

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**CONTEMPT PETITION NO. 593 OF 2013
IN
WRIT PETITION NO. 1815 OF 2013**

Kashyap Phulchand Shobnath	 Petitioner
vs	
The State of Maharashtra & Ors.	 Respondents

Mr. A.A. Maniyar for the Petitioner.
Mr. Devendra Shukla for Respondent No.4.
Mr. Yogesh Dalvi for Respondent No.5.
Mrs. K.R. Kulkarni, A.G.P. for the State.

**CORAM : A. A. SAYED, J.
DATE : 15 DECEMBER, 2016.**

ORDER:

1 This Contempt Petition is filed by the Petitioner-teacher alleging breach of the order dated 24.06.2013 of this Court by Respondent Nos.4 and 5 Management. The said order dated 24.06.2013 reads as follows:

1 *Heard learned counsel for the parties.*

2 *By this Petition under Articles 227 of the Constitution of India, Petitioners – original Respondent nos.1 and 2 – Management challenge the order dated 22nd November, 2012 passed by the learned Presiding Officer, School Tribunal, Mumbai in Appeal no.50 of 2011. In that Appeal, the Respondent no.4 – original Appellant challenges the termination order dated 11th November, 2011 issued by the Petitioners – Management.*

3 *The learned counsel for the Petitioners states that he received instructions from his client to withdraw the present Writ Petition with liberty to follow the procedure as prescribed under section 4(6) of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 to take action against Respondent no.4 teacher. He further states that he received instructions from his clients that they are ready to reinstate the Respondent no.4 – original Appellant on the post of Assistant Teacher with continuity of service and full back wages as directed by the School Tribunal, Mumbai in the impugned order dated 22nd November, 2012. He states that Management will reinstate the Respondent no.4 – original Appellant within two weeks from today and will pay the entire back wages within eight weeks from today. Hence, following order:*

a) Liberty granted to the Petitioners to take appropriate action against the Respondent no.4 – original Appellant by completing the procedure as prescribed in section 4 (6) of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977.

b) Writ Petition is dismissed as withdrawn.”

2 On 04.07.2016 this Court passed the following order in the present Contempt Petition:

. Pursuant to the order passed by this Court on 2nd May 2016, the respondent nos.4 and 5 have deposited a sum of Rs.1,10,000/- in this Court. By the said order, the concerned Education Officer was also directed to submit a report after computing the amount of back wages payable to the petitioner by giving an opportunity to the petitioner as well as the respondent nos.4 and 5.

2. Pursuant to the said order, the concerned Education Officer has submitted a report. According to the said report, total amount without increment payable to the

petitioner is as Rs.4,27,703/-. Out of the said amount, the respondent nos.4 and 5 had deposited a sum of Rs.30,000/- and Rs.1,10,000/-. According to the learned counsel for the petitioner, the Education Officer has not taken into consideration the increment in pay scale and to that extent, the amount calculated by the Education Officer is disputed by the petitioner. Learned counsel appearing for the respondent nos.4 and 5 has also raised a dispute about calculation made by the Education Officer.

3. In view of the rival contentions raised by the parties, it would be appropriate if the respondent nos.4 and 5 are directed to deposit differential amount of Rs.2,87,703/- as calculated by the Education Officer in this Court within a period of eight weeks from today. Deposit of the said amount shall be subject to the out come of the execution proceedings as may be filed by the petitioner before the appropriate Court. The Executing Court can decide the correctness of the order passed by the Education Officer calculating the amount of back wages of Rs.4,27,703/- excluding the increment.

4. Office is directed to permit the petitioner to withdraw the said amount of Rs.1,10,000/- deposited by the respondent nos.4 and 5 upon the petitioner being identified by his advocate within two weeks from today. Office shall invest the amount of Rs.2,87,703/- if deposited by the respondent nos.4 and 5 in a fixed deposit in any nationalized bank initially for a period of two years and shall continue such deposit till the execution proceedings are decided.

5. Place the contempt petition on board for 'Direction' on 29th August 2016. What action under the provision of Contempt of Courts Act, 1971 should be initiated against the respondent nos.4 and 5 can be decided by this Court on the next date of hearing.”

3 Thus, so far as the issue of back wages is concerned, it is noticed that an amount of Rs.4,27,703/- of back wages has been worked

out by the Education Officer, which amount has been deposited in the Court by Respondent Nos.4 and 5 and the Petitioner has been permitted to withdraw an amount of Rs.1,10,000/-. Since the correctness of the amount of Rs.4,27,703/- was disputed by the Petitioner, the Court has directed that the amount of deposit shall be subject to the outcome of the execution proceedings.

4 So far as the issue of reinstatement is concerned, the Petitioner does not dispute that he was reinstated in service. The Petitioner's grievance however is that he was appointed only part time instead of full time as held by the School Tribunal and he is made to teach Class 5th, 6th and 7th instead of Class 8th, 9th and 10th. This however has been disputed by the learned Counsel for the Respondent No.4 and learned Counsel for Respondent No.5.

5 Be that as it may, in contempt jurisdiction, I am not inclined to go into these factual aspects. Suffice it to say that there is substantial compliance of the order dated 24.06.2013 by Respondent Nos.4 and 5. In any event, the Court is informed by the Counsel for the Respondent Nos.4 and 5 that after the reinstatement of the Petitioner, he was suspended and thereafter terminated and that termination order is subject matter of

another Appeal filed by the Petitioner before the School Tribunal.

6 Considering the overall facts and circumstances, I find that this is not a case for contempt action as there is substantial compliance by Respondent Nos.4 and 5 of the order dated 24.06.2013. Hence, the Contempt Petition is disposed of.

7 It is clarified that this order shall not influence the Tribunal/Court in other proceedings including execution proceedings.

8 The learned Counsel for the Respondent No.4 invites my attention to order dated 26.02.2016 in Civil Application No.22 of 2016 taken out in above Contempt Petition by Respondent No.4 (Applicant therein) and states that appropriate action be taken against the Petitioner as recorded in the order dated 26.02.2016. The Civil Application No.22 of 2016 is already disposed of by order dated 26.02.2016. Having regard to the facts and circumstances of the case, I am not inclined to take any action against the Petitioner as sought to be suggested by the Counsel for the Respondent No.4. It is left open for the Respondent No.4 to take appropriate proceedings against the Petitioner, if the Respondent No.4 is so advised and if so permissible in law.

(A.A. SAYED, J.)