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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CONTEMPT PETITION NO.432 OF 2008

IN

WRIT PETITION NO.1673 OF 2008

Sou. Sandhaya Ravindra Saygaonkar ...Petitioner

vs

Shri. Bapusaheb (Hanumantrao)

Kulkarni & Anr.

...Respondents

.....

Mr. Avinash Belge, i/b. Mr. Suresh S. Pakale, for the Petitioner.

Mr. P.B. Shah, a/w. Mr. K.P. Shah, for Respondent Nos. 1 and 2.

Ms. Vaishali Nimbalkar, AGP, for Respondent No.3.

Mr. D.D. Rananaware, for Respondent Nos. 4 to 6.

Mr. Sanskar Marathe, for Respondent No.8.

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CORAM : S.C. GUPTE, J.

DATED: JULY 13, 2018

P.C.:

. Heard learned Counsel for the parties. This contempt petition alleges breach or disobedience of an order passed by this Court in Writ Petition No.1673 of 2008.

2. This writ petition was filed by the management against the teacher challenging an order of the School Tribunal at Kolhapur, by

which the termination of the teacher was declared illegal and quashed. The teacher was directed to be reinstated with full back wages and continuity in service with effect from 17 October 1998. This Court disposed of the management's writ petition inter alia holding that the Respondent teacher was entitled to full back wages save and except the period from 9 December 1999 and till her appeal was restored by the School Tribunal. The order of the learned Single Judge on the writ petition was challenged by the School Management before a Letters Patent Bench. The letters patent appeal was finally dismissed on 7 June 2011. With effect from 21 June 2011, the Respondent teacher was reinstated in service. She continued to work with the school till the school was closed in June 2015 in pursuance of withdrawal of its recognition on 21 November 2015 for academic year 2015-16 as a result. In pursuance of an order passed by this Court on 17 October 2015. She got her salary and dues on the basis of continuity in service between 1 March 2012 and the closure of the school. The grievance of the Petitioner teacher is that she has not received back wages for the period till 1 March 2012.

3. Learned Counsel for the Petitioner submits that non-payment of back wages must be treated as a matter of willful disobedience to the order passed by this Court in Writ Petition No.1673 of 2008. On the other hand, it is the case of the Respondents herein, who are, respectively, the chairman of the school trust, namely, Shri Khadkeshwar Shikshan Prasarak Mandal, and the headmistress of the Secondary School originally run by the Mandal, that non-payment of back wages was on account of financial inability of the trust. It is

submitted that in the first place, the school became aided with effect from 2004-2005; before that date, it was an unaided school. Secondly, it is submitted that for the entire period upto February 2012, there was another teacher working in the school in place and stead of the Petitioner herein. This other teacher was terminated only after the letters patent appeal filed by the school management was dismissed by this Court. Till, however, this teacher was dismissed, the salary and other dues of this teacher were paid by Zilla Parishad as part of aid. It is submitted that since the school, being a recognized school receiving grant, was not in a position, on account of its inability, to honour payment which was due, this Court, by its order dated 17 October 2015, expected the Deputy Director to take an appropriate decision concerning withdrawal of recognition and of aid to the school. In pursuance of this order, the recognition of the secondary school run by the school management has been admittedly withdrawn by the State with effect from the academic year 2015-2016.

4. The question that now needs to be considered is whether the chairman of the trust and the headmistress of the secondary school should be held accountable for non-compliance of the order and punished under the contempt jurisdiction of this Court. Contempt jurisdiction is a special jurisdiction of this Court; it needs to be exercised sparingly and in circumstances which leave no manner of doubt that the breach or disobedience of an order of this Court has come about as a result of deliberate defiance and contumacious conduct on the part of the persons complained against and not for possible reasons beyond their control. Considering the overall facts and circumstances of the case, such

deliberate defiance does not appear as a matter of proven conduct on the part of the Contemnor Respondents herein. There is doubt whether non-payment of back wages in the present case is the result of deliberate disobedience or genuine inability to pay. The management appears to be relying exclusively on grant in aid received from the Education Department for running the school and in fact appears to have even suffered non-recognition of the school and its closure on account of its inability to raise financial resources for payment of past dues of the teacher.

5. In the premises, it is difficult to come to any definite conclusion that non-payment has occurred as a result of deliberate defiance of this Court on the part of the persons complained against. It is believable that such non-payment is on account of genuine inability of the school trust to pay the dues.

6. In the circumstances of the case, this Court, by its order dated 11 March 2015, directed the Respondents to disclose the assets of the trust which ran the secondary school. By an affidavit filed by Respondent No.1 herein, the assets have been placed on record. The assets include the school building having six class rooms, office and teachers room, and movables including school furniture. The estimated valuation of these assets is said to be about Rs.1 crore. There does not, however, appear to be any amount in the bank account of the trust. Since the assets are placed on record, the Petitioner herein may very well adopt steps for execution of the order of the School Tribunal read with the order passed by this Court in Writ Petition No. 1673 of 2008. The

Respondents agree not to deal with the assets of the trust referred to in the affidavit of Respondent No.1 dated 25 July 2017 for a period of three months from today.

7. In the premises, the apology tendered by the Respondent Contemnors is accepted and the contempt petition is dismissed. The Petitioner will be at liberty to adopt steps for execution of the order of the School Tribunal, read with the order passed by this Court in Writ Petition No.1673 of 2008. The executing court/authority shall regard the time spent by the Petitioner in the prosecution of this petition as time bonafide spent for redressal of the Petitioner's grievance and enforcement of the orders and execution may be permitted on that footing.

8. It is also directed that the service book of the Petitioner should be immediately made available to the Petitioner by the Respondents herein. It is made clear that this Court will take a very serious view, by permitting the Petitioner, if necessary, to once again have his petition placed on board for necessary orders, if the service book is not made available within two weeks from today. The service book shall be handed over to the Petitioner's advocate appearing in this petition.

(S.C. GUPTE, J.)

Smita
Johnson
Gonsalves

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signed by
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