

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CONTEMPT PETITION NO.322/2015 IN C.A.Z. NO.103/2014(D) IN L.P.A.
NO.63/2009(D) IN W.P. NO.476/2008(D) & IN C.P. NO.26/2009(D)

Shri Shrikrushna s/o Akaram Thorat
 ..VS..

Shri Namdeo s/o Miraji Sirsat and others

 Office Notes, Office Memoranda of Coram,
 appearances, Court's orders of directions
 and Registrar's orders

Court's or Judge's orders

Shri G.R. Sadar, Advocate for the petitioner.
 Shri Anjan De, Advocate for respondent No.1.
 Ms. Deepali V. Sapkal, Advocate for respondents 2 and 3.

CORAM : Z.A.HAQ, J.

DATED : 12.8.2016.

The respondent Nos.1 to 3 identified by their respective Advocates are present.

Heard Shri G.R. Sadar, Advocate for the petitioner, Shri Anjan De, Advocate for the respondent No.1 and Ms. Deepali Sapkal, Advocate for the respondent Nos.2 and 3.

In the order passed by this Court on 9th August, 2016 the relevant history of the proceedings is recorded, however, as the contempt petition is being finally disposed, in my view, it would be appropriate to repeat it again.

“The petitioner was working as Head Master administered by the Society of which the respondent No.1 is the President and respondent No.2 is the Manager. The petitioner gave notice dated 30-09-2003 of voluntary retirement to be effective from 31-12-2003. The petitioner gave notice dated 28-10-2003 withdrawing the earlier notice given by him on 30-09-2003. In spite of the

withdrawal of notice, the petitioner was relieved on 31-12-2003. Treating this as termination the petitioner filed appeal before the School Tribunal which was dismissed. The petitioner filed Writ Petition No.476/2008 before this Court which was allowed by the judgment dated 20-10-2008. Paragraph No.12 of the judgment reads as follows :

“12. For the reasons aforesaid, the petition is hereby allowed. The impugned order passed by the School Tribunal on 12-12-2007 is hereby quashed and set aside. Respondent Nos.1 to 3 are directed to reinstate the petitioner on the post of Headmaster with continuity in service and full back wages.”

This judgment was challenged in Letters Patent Appeal No.63/2009. The Division Bench of this Court admitted the Letters Patent Appeal on 12-06-2009, however, refused to grant interim order. Civil Application No.103/2014 was filed in Letters Patent Appeal on which an order was passed by the Division Bench on 23-03-2015, relevant portion of which is as follows :

“We find that President and Headmaster are appellants before this Court and they have joined Manager as party respondent No.2. In this situation, we direct the appellants to abide by the order of learned Single Judge and to deposit the amount of wages with the Registry of this Court within a period of 8 weeks from today.”

The order passed by the Division Bench on 23-03-2015 was not complied and when the matter was listed an order was passed on 30-06-2015 which reads as follows :

“CORAM : B.R. GAVAI & INDIRA K. JAIN, JJ.

DATE : 30-06-2015

Two weeks time is granted by way of last chance so as to comply with the order passed by this Court on 23rd March, 2015. It is made clear that if the order is not complied with by the next date, the appeal shall be dismissed.

Stand over to 13-07-2015.”

The above order was also not complied and therefore, when the matter was listed before the Division Bench on 13-07-2015, following order came to be passed:

***“CORAM : B.R. GAVAI & INDIRA K. JAIN, JJ.
DATE : JULY 13, 2015.***

1. Vide order dated 23-03-2015, this Court had directed the appellants to abide by the order of learned Single Judge and to deposit the amount of wages with the Registry of this Court within a period of 8 weeks from 23-03-2015.

2. When the matter was listed on 30-06-2015 since it was submitted on behalf of the respondents that the order is not complied with, we passed the order giving two week's time by allowing to comply with the order passed by this Court on 23-03-2015. We had also made it clear that if the order is not complied with by the next date, the appeal shall be dismissed.

3. Now an additional affidavit is filed contending therein the difficulties which are coming in the way of the appellants in depositing the amount. Certain blame is also sought to be placed on the respondents-employees.

4. When an order is passed by this Court and that too after hearing the parties, the parties are bound, to comply with the said order.

5. In that view of the matter, the appeal shall stand dismissed not complying with the order passed by this Court dated 23-03-2015.”

Now the petitioner has come up with the grievance that the amount of arrears of salary has not been paid to him till date. On 01-02-2016 this Court issued notice before admission to the respondent Nos.1 to 3 in response to which the respondent Nos.1 to 3 appeared. The respondent Nos.1 to 3 have not given any

offer to purge the contempt and submissions were made in defence. After considering the submissions, on 04-07-2016 this Court took cognizance of the contempt and issued Rule. In response, the respondent No.1 has filed the submissions.”

