

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

WRIT PETITION NO. 796 OF 2014

- | | | |
|---|---|------------------|
| 1. Natepute Education Society, |) | |
| having office at/post- Natepute |) | |
| Tal. Malshiras, Dist. Solapur. |) | |
| |) | |
| 2. The Head Master, |) | ... Petitioners. |
| Dr. B. J. Date Prashala Jr.College |) | |
| Natepute, Tal. Malshiras, Dist. Solapur.) |) | |

V/s.

- | | | |
|--------------------------------------|---|------------------|
| 1. State of Maharashtra |) | |
| Department of Secondary School |) | |
| Education Mantralaya, Mumbai |) | |
| Through its Secretary |) | |
| |) | |
| 2. The Deputy Director of Education, |) | |
| Pune Region, 17, Dr. Ambedkar Rd., |) | |
| Pune 411 001. |) | |
| |) | |
| 3. The Education Officer, Secondary |) | |
| Section, Zilla Parishad, Solapur. |) | |
| |) | |
| 4. Smt. Shobha Adinath Fuke, |) | ... Respondents. |
| Age :41 years, Occ.- Service, |) | |
| R/at.Shete Plot, at/post-Natepute, |) | |
| Tal. Malshiras, Dist. Solapur. |) | |

Mr. Satish S. Raut, Advocate for the Petitioners.
 Mr. B. V. Samant, AGP for the State,- Respondent Nos. 1 to 3.
 Mr. R. V.Bansode, Advocate for Respondent No. 4.

**CORAM : S. C. DHARMADHIKARI AND
SMT.BHARATI H. DANGRE, JJ.**

DATE : 10th NOVEMBER, 2017

ORAL JUDGMENT : (PER S.C. DHARMADHIKARI,J.)

1 By this Petition under Article 226 of the Constitution of India, the Petitioners are challenging the Orders dated 30th September, 2013 and 21st October, 2013 of the Respondent Nos. 2 and 3.

2 We would refer to these orders in detail so as to appreciate the arguments of the Petitioners' Advocate.

3 By the order dated 30th September, 2013, which is styled as 'impugned order' to the petition, the 4th Respondent, who has been working as a part time Librarian from 5th August, 1997, sought an approval through the Management to the said appointment and the Education Officer (Secondary), Zilla Parishad, Solapur on 27th March, 1998, 8th January, 1999 and

28th October, 1999 granted approval to the appointment of the 4th Respondent till the end of the academic year. Thereafter, a further order was passed on 30th October, 2001, granting permanent approval to the appointment of the 4th Respondent as a part time Librarian with effect from 14th June, 2000.

4 Thereafter, there is a reference made to the recommendations of the Chiplunkar Committee. That Committee expressed an opinion and recommended that such of the schools which have approved post of a part time Librarian and there is an appointment made on such posts on a regular basis, when incumbent has completed five years, then, such appointment shall be converted into full time Librarian post by up-grading the existing incumbent and that is how the school namely, Dr.B. J. Date Prashala, Natepute, Tal. Malshiras, Dist. Solapur, forwarded a letter dated 29th March, 2004 to the Education Officer (Secondary), Zilla Parishad, Dist. Solapur. The impugned order refers to a Government Resolution dated 3rd August, 2006 and the government has in terms of the

proposal received in the year 2004, permitted the creation of that post and filling in it up accordingly. Thereafter, a communication dated 23rd March, 2007 is referred, pursuant to which the proposal of converting the post of part time Librarian into the full time Librarian was approved. Thereafter, the Education Officer (Secondary), by the order dated 10th December, 2008 approved the proposal of the Management and directed the Head Master of the School to appoint the 4th Respondent as a full time Librarian. However, instead of allowing the 4th Respondent to resume duties, the School Management made a proposal and got approved the same through the Education Department and by which a Seven Post Roster (Group 'C') was sanctioned. In other words, there was a roster, permitting 2 junior Clerks, 2 full time Librarians and 3 Laboratory Assistants to be appointed. Therefore, the impugned order refers to this proposal/roster and says that it is not possible for the Management, to grant any appointment to the 4th Respondent. Further, the impugned order points out

that in seven roster point submitted by the Management itself, the 7th post has been shown as an open post.

