

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

CONTEMPT PETITION NO.295 OF 2013

Mr. Khanderao Kamble

...Petitioner

Versus

The Education Officer (Secondary),
Zilla Parishad, Pune and Ors.

...Respondents

.....

Mr. Chandrakant Bidkar for the petitioner.

Mrs. M.S. Bane, AGP for the Respondent Nos.1 to 3.

Mr. Subhash Langote i/b. Mr. Vishnu A. Madane for the Respondent Nos.4 and 5.

**CORAM : SMT. ANUJA PRABHUDESSAI, J.
DATED : 4th JULY, 2017.**

ORAL JUDGMENT :-

1. The petitioner herein has filed this Contempt Petition alleging contempt of order dated 6th December, 2012, passed by the learned Presiding Officer of the School Tribunal, Pune Region, Pune in Miscellaneous Application No.3 of 2012.

2. By the said order dated 6th December, 2012, the learned Presiding Officer of School Tribunal had allowed the application filed by the petitioner in following terms:

“1. Application is hereby allowed and the respondent No.3 Education Officer is hereby directed and recommended to ensure of the joining of appellant in respondent No.2 school in his

presence or in presence of any subordinate officer appointed by him.

2. It is further recommended to the respondent No.3 to deduct the amount of non salary grants payable to the respondents No.1 & 2 and pay the same to the appellant towards his arrears of salary which is due and payable to him in accordance with MEPS Rules, 1981 and in view of the directions issued by this Tribunal in judgment and order dt.18.09.2000 in appeal No.56/1998.”

3. Mr. Chandrakant Bidkar, the learned counsel for the petitioner has advanced written as well as oral submissions. He has submitted that the Government has not paid the arrears of salary by deducting the amount of non-salary grants payable to the respondent nos.1 and 2. He claims that the respondent no.3 has not complied with clause 2 of the order dated 6th December, 2012 and that the non-compliance of this clause by the Government i.e. the respondent no.3 amounts to Contempt of Court.

4. Heard Mrs. M.S. Bane, the learned AGP for the Respondent Nos.1 to 3 and Mr. Subhash Langote, the learned counsel for the Respondent Nos.4 & 5. The learned AGP has placed on record the copy of the judgment dated 28th April, 2017 in Letters Patent Appeal No. 155 of 2006 and has submitted that in terms of the said order which was based on the consent terms filed by the parties, the respondent no.3 is not liable to pay any amount to the

petitioner towards arrears of salary. She has submitted that the respondent no.3 has not committed breach of any of the clauses of the order.

5. I have perused the records, more particularly the orders passed by the School Tribunal, by the Single Judge of this Court as well as by the Division Bench of this Court in Letters Patent Appeal No.155 of 2006. Some relevant facts, which are necessary to decide this Petition, are as under:-

The petitioner herein was appointed as Assistant Teacher on 1st July, 1997. His services were terminated vide order dated 8th June, 1998. The said order was challenged before the School Tribunal, Pune Region, Pune, in Appeal No.56 of 1998. The School Tribunal Pune, by order dated 18th September, 2000 allowed the said Appeal and set aside the termination order and further directed to reinstate the petitioner in service as an Assistant Teacher w.e.f. 8th June, 1998 with full back wages. The Respondents were directed to comply with the said directions within a period of two months from the date of receipt of the said order. The learned Presiding Officer of the School Tribunal recommended to the State Government to deduct the amount payable towards the non-salary grant due and payable to the respondent nos.1 and 2 and pay the same to the petitioner herein towards arrears of salary.

6. The Management challenged the said order in Writ Petition No.3858 of 2001. The learned Single Judge of this Court dismissed the said

Writ Petition by order dated 9th September, 2002. Said order was challenged in Letters Patent Appeal No.155 of 2006. On 9th June, 2010, the Letters Patent Appeal was dismissed for non-prosecution. The present petition was filed after the dismissal of the Letters Patent Appeal. It is to be noted that subsequently the said Letters Patent Appeal was restored and was finally disposed of by order dated 28th April, 2017.

