

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO.2247 OF 2016
IN
WRIT PETITION NO.1466 OF 2015

Nilesh @ Umesh Narayan Deshpande
and Another.

.. Applicants

Vs

Poonam Toradmal and Others.

.. Respondents

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Shri Chintamani K. Bhangoji for the Applicant No.2/Original Writ
Petitioner No.2.

Shri Nilesh Suresh Patil for the Respondent No.1.

Shri Dhawal Patil i/b M/s. K. Ashar & Co for the Respondent No.2.

Shri Manish M. Pabale, AGP for the Respondent Nos.3 to 6.

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CORAM : A.S. OKA & PD. NAIK, JJ

DATED : 15TH JUNE 2017

(In Chamber at 2.40 p.m.)

PC.

1. Heard learned counsel appearing for the Applicant who is the second Writ Petitioner. The Writ Petition was disposed of by an order dated 22nd April 2016. Relevant part of the said order reads thus:

“As far as the second petitioner is concerned, he was holding a post which is now held by the first respondent. The second petitioner has preferred an appeal for challenging order of his termination and the said appeal is pending before the Divisional Social Welfare Officer, Konkan Division, Navi Mumbai. As the

appointment of the first respondent to the post of the Superintendent in the School of the second respondent has been made during the pendency of the Appeal, the appointment of the first respondent is subject to the final outcome of the Appeal preferred by the second petitioner which is pending before the Divisional Social Welfare Officer, Konkan Division, Navi Mumbai. This position is not disputed by the learned counsel for the first respondent. Hence, the learned counsel for the second petitioner seeks permission to withdraw this petition with liberty to prosecute the appeal and with liberty to raise all the permissible contentions in the pending appeal.”

2. Now in this Application, it is pointed out that the statement made by the present Applicant that appointment of the first Respondent to the post of Superintendent has been made during the pendency of the Appeal is erroneous. It is contended that the said statement was made inadvertently. It is not necessary for us to go into the question in this Application whether the said statement made was inadvertent or deliberate especially in light of the Civil Application No.170 of 2017 filed by the first Respondent in the Petition. Suffice it to say that the order dated 22nd April 2016 in the Writ Petition was based on a statement made across the bar as per the instructions of the Applicant which is now accepted to be incorrect. Therefore, the Writ Petition as far as the second Petitioner (the Applicant in this Application) is concerned, will have to be revived especially when the Clause (II) of the operative part of the said order dated 22nd April 2016 is based on the statement which is now accepted to be incorrect.

3. Accordingly, we pass the following order:

ORDER :

- (a) Writ Petition No.1466 of 2015 is restored to the file as far as the second Writ Petitioner (present Applicant Shri A.A. Murlidharan) is concerned;
- (b) The order passed as regards the first Petitioner in the Writ Petition is not disturbed;
- (c) Place the restored Writ Petition before the Regular Bench along with Civil Application No.170 of 2017;
- (d) We make it clear that we have made no adjudication on the question whether the statement of the Applicant recorded in the order of the Court dated 22nd April 2016 was deliberate or inadvertent. The said issue will have to be gone into by the Regular Bench when Civil Application No.170 of 2017 is heard.
- (e) Civil Application is disposed of on above terms.

(P. D. NAIK, J)

(A.S. OKA, J)