5 Then there is reference made to the writ petition nos. 900 of 2011 and 1000 of 2011 in this court filed by the 4th Respondent to this petition. On these two petitions, orders were passed on 25th November, 2011 and prior order is of 23rd August, 2011. By these orders, the Deputy Director, Pune Division, Pune, and the Education Officer (Secondary), Zilla Parishad, Dist. Solapur were directed to decide as to whether the 4th Respondent can be appointed as full time Librarian. A decision was to be taken within a period of three months.

6 The impugned order recites that though the 4th Respondent reported for duties on 01st February, 2011, she was not allowed to sign the attendance muster/register and her salary was also not released. It is in these circumstances, the 4th Respondent filed a contempt petition in this court being Civil Contempt Petition No. 338 of 2013. On 4th September,

2013 there is an order passed on this contempt petition, by which it was directed that the authority should inform the court as to what steps were taken to implement the earlier orders. The Authority sought further time and, on 26th September, 2013 at a hearing of the contempt petition, the authorities were directed to take decision by 3rd October, 2013. It is in these circumstances that the Head Master of the said School, speaking for the Management, informed the Deputy Director by a letter dated 30th September, 2013 that on account of the seven roster point, these posts and particularly, on which the 4th Respondent was to be appointed, are reserved and that is why the 4th Respondent cannot be appointed. On such a communication from the Management, the Education Officer (Secondary) to whom the papers were once again forwarded, noticed that the department had specifically approved the appointment of the 4th Respondent and had opined that she can be appointed as a Librarian on full time basis. Further on 30th September, 2013 and according to the proposal of the Management, it is evident that full time

librarian - Shri Deshpande had retired from service on 30th April, 2013. According to this proposal, it is also evident that one Ankush Rama Shinde, who was working in the Secondary School as a Laboratory Assistant also retired on 30th April, 2013. On these two vacant posts, the Management can appoint one person belonging to Scheduled Caste and one person belonging to Scheduled Tribe.

7 It in these circumstances, the Deputy Director expressed an opinion that on account of the prior proposals, the decision of the government, giving specific directions to the Management, it is evident that the department had no objection to the appointment of the 4th Respondent as a full time librarian. The Management was faulted for having not abided by the roster but that has no impact on the appointment of the 4th Respondent. All the more, when there are two vacancies, which can be filled in in terms of the roster. Therefore, the 4th Respondent was to be accommodated , as per the earlier directions, but on the the condition that the

two vacant posts should be filled in by appointing the SC and ST candidates.

8 It is evident that this was the order passed on 30th September, 2013.

9 Thereafter, the contempt petition no. 338 of 2013 was placed before the Division Bench, to which one of us (S.C.Dharmadhikari,J) was a member. On 10th October, 2013 this court after hearing all the parties passed the following order :

“14. In the light of the above discussion, we do not find that the explanation given for the delay in complying with this Court’s orders is bonafide and deserves acceptance. We do not wish to pursue the matter in civil contempt jurisdiction any further because the decision taken on 30th September, 2013 has been placed on our file. Once the decision is taken and so belatedly, we do not deem it fit and proper to pursue the proceedings as the Petitioner states that her grievance is not fully redressed. She would accept the benefit in terms of this order under protest and without prejudice to her legal rights and contentions.

15. In the above circumstances, we direct that the State must take all consequential measures and steps in pursuance of the decision taken on 30th September, 2013. We are assured that within a period of two weeks from today, the Petitioner would be communicated the formal decision through the management with regard to her appointment as a full time Librarian at the concerned school with effect from 1st May, 2013. Thereafter, the Deputy Director of Education will take further steps so as to fix her salary and attendant benefits and also issue ancillary directions with regard to continuity of service. All such orders would be passed within a period of four weeks from the date of receipt of a copy of this order.”

