

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

Contempt Petition No. 0843 of 2016
(In Writ Petition No. 12327 of 2015)

District : Nanded

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| <p>1. Pratibha Niketan Education Society,
Nanded,
Through its General Secretary,
Sakharam s/o. Digambarrao Mahajan,
Aged 74 years,
Occupation : Retd. Principal,
R/o. 53, Bhagyanagar, Nanded (M.S.).</p> | |
| <p>2. Pratibha Niketan High School,
Nanded,
Through its Head Master,
Shri Anand s/o. Kondiba Gaikwad,
Aged 56 years,
R/o. Nanded.</p> | <p>.. Petitioners
(Original
petitioners)</p> |

versus

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| <p>1. Vijay s/o. Gangaram Khuniwad,
Aged 48 years,
Occupation : Suspended employee,
R/o. Bhimai Building,
Uday Nagar, Nanded.</p> | |
| <p>2. Mr. Shivaji Pawar,
Education Officer (Secondary),
Zilla Parishad, Vazirabad,
Nanded.</p> | <p>.. Respondents
(Original
respondents)</p> |

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*Mr. Suresh M. Kulkarni, Advocate, for the
petitioners.*

*Mr. V.J. Dhage and Mr. D.A. Karnik, Advocates,
for respondent no.01.*

*Mr. S.P. Tiwari, Asst. Government Pleader, for
respondent no.02.*

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CORAM : RAVINDRA V. GHUGE, J.

DATE : 24TH FEBRUARY 2017

ORAL JUDGMENT :

01. While issuing notice, this Court had observed in its order dated 13.01.2017 as under :-

"01. By order dated 04.05.2016, this Court had directed Respondent No.2 / Education Officer to decide the application within 15 days from the date on which he receives it from the Petitioner / Management. It is stated that the application was served on Respondent No.2 on 21.06.2016. A reminder dated 08.08.2016 was also served. Till today, he has not complied with the direction of this Court.

02. Issue notice to Respondent No.2 returnable on 10.02.2017. Respondent No.2 / Education Officer shall show cause as to why he should not be punished for disobedience of the directions of this Court.

03. Respondent No.2 / Education Officer shall personally remain present in the Court on the next date of hearing and would also file his affidavit."

02. I have heard Shri Kulkarni, learned Advocate for the petitioner and Shri Tiwari, learned Asst. Government Pleader, on behalf of respondent no.02 - Education Officer, Shri Shivaji Eknath Pawar.

03. It is quite disturbing that the said

Education Officer has been time and again arrayed in contempt petitions. In an earlier contempt petition bearing Contempt Petition No. 0446 of 2016 [In Writ Petition No. 12486 of 2015], I had noted his conduct and had passed the following order on 22.12.2016:-

"01. On 23.09.2016 in the first Contempt Petition No.446/2016, I had issued notice to Respondent No.2, namely, Shri Shivaji Eknath Pawar, Education Officer (Secondary), Zilla Parishad, Nanded, by passing the following order:-

"1. The petitioner points out the direction issued by this Court at paragraph No. 35(c) in its order dated 02.04.2016 in WP No. 12486/2015. Learned Advocate for respondent Nos.1 and 3 submits that despite correspondence with respondent No.2 for seeking approval to the suspension of the petitioner so as to ensure the payment of subsistence allowance, respondent No.2 has not implemented the order of this Court. Similarly, respondent No.2 has not nominated a State Awardee Teacher on the Enquiry Committee of the Management.

2. In the light of the above, issue notice to respondent No.2, returnable on 18.10.2016. Respondent No.2 shall file an affidavit in reply on or before 18.10.2016 and shall not seek extension of time. "

02. An affidavit in reply is filed on 24.11.2016 by the said Education Officer. It is stated in paragraph 3 that the School Management

has forwarded the proposal in respect of suspension allowance on 21.11.2016 and he has forwarded the same to the Superintendent, Pay and Provident Fund Unit (Education), Nanded, on 23.11.2016. The Superintendent, Pay and Provident Fund Unit (Education), Nanded, sanctioned the salary grants on 23.11.2016. An affidavit is also filed in the second Contempt Petition No. 783/2016 by the same Education Officer dated 16.12.2016 which indicates that the order of according approval to the suspension of the employee is granted on 15.12.2016. As such, the sanction is accorded on 15.12.2016.

