

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CIVIL APPLICATION NO. 10358 OF 2017
IN
WRIT PETITION NO. 7584 OF 2013

THE STATE OF MAHARASHTRA AND OTHERS
VERSUS
SHIVAJI HULLABA APTE AND OTHERS

...

AGP for Applicants : Shri Kendre S.N.
Advocate for Respondent 1 : Shri Kedar Balbhim R.
Advocate for Respondents 3 & 4 : Shri Kale Yogesh
h/f Shri Karpe R.R.

...

CORAM : RAVINDRA V. GHUGE, J.
Dated: September 06, 2017

...

PER COURT :-

1. By this application, the Education Officer - Dr. Ganpat Shankarrao More prays for recalling of the order dated 3.3.2017, especially, paragraph No.9, by which, an adverse entry in his service book has been directed by this Court.

2. I have considered the submissions of the learned AGP on behalf of the Education Officer and the learned Advocates for the original appellant and the management.

3. While passing the order dated 3.3.2017, as the earlier order of this Court dated 23.12.2013 was pointed out directing

the presence of the Education Officer, it was observed that the Education Officer is not rendering any assistance. To secure his presence, a bailable warrant was issued which was yet to be served. On the condition of deposit of Rs.10,000/-, the bailable warrant was recalled and Dr. More has deposited the said amount from his salary.

4. I have perused the entire record of this proceeding and have gone through every order passed by this Court on various dates.

5. By order dated 23.12.2013 (Coram : S.S.Shinde, J.), the presence of the Education Officer was directed. This Court (Coram : S.V. Gangapurwala, J.) has recorded the presence of the Education Officer while passing the order dated 13.1.2014 and his presence was thereafter dispensed with. This order was not brought to my notice when I had passed the order dated 20.1.2017, 31.1.2017 and 3.3.2017.

6. The learned AGP points out that the said Education Officer has filed an affidavit in reply initially on 21.9.2014 and then on 21.7.2014. Thereafter, there was no order of this Court requiring the presence of the Education Officer.

7. On 1.7.2014 (Coram : N.W.Sambre, J.), the Education Officer was directed to file his affidavit-in-reply in the light of the observations recorded in the said order in paragraph No.1. It was pursuant to this order that the Education Officer had filed a reply on 21.7.2014. This was also not pointed out before me, when I have passed the above referred orders in January, February 2017 and on 3.3.2017.

8. In the light of the above, it becomes clear that when I noted on 20.1.2017 that respondent No.2 - Education Officer has not responded, though notices were issued on 23.9.2013, the above orders were not brought to my notice. The direction to the Education Officer to remain personally present was, therefore, without considering the earlier order passed. Thereafter, the issuance of bailable warrant as well as the direction to enter an adverse remark in the service book of the Education Officer was passed as he had not remained present. It also cannot be ignored that Dr. More has stated on oath in the Civil Application that the communication dated 17.1.2017 and 23.1.2017 from the office of the Government Pleader were not received by him.

9. Taking into account all the above orders passed by this

Court, pursuant to which the Education Officer had responded and had filed his affidavit-in-reply on two occasions as directed by this Court, I am of the view that my order dated 3.3.2017, based on the non-citing of the earlier orders, needs to be recalled.

10. As such, this Civil Application is allowed. The amount of Rs.10,000/- deposited by Dr. More in this Court can be withdrawn by him with accrued interest. Learned AGP submits on instructions that Dr. More desires to donate the said amount to the Advocate Associations' Bar Library of Bombay High Court, Bench at Aurangabad. The gracious statement is accepted and the Registry shall therefore, transmit the said amount to the Advocate Associations' Bar Library of Bombay High Court, Bench at Aurangabad.

11. The order dated 20.1.2017 to the extent of directing the presence of Dr. More, 31.1.2017 to the extent of issuing a bailable warrant and 3.3.2017 directing Dr. More to deposit Rs.10,000/- from his salary and the direction to the Chief Executive Officer, Z.P. Latur to make an adverse entry in his service book, are recalled. In the event, the CEO has made any adverse entry in the service book of Dr. More, the same shall be

deleted / erased forthwith.

(RAVINDRA V. GHUGE, J.)

...

akl/d