In this order, the Division Bench noted that the Management was throughout in favour of appointing the 4th Respondent to this petition. The Management was pursuing the cause of the 4th Respondent. The department was not complying with the orders of this court, by accepting the proposal of the Management, because it was of the view that the Management had not complied with the government resolution, circulars and decisions with regard to the recruitment and appointment.

However, the 4th Respondent was not at fault and her cause was pursued from 29th March, 2004. It is on that date, the Management forwarded her proposal. It is in these circumstances, the government authorities were faulted for not abiding by this court's orders and directions.

10 The second order, a copy of which is at page 57 of the paper book, is dated 21st October, 2013 and surprisingly that is also challenged in this petition.

11 By that order, the 2nd Petitioner to this petition, the Head Master of Dr.B.J.Date Prashala, Natepute, Tal. Malshiras, Dist. Solapur, was informed and particularly with reference to the letter of 17th October, 2013 of the Deputy Director, Education, the order of the Education Officer (Secondary) dated 17th October, 2013 and the Application of 21st October, 2013 of the 4th Respondent that the 4th Respondent has not been allowed to sign the attendance muster from February 01, 2011 and that she has not been paid her salary as well.

There was a specific order passed in her favour. Therefore, the Management was directed to forward the request in writing so as to permit her to draw salary from 1st February, 2011 to 30th April, 2013 and pay the amount in respect thereof to the 4th Respondent. Therefore, the pay bills be forwarded and immediately to the Superintendent in the office of the Education Officer (Secondary), Zilla Parishad, Solapur. Once again, it was observed that there are courts orders and specifically in favour of the 4th Respondent and at that time the Management had taken a stand, favouring the 4th Respondent. That is how it was directed that the salary of the 4th Respondent should be paid.

12 These are the orders passed and which are now impugned in the writ petition. The orders are impugned on the footing that on 11th November, 2013, by addressing a letter to the Education Officer (Secondary), the Management pointed out as to how the earlier proposal forwarded by it could not have been pursued much less approved on account

of the fact that the 4th Respondent is an open category candidate. She has not been appointed against the post which is vacant and shown as open. She has been appointed against the post reserved for the scheduled tribe. That is how her appointment appears to be contravening the Rules and is illegal. Thereafter, all communications are mentioned and the orders are referred, and then a reference is made to the order passed by the Presiding Officer, School Tribunal, Pune Region, Solapur in Appeal No. 14 of 2009 dated 30th November, 2010. It is in these circumstances, that the Management requested that in the event the 4th Respondent is appointed and her salary is released that would create complications and by that once again legal issues would crop up. It is in these circumstances, the Management prayed that the Education Officer (Secondary) should not be insist upon compliance of the orders or directions, approving the order of appointment of the 4th Respondent.

13 It is this stand, which is reiterated in several grounds in the writ petition. However, when these grounds are reiterated in the oral arguments by the petitioners' counsel, he overlooks the fact that on 20th November, 2013, the President of Petitioner No.1-Society was informed in writing by the Education Officer (Secondary), Zilla Parishad, Solapur, that there was a proposal forwarded by the Management, permitting one Machhindra D. Kokate, to work as a Head Master. However, the Deputy Director of Education, Maharashtra State, Pune Division, had passed an order as to why the 4th Respondent has not been allowed to resume duties though it was directed that she should be appointed as a full time librarian and her appointment was duly approved. It is in these circumstances, that the promotion of the Head Master was not approved but yet, not to cause any inconvenience to the Management and /or to create unnecessary complications, by this communication the Education Officer (Secondary), Zilla Parishad, Solapur, permitted the said Machhindra D. Kokate to sign the requisite documents as a Head Master and

for the purpose of smooth and efficient day-to-day functioning of the School.