On 9th August, 2016 after hearing the learned Advocates for the respective parties following charge is framed:

““Whether the respondent No.1-Namdeo Miraji Sirsat, respondent No.2-Govind Sadashiv Palaspagar and respondent No.3-Suresh Samadhan Sawang have wilfully disobeyed the directions given by this Court in the judgment given in Writ Petition No.476/2008.”

At this stage, the respondent No.1 has filed Civil Application No.82/2016 contending that the petitioner has made false statement on oath that he has not been paid Rs.5,000/- as directed by this Court by the order passed in Contempt Petition No.26/2009. The respondent No.1 has prayed that the action be taken against the petitioner for act of perjury and giving false statement.

I have examined the facts relevant for considering the prayer of the respondent No.1. Though the petitioner has stated on oath before this Court that the amount of Rs.5,000/- is not paid, I find that this Court has not taken cognizance of that statement and has not taken any action against the respondent no.1 on the basis of that statement. Therefore, this civil application is **dismissed**.

The respondent No.1 has filed Civil Application No.83/2016 praying that he be granted opportunity to cross-examine the petitioner and lead evidence to substantiate his defence. The defence of the respondent No.1 as also the respondent No.2 is that the respondent Nos.1 to 3 are not liable to pay the amount to the petitioner as per the judgment passed by this Court in Writ Petition No.476/2008 as the post of Headmaster was not filled up on regular basis after the termination of the services of the petitioner and the grants receivable for the post of Headmaster for the period from the date of termination of the services of the petitioner till the reinstatement of the petitioner were not claimed by the school administered by the Society and were not disbursed by the Education Department and, therefore, the amount has to be claimed from the Education Department. It is the contention of the respondent Nos.1 and 2 that the petitioner, after reinstatement in the post of Headmaster was working in the school as the Headmaster from 27th October, 2008 till he attained the age of superannuation on 28th February, 2013 and an Administrator was appointed to manage the affairs of the school from 13th December, 2011 till 28th January, 2013 and when the petitioner was working as the Headmaster of the school, he should have submitted the bills to the Education Department to claim the arrears of salary. The

submission of the respondent Nos.1 and 2 is that neither the Administrator had taken any steps in the matter nor the petitioner had submitted the bills to the Education Department to claim the arrears. Considering the defence of the respondent Nos.1 and 2 and considering the other undisputed facts on record, the prayer made on behalf of the respondent No.1 for cross-examining the petitioner and for leading evidence is rejected.

As recorded earlier, the directions given by this Court in the judgment given in Writ Petition No.476/2008 are clear and the President of the Society, the Manager of the Society and the Headmaster (In-charge) of the school have to pay the amount of arrears of salary to the petitioner. The respondent Nos.1 and 2 can independently make the claim, if any, against the Education Department, however, the directions given by this Court cannot be flouted for indefinite period and the spacious defence as raised by the respondent Nos.1 and 2 cannot be accepted in these proceedings.

Shri Anjan De, Advocate for the respondent No.1 has relied on the provisions of Rule 22(c) of Rules to regulate proceedings for contempt under Article 215 of the Constitution of India and the Contempt of Courts Act, 1971 and Order 19 of the Civil Procedure Code to substantiate the prayer made in the civil application. However, in view of the

facts recorded above, in my view, the prayer made on behalf of the respondent No.1 does not require any consideration. The civil application is **dismissed**.

At this stage, the learned Advocate for the respondent No.1 sought time to challenge the order as according to him it is appealable, however, as the judgment is not yet complete and as I propose to continue with the judgment, the request made on behalf of the respondent No.1 is rejected.

The directions given by this Court in paragraph No.1 of the judgment given in Writ Petition No.476/2008 are clear and the President of the Society, the Manager of the Society and Headmaster (In-charge) of the School have to pay arrears of salary of the petitioner. The directions given by the learned Single Judge of this Court are considered by the Division Bench of this Court and the order passed on 30th June, 2015 and 13th July, 2015 by the Division Bench reiterate the directions given by the learned Single Judge.

After considering the affidavit filed by the respondent Nos.1 and 2, I find that the defence raised by them cannot be accepted. I have already recorded that the respondent Nos.1 to 3 may be entitled to claim the amount of arrears of salary from the Education Department, however, they cannot wriggle out of the directions given by this Court.

Moreover, I find that the defence raised by the respondent Nos.1 and 2, as recorded above, is not *bonafide*. The respondent Nos.1 and 2 have not been able to show that they have taken steps and have made all possible attempts to get the amount disbursed from the Education Department.

Ms. Deepali Sapkal, Advocate for the respondent Nos.2 and 3 has submitted that at the time when the judgment was passed in Writ Petition No.476/2008 on 8th October, 2008 Mrs. Nikose was the In-charge Headmistress of the school and at present the respondent No.3 - Suresh Samadhan Sawang is working as the Headmaster of the school. Shri Anjan De, Advocate for the respondent No.1 states that the respondent No.3 - Suresh Samadhan Sawang is not the Headmaster of the school and Mrs. Nikose is working as the Headmistress of the school. It is further submitted by the Advocate for the respondent No.1 that the Education Officer is conducting an enquiry in the matter. In these facts, in my view, it will not be appropriate to hold the respondent No.3 liable for contempt.

