

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

904 WRIT PETITION NO. 8644 OF 2010

SUDHIR MADHUKAR WADWALKAR AND ANR

VERSUS

THE STATE OF MAH AND ORS

...

Advocate for Petitioner : Mr.P.M.Shah, Senior Advocate I/b
Mr.S.P.Shah

A.G.P. For Respondent No. 1 & 2 : Mr.Y.G.Gujarathi

Shri. Namdeo Santoba Wagh- Respondent No.3- party in person
Absent.

Advocate for Respondent NO. 4 and 5 G.P Mantri

CORAM : **R.D. DHANUKA &
SUNIL K. KOTWAL,JJ.**

DATED : 28-09-2017.

PER COURT :-

By this petition filed under Articles 226 and 227 of the Constitution of India, the petitioners have prayed for a writ of certiorari inter alia praying for quashing and setting-aside the order dated 15th October, 2009 passed by the Respondent No.2. i.e. Director of Technical Education, the report of the inquiry committee dated 8th December, 2009, the order of the Respondent No.2 dated 24th February, 2010, directing the Respondent No 5 to take action on the basis of report submitted by the inquiry committee.

2. It is the case of the petitioners that the respondent No.3 had

secured admission to B.Pharm during the academic year 1998-1999 against payment seat. Fees of the First Year was Rs. 32,000/-. However, the respondent No.3 had paid only token fee of Rs. 1,000/-. The affiliation of Pharmacy College in the State of Maharashtra from the traditional Universities came to be withdrawn and the Pharmacy Colleges came to be affiliated to the Maharashtra Universities of Health Science. In the periodic test conducted during the academic Sessions 1998-99, all the students of First Year B.Pharm, except two had secured 50% or more than 50% marks in the periodic test conducted during the academic Sessions 1998-1999.

3. For all the student who had failed at July 1999 Universities Examination, opportunity to improve the periodic test, marks was offered by the College.

4. It is the case of the petitioners that the respondent No.3 received 50% and above marks in the periodic test in all subjects. The respondent No.3 however, chose to remain absent from appearing for improvement examination. Therefore the same marks for the earlier periodic test secured by him carried forward for Dec. 1999 examination were sent to the University by the college with covering letter dated 25th November, 1999. The respondent No.3

did not attend the classes of the Second Year and also remained unsuccessful in the first year. The respondent No.3 made a complaint in the year 1999 alleging that though the respondent No.3 had not appeared for the Internal Examination conducted by the institution, his result was forwarded to the University. He made various allegations against the institution to the Director of Technical Education to initiate action against the institution. The director of technical education by communication dated 2nd, July 2008 after considering the allegations made by respondent No.3 informed the respondent No.3 that he should not make any correspondence henceforth with the office of the Director of Technical Education viz respondent No.3 was repeatedly doing.

5. On 27th July, 2009 the Respondent No.3 filed a Criminal Writ Petition No. 2001 of 2009 in this Court at Principal Bench. By an order dated 26th August, 2009, this court rejected the said Writ Petition on the ground that petition was filed after long intervening period of 10 years. The respondent No.3 thereafter filed a fresh complaint on 1st Sept. 2009 based on the similar allegations which were made by him 10 years ago with the office of the Director of Technical Education. By an order dated 15th October, 2009, the respondent No. 2 appointed a committee headed by Principal, Government Polytechnic for Women, Latur. It was alleged by the

Respondent No.3 that false marks were awarded to the respondent No.3 in the Improvement Periodic Test, 1998-1999 academic sessions in the College that were sent to the MUHS on 25th November, 1999 for December-1999 Examination.

6. The said committee thereafter submitted a report on 8th December, 2009, to the Director of Technical Education making various observations against the Management of the College and also recommended action against the Management based on the said committee report dated 8th December, 2009. The respondent No.2 instructed the Respondent No.5 to take action on the basis of the said report against all the concerned persons. The petitioner thus being aggrieved by the said order and the said committee report filed this Writ Petition for various reliefs.

7. Learned counsel for the petitioner invited our attention to various annextures to the Writ Petition including orders passed by this court from time to time. He also invited our attention to the order passed by Division Bench of this Court on 26.08.2009 in Criminal Writ Petition No. 2001 of 2009 filed by the respondent No.3 inter alia alleging that the authority had not taken any action against the Management on the basis of complaint made by him on 9th June, 2009.

8. It is submitted by the learned counsel that though the complaint filed by the respondent No.3 was already rejected by this Court in Criminal Writ Petition No. 2001 of 2009, on 26 August, 2009, the respondent No.3 filed a fresh complaint on 1st September, 2009, against the Management based on the same allegation which were made by him in the year 1999. He submits that Director of Technical Education himself had addressed a letter to the Respondent No.3 on 2nd July, 2008 directing him not to make any correspondence with the office of the Director Technical Education. He submits that since the complaint filed by the respondent No.3 was also closed by the Director of Technical Education and the Criminal Writ Petition filed by the Respondent No.3 was also rejected by this Court, the Director of Technical Education could not entertain the application filed by the Respondent No.3 once again based on similar allegations.

