

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CONTEMPT PETITION NO. 279 OF 2007
IN
WRIT PETITION NO. 5264 OF 1996

Shri. Sudhir V. Pandharpure	}	
and Ors.	}	Petitioners
versus		
The State of Maharashtra }		
and Ors.	}	Respondents

Mr. S. S. Pakle for the petitioners.

Mr. V.M. Mali-AGP for State.

Mr. Vikas Takulkar i/b. Mr. P. B. Deo for
respondent nos. 4 to 6.

CORAM :- S. C. DHARMADHIKARI &
SMT. BHARATI H. DANGRE, JJ.

DATE :- JUNE 18, 2018

P.C. :-

1. By this contempt petition, the petitioners seek action in contempt against the respondents for not implementing an order dated 8th January, 1997, copy of which is at Exhibit "A" passed by this court in Writ Petition No. 5264 of 1996.

2. It is common ground that on this petition, notice was issued by this court and thereafter, the court found that the petitioner has not annexed a certified true copy of the order passed, contempt of which is complained. Later on, when that objection

was removed, the petition was heard by several Benches. We would proceed to dispose of the contempt petition on the basis of the material available before us.

3. It is stated that the petitioners in this contempt petition had filed a writ petition in this court. That writ petition was listed for admission before a Division Bench and an order came to be passed thereon. The order, according to the petitioners, restrains the respondents from terminating the services/transferring the petitioners and it is alleged that in utter defiance of that order, respondent nos. 4 to 6 intentionally and willfully terminated the services of the petitioners and similarly situated employees. That is how an initial contempt petition was filed being Contempt Petition No. 274 of 2002. In that, an order was passed, copy of which is at Exhibit 'B', which records that the fourth respondent and respondent nos. 13 and 14 to that petition stated before the court that if the petitioners report to duty with effect from 7th June, 2007, they will be allowed to perform the same. Accepting that statement, that contempt petition was deferred.

4. Then, it is stated that respondent nos. 4 to 6 to this contempt petition prevented the petitioners from reporting for work. They created a record that it is these employees, who are not reporting for duties.

5. It is stated that a contempt petition being Contempt Petition No. 41 of 1997 was filed and in that as well, same stand was taken that it is the petitioners, who are not reporting for work.

6. Thus, as an habit, these respondents make a casual and irresponsible statement that the petitioners have abstained from duties, whereas, the position is otherwise and that is how the averments and allegations in this contempt petition would proceed. Thus, the sum and substance of the allegations, on which the contempt is founded, is that the order of this court and subsequent thereto, a solemn statement recorded by this court as an undertaking, is flouted. A record is created as if the concerned petitioners in that writ petition, in whose favour the order has been passed, have abandoned the services. That is how an argument is placed that there is no case of civil contempt made out.

7. On such a petition, we find that the order that is stated to be breached is the initial order of 8th January, 1997 in Writ Petition NO. 5264 of 1996. It is stated that this order grants a further interim relief in terms of prayer clause (g). Prayer clause (g) of that petition, according to the present contempt petitioners

prevents the concerned respondents from terminating the services of the petitioners. Then, on 6th June, 2007, a contempt petition, which again is stated to be moved in this writ petition itself proceeded on the footing that the advocate for the respondents, who are contemnors before us making a statement that the petitioners in this contempt petition so also the writ petition can report for work. Thus, the initial interim order, copy of which is at page 16 dated 6th May, 1996 and a further interim order in terms of prayer clause (g) and which is stated to be passed by this court in the very writ petition dated 8th January, 1997 is stated to be breached.

8. From the pleadings and the annexures to this contempt petition, we found it extremely difficult to ascertain as to who are the petitioners in the earlier petition, who are claiming the benefit of the interim order and in what capacity they were employed and whether their services were indeed continuing, as claimed. There is a notice preceding this contempt petition, copy of which is at Exhibit 'F' at page 25 of the paper book, which refers to the subject of illegal notice of abandonment of service at Smt.Premalatai Chavan Polytechnic, Karad. The whole notice proceeds on the footing that the stand of the Management that the petitioners have abandoned the services, is totally

mischievous. Thus, on the basis of a cause of action, which at best can be arising subsequently, instead of filing substantive proceedings, this contempt petition has been filed. It is apparent from the advocate's notice, copy of which is at Exhibit 'G' at page 31 that what is alleged therein is hardly a foundation for contempt. There is a clear dispute inasmuch as the Management alleged that the petitioners have voluntarily abandoned the services by remaining absent, whereas, this allegation is vehemently denied.