But as far as the respondent Nos.1 and 2 are concerned, I am convinced that there is wilful disobedience on their part and they have failed to show that they have not been able to comply with the directions given by this Court because of some reasons and / or inspite of their *bonafide*

attempts.

I have heard the Advocates for the respondent No.1 and respondent No.2 on the point of sentence.

The Advocate for the respondent No.1 has submitted that the respondent No.1 is aged about 82 years and is having medical problems. It is further submitted that the respondent No.1 assures to take all necessary steps to see that the amount of arrears of salary of the petitioner is disbursed by the Education Department. The Advocate for the respondent No.2 has submitted that the respondent No.2 is also aged about 84 years. The submissions on behalf of the respondent No.2 are on the same lines as of the respondent No.1.

I have given an anxious thought to the submissions made on behalf of the respondent Nos.1 and 2. The question at this stage is whether the respondent Nos.1 and 2 should be shown leniency. While exercising the jurisdiction under the Contempt of Courts Act, 1971, this Court has to mainly considered that whether any act is committed by the contemnor which is against the majesty of law and sanctity of judgment or order passed by the Court. In the present case, as recorded earlier, I find that the respondent Nos.1 and 2 have not made any attempt to purge the contempt. There is no explanation why steps are not

taken to get the amount of grants disbursed if the school and the management were and are entitled. The respondent Nos.1 and 2 have not made any offer to pay the amount of arrears of salary even in installments and a submission is made that they are not in a position to pay the arrears of salary because of financial constraints. In these facts, there is no option but to punish the respondent Nos. 1 and 2 each with simple imprisonment for a term of four months. The respondent Nos.1 and 2 each shall pay fine of Rs.2,000/- (Rupees Two Thousand), in default to undergo simple imprisonment for further period of fifteen days.

The Registrar (Judicial) of this Court is directed to take the respondent No.1-Namdeo s/o Miraji Sirsat and respondent No.2-Govind s/o Sadashiv Palaspagar in custody forthwith and to take further consequential steps in the matter after 4.30 p.m. if the respondent Nos.1 and 2 failed to obtain interim order till then.

A copy of this order be given to the respondent Nos.1 and 2 immediately and their signatures be obtained.

Civil Application No.80 of 2016.

This application was filed on behalf of the respondent No.1 on 05-08-2016 praying for grant of personal exemption.

The civil application does not survive. It is disposed accordingly.

Civil Application No. 84 of 2016.

An application under Section 19 of the Contempt of Courts Act, 1971 is filed by the respondent No.1 stating that he intends to file appeal to challenge the order. The respondent No.1 has prayed that the order of sentence be suspended for three weeks to enable him to seek appropriate orders in appeal.

Ms. Deepali Sapkal, Advocate for the respondent No.2 has made oral request on behalf of the respondent No.2 on the same lines as made by the respondent No.1 in the application. The Advocate for the respondent No.1, relying on the provisions of sub-section (2) of Section 19 of the Contempt of Courts Act, 1971, has submitted that this Court can exercise powers conferred on the appellate Court by sub-section (2) of Section 19 of the Contempt of Courts Act, 1971. Sub-section (2) of Section 19 of the Contempt of Courts Act, 1971 provides for the powers of the “appellate Court”. Sub-section (3) of Section 19 of the Contempt of Courts Act, 1971 provides that “High Court” may also exercise all or any of the powers conferred by sub-section (2). The use of different

terms “appellate Court” in sub-section (2) of Section 19 and “High Court” in sub-section (3) of Section 19 of the Contempt of Courts Act, 1971 show that the High Court can exercise all or any of the powers conferred by sub-section (2) of Section 19 on the “appellate Court”.

Section 2(d) of the Contempt of Courts Act, 1971 defines “High Court” as follows :

“2(d). “High Court” means the High Court for a State or a Union territory, and includes the Court of the Judicial Commissioner in any Union territory.”

Considering the above provision, in my view, this Court can exercise the powers conferred by sub-section (2) of Section 19 of the Contempt of Courts Act, 1971, on the appellate Court.

However, in the facts of the present case and looking to the conduct and approach of the respondent Nos.1 and 2 that even at this stage they have not shown willingness to deposit the amount of arrears of salary payable to the petitioner as per the directions given in the judgment given in Writ Petition No.476/2008, I am not inclined to consider the prayer made on behalf of the respondent Nos.1 and 2 for suspending the sentence or keeping the order in abeyance.

The civil application filed by the respondent No.1 and the oral request made on behalf of the respondent No.2 is rejected.

JUDGE

Tambaskar/Adgokar

CERTIFICATE

I certify that this Order uploaded is a true and correct copy of original signed Order.

Uploaded by : P.M. Adgokar.

P.A. to Hon'ble Judge.

Uploaded on : 12-08-2016.