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

**CONTEMPT PETITION NO.619 OF 2018
IN
WRIT PETITION NO.1692 OF 2016**

Gopalprasad s/o Balaprasad Awasthi,
Age: 48 years, Occu: Service,
R/o: Central Hanuman, Latur,
Tq. & Dist. Latur

..PETITIONER

VERSUS

1. Satish s/o Rupchand Suryawanshi,
Age: Major, Occu.: Govt. Service as
Joint Director, Vocational Education
and Training, Regional Office, Nashik,
Trimbak Naka, Old Agra Road,
Nashik-2

2. B. R. Shimple,
Age: Major, Occu. Govt. Service as
Joint Director, Vocational Education
and Training, Regional Office,
Bhadkal Gate, Aurangabad

3. The State of Maharashtra,
Through its Secretary,
Higher & Technical Education
Department, Mantralaya, Mumbai

..RESPONDENTS

Mr S. V. Warad, Advocate for petitioner;
Mr A. R. Kale, A.G.P. for respondent No.3

**CORAM : PRASANNA B. VARALE
AND
MANISH PITALE, JJ.**

DATE : 28th August, 2018

ORAL ORDER:

Heard Mr Warad, learned Counsel appearing on behalf of the petitioner.

2. This is a petition raising a grievance of non-compliance of the orders of this Court dated 12th October, 2017 and 8th November, 2017. The submission is, by non-complying the order of this Court, the respondents are indulged in an act of willful disobedience of the orders of this Court, as such, an action accordingly be taken against them.

3. Our attention was invited by learned Counsel Mr Warad firstly to the order dated 8th July, 2015, passed by the learned Single Judge of this Court in Writ Petition No.1624 of 2001. It may not be necessary to refer to the other details, suffice it to say that the learned Single Judge, on considering the issue raised in the petition, was pleased to direct respondent No.2 i.e. Deputy Director of Vocational Education and Training, Aurangabad to consider the representation of the petitioner dated 1st September, 2014 taking into account the facts referred by the learned Single Judge as well as the service span of the petitioner for 17 years with respondent Dayanand Science College and Rule 26 of the Maharashtra Employees of Private Schools (Condition of Service) Rules, 1981 (for short 'the Rules').

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4. Learned Single Judge was pleased to direct the authority to take a decision expeditiously and within a stipulated time frame of 10 weeks from the date of the order. Mr Warad submitted that the petitioner was not claiming any monetary benefits but his only prayer was of his absorption and treating the petitioner as a surplus teacher in view of the Rules and various Government Resolutions. Mr Warad then invited our attention to the order passed by the Joint Director dated 3rd September, 2015. As the petitioner was permitted to avail the remedies in case there is a negative decision against him, the petitioner again approached this Court by filing Writ Petition No.1692 of 2016. The Division Bench of this Court on 12th October, 2017 passed the order, the relevant part of which reads thus:

"4. The petitioner is seeking absorption pursuant to Rule 26 of the Maharashtra Employees of Private Schools (Condition of Service Regulations) Rules. The respondent No.3 shall forward the proposal to the respondent No.2 within a period of three (03) weeks from today. On receipt of the said proposal, the respondent No.2 shall take decision upon it, on its own merits, in accordance with law, expeditiously and preferably within a period of six (06) months from receipt of the proposal. The respondent No.2 shall consider all the relevant aspects of the matter including Rule 26 of the M.E.P.S. Rules. The writ petition accordingly disposed of. No. costs."

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5. Mr Warad then by inviting our attention to the further order of the Division Bench, dated 8th November, 2017 submitted that a motion was moved for speaking to the minutes of the order dated 12th October, 2017 and considering the submission of the learned Counsel appearing for the petitioner, the Division Bench was pleased to modify the order by disposing of the motion. The necessary modification appears in paragraph 2 as well as paragraph 4 of the said order. Mr Warad then submits that the Joint Director, without considering the order of the Division Bench whereby the authority was directed to take into consideration Section 5 (2) of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 (for short 'the Act') along with Rule 26 of the Rules, issued the order dated 3rd January, 2018 thereby refusing to accept the prayer for absorption of the petitioner. Our attention was then invited to the representation made by the petitioner submitting before the authority that there is an error committed by the authority and the authority failed to consider Section 5 (2) of the Act. It seems that the authority found some favour with the petitioner in the grievance raised in the representation and accordingly the authority called upon the petitioner for personal hearing.

6. Mr Warad then submitted that as the authority, namely, Joint Director of Vocational Education and Training, Regional Office, Aurangabad was unable to arrive at some conclusion, the matter was referred to the Director of Vocational Education and Training, Mumbai by communication dated

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14th May, 2018. The said communication is placed on record at Exh.'N'. The communication refers to the personal hearing to the petitioner as well as the hearing of the School Inspector, the representative of the Vocational Education and Training Directorate at Latur and the representative of the Management i.e. Shri. Rajarshi Shahu College, Latur. The Joint Director, by apprising these facts requested the Director to guide him in the matter. Mr Warad submits that though the guidance is sought for by communication dated 14th May, 2018, till date there is no decision. Mr Warad then submitted that the petitioner is before this Court claiming an urgency in view of the fact that the petitioner though stakes his claim for absorption in view of the orders of this Court and in view of the provisions of the Act and the Rules, as per instructions received by him, an another person is also staking his claim and the petitioner apprehends that without considering his grievance, the claim of the other person may be considered by the institute in view of no decision by the authority.

7. Considering all aforesaid facts, we are of the opinion that the petition itself can be disposed of by issuing certain directions, as in strict sense the grievance of the petitioner that the order of this Court is not complied with and there is willful disobedience by the authority cannot be entertained, but at the same time, the grievance of the petitioner can be taken care of by issuing directions which we propose to issue to the authority. It is not is dispute that though the Joint Director forwards the communication to the

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Director seeking his guidance, the Director himself is the competent authority to take appropriate decision. Thus, we direct the Director of Vocational Education and Training, State of Maharashtra, Mumbai, to take a decision in view of the communication dated 14th May, 2018, forwarded to him by the Joint Director of Vocational Education and Training, Regional Office, Aurangabad, needless to state, considering the orders of this Court dated 12th October, 2017 and 8th November, 2017. This exercise be undertaken by the Director as expeditiously as possible and not later than three weeks from today.

8. Learned Asstt. Government Pleader to communicate this order forthwith to the Director of Vocational Education and Training, Maharashtra State, Mumbai.

9. Registry to issue authenticated copy of this order to the learned Asstt. Government Pleader.

Contempt Petition is accordingly disposed of.

(MANISH PITALE, J.)

(PRASANNA B. VARALE, J.)

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