

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 558 OF 2018

1. Mrs. Fatma Zakaria,
Age: 83 years, Occu: Social Work,
and the Chairman, Maulana Azad
Educational Trust, Aurangabad.
R/o. Dr. Rafiq Zakaria Campus-1,
Roza Baugyh, Near Taj Residency,
Aurangabad, Tq. & Dist. Aurangabad.
 2. Syed Ismatullah Pathan,
Age: 60 years, Occ: Private Service,
R/o:23/110, Sultanbad Jyoti,
Behrambag Road, Jogeshwari (W),
Mumbai.
 3. Shaikh Kausar d/o Shaikh Gafoor,
Age: 48 years, Occu: Service as
Headmistress / Incharge Principal of
Model High School, Navkhanda
Jubilee Park, Aurangabad.
R/o: House No.7-2-226, Opposite
Ikon Hospital, Ganesh Colony,
HUDCO Road, Aurangabad.
Tq. & Dist. Aurangabad.
- ... **Petitioners**

Vs.

1. The State of Maharashtra (Name of R.No.1 deleted
as per Court order dtd.3.07.18)
 2. Mrs. Uzma Khanam Mirza Moin,
Ullah Baig, Age: 35 years,
Occu: Assistant Teacher,
R/o: H.No. 1-27-33, New Road,
Manjoorpura, Behind Dr. Jaffar
Hospital, Aurangabad.
Tq. & Dist. Aurangabad.
- ... **Respondents**

Mr. Rajendra S. Deshmukh, Advocate for the Petitioners.
Mr. Dixit h/f. Mr. S.S. Kazi, Advocate for Respondent No.2.

CORAM : MANGESH S. PATIL, J.
DATE : 11.02.2019

JUDGMENT :

Heard.

2. Rule. The Rule is made returnable forthwith. The learned A.P.P. waives service for respondent no.1. Learned advocate Mr. Dixit waives service for the respondent no.2. At the request of both the sides the matter is heard finally at the stage of admission.

3. In sum and substance, the facts leading to the filing of this writ petition are as under:

The petitioner nos.1 & 2 are the President and Secretary of the Maulana Azad Educational Trust, Aurangabad respectively. The petitioner no.3 is the Headmaster of the school run by that trust. The respondent no.2 was serving as a Teacher in that school. She was orally terminated from the employment w.e.f. 04.08.2014. She preferred Appeal no. 21 of 2014 before the School Tribunal under Section 9 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 (hereinafter referred to MEPS Act). The petitioners were obviously the parties to the appeal. By the judgment and order dated 08.07.2015 the appeal was allowed. The termination was quashed and set aside. The petitioners were directed to reinstate her within 40 days from the date of the order, further she was declared

entitled to 30% of back wages and arrears of salary from the date of termination till the date of reinstatement. She was also given continuity in service. It appears that the petitioners preferred Writ Petition No. 8837 of 2015 on 14.08.2015 impugning the order of the School Tribunal. The writ petition was dismissed on 08.12.2015.

In the meantime, the respondent no.2 preferred Misc. Application No. 19 of 2015 before the School Tribunal seeking execution of the order. Simultaneously, she filed Criminal Misc. Application No. 6215 of 2015 in the Court of the learned Chief Judicial Magistrate under Section 13 of the MEPS Act which provides for penalty in the form of imprisonment for 15 days and fine for disobedience of the orders passed by the School Tribunal. Both these proceedings were initiated on 01.09.2015. The learned C.J.M. directed the process to be issued. Hence this writ petition seeking quashment of the criminal proceeding, preferred by the respondent no.2 under Section 13 of the MEPS Act.

4. The learned advocate for the petitioners in his erudite submissions pointed out as to how the petitioner no.1 is a recipient of the highest civilian award of the country. She is aged more than 80 years. For years she is in journalism and is also an editor of a quarterly art journal. The learned advocate took pains to point out as to how she is involved in a social work and runs educational institutes including the present one.