9. In these circumstances, we are left with an additional affidavit in reply, which has been filed by the Administrative Officer in the office of the Joint Director of Technical Education, Pune Region and from his reply, what we can gather is that the sixth respondent is a non-Government private unaided institute working under the control of respondent no. 4-Management, namely, Yashwant Vidyapeeth, District-Satara. The petitioners are working in the said respondent no. 6-institute. The State and the Technical Education Department has not been providing any grant or any financial assistance to these institutes. The administrative and financial matters such as appointment of staff, payment of salary and allowances and the service matters are under the purview of this private Management and

respondent nos. 1 to 3 have no concern therewith. Thus, they have expressed their inability to interfere in the administrative or financial matters of this sixth respondent. The entire responsibility, therefore, is resting with this private Management and this officer has stated that he is unable to understand why in the contempt petition the State and the officer or the Director of Technical Education or the Directorate as a whole have been impleaded as party respondents.

10. Then, respondent nos. 4, 5 and 6 have filed an affidavit in reply, in which, it is stated that petitioner no. 2 and petitioner no.3 were working as clerks. Both of them have since attained the age of retirement and retired from the services. Yet, it is stated that there is a written communication dated 4th November, 2006 intimating the petitioners as to when and from which date they have abandoned the services. It is stated that when there are total 12 petitioners in this petition, by way of Exhibit 'E' communication of abandonment of service of only one petitioner, namely, Vijay Shrirang Ghare (petitioner no. 12) is annexed to the petition. The person, who has affirmed the petition, in relation to him, none of the documents are annexed.

11. Then, the Management places its version on facts and asserts that none of the petitioners in the present contempt

petition were concerned with Contempt Petition (Civil) No. 274 of 2002. That petition was filed by one A. Y. Mutawali and others. Their services were terminated on 4th December, 2001, as the department, in which they were working, was closed, whereas, in the present matter, the petitioners themselves have abandoned their services and it is communicated to them. Thus, this is a twisting of facts and the order passed in that petition is of no assistance. Then, it is stated that the petitioners have suppressed the fact that the amounts of Rs.13,00,000/- and Rs.1,10,000/- were deposited. Thereafter, there was a Contempt Appeal No. 9 of 2006, in which, an order was passed directing deposit of Rs.20 lakhs and which amount was also deposited. This fact is suppressed by the petitioners in the present petition. Then, there is a further order of 27th September, 2006 in Contempt Appeal No.9 of 2006. All these orders are not only referred, but their copies are also annexed. It is stated that the petitioners in this petition did not report for duty but gathered at site and started shouting defamatory slogans against the institute. This is not reporting for work. Then, there are several memos, which are issued with regard to abstention of the petitioners and reference to the same is made in this affidavit.

12. With this voluminous record, there is an additional affidavit in reply, which is filed again on behalf of respondent nos. 1 to 3 and which reiterates the earlier position. It is stated that the concerned polytechnic institute may or may not have adhered to the provisions of law, but there are distinct statutes, under which, the petitioners can assert the rights conferred in them, if any.

13. After having heard the learned advocate for the parties and perusing this petition with all these annexures, we are of the clear opinion that when there is a dispute as to whether the order protects the petitioners against termination, but the termination of the services has not been effected by any act attributable to the Management, as stated in the petition, but on account of the absentism of the petitioners themselves and an inference is drawn that they have abandoned the services, then, this aspect cannot be gone into in contempt jurisdiction. We cannot assume that the order of this court prevents the respondents from terminating the services or treating the services as terminated under any of the eventualities. If the allegations are that the petitioners themselves have not taken advantage or benefit of the interim order and have not reported for work, then all the more we are disinclined to grant any relief or pass any order in contempt jurisdiction. This not a normal and ordinary

jurisdiction, under which, parties like the petitioners can claim additional relief or seek further directions. The remedies for that are distinct. The contempt petition is entirely misconceived and it is dismissed. There would be no order as to costs.

(SMT. BHARATI H. DANGRE, J.)

(S.C.DHARMADHIKARI, J.)