03. It is pointed out that the same Education Officer was the Respondent before the learned Division Bench in Writ Petition Nos. 7385/2016 and 7422/2016. Observing the conduct of the said Education Officer, the learned Division Bench by its order dated 22.07.2016, observed in paragraph 6 that *"In our prima facie opinion, it appears that the Education Officer has made calculated attempt to pass the impugned order dated 16.05.2016 so as to favour Respondent No.4 thereby totally ignoring the fact that the petition filed by Respondent No.4 is not only rejected simplicitor, but the same is rejected with the reasoned order."* It is then observed in paragraph 7 that *"In the circumstances, this is a fit case where the Education Officer / Respondent No.3 deserves to be dealt with by issuing a suo-motu notice to Respondent no.3, returnable on 11.08.2016 as to why appropriate action / proceedings should not be initiated against him for misleading and misinterpreting the order passed by this Court on 02.05.2016 thereby, making an attempt to get over the order of rejection passed by this Court in Writ Petition No.5808/2015."* It is then ordered in paragraph 9 that *"Till the next date of hearing, we direct*

the Deputy Director of Education, Latur, to withdraw the charge of the Education Officer / Respondent No.3. However, his other service conditions shall remain unaffected."

04. It is informed that the charge of the said Education Officer Mr. Pawar was withdrawn by the competent authority on 22.07.2016 and the said statement was recorded by the learned Division Bench in its order dated 11.08.2016. Subsequently, the learned AGP states, on instructions, that an apology tendered by Mr. Pawar was accepted and the charge was then re-handed over to him on 24.10.2016.

05. The learned AGP submits that Mr. Pawar, who is personally present in the Court, is tendering an unconditional apology and seeks pardon.

06. In so far as the second Contempt Petition No.783/2016 is concerned, it is apparent from the contents of the affidavit in reply filed and the directions of this Court that despite the communication dated 21.06.2016 and the reminder dated 29.06.2016 followed by yet another reminder dated 08.08.2016, Mr. Pawar did not initiate any action. When confronted in the open Court, he instructed the learned AGP to state, initially, that he had not received the communications dated 21.06.2016 and 29.06.2016. He then made a further statement that those two documents were received by his office, but he may not have read those documents.

07. The affidavit in reply does not indicate in any manner that the said two documents were not brought to his notice, inasmuch as it is not stated as to who suppressed those documents from him. It appears that it is only after this Court

passed the earlier order that he has promptly issued the sanction to the suspension by letter dated 15.12.2016 which he was expected to do several months ago.

08. In the light of the above, I deem it proper to award the punishment of stoppage of one increment permanently. However, the learned AGP submits, on instructions, that Mr. Pawar is tendering an unconditional apology and submits that such an act would never happen again. In order to scale down the punishment, I put it to the learned AGP that I am inclined to impose fine of Rs. 10,000/-. Upon taking instructions, it is submitted that Mr. Pawar prays that he would suffer fine rather than stoppage of one increment permanently.

09. In the light of the above, Contempt Petition No. 783/2016 is disposed of by recording the statement of Mr. Pawar, who shall deposit an amount of Rs. 10,000/- (Rupees Ten Thousand) in this Court on or before 06.01.2017. The said amount shall be paid from his salary account and it would be donated to the Advocates Association of Bombay High Court, Bench at Aurangabad.

10. Copy of this order be placed before the Chief Executive Officer, Zilla Parishad, Nanded, and an entry be made in the Service Book of Mr. Pawar.