14 We, therefore, during the course of the arguments yesterday and equally today, called upon the Petitioners' counsel to explain as to why the Management resists compliance with this court's orders and directions. In the garb of challenging the orders of the State Government and particularly, the Respondent Nos. 1 to 3, in effect the Management is defying the orders of this court and that was the fundamental aspect of the matter brought to the notice of the petitioners' counsel. He insisted, as pointed out in the petition, that there are practical difficulties in complying with the orders passed by the Respondent no. 1 to 3. Those are highlighted in the grounds of this petition. He specifically urged that there were two posts of librarians, one post was filled in by appointing one Rajendra M. Landge by order of 31st July, 2010 and an approval to his appointment has not been granted. The proposal in that behalf is pending with the

Respondent Nos. 1 to 3. Then one Ankush Rama Shinde was promoted as Laboratory Assistant (Class -III) and he retired on 30th April, 2013. On the said vacant post, one Dhananjay B. Dixit, who was since working and for 27 years as Lab Attendant (class IV) has been appointed on 31st May, 2013. The proposal for approving these appointments is submitted to the authorities and that is pending. Thus, there is only one vacancy in the post of Librarian and that is reserved for the scheduled caste. It is in these circumstances, the order of Assistant Commissioner (Backward Cell), Pune Division, dated 10th November, 2008 was pointed out and it was submitted that the same is raising difficulties in complying with the impugned orders. Thus the 2nd and the 3rd Respondent should have appointed the 4th Respondent in any other school, where vacancies were available in open category. That is how, should we put end to the matter and should not insist on the petitioners' complying with the orders and directions. We are aghast and indeed shocked at such an approach of the petitioners, which is nothing but an open defiance of the

bindings orders of this court. Pertinently, all these facts could have been pointed out and were rather pointed out to this court in the earlier round of litigation. This litigation was not an usual one. The 4th Respondent filed two writ petitions against the Respondent Nos. 1 to 3, namely, the State Authorities and the officials. At that point of time, the petitioners' Management fully supported, the 4th Respondent. We do not see why this somersault is taken now and after the orders and directions of this court, incidental communications and consequential directions were issued, they have not been complied with. That is the reason why we termed this as an open defiance of the orders of this court. Pertinently, none of the orders of this court passed in the earlier round of litigation are quashed and set aside. They are final and bind the petitioners therein.

15 Surprisingly, in this round, we find that the petitioners are not supported by the Respondent Nos. 1 to 3. In their affidavit filed in reply to this petition and affirmed by the

Deputy Inspector of Education, working in the office of Directorate of Education, Pune Region, Pune, it is clarified that, from the record forwarded by the School, the number of students in the school is more than 1000. The 4th Respondent was working as part time librarian for more than five years. Therefore, the post was required to be upgraded to full time librarian. That is how, it was an upgraded post. There was no question of accommodating the 4th Respondent against any reserved post. Once there was a vacancy after the retirement of Shri Deshpande and Shri Shinde, it is then the Department clarified that by appointing reserved category candidates in these two vacancies, the back log can be filled in and then there would be a compliance with the roster. It is precisely this aspect of the matter which is highlighted by the 4th Respondent in her affidavit in-reply to this petition. So far as these two affidavits are concerned, the petitioners counsel would urge that we must refer to the rejoinder of the Management and in that rejoinder, the Management has pointed out as to how there are resolutions of the Government

passed in 1999 and subsequently on 3rd August, 2006, (Annexure “D” to the petition), clarifying that there are terms and conditions set for converting the post of part time librarian into a full time librarian post in private aided school in the State. The post which was converted is a new appointment and not a promotion. It is in these circumstances, that while making appointment to the post as a full time librarian, it will be subject to the reservation policy of the State Government and particularly, in respect of the backward class. In the year 2008, the petitioner no. 1 institute verified its roster of teaching and non-teaching staff and got it checked from the Respondent No.3. It was approved by the Assistant Deputy Commissioner, Pune Division, Pune (Backward Class Division) on 31st October, 2008. While verifying the roster, the 3rd Respondent placed the remarks that the vacant post is reserved for scheduled caste and scheduled tribes candidates only. It is in these circumstances that the Management appointed Shri Dhananjay B. Dixit, by way of promotion to the vacant post of Lab Assistant.

