

Urmila Ingale

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 5407 OF 2014

Shri Annasaheb Gajanan Patkulkar and anr. .. Petitioners

Vs.

The State of Maharashtra and anr. .. Respondents

Mr.N.V.Bandiwadekar, for the Petitioners.

Ms.Nisha Mehra, AGP for Respondents No. 1 & 2 – State.

**CORAM : SHANTANU.S.KEMKAR &
M.S.KARNIK, JJ.**

DATE : 21st SEPTEMBER, 2016

PC. :

. Parties through their Counsel.

2. By filing this Petition under Article 226 of the Constitution of India, the petitioner No.1 – Head Master of petitioner No.2-School has challenged the order dated 17/3/2010 as also order dated 03/04/2013. By both the impugned orders, the petitioner's salary has been ordered to be withheld.

3. The reason assigned for withholding the petitioner's

salary in the order dated 17/03/2010 is that the petitioner did not give information to one Shri Nalage Bharat Sahebrao - a retired employee of the school sought by him. Learned Counsel for the petitioner submits that subsequently, the requisite information was supplied to the said retired employee and his grievance was satisfied. This fact has not been disputed by the respondents in the reply.

4. For withholding the salary vide order dated 03/04/2013 the reason assigned was that the petitioner did not appoint one Shri Dinesh Bansode on compassionate basis. The case of the petitioners is that there was no vacant post for appointment to be made on compassionate basis. Moreover, the said Shri Dinesh Bansode was not having requisite qualification of B.Ed. The petitioner's institute is running secondary school in which the B.Ed teachers can be appointed, but Dinesh Bansode was having merely D.Ed qualification. Even otherwise, according to him, for no appointment of Shri Dinesh Bansode on compassionate basis, the petitioner No.1 who is the Principal of

the school could not have been penalised by withholding the salary.

5. On the other hand, learned AGP appearing for respondents – State has supported the impugned orders and has argued that for the reasons stated in the orders, action which was taken against the petitioners was justified.

6. Having considered the submissions made by the parties and having gone through the impugned orders, averments made in the Petition and reply filed by respondents – State, we are of the view that the impugned orders passed by the respondents – State are not sustainable. For not giving information, salary of petitioner No.1 could not have been withheld without giving opportunity of hearing to him. Even otherwise, undisputedly the information was subsequently furnished.

7. So far as non-appointment of one Shri Dinesh

Bansode by petitioner No.2 – school on the compassionate basis, the petitioner No.1 who was the Principal of the school could not have been penalised by withholding his salary, more particularly when the said Dinesh Bansode was not having requisite qualification and when the petitioner No.2 – school was not having vacancy for making appointment on compassionate basis.

8. In the circumstances, in our considered view the reasons assigned for passing both the impugned orders are not sustainable. Accordingly, the impugned orders deserve and therefore, are hereby quashed. Petition is allowed. No order as to costs.

(M.S.KARNIK, J.)

(SHANTANU.S.KEMKAR, J.)