

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

CIVIL APPLICATION NO.2143 OF 2018
IN
WRIT PETITION NO. 468 OF 2018

SHRI CHAKRADHAR SHIKSHAN AND SAMAJ PRABODHAN MANDAL
THROUGH ITS PRESIDENT AND OTHERS
VERSUS
ANURADHA RAOSAHEB GAJARE AND ANOTHER

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Advocate for the Petitioners : Shri Thombre S.S..
Advocate for Respondent 1 : Shri Wakade Ramesh I..

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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 21st February, 2018

Per Court:

1 The Petitioner/ Management has moved this Civil Application making a grievance that this Court has been misrepresented by Respondent No.1/ original Appellant and based on the said representation, an order has been passed on 01.02.2018.

2 Shri Thombre, learned Advocate for the Management, submits that on 01.02.2018, since he was on his feet before another Court, his colleague has mentioned the matter and an order was passed without hearing the Petitioner/ Management.

3 He points out that this Court has directed the Management to

deposit the suspension allowance of the Appellant from August, 2017 till February, 2018 in this Court on or before 16.02.2018. However, in November, 2017, the Appellant had preferred Writ Petition No.14521/2017 before the learned Division Bench of this Court, setting forth prayer clause (B), which is as under :-

"(B) By issuing a writ of mandamus or any other writ, order or directions in the like nature, respondents may, kindly be directed to pay the Subsistence Allowances to petitioner from 1st July, 2014 to 17.09.2014 and thereafter, as per ordered by Hon'ble School Tribunal, Aurangabad on 03.08.2017 in Appeal No.40/2015 from the date of termination i.e. 18.09.2014 till today in accordance with law."

4 Notices have been issued in the said Writ Petition and as such, the learned Division Bench of this Court is seized of the said petition and is entertaining the prayers put forth by the Appellant.

5 Shri Wakade, learned Advocate for Respondent No.1/ original Appellant, submits that on 01.02.2018, he had pointed out to this Court that the judgment of the School Tribunal dated 03.08.2017 directing a de-novo enquiry and treating the Appellant to be on suspension, has not been implemented on a spacious plea that this petition is pending. He had, therefore, canvassed that at least the suspension allowance should be paid to the Appellant. He had no option, but to make this prayer as neither the Appellant is reinstated in service nor an enquiry is conducted pursuant to

the Tribunal's order nor is the Appellant receiving the suspension allowance.

6 I find that the conduct of Shri Wakade, learned Advocate, is quite disturbing. Had he not been aware of Writ Petition No.14521/2017, one could accept that he had no knowledge that the same Appellant has put forth the prayer for payment of subsistence allowance before the learned Division Bench of this Court. The said petition has been, however, filed through Advocate Shri Wakade. It, therefore, cannot be believed that Advocate Shri Wakade was unaware that the Appellant had put forth such a prayer before the learned Division Bench. As such, knowing fully well that the prayer reproduced above, which has been drafted by Advocate Shri Wakade, being under consideration of the learned Division Bench, he should have refrained from making a grievance in this Court while opposing the adjournment contending that the suspension allowance has not been paid and there should be a direction to pay the same.

7 I, therefore, find that it was out of the suppression of a material fact that this Court has passed the order on 01.02.2018. To say the least, the conduct of Shri Wakade is deprecable and it is squarely covered by the view expressed by the Honourable Supreme Court in the matters of *Kishore Samrite v/s State of Uttar Pradesh*, **(2013) 2 SCC 398** and *Bhaskar Laxman Jadhav and others vs. Karamveer Kakasaheb Wagh Education Society*, **AIR 2013 SC 523**. Though this could have been a fit

case to initiate an action against Shri Wakade, however, at this juncture, Shri Wakade has tendered an apology in open court. Hence, I am refraining from doing so.

8 Considering the above, this Civil Application is allowed. The order dated 01.02.2018 passed by this Court is recalled.

9 List Writ Petition No.468/2018 in the Urgent Admission Category on 14.03.2018.

kps

(RAVINDRA V. GHUGE, J.)