Dhananjay B. Dixit was working in the institution since 11th May, 1986, which is more than 25 years, on the post of Lab Assistant and hence, was entitled to promotion and the said promotion was in accordance with the Government Resolution dated 12th January, 2000.

16 The Management, then, pointed out that Shri S. V. Deshpande, Librarian, retired on 30th April, 2013 and the post fell vacant, which was reserved for the scheduled tribe as per the roster. It is in these circumstances, that a reference was made to another Government Resolution dated 23rd October, 2013; by which the Management is allowed to appoint only one full time librarian. That is how its staffing pattern was approved on 24th August, 2014 for the year 2013-14. Once there is only post of Librarian duly sanctioned and approved and that has been filled in by appointing one Rajendra Landge from Scheduled Caste on 31st July, 2010, then there is no question of appointing the 4th Respondent.

17 We are of the firm opinion, after reading this rejoinder affidavit, that the facts set out therein are clearly an afterthought. We do not see how if Rajendra M. Landge was appointed on 31st July, 2010 as per the roster verified and way back in 2008, this fact could not have been pointed out in the earlier round of litigation initiated by the 4th Respondent. The counsel appearing for the Petitioner may say anything but we do not find that when the orders of this court were passed, the management was prevented from pointing out these facts, which are now set out, so as to defy the same. Pertinently, when the 4th Respondent made a complaint of non-compliance of the order in her favour, by the State, the petitioners promptly supported her. At that time, there was no difficulty in complying with this courts orders and directions. Further, we have not been shown anything in the Government Resolutions, which prevents the Management, while converting the post from part-time to full time librarian, from protecting the rights of the incumbent-Respondent No. 4. That is precisely done in this case.

18 We do not see how the binding orders of this court could be defeated by making a reference to this roster point and the reservation for the scheduled tribe. Surely, this class deserves better treatment. The protection and welfare of this class is a matter of concern. However, that should not be plea raised, so as to resist compliance with the binding orders of the State and this court. The backward and reserved class candidates should not be used as shield so as to get over the binding directions of the authorities and the court.

19 This is precisely what has been pointed out by the 4th Respondent in her sur-rejoinder. In her sur-rejoinder she has brought on record following material facts :

“7) As regards the contents of para 5 of the Affidavit under reply, I say that the Govt. Resolution dated 03.08.2006 relied upon by the Petitioners, is totally misconstrued by the Petitioners. I say that the terms and conditions mentioned in the said Govt. Resolution dated

03.08.2006 are not applicable to my case for more than one reasons, namely -

(a) The Directorate of Education, Pune had granted approval in my favour vide their Order dated 23.03.2007 (Page Nos. 117 to 199) of the paper book),

(b) It is pertinent to note that while passing the aforesaid order, the Directorate of Education, Pune had specifically referred to the Govt. Resolution dated 03.08.2006 at serial no. (1) in the said order dated 23.03.2007,

(c) Said approval dated 23.03.2007 stands good, valid and in operation, as on date, since the same is neither challenged nor questioned nor set aside by any Competent Authority,

(d) On the contrary, even as on today, the State Authorities are supporting my case on one of the main grounds of the said Approval dated 23.03.2007 passed by the Directorate of Education, Pune.

As regards the contentions of the Petitioners regarding Reservation for the post of Full Time Librarian, I say that according to the Petitioners, there is one post of Full Time Librarian is permitted as on today. (In view of the Govt. Resolution dated 23.10.2013 & other documents annexed by the

Petitioners alongwith their Affidavit under reply, [page nos. 190 to 194 of the paper book]). If that be so, in view of the settled position of law, in case of an 'Isolated Post', the Reservation Policy is not applicable.”