11. Contempt Petition No. 446/2016 shall stand over to 13.01.2017. To be heard along with Contempt Petition (Stamp) No. 38291/2016. "

04. Yet again, in these proceedings, it is noticed that the orders passed by this Court on 11.04.2016 and 04.05.2016 were not complied with

despite the direction that if the petitioner - Management makes an application for seeking permission to suspend respondent no.01 herein, the said application would be decided within 15 days from the date of receipt.

05. An affidavit in reply has been filed by Shri Shivaji s/o. Eknath Pawar, Education Officer (Secondary), dated 09th February, 2017. He is personally present in the Court.

06. Respondent no.02 - Education Officer (Secondary) states in the affidavit that the application of the Management was received by him on 21.06.2016. He was, however, not holding charge of Education Officer from 22.07.2016 to 23.10.2016. I find it to be quite obvious because the learned Division Bench of this Court by order dated 22.07.2016, in Writ Petition No. 7385 of 2016 and Writ Petition No. 7422 of 2016, had taken away his charge after noticing his behaviour and conduct of attempting to overbear the authority of the Court. His charge was restored from 24.10.2016 after he tendered an apology.

07. As such, it is apparent that the orders dated 11.04.2016 and 04.05.2016 passed by this Court were not complied with for about one month, till the date his charge was taken away under the orders of the learned Division Bench. After his charge was restored on 24.10.2016, he did not act upon the

application made by the petitioner - Management and he did not implement the orders of this Court to decide the said application within 15 days, till 11.01.2017. It is apparent that the said order was passed by respondent no.02 - Education Officer (Secondary), a day before issuance of notice by this Court in this Contempt Petition.

08. Normally, in a given case, where the Education Officer has a clean past record, there could have been a possibility of pardoning him by issuing a caution. However, in this case, it appears that this Education Officer appears to have disobeyed the orders of this Court on two occasions, inasmuch as the learned Division Bench noted his conduct by concluding that it was a fit case for issuing *suo motu* notice as to why proceedings should not be initiated against him for misleading and misinterpreting the order of the learned Division Bench.

09. While issuing notice, I have specifically called upon the said Education Officer to show cause as to why he should not be punished for disobedience. He has tendered an apology in his affidavit in reply which is similar to the apology that he had earlier tendered before this Court in an affidavit filed in Contempt Petition No. 0446 of 2016.

10. When I called upon the learned Asst. Government Pleader to state as to what punishment

should be imposed upon respondent no.02 - Shri Shivaji s/o. Eknath Pawar, he submitted after taking instructions, that disciplinary action may not be initiated against him and he is willing to pay fine of Rs. 20,000/-, keeping in view that on the last occasion, he has paid a fine of Rs. 10,000/-.

11. Learned Advocate for the petitioner submits that the said amount be donated to the Advocates' Association of Bombay High Court, Bench at Aurangabad.

12. Considering the above, by way of punishment, respondent no.02 - Shri Shivaji s/o. Eknath Pawar shall deposit an amount of Rs. 20,000/- [Rupees twenty thousand] on or before 10th day of March, 2017, in the account of Advocates' Association of Bombay High Court, Bench at Aurangabad.

13. Learned Asst. Government Pleader is requested to place a copy of this order before the Chief Executive Officer, Zilla Parishad, Nanded, so as to cause an entry in the service book of respondent no.02 - Shri Shivaji s/o. Eknath Pawar. Compliance of this order shall be reported by the Chief Executive Officer, Zilla Parishad, Nanded, to the Registrar [Judicial] of this Court, on or before 20th day of April, 2017.

14. This Contempt Petition is accordingly disposed of and the said Education Officer shall

withdraw the order dated 12.01.2017, which imposes suspension on respondent no.01 with retrospective effect and shall issue a fresh order granting sanction to the suspension of respondent no.01 with prospective effect.

(Ravindra V. Ghuge)
JUDGE

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