9. It is submitted that various frivolous allegations were made by the Respondent No.3 against various authorities and also this Court were considered by this Court in the year 2012 and by a detailed order and judgment dated 21st December, 2012 dismissed the said Criminal Writ Petition No. 3050 of 2012 filed by the Respondent No.3 with costs. The said cost was reduced to Rs. 5,000/- by an order dated 22nd December, 2012.

10. It is submitted by the learned counsel that there was no proper procedure followed by the such committee appointed by the Respondent No.2. The said committee has even otherwise exceeded the scope of inquiry. He submits that the said committee could not have decided contrary to the order passed by this Court in two Criminal Writ Petitions filed by the Respondent No.3 dismissing those petitions containing similar allegations.

11. Mr. Mantri learned counsel for the Respondent No.5 also invited our attention to the various anextures to the petition and would submit that Respondent no.3 was in habit to making false and frivolous complaint against the Management with ulterior motive. He adopted submissions made by Mr.Shah learned counsel for the petitioner and would submit that this Court shall pass an order for exemplary costs against the Respondent No.3 for filing such frivolous complaint before the Director of Technical Education though his complaint was already closed earlier based on similar allegations, and his Writ Petition came to be dismissed.

12. Our attention was also invited to the affidavit-in-reply filed by the Respondent No.3 filed before this Court. None appeared for respondent No. 3 though served.

13. A perusal of the record indicates that similar complaint was made by the respondent No.3 in the year 1999. The Criminal Writ Petition No.2001 of 2009 was dismissed by this Court on 26th August, 2009. The respondent No.3 thus could not have filed fresh complaint on the basis of the same allegations to the Director of Technical Education. A Perusal of the record indicates that respondent No.2 had also clearly instructed the Respondent No.3 not to make any further correspondence with this office. In spite of such correspondence and the order passed by this Court dismissing the earlier Writ Petition filed by the Respondent No.3, The respondent No.2 entertained the complaint filed by the Respondent No.3 based on the same allegations which were made earlier which was subject matter of the Writ Petition No. 2001 of 2009 which was dismissed by this Court. In our view various instructions issued by the Director of Technical Education while appointing a committee to look into the same allegations once again which were rejected by this Court as well as by the office of the Director of Technical Education, were without jurisdiction and without application of mind.

14. A perusal of the report submitted by the committee also clearly indicates that the committee has totally over looked the order passed by this Court on 26th August, 2009 in Criminal Writ

Petition No. 2001 of 2009 and also the correspondence and letter addressed by the Office of Director of Technical Education instructing Respondent No.3 not to make further correspondence with his office.

15. A perusal of the report further indicates that the said committee has traveled much beyond their power and beyond the scope of inquiry conducted by the Respondent No.2.

16. A perusal of the order dated 5th November, 2012 passed by the Division Bench in Criminal Writ Petition No. 3050 of 2012 indicates that the said Writ Petition was also based on the same allegations which were made in the Writ Petition No. 2001 of 2009. This Court, in the said order also referred to an order passed by the Division Bench in Criminal Writ Petition (PIL) No. 19 of 2010 which was filed by the Respondent No.3. The Division Bench rejected the said Criminal Writ Petition (PIL) No.19 of 2010.

17. By an order and Judgment dated 5th November, 2012, the Division Bench of this Court has already held that the Respondent No.3 wanted same relief which were sought in the earlier two writ petitions and thus it was nothing but abuse of process of law. The

Division Bench also held that several allegations made against Chief Justice of this Court was ex-facie contemptuous. This Court observed that, an action under Contempt of Courts Act, 1971 deserved to be initiated against the Respondent No.3. The Division Bench however observed that though making such allegations by the Respondent No.3 much had to be strongly condemned, the Division Bench of this Court took sympathetic view and observed that respondent No.3 who was appearing in person has been misguided was incapable of understanding and comprehending the seriousness of his actions. This Court accordingly took a lenient view in the matter and did not initiate action under Contempt of Courts Act, 1971 and only imposed cost of Rs. 10,000/- against the respondent No.3 holding that the said petition was an abuse of process of law. The said order passed by the Division Bench on 5th November, 2012 was not impugned by the Respondent No.3. On 26th August, 2009 by an order dated 20th December, 2012, the Division Bench however reduced the cost of Rs. 10,000/- to Rs. 5,000/-.

18. A perusal of the affidavit-in-reply filed by the Respondent No.3 in this proceeding clearly indicates that several false and frivolous allegations are made by the Respondent No.3 against Judges of this Court and other authorities. Similar allegations were

made by the Respondent No.3 before this Court in Criminal Writ Petition No. 3050 of 2012 which has been rejected, by the Division Bench of this Court. This Court observed that the said Writ Petition was abuse of process of law. These allegations are once again rejected as frivolous by this order.

19. In our view initiation of action by the respondent No.2 in appointing an inquiry committee and thereafter, the report submitted by the inquiry committee and proposed action against the Management is totally illegal, without authority of law and thus deserves to be set-aside. We, therefore, pass the following order.

ORDER

1. Writ Petition No. 8644 of 2010 is made absolute
in terms of prayer clause A (i), (ii) and (iii).
2. Rule is made absolute in aforesaid terms.
3. No order as to costs.

(SUNIL K. KOTWAL)

JUDGE

(R.D. DHANUKA)

JUDGE

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