

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.3081 OF 2016
IN
WRIT PETITION NO.11855 OF 2016

Shyamsunder Laxman Malwankar ...Applicant
In the matter between
Shikshan Prasarak Mandal, Talavade and Ors. ...Petitioners
vs.
The State of Maharashtra and Others ...Respondents

Mr. S.S. Pakale a/w. Mr. S.M. Katkar, for the Applicant.
Mr. Prashant Bhavake, for the Petitioners.
Mrs. R.M. Shinde, AGP for the Respondent-State.

CORAM : SHANTANU S. KEMKAR &
PRAKASH D. NAIK, JJ.

DATE : **DECEMBER 22, 2016**

P.C.:

. Heard learned counsel for the parties.

2. The Applicant of the Civil Application is Respondent No. 4 in Writ Petition No. 11855 of 2016. Through this Civil Application, the Applicant is seeking recall of the *ex-parte* order dated 15th October, 2016 passed by this Court.

3. The following order was passed on 15th October, 2016.

“ Not on board. Taken on production board in view of the urgency.

2. Leave to amend interim relief prayer clause is granted. The amendment to be carried out during the course of the day.

3. Heard on the question of admission. Issue notice to respondents. Learned AGP waives service of notice on behalf of respondent nos.1 to 3. Steps be taken for service of notice on respondent no. 4 within one week.

4. Till next date of hearing, Smt. Manisha Maruti Patil would be allowed to continue as In-charge Headmaster of the petitioner's school which is run by petitioner No. 1.

5. List as per CMIS date”

4. The case of the Applicant (Respondent No. 4 of Writ Petition) is that on 15th October, 2016 when the Court passed the said order Smt. Manisha Maruti Patil was not working as in charge Head Mistress of the Petitioner's school. The Applicant's case is that much prior to the said date i.e. from July, 2016 itself, the Applicant was working on the post of Head Master, as his suspension order had come to an end and the prayer made by the Writ Petitioner for extension of suspension beyond 17th July, 2016 was already refused by Education Officer (Secondary), Zilla Parishad, Sindhudurg vide its order dated 29th/30th August, 2016. In the circumstances, according to the Applicant, on 15th October, 2016 this Court would not have been passed the said order to continue Smt. Manisha Maruti Patil if it would have been brought to the notice of the Court that the Applicant

has already started functioning as Head Master, on account of the fact that the period of suspension had come to an end and the extension sought for by the Petitioner was denied by the Education Officer. In support of the contention that the Applicant is discharging the duties of the Head Master, the Applicant has filed various documents.

5. In reply to the Civil Application the Respondents denied the averments made by the Applicant in the Civil Application and have stated that the documents submitted by the Applicant to support his contention that he was working are false and bogus document. It has been stated that inquiry against the Applicant is still pending and in the circumstances, the order of the Education Officer not to continue the suspension being illegal, the same is challenged before this Court.

6. Having considered the submissions of the learned counsel for the parties, *prima facie* we are of the view that on the date when the ad-interim order was passed Smt. Manisha Maruti Patil was not working on the said post. It appears that after the period of suspension was over on 17th July, 2016 the Petitioner started

functioning on the post held by him. In the circumstances, we recall the order dated 15th October, 2016. Consequences shall follow.

7. As a result, the Civil Application is allowed.

8. Keeping in view the controversy involved in the matter, we direct that this Petition be listed for final disposal at admission stage on **17th January, 2017**. Reply of the Petition be filed by the Respondents on or before 16th January, 2017.

(PRAKASH D. NAIK, J.)

(SHANTANU S. KEMKAR, J.)