

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE CIVIL JURISDICTION
WRIT PETITION NO.1352 OF 2016**

Samuel Shankar Khilare Petitioner
vs
The Chairman, Miraj Medical Centre,
& ors Respondents

Mr. Chetan Patil for Petitioner
None for Respondents

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CORAM: G.S.KULKARNI, J

DATE: 4 OCTOBER, 2016

P.C.

1. Heard Mr. Patil learned counsel for the petitioner.
2. The petitioner who claims to be in service of the respondents and more particularly in Wans Hospital, Miraj has filed this petition challenging order dated 25 June 2015 passed by the learned District Judge-5, Sangli whereby the respondent's appeal against the injunction order dated 4 September 2012 passed by the learned Joint Civil Judge, Junior Division, Miraj in an application below Exhibit 5 in Regular Civil Suit No.167 of 2010 has been allowed. The case of the petitioner/ original Plaintiff is that by an order dated 2.5.1988 issued by the defendants- Wans Hospital the petitioner was appointed as an ' Evangelist ' initially for

probation for a period of one year. The probation was confirmed by subsequent order dated 5 May 1989. There is also an issue of a show cause notice issued to the petitioner by one Kolhapur Diocese Council (KDC) and the order came to be passed by the said body on 11 December 2008 whereby the said body had withdrawn the authorization granted in favour of the petitioner to the post of Presbyter in Diocese of Kolhapur w.e.f 11.12.2008.

3. It appears that on 28 July 2009 the respondent-Wans Hospital in pursuance of a decision of the Managing committee dated 9 July 2009 informed the petitioner that in view of the resolution of the K.D.C. dated 24 November 2008 it was resolved to change the designation of the petitioner in the hospital records from Rev.S.S. Khilare to Evangelist. Thereafter, by an order dated 29 July 2008 the defendants in view of the need of the institution transferred the service of the petitioner to the Engineering Stores w.e.f. 1 August 2009. The petitioner being aggrieved by this action on the part of the defendants initially approached the Industrial Court at Sangli in a complaint ULP No.81 of 2009. The Industrial Court vide its order dated 16 January 2010 held the complaint

to be not maintainable as it held that the petitioner was not a workmen within the definition of section 3 (5) of MRTP and PULPAct.

4. The petitioner accordingly on this background approached the Court of Civil Judge, Junior Division, Sangli by filing the said Regular Civil Suit No.167 of 2010. The petitioner moved an application under Exhibit 5 seeking an injunction inter alia praying for a temporary injunction restraining the defendants from appointing any person on the post of 'Evangelist' till the decision of the suit and from executing the order dated 29 July 2009 whereby the petitioner was appointed to work in the Engineering Stores.

5. By an order dated 4 September 2012 the learned trial Judge allowed the injunction application whereby the defendants/respondents were temporarily restrained from appointing any person in the posts of 'Evangelist' till the decision of the suit and also restrained by an order dated 29 July 2009.

6. The defendant/respondents being aggrieved by the

injunction order passed by the trial Judge approached the Court of the learned District Judge at Sangli in Misc.Civil Appeal No.187 of 2012. By the impugned order the learned District Judge has allowed the Misc.Civil Appeal filed by the defendants/respondents whereby the order passed by the learned trial Judge at Exhibit 5 dated 4 September 2012 has been set aside.

7. Mr.Patil learned counsel for the petitioner in assailing the impugned order contends that an interference in the order passed by the learned trial Judge below Exhibit 5 was totally uncalled for. Secondly, he submits that the scope of the appeal before the learned District Judge was narrow and that the findings as recorded by the learned District Judge in the impugned order and more particularly in para 14 are totally insufficient to displace the order passed by the learned trial Judge. Thirdly, he submits that the learned District Judge ought to have appreciated that action against the petitioner was totally vindictive and therefore, temporary injunction as granted by the learned trial Judge was justified in the facts and circumstances of the present case.

8. With the assistance of the learned counsel for the petitioner, I have perused the orders passed by the trial Court as also the impugned order and also other correspondences and necessary averments made in the plaint. From the submission of the Mr. Patil it is not in dispute that though initially the petitioner was appointed as an 'Evangelist.' However, the nature of the duties of the post of an 'Evangelist' was to encourage the patients in hospital and to increase their devotion towards God. Undoubtedly, there is no dispute that Wans Hospital is a missionary hospital. If this was the nature of the appointment then admittedly action which was taken by the Diocese Council would have a relevance or nexus to the continuation of the petitioner to discharge duties as an 'Evangelist.' It is not the case that the petitioner has been dismissed from service by the respondents. However, by an order dated 29 July 2008 the petitioner has been asked to work in the Engineering Stores Department instead of performing his duties as an 'Evangelist.' Further, there are certain other issues which are raised by the respondents of the petitioner undertaking some business outside/in front of the hospital which according to the defendants is in conflict towards discharge of duties of the petitioner in the employment of the defendants. It also appears that the petitioner since

16 January 2010 has not reported for duties. There is no specific averment made in the writ petition or anything placed on record to disbelieve this except a bare denial. It is not the case of the petitioner that he is removed from service. He continues to be in service of the defendants.

9. In the light of the above observations, I do not find any infirmity in the impugned order passed by the learned District Judge. The writ petition is devoid of merits and is rejected. No order as to costs.

10. Needless to observe that the above observations made in this order pertain to the proceedings arising out of an injunction application and that the suit would be decided by the learned trial Judge on its own merits.

11. As regards the request of the learned counsel for the petitioner for expediting the suit, the petitioner is permitted to approach the learned trial Court with a request to take up the suit for an early hearing. The said request be considered on its own merits by the learned trial Judge.

(G.S.KULKARNI, J)