She has also pointed out new hurdles that are now created by the Management by relying on a roster are to avoid compliance of the earlier orders and directions and particularly, the impugned one. The Government Resolution dated 23rd October, 2014 cannot be made applicable with retrospective effect, is her stand. She has also brought on record the fact that Shri Rajendra M. Landge, allegedly appointed on full time basis as a Librarian; his appointment order shows that it has been made at a rate fixed by the Management on honorarium basis. It is an additional appointment which is now put-forth to get over the binding orders and directions of this court. Further in para 14, she points out that she has been attending and discharging the duties of full time Librarian regularly. The Petitioners have prohibited her from signing the muster roll on and from 01.02.2001 and that she

has been paid salary as full time Librarian from 1st May, 2013 to 31st October 2013 by the Education Officer, (Secondary), Zilla Parishad, Solapur in her Salary Account No. 10818 with the Solapur District Central Co-operative Bank Ltd., Natepute Branch, Tal. Malshiras, Dist. Solapur. The letter dated 21st October, 2013 to that effect by the Education Officer, (Secondary) addressed to the Head Master of the school is termed as self explanatory.

20 Then she pointed out that certain part time Librarians have been given the benefit of the post of full time Librarian by way of conversion and the two Government Resolutions relied upon by her are dated 03rd June, 2015. We find that there is no denial of these facts and in fact what we have on record is an affidavit which has been filed by the Deputy Education Officer (Secondary), Zilla Parishad, Solapur. In other words, none of these aspects, as highlighted by the 4th Respondent and equally the statutory authorities in the

earlier orders, are now denied nor they are resiting or backing out from the same.

21 It is in such circumstances that, we repeatedly told the Petitioners' counsel that if we deal with this petition on merits, we would be constrained to impose heavy costs, for not only wasting our precious judicial time but to curb open defiance with the orders of this court.

22 Long time back and in the reported decision in the case of **Bigyan Kumar & Ors. vs. Union of India & Ors**, reported in AIR 1988 Supreme Court 1025, the Honble Supreme Court with regard to the judicial orders has observed as under :

“7) We would part with the matter by recording our serious concern and disapproval of the growing conduct of parties and public officers in particular of ignoring the directions of the Courts and the multiplying instances of confrontation. The Court, including the apex one, is a part of the State and is a built-in-mechanism of the Constitution to administer justice in

accordance with law. For discharging that duty, the Court has got to adopt the attitude of critical assessment of situations connected with litigation brought before it for adjudication. The manner of functioning of the Court in accord with the Rule of Law has to be dispassionate, objective and analytical. The Judges who preside over these courts do not act with a sense of superiority; nor do they look down upon others in the community. In order that the system may efficiently work and the purpose for which the courts are established is duly served, it is necessary that everyone within the framework of the Rule of Law must accept the system, render due obedience to orders made and in the event of failure of compliance, the rod of justice must descend down to punish. We hope and trust that everyone within the system realizes this situation and does not unnecessarily get into a confrontation.”

From the reading of this paragraph, it is evident that the judicial orders cannot be brazenly flouted. The tendency as reflected in this case and repeatedly after rounds needs to be strongly deprecated. The conduct of the petitioners is contumacious. It is this additional reason which persuade us to impose costs on the petitioners.

23 As a result of the above discussion, we dismiss this Writ Petition with costs, quantified at Rs. 5,00,000/- (Rs. Five Lacs). The costs to be paid by the Petitioners within a period of four weeks from the receipt of copy of this order. It be paid in equal proportion to the State as also the Respondent Nos. 3 and 4. If the costs are not paid, this court, through its Registry shall issue a certificate to that effect and, particularly that the order and direction of the payment of costs has not been complied with within this time schedule and based on such certificate, the Collector of District Solapur, then to initiate measures to recover this amount, as arrears of land revenue.

(SMT.BHARATI H.DANGRE,J.) (S.C.DHARMADHIKARI,J.)

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