7. A perusal of the order dated 28th April, 2017 in Letters Patent Appeal 295 of 2013, which is placed on record by the learned AGP, reveals that the said Letters Patent Appeal was disposed of in view of the consent terms filed by the parties. The petitioner herein, who was the Respondent No.4 in the said Letters Patent Appeal has signed the said consent terms, which read as under :-

“1) Appellant Society had appointed Respondent No.4 and 1st July, 1997 as Assistant Teacher. However, his services were required to be terminated vide order dated 8.6.1998.

2) Against such order the School Tribunal & Single Judge of the Hon'ble Court has given decision in favour of Respondent No.4 & hence this appeal wherein interim stay is granted in favour of appellant.

3) There were talks of compromise between appellant & respondent & without prejudice to the rights of appellant respondent no.4 was allowed to resume duty as an Asstt. Teacher on 17.11.2016 in the school run by the Appellant management.

- 4) *The matter is now completely settled between parties in following terms.*
- 5) *The respondent no.4 undertakes and agrees that he will not claim any back wages from the date of termination i.e. 8.6.1998 till his reinstatement on 17.11.2016.*
- 6) *The respondent No.4 agrees and undertakes that he will not claim any wages prior to termination of his service from management.*
- 7) *The respondent No.4 has agreed and undertaken that he is reinstated in trained under graduate scale & has no grievance about the same.*
- 8) *The respondent No.4 is already reinstated in service as Asstt. Teacher in school and will be given continuity in service from June 8.6.1998 with consequential benefits by the management.*
- 9) *Respondent No.4 undertakes that he will not claim seniority on the basis of reinstatement through he will be entitled to pensionary benefits if held admissible by Government.*
- 10) *The Respondent No.4 agrees and undertakes to withdraw the Contempt Petition No.295 of 2013 filed in the Hon'ble High Court unconditionally and also agrees and undertakes to not to take such any action in future against the management.*
- 11) *Parties to this appeal have withdrawn allegations made against each other.*
- 12) *This petition be disposed off in above terms. The undertaking given by respondent no.4 in item No.5 to 7, 9 & 10 be accepted. The petition be disposed off with no order as to*

costs.”

8. In the present petition, the only grievance of the petitioner is that the respondent no.3 has not paid to him the arrears of salary by deducting the said amount from non-salary grants payable to the respondent nos.1 and 2. A perusal of the consent terms particularly, clauses 5 and 10 clearly indicate that the petitioner had undertaken not to claim back-wages from the date of termination i.e. 8.6.1998 until his reinstatement on 17.11.2016. The petitioner had also undertaken to withdraw the present contempt petition unconditionally. These undertakings were accepted, the consent terms were taken on record, since the dispute between the parties was amicably settled, the Division Bench of this Court, by Order dated 28.4.2017 disposed of the Letters Patent Appeal in terms of the consent terms. The order of the School Tribunal having merged in the order in the Letters Patent Appeal, it is the said order in Letters Patent Appeal which is final, binding and operative decision. Consequently, non-compliance of clause 2 of the order of the School Tribunal does not amount to contempt of court.

9. Now coming to the conduct of the petitioner, it is seen that the consent terms filed in LPA No.155 of 2006 were signed by the petitioner as well as by his counsel. He was therefore well aware that the Letters Patent Appeal was disposed of in view of the consent terms. Despite which, the

petitioner did not place on record the consent terms and the copy of the order dated 28th April, 2017. The petitioner suppressed the fact that he had filed consent terms wherein he had undertaken and agreed not to claim back-wages from the date of termination i.e. from 8th June 1998 till the date of his reinstatement on 17th November, 2016 and that he had agreed to withdraw the contempt petition.

10. It may be mentioned that the petitioner is a Head Master and being a teacher by profession, he cannot be categorized as an illiterate litigant. The petitioner also does not claim that he was not aware of the contents of the consent terms, or his obligation to comply with the undertakings to the court and the consequences of the breach of the same. Despite which the petitioner not only failed to withdraw the contempt petition but in total breach of the undertaking, he persisted on proceeding with the Contempt Petition. These facts and circumstances, prima facie, indicate that the petitioner has committed willful breach of a clear and categorical undertaking given to the Court and the same amounts to contempt of Court.

