

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

WRIT PETITION NO. 3762 OF 2014
WITH CA/5216/2014 IN WP/3762/2014

YOGESHWAR ANNASAHEB KUTE AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

Mr.Atul B. Gatne, Advocate for the petitioner
Mr.S.W.Mundhe, AGP for the respondent Nos. 1 to 3
Mr.V.Y.Bhide, Advocate for respondent No.4
Mr.V.P.Golewar, Advocate for the applicant in CA 5216/14

**CORAM : S.V. GANGAPURWALA &
S.M. GAVHANE, JJ.**
DATED : 06.11.2017

P.C. :-

. The petitioner Nos. 1 and 2 assail the order passed by the Education Officer rejecting the salary bills of the petitioners. The period of the said salary bill is from 12.01.2012 to 29.10.2013.

2. Mr.Gatne, learned Advocate submits that respondent No.6 illegally did not allow petitioners to work from 12.01.2012 on the ground that the petitioners are suspended. In fact, the petitioner No.3 was the Secretary and authorized to administer the trust. The same would be clear from the order dated 30.07.2011 below Exh.7 in trust application No.1/2011 passed by the

District Judge, Ahmednagar. According to the learned counsel respondent No.6 was playing in the hands of the persons who were illegally interfering in the administration of the trust/society. Because of the illegal activities of those persons who were interfering in the administration of the society and respondent No.6 the petitioner were not allowed to join duties. It is only on the 29.10.2013 the petitioners were allowed to join their duties. The Education Officer had also directed respondent No.6 to allow the petitioners to work and join the duties. But, respondent No.6 did not abide by the same. Learned counsel submits that it is only when the In-charge Headmaster was appointed in place of respondent No.6 the petitioners were allowed to join on 29.10.2013. Learned counsel submits that the petitioner were always ready to work, but they were prevented by the respondent from discharging their function during the said period. The petitioner cannot be deprived of the salary of the said period as there was no fault on the petitioner and because of the groupism the petitioner Nos.1 and 2 were not allowed to work. Learned counsel submits that ad-interim order dated 30.07.2011 below Exh. 7 in trust application No.1/2011 is subsequently confirmed up to this Court.

3. Mr.Bhide, learned Advocate for respondent No.6

submits that respondent No.6 at the relevant time was Head Mistress of the School. Head Mistress is not concerned with the persons who claim themselves to be in power. Respondent No.6 has to abide by the orders issued by the Management. The order of suspension of the petitioner Nos. 1 and 2 was issued on 12.01.2011 under the signature of one Dr. N.H.Waghmode who claims to be the Secretary. The petitioners abided by the same. Subsequently respondent No.6 was also suspended on 28.12.2012 and terminated. Respondent No.6 assailed said termination. The termination is set aside by the school tribunal. Respondent No.6 never received any letter from the Education officer directing her to allow the petitioner Nos. 1 and 2 to work. Learned Counsel submits that the respondent No.6 cannot be faulted for not allowing the petitioner Nos. 1 and 2 to work during the said period. Respondent No.6 was bonafidely abiding by the orders passed by the persons claiming themselves to be in the Management.

4. The Education Officer submits that the Education Officer had directed the respondent No.6 to allow the petitioner to work. As the petitioners have not discharged any work during the relevant period the salary bills have been rightly negatived.

5. We have considered submissions canvassed by the learned counsel for the respective parties. The employees cannot be allowed to be made scapegoat for disputes in the Management. It appears that various persons claims themselves to be Management to exhibit their supremacy passed the orders against the employees whom they did not consider favourable to them. In such scenario the employees cannot be made to suffer.

6. The order dated 30.07.2011 in the trust application No.1/2011 below Exh.7 reads thus:

ORDER

1. The impugned order dated 04.05.2011 passed by the A.C.C. Ahmednagar while deciding application no.21/1997 and 13/01 is stayed until further orders.

2. The opponents are directed not to interfere with the functions, administrations and duties performed by the secretary Robert Gaikwad, Chairman Sujit Jadhav and Vice Chairman Rajan Patole and other trustees of the said trust until further order.

3. Issue show cause notice to the opponents 1,2 and 5 to 13 to why the interim order of injunction shall not be confirmed till the final decision of the trust application No. 1/2011. Notice returnable on 30.08.2011.

7. Perusal of the said order it is manifest that the petitioner No.3 and other persons were in the

Management. The petitioner No.3 was performing his duty as Secretary. It is stated that this order is confirmed upto this Court. In view of that the order of suspension issued as against the petitioner Nos.1 and 2 by another persons claiming himself to be Secretary would be of no avail.

8. Be that as it may, it is nobody's case that petitioner were not willing to work for the period of 12.01.2012 to 29.10.2013. It appears that because of some circumstances and the letters issued by the some persons claiming to be the Secretary and in the Management respondent No.6 did not allow the petitioner to join. The Education Officer had also directed the respondent No.6 to allow the petitioner to join. The respondent No.6 disputes the service of the said letter upon her. We need not enter in to the said debate.

9. However the fact remains that the petitioners are allowed to join on 29.10.2013. The petitioner Nos. 1 and 2 are not at fault. They cannot be deprived of their legitimate salary for the said period.

10. We had asked learned counsel for respective parties as to whether during 12.01.2012 to 29.10.2013 any other person were appointed for officiating their work on

the post held by the petitioner Nos. 1 and 2. It is stated that no other persons were appointed on the post held by the petitioner Nos. 1 and 2 during that period.

11. In light of the above negating salary bills of the petitioner for the said period would be punishing the petitioner for no fault on their part. The said posts are grant-in-aid post. The government is bound to pay the amount to the persons working on the said posts of course government cannot be taxed to pay the amount of the said post for two persons. In the present case no other persons were appointed on the post held by petitioner Nos.1 and 2. In view of that we pass the following order.

ORDER

i. Impugned order rejecting the salary bills of the petitioners is quashed and set aside.

ii. The Education Officer respondent shall pass salary bills of the petitioner submitted to him for the period 12.01.2012 to 29.10.2013.

iii. The writ petition accordingly stands allowed. No costs.

iv. In view of dismissal of the writ petition, the civil applications, if any, stand dismissed.

[S.M. GAVHANE, J.]

[S.V. GANGAPURWALA, J.]