

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**CRIMINAL WRIT PETITION NO. 1520 OF 2016
WITH
CRIMINAL APPLICATION NO. 334 OF 2017**

Vidya Vikas Mandal, Sakri and Others ..PETITIONERS

VERSUS

State of Maharashtra and Another ..RESPONDENTS

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Mr. P.R. Patil, Advocate for petitioners.

Mr. G.O. Wattamwar, A.P.P. for Respondent No.1 – State.

Mr. S.S. Deshmukh, Advocate for Respondent No.2.

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**CORAM : T.V. NALAWADE, J.
DATED : 20th JANUARY, 2017**

ORDER :

1. The petition is filed to challenge the order dated 14th November, 2016 made by Judicial Magistrate, First Class, Sakri in Summary Trial Case No. 55 of 2010. Both sides are heard.

2. The application at Exhibit 97 was filed by present petitioner for stay to the proceeding filed to take action against accused under Section13(1) of the Maharashtra Employees of Private Schools (Condition of Service) Regulation Act, 1977. The said proceeding is filed by Respondent No.2 – Shubhangi. It is her contention that she was illegally removed from

service by the institution – Vidya Vikas Mandal, Sakri and the said order is set aside by the authority and the decision has become final. It is her case that as per the decision which has become final, it was the responsibility of the respondent to not only re-institute her in service but start making payment of salary as per the rules. It is her case that as salary is not being paid, action needs to be taken against present petitioners. The application for stay to the proceeding was filed by present petitioner / original respondents by contending that there was settlement between parties in Special Leave Petition (Civil) No. 26505-26506/2012 and the terms and conditions of the settlement which are arrived at has been complied by the petitioners. The terms and conditions of the settlement were as under:-

“(a) That the Respondent No.1 agrees to give up her claim for all the back wages.

(b) Remaining order passed by the Ld. School Tribunal regarding reinstatement and continuity of service shall remain as it is.

(c) That the Respondent No.1 will get salary after obtaining formal approval from the concerned Education Officer.”

3. The submissions made show that Respondent No.2 – Shubhangi came to be re-instituted as per this compromise but after re-instatement, salary is not being paid to her. It is the contention of present petitioner that

Education Officer has not given the approval to the appointment of respondent and so it cannot be said that they are liable to take action under aforesaid provision.

4. Learned Counsel for petitioner placed reliance on some observations made by this Court in the cases which are reported as under:-

(i) 2001(1) Mh.L.J. 261 (Vilas Shankarrao Deshmukh and Another Vs. S.A. Ghode, Principal, Navprabhat Vidya Mandir and Junior College, Thanegaon and Others)

(ii) Criminal Writ Petition No. 792 of 2008 (Dhairyasheelrao Dongar Paul Vs. Nandkumar Hari Patil)

(iii) Criminal Writ Petition No. 1202 of 2016 (Vijaysing Nathesingh Rajput and Another Vs. State of Maharashtra and Another)

5. The facts and circumstances of each and every case are always different. There is decision which has become final in favour of Respondent No.2 – Shubhangi that she is entitled to re-instatement in the service and she is entitled to get salary as per the rules. This decision is not disputed and what has changed is that only her entitlement to get back wages. She has given up the back wages with hope that in future she will get the entire salary as per the rules. If approval of Education Officer is necessary for this

appointment taking such permission is the job of present petitioner – institution, as they are responsible for everything. Further, in the proceeding like present one this Court cannot decide whether Education Officer is bound to give the approval.

6. In view of these circumstances, this Court holds that proceeding needs to go on as there is case made out for liability as per aforesaid provisions against the present petitioners. It can be said that application filed by present petitioners is itself misconceived and that present petitioners are trying to avoid their liability to pay the wages as per the terms of settlement and also as per their liability. In the result, both petitions and application stand dismissed.

7. The amount if any deposited by petitioner is to be given to Respondent No.2 – Shubhangi. Learned Counsel for petitioners requests for continuation of interim relief. In view of aforesaid circumstances, the relief cannot be continued and is vacated.

(T.V. NALAWADE, J.)

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