

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5397 OF 2017

Sou Kanchan Sanjay Bhopale	... Petitioner
v/s	
The State of Maharashtra and others	... Respondents

Mr N.V. Bandiwadekar with Mr M.G. Bagkar for Petitioner.
Mr B. Samant, AGP for Respondent - State.
Mr M.S. Topkar for Respondent Nos.3 and 4.

**CORAM : SHANTANU S. KEMKAR &
B.P. COLABAWALLA, JJ.**

DATE : MAY 5, 2017

JUDGMENT (PER B.P. COLABAWALLA J.):

By this Writ Petition under Article 226 of the Constitution of India, the Petitioner challenges the alleged illegal and unauthorized departmental inquiry sought to be continued against the Petitioner as per the charge-sheet issued by Respondent No.3. It is the case of the Petitioner that as per the order passed by this Court dated 24th March 2015 and which came to be modified by the Supreme Court by its order dated 30th August 2016, the inquiry which was initiated against

the Petitioner was required to be conducted and completed within three months from 30th August 2016. Since the said inquiry was not completed within the aforesaid time, it is the case of the Petitioner that the inquiry has automatically lapsed and the Petitioner is entitled to be reinstated and continued in service as the Head Mistress. This is the basic relief that is sought in the Writ Petition.

2. The very brief facts arising this controversy are that the Petitioner was appointed as an Assistant Teacher on 2nd October in a Primary School run by Respondent No.3. Thereafter, on 1st September 1988, the Petitioner was promoted as Head Mistress of the Primary School. It is the case of the Petitioner that since she resisted the statement of some false and fabricated bills, the School Management as a counter-blast, issued a charge-sheet on 19th August 1999 against the Petitioner. Thereafter, an inquiry was held. In that inquiry, the Petitioner was held guilty of mis-conduct and was dismissed from service on 20th January 2000 and the Appeal therefrom to the School Tribunal was also dismissed on 31st January 2003.

3. Being aggrieved by this dismissal orders, the Petitioner

approached this Court by filing Writ Petition No.9237 of 2003. By judgment and order dated 24th March 2015, this Court set aside the order of the School Tribunal as well as the order of dismissal of the Petitioner and directed that the Petitioner be reinstated, but without any back wages. The Court however, held that the School Management was at liberty to hold a fresh departmental inquiry within a period of three months and that the issue of back wages would abide with the result of fresh inquiry proceedings.

4. Being aggrieved by this order, Respondent No.3 approached the Supreme Court. The Supreme Court by its order dated 30th August 2016 dismissed the Special Leave Petition filed by Respondent No.3 but directed that the time of three months granted by the High Court for conducting the inquiry against the Petitioner should be reckoned from the date of the order of the Supreme Court (viz. 30th August 2016). Thereafter, the Respondent No.3 also filed an Interim Application before the Supreme Court in November 2016 inter alia praying for extension of time for conducting the said inquiry. That Interim application was dismissed vide its order dated 9th December 2016. Thereafter, even a Review Petition was dismissed

by the Supreme Court on 16th February 2017.

5. In this factual backdrop, Mr Bandiwadekar submitted that as per the order passed by this Court and thereafter modified by the Supreme Court, the Departmental Inquiry was to be conducted and completed against the Petitioner within three months from 30th August 2016 (viz. 30th November 2016). Admittedly, the Departmental Inquiry has not been completed till date and therefore the Respondents have no power to proceed with the said Departmental Inquiry in view of the fact that they have not adhered to time schedule set down by this Court and modified by the Supreme Court. It is in these circumstances, Mr Bandiwadekar prayed that it be declared that the Departmental Inquiry initiated against the Petitioner has lapsed and / or stands cancelled since the same is not completed within the period of three months from the date of the order of the Supreme Court dated 30th August 2016.

6. Mr Topkar, learned counsel appearing on behalf of Respondent Nos.3 and 4, on the other hand, submitted that this Writ Petition is wholly misconceived. He submitted that as per the order of

this Court dated 24th March 2015 (and more particularly paragraph 16 thereof), the School Management was granted liberty to hold a fresh Departmental Inquiry within a period of three months from the date of the said order. It is not in dispute that the inquiry against the Petitioner was initiated within the aforesaid period. He submitted that there was no direction in the said order that the fresh departmental inquiry has to be completed within the period of three months. Even in the order of the Supreme Court dated 30th August 2016, Mr Topkar submitted that no such direction of completing inquiry within a period of three months was given. He submitted that the Supreme Court has merely submitted that the time of three months granted by the High Court for conducting the inquiry against the Petitioner would be reckoned from the date of the order of the Supreme Court. He submitted that the declaration sought for in the Writ Petition is wholly misconceived. In any event, he submitted that the Writ Petition is premature and it is seeking to thwart the Departmental Inquiry which is already in progress. He submitted that even if one were to assume that there is any merit in the contention raised by the Petitioner, this would certainly be a ground for him as and when she would challenge the findings of the inquiry, provided

she is held guilty. He therefore submitted that there was no merit in the Writ Petition and the same ought to be dismissed with costs.

7. We have heard the learned counsel for the parties and have perused the papers and proceedings in the Writ Petition. We find considerable force in the argument of Mr Topkar. Prima facie, after reading the orders passed by the High Court and modified by the Supreme Court, we do not read those orders to mean that the Departmental Inquiry had to be completed within a period of three months. The High Court had specifically directed that the School Management was at liberty to hold the fresh inquiry within the period of three months. The order of the Supreme Court dated 30th August 2016 categorically states that as per the order of the High Court, the inquiry against the Petitioner ought to be conducted within a period of three months from the date of the order of the Supreme Court. Nowhere we find that the inquiry was to be completed within a period of three months as sought to be contended by Mr Bandiwadekar.

8. In any event of the matter, we find that on leaving these

two orders, it is certainly a debatable issue whether the inquiry was to be completed within a period of three months as sought to be contended by Mr Bandiwadekar or whether the inquiry was to be initiated within the aforesaid period as contended by Mr Topkar. This being the case, we are not inclined to interfere at this stage and stall the Departmental Inquiry. For all one knows the Departmental Inquiry could culminate in a finding in favour of the Petitioner. The Petitioner therefore, to our mind, ought to face the inquiry and cannot scuttle the same at this stage.

9. We also have our serious doubts as to what would be the effect on the inquiry if the same was not completed within a period of three months, even assuming that such was the direction. All these issues we are not inclined to consider at this stage.

10. We therefore dismiss this Writ Petition with liberty to the Petitioner to raise all ground raised herein as and when the Petitioner challenged the final order passed in the inquiry proceedings if the same are adverse against her. We must clarify that all the observations made herein are only prima facie and tentative and shall

not be binding on the Court as and when it hears any challenge raised by the Petitioner, if any, in the final outcome of the inquiry proceedings. With these observations and clarifications, Writ Petition is dismissed. No order as to costs.

(B.P. COLABAWALLA, J.)

(SHANTANU S. KEMKAR, J.)