waive service. Petitions are heard finally.
3. Since the facts in both the writ petitions are identical, learned counsel for the parties addressed this Court in Writ Petition No.6241 of 2016. The petitioner in this writ petition has passed B.A.

from Pune University in April, 1997 and was appointed as a clerk. On 10th July, 2000, the management issued an advertisement inviting the applications for the post of junior clerk. It is the case of the petitioner that the petitioner was eligible and qualified to be appointed in the said post. He accordingly applied for the said post. After taking interview of the candidates who had applied for the said post, the petitioner was selected in open category on 19th July, 2000 and was issued a letter of appointment on 20th July, 2000. It is the case of the petitioner that on completion of probation period, the petitioner was confirmed in the said post and has been working in the school run by the respondent no.2.

4. On 1st September, 2004, the petitioner was promoted as a senior clerk. The Education Officer granted approval to the appointment of the petitioner. It appears that on 9th June, 2014, Mr.Rohkale filed a complaint with the office of Anti Corruption Bureau making allegations against some of the employees, including the petitioner. Insofar as the petitioner is concerned, it was alleged that the promotion to the post of senior clerk granted to the petitioner was illegal as he belonged to open category, whereas the post was reserved for reserved category. It was alleged that false and bogus papers were prepared and were submitted for approval of his promotion for the post of senior clerk.

5. on the basis of such complaint, the respondent no.2 directed the respondent no.4 to call upon the petitioner and other similarly situated employees to execute an affidavit in the form of indemnity bond on the stamp paper of Rs.500/- as a condition for release of the salary to the effect that in case any adverse decision is taken against them in future, they would return the salary paid to them and other benefits. The salary and other benefits of the petitioner in both the matters are withheld on the ground that the petitioner in both the matters did not execute an affidavit in the form of indemnity bond as demanded. This action on the part of the respondents has been impugned by both the petitioners in these writ petitions.

6. Mr.Shah, learned counsel appearing for the petitioner invited my attention to a copy of the F.I.R. alleged to have been filed against the petitioners and other employees. He submits that some of the employees had challenged the said F.I.R. by filing writ petitions in this Court. However, the action under the said F.I.R. is stayed by this Court. He submits that the complaint filed by the third party against the petitioner is totally frivolous. No action is taken by the management against the petitioner. No enquiry is conducted till date. No show cause is issued. He submits that there is no provision under the M.E.P.S. Act, 1977 for compelling an employee to issue such

indemnity bond before releasing the salary and other benefits.

7. Learned counsel appearing for the management supports the case of the petitioner and would submit that the petitioner was appointed in the vacant post after complying with all the requisite selection procedure and further submits that the complaint filed by the third party was frivolous. He submits that in view of the order passed by the Education Officer, the management had insisted for such indemnity bond from the petitioner and other employees.

8. Learned A.G.P. appearing for the State on the other hand submits that since the F.I.R. has been lodged against the petitioner in both the matters, the Education Officer was justified in passing an order for submission of indemnity bond before release of the salary and other benefits to the petitioner.

9. It is not in dispute that no action has been initiated against the petitioner in both the matters till date pursuant to such F.I.R. lodged by the third party. It is the case of the management that the petitioner in both the matters were appointed on vacant and clear posts after following requisite selection procedure prescribed under the M.E.P.S. Act.

10. There is no dispute that there is no provision under the M.E.P.S. Act which prescribes for submission of such indemnity bond by an employee before releasing of his salary and other benefits.

Both the petitioners are still working in the school. No show case notices have been issued to them. In my view, the Education Officer thus could not have passed an order compelling the management to insist for an indemnity bond from the petitioners before releasing of their salary and other benefits. The action on the part of the Education Officer is without authority of law and is illegal. As and when the enquiry is initiated or any action is taken against the petitioner, the management or the Education Department shall be at liberty to take appropriate action in accordance with law.

11. I therefore, pass the following order :-

a). The impugned orders dated 10th February, 2016 passed by the respondent no.2 are set aside. The respondent no.2 is directed to release grant in aid to the respondent no.4 and is further directed to release the arrears of salary to the petitioners in both the matters without demanding execution of any affidavit or undertaking on the stamp paper or otherwise. The respondent no.2 shall release grant in aid expeditiously. The management shall release the salary of the petitioners in both the matters within two weeks from the date of release of grant in aid.

b). Rule is made absolute in aforesaid terms. No order as to costs.

12. All parties including the Education Department to act on the authenticated copy of this order.

(R.D. DHANUKA, J.)