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

**CONTEMPT PETITION NO.305 OF 2019
IN
WRIT PETITION NO.10833 OF 2017**

Vilas S/o Sudamrao Ingole
Age: 32 years, Occu: Service as
Shikshan Sevak R/o Kamalewadi,
Tq. Mukhed, Dist. Nanded

..PETITIONER

VERSUS

1. The State of Maharashtra
Through its Secretary,
Shri J. P. Gupta
Age: 56 years, Occu:Service as
Social Justice and Special
Assistance Department
Mantralaya, Mumbai-32.
2. Dilipkumar Rathod
Age: 46 years, Occu. Service as
Regional Deputy Commissioner,
Social Welfare Department,
Dr. Babasaheb Ambedkar
Social Justice Bhavan
Near Market Yard, Latur
3. Tejas Malwadkar
Age: 40 years, Occu: Service as
Assistant Commissioner, Social
Welfare, Nanded, Dist. Nanded
4. Vimukta Jati Seva Samiti,
Vasantnagar (Kotgyal)
Tq. Mukhed, Dist. Nanded,
Though its Secretary
5. Primary Ashram School
Kamalewadi, Tq. Mukhed, Dist. Nanded
Through its Head Master

..RESPONDENTS

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Mr V. S. Panpatte, Advocate for petitioner;
Mr S. D. Ghayal, AGP for respondent/State;

**CORAM : PRASANNA B. VARALE
AND
R. G. AVACHAT, JJ.**

DATE : 22nd August, 2019

ORAL ORDER:

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

2. It is the submission of Mr Panpatte, learned Counsel for the petitioner that the order dated 25th July, 2018, passed by this Court, is not complied with in letter and spirit. Perusal of the said order shows that rival claims were made by the parties, namely, the petitioner and the respondents. Considering these conflicting claims, the Division Bench of this Court thought it fit to direct the authority to consider the record produced by the petitioner and clarification given by the petitioner with regard to roster and thereafter to take decision afresh. The petitioners were permitted to produce entire record regarding roster, existence of backlog, applications seeking permission and thereafter the authority was directed to take decision afresh on its own merits. The parties were permitted to appear before the authority with entire record on 27th August, 2018 and the authority was directed to

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take decision afresh preferably within three months, after the parties appeared before it. The Division Bench also made it clear that while taking the decision, the order impugned in the petition would not be an impediment.

3. It is the submission of Mr Panpatte that the State Government thought it fit to constitute a committee of three members and accordingly three members committee consisting of Desk Officer and Under Secretary of Social Welfare Department, the Regional Deputy Commissioner of Social Welfare Department, Latur and the Joint Secretary of Social Welfare Department, Mumbai was constituted. The committee of three members took a decision and observed that insofar as the cases of the petitioners Shri. Vilas Sudamrao Ingole, Assistant Teacher and another Assistant Teacher Shri. Sayyad Jalil Mastansab are concerned, the appointments of these persons were made filling up the backlog and non absorption of surplus teachers cannot be an impediment for consideration of their claims. Thus, it was the submission of Mr Panpatte that this committee gave a positive finding in favour of the petitioner. Then Mr Panpatte invited our attention to a note dated 6th March, 2019, submitted to the office of the Honourable Chief Minister for grant of personal approval to the employees of Vimukta Jati Seva Samiti, Vasantnagar, Kotgyal, Tq.

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Mukhed, Dist. Nanded. Perusal of said document which is placed at Exh.E shows that the office of the Honourable Chief Minister expressed an opinion that the approval of the Honourable Chief Minister is not required in the matter of grant of approval to these employees and the matter be forwarded to the concerned department i.e. Social Welfare Department for appropriate action.

4. It is the further submission of Mr Panpatte that post the aforesaid communication dated 6th March, 2019, a decision is taken by the State Government on 14th June, 2019 and this decision is in favour of the petitioner and some other persons. This document is not a part of the record. Though he presented two copies of the said communication, these copies being wholly illegible, we are unable to read the entire text of the said document. Be that as it may.

5. Perusal of the reply filed by respondent No.2 - Shri. D. V. Rathod, presently holding post of Regional Deputy Commissioner, Social Welfare Department, Govt. Of Maharashtra, Latur shows that under the directions of this Court, the Regional Deputy Commissioner of Social Welfare Division, Latur issued notices to all the concerned parties for hearing. The decision is placed on record along with the affidavit-in-reply at Exh.R-1. Perusal of the decision shows that opening part of the decision refers to the order passed by the Division