11. It is also pertinent to note that a litigant engages a lawyer with utmost faith and trust to represent or defend him in conformity with the requirements of law and to fearlessly uphold his interest by all fair means. The advocate, therefore, owes a duty towards his client to advance the cause

of his client to the best of his ability, skill and understanding. In the instant case, the Order dated 28.4.2017 in LPA 155 of 2006 reveals that the counsel representing the petitioner in the present petition, had also represented him in the Letters Patent Appeal. The learned Counsel for the petitioner had also signed the consent terms. The learned Counsel for the petitioner was therefore aware of the consent terms as well as the order passed in LPA 155 of 2006. Under these circumstances, it was the duty of the counsel to apprise the petitioner of his obligation to comply with the undertaking and the consequences that could entail due to breach of such undertaking. The counsel for the petitioner did not advise the petitioner, who was present before the court, to abide by the undertaking given to the court, on the contrary, he insisted that he would not withdraw the contempt petition. He was informed that non-compliance of the undertaking and insistence to proceed with the contempt would be in breach of the undertaking given to the court and the same would amount to contempt of Court. Even after being put to such notice, he flatly refused to withdraw the contempt petition and persisted that he would proceed with the contempt on merits, even at the cost of going to jail. By such approach, the learned Counsel for the petitioner, in my view, failed in his duty towards his client.

12. Furthermore, an advocate has duty not only towards his client, but he also has duty towards the Court. As an officer of the Court, he is

responsible to uphold the dignity of the Court, Majesty of Law and prevent any interference in administration of justice. In the instant case, as stated earlier, the consent terms were filed on 28.4.2017. The present petition had come up before this Court on 13.7.2017 and 27.6.2017. On both these dates, the learned Counsel did not bring to the notice of the Court that the petitioner had already entered into consent terms, and had agreed not to claim back-wages and that he had undertaken to withdraw the contempt petition. There is no reference to the consent terms and the order in the written submissions filed by the learned Counsel for the petitioner. Even after the terms of the order were brought to his notice, he continued arguing the matter on merits.

13. It is further to be noted that the learned Counsel for the petitioner, while making his submissions on merits of the matter, made allegations of corruption against the Education Officer (respondent no.1), and suggested that the court was protecting and helping a corrupt officer. He addressed the Court in a rude and intemperate language and further threatened "You do whatever you want, I will lodge a complaint against you before the Hon'ble the Chief Justice". Even when the order was being dictated, he kept interrupting, shouting, attributing motives and making disparaging and derogatory remarks against the Court in a Courtroom packed with litigants, lawyers and court staff. His tirade against the Court was nothing but a pressure tactics and an attempt to browbeat into submission to secure a desired order. By indulging in

such acts, the learned counsel for the petitioner undermined the dignity of the Court.

14. As it has been held by the Apex Court in *Supreme Court Bar Association vs. Union of India (1998) Vol 4 SCC 409*, nothing is more destructive of public confidence in the administration of justice than incivility, rudeness, disrespectful conduct on the part of a counsel towards the Court or disregard by the Court of the privileges of the Bar. In the instant case, the learned counsel for the petitioner, by his unbecoming conduct has abused his position, both as a lawyer, as well as an officer of the Court. Considering this fact, and keeping in mind the observations of the Apex Court in Supreme Court Bar Association (supra), in my view, this is a fit case to direct the Bar Council of Maharashtra and Goa to draw proceedings against Shri Chandrakant Bidkar, the counsel for the petitioner, for professional misconduct, and proceed in accordance with the prescribed procedure.

15. Hence the following order.:-

i) The Contempt Petition is dismissed with exemplary costs of Rs.50,000/-. The costs shall be paid within a period of Six weeks from the date on which this order is uploaded;

- ii) In the event the cost is not paid within the stipulated time, the same shall be recovered from the arrears/ salary due and payable to the petitioner;
- iii) The Registrar (Judicial -I) to issue a notice to the petitioner, returnable in six weeks from the date of uploading of this order, to show cause as to why contempt proceedings should not be initiated against him for breach of the undertaking in clause 10 of the consent terms filed in LPA No.155 of 2006;
- iv) The Registrar (Judicial-I) shall forward a copy of this order to the Bar Council of Maharashtra & Goa for drawing proceedings against Mr. Chandrakant Bidkar, the Counsel for the petitioner, for professional misconduct.

(ANUJA PRABHUDESSAI, J.)