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Bench in Writ Petition No.9577 of 2017 and Writ Petition No.10833 of 2017. It may not be out of place to state here that Writ Petition No.10833 of 2017 was filed by the very petitioner Shri Vilas Sudamrao Ingole. The order then refers to the presence of the petitioner before the authority at Sr. No.6. In the order, the authority states that all these petitioners were heard. The authority also refers to the submissions of these petitioners, earlier decision of rejection of the approval and the reasons assigned in the rejection order. Interestingly enough, this order then refers to the specific submissions of Shri Vilas Sudamrao Ingole i.e. the present petitioner. Then the decision refers to the submissions of the President of said institute, namely, Vimukt Jati Seva Samiti, Vasantnagar (Kotgyal), Tq. Mukhed, Dist. Nanded. Interestingly enough again, the Head master of the Primary School Kamlewadi, Tq. Mukhed, Dist. Latur states that present petitioner Shri Vilas Sudamrao Ingole submitted a request to the Assistant Commissioner, Nanded by a written application to grant permission to the advertisement dated 29th December, 2016 or permission to absorb as an additional teacher and it is then stated that as per the claim of the petitioner Shri Vilas Sudamrao Ingole, his appointment was by following the due procedure. Then the authority refers to the submissions and information on behalf of the Assistant Commissioner, Social Welfare Department, Nanded. Then the authority refers its

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findings. The first finding is, the so-called advertisements placed on record are not genuine and there is difference in the date and day. These advertisements are not published in the largely circulated newspaper. There is no material presented before the authority that the candidates were called upon for an interview. It also refers to the finding that there was no prior approval for filling up the posts. On these findings, the authority, namely, the Regional Deputy Commissioner, Social Welfare Department, Latur rejected the request for grant of approval. Then it is further observed that the institute may take appropriate steps for conclusion of the appointments and the State Government shall not bear any financial burden of these employees and that burden will have to be borne by the institute from its sources.

6. Learned Asstt. Govt. Pleader, relying on the aforesaid decision, vehemently submitted that the order of this Court is now duly complied with and the decision is taken by the authority by assigning the reasons.

7. Per contra, Mr Panpatte submitted that the decision by the authorities is unsustainable on the ground that the Regional Deputy Commissioner, Social Welfare Department, Latur was not the appropriate authority to take a decision on the aspect of granting approval to the petitioner. It is vehemently submitted by Mr Panpatte

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that the powers to grant approval vests with the State Government. He also submitted that the State Government initially constituted three members committee and Shri. D. V. Rathod was one of the members of such committee and that three members committee took a decision in favour of the petitioner and subsequently Shri. Rathod took a different view in the order dated 23rd October, 2018. It was also submitted by Mr Panpatte that these facts, such as, constitution of three members committee or a decision by the State Government dated 14th June, 2019 are not brought to the notice of this Court by the respondents.

8. Though the submissions of Mr Panpatte, learned Counsel for the petitioner look attractive at the first blush, we are unable to accept these submissions for more than one reasons. Firstly, while dealing with the contempt petition, this Court cannot expand the scope of contempt petition as it is an original proceedings to adjudicate the claim of the parties on the submissions or counter submissions. It is the settled position of law that while dealing with the contempt petition, the scope is limited one and this Court cannot take up the contempt petition as an original proceedings to adjudicate the claim of the parties and the Court could only consider the matter whether the grievance of the petitioner of non-compliance of the order of the Court

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and whether such act is willful act and disobedience of the order of this Court and if it is so, what punishment be awarded to the contemnor.

9. In the present matter, the parties were permitted to go before the authority submitting their claims and the authority was directed to decide the matter on its own merits, considering the material submitted before it. The petitioner appeared before the authority and at no point of time, raised any grievance to the authority that the authority is not the competent authority so as to proceed with the matter. The petitioner has not submitted any objection to the authority and raised this very ground. Not only this, the petitioner participated in the proceedings and permitted the authority to record his submissions and also permitted to the authority to pass order and now a somersault is taken by the petitioner to state before this Court that the order passed by the authority is unsustainable on the ground that this authority is not a competent authority. The issue, whether the authority is not competent, cannot be a issue for consideration for this Court in the contempt petition. This Court has not been called upon to approve whether 'X' party is competent authority or otherwise.

10. Considering all the aforesaid aspects, we are of the opinion that in view of the directions of this Court, the order is passed by the

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authority. The petitioner permitted himself to participate in the proceedings and at the cost of repetition, the petitioner himself appeared before the authority, made his submissions before the authority and permitted the authority to pass order.

11. In view of above, we are of the opinion that in view of the decision taken by the authority, it is not the case of willful disobedience of the order of this Court and as such, the contempt petition fails.

12. We further make it clear that if the petitioner is having any grievance against the order passed by the authority, namely, Regional Deputy Commissioner of Social Welfare Division, Latur, he is at liberty to challenge that order by availing appropriate remedies, if so advised.

The contempt petition is disposed of accordingly.

(R. G. AVACHAT, J.)

(PRASANNA B. VARALE, J.)

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