5. The learned advocate vehemently submits that the criminal proceeding initiated by the respondent no.2 smacks of vengeance. It is prompted with mala fides. Already, she has been reinstated on 31.12.2015. Even the execution proceedings preferred by her bearing Misc. Application No. 19 of 2015 was disposed of by the School Tribunal on 23.01.2018 pointing out that the order passed by it was finally complied with and stood satisfied. The learned advocate therefore submitted that the case of the petitioners is duly covered by the guidelines 1, 3, 5 and 7 laid down by the Supreme Court in the case of **State of Haryana V/s. Bhajan Lal and Ors.; AIR 1992 SUPREME COURT 604.**

6. The learned advocate further submits that allowing such a criminal case to continue after due execution of the order passed by the School Tribunal is nothing but an attempt to misuse process of the Court. There was no intentional disobedience. In fact Writ Petition No. 8837 of 2015 was filed on 14.08.2015. The respondent no.2 had filed a caveat and therefore a copy of the petition was duly served to her on 24.08.2015 and still she filed a criminal proceeding on 01.09.2015 which demonstrates *mala fides* on her part to implicate the petitioners. The learned advocate would submit that there was merely a technical non-compliance of not reinstating the respondent within 40 days laid down by the School Tribunal. Allowing such a criminal proceeding to

continue would be nothing but an attempt to manifestly attend the criminal proceeding with an ulterior motive which is the guideline no.7 laid down in the case of **Bhajan Lal** (supra).

7. The learned advocate for the petitioners would further point out that even the respondent no.2 had filed Writ Petition No. 3658 of 2015 claiming arrears of salary according to the Sixth Central Pay Commission w.e.f. 02.07.2012 to 03.08.2014 but this Court by the order dated 19.09.2016 only held her to be entitled to claim back wages according to Fourth Pay Commission. Since the petitioners were *bona fide* seeking to challenge the order of reinstatement passed by the School Tribunal under Section 9 of the MEPS Act and had preferred Writ Petition No. 8837 of 2015, soon after it was dismissed on 08.12.2015, the respondent no.2 was reinstated on 31.12.2015 and therefore it would be a sheer misuse of the process of the Court and therefore the criminal proceedings initiated by the respondent no.2 may be quashed.

8. The learned advocate for the respondent no.2 strongly opposes the petition. By pointing out the aims and objects of the MEPS Act he submits that the Act has come into force with the object *inter alia* to provide employees of private schools security and stability of service so as to enable them to discharge their duties towards pupils, their guardians, institution and the society in general, effectively and efficiently.

9. It is only to achieve the object, with a view to provide for a penalty for not implementing the directions issued by the School Tribunal constituted thereunder that Section 13 has been enacted which provides for a penalty. Therefore, though the offence is technical it is indeed an offence which is made punishable if the order or direction of the School Tribunal is not implemented. He would submit that the respondent no.2 was left with no alternative but to prefer the criminal proceeding under Section 13 of the MEPS Act since she was not reinstated till 01.09.2015. As far as filing of the Writ Petition No. 8837 of 2015 is concerned the learned advocate would submit that though the petition was filed on 14.08.2015, already 36 days had lapsed since the School Tribunal had passed the order on 08.07.2015. Even thereafter there was no interim relief or undertaking which could be said to have enabled the petitioners not to reinstate her. The learned advocate would further point out that even after dismissal of the writ petition on 08.12.2015, the petitioners took time to reinstate her and she was reinstated only on 31.12.2015. In view of such state of affairs, it cannot be said that the criminal proceeding has been initiated by her to rake vengeance or is prompted by *mala fides*. When the law specifically provides for a penalty, merely because the act complained of is duly complied with subsequently is of no consequence. The petitioners had incurred the liability to face the prosecution no sooner they had failed to implement the order passed by the School Tribunal. It is not a matter of

mere technical non-compliance. The petitioners had orally terminated the respondent without following any due process of law all of a sudden on 04.08.2014. She had to approach the School Tribunal and solicit the order of reinstatement. The petitioners who are at the helm of the affairs of the education society had deliberately deprived her of her source of living in a high handed manner and now cannot be allowed to be heard when they allege that the proceeding initiated by her under Section 13 of the MEPS Act is *mala fide* or is attended with vengeance. Therefore, the learned advocate for the respondent no.2 submits that there is no apparent illegality in allowing the prosecution to go ahead and the situation is not covered by any of the guidelines laid down in the case of **Bhajan Lal** (supra).

10. I have carefully gone through the papers including the record and proceedings of Writ Petition No. 8837 of 2015. As far as facts are concerned there is not much of a dispute. The respondent no.2 was orally terminated on 04.08.2014. She preferred an appeal under Section 9 of the MEPS Act before the School Tribunal. It was allowed by the order dated 08.07.2015 *inter alia* directing the petitioners to reinstate her within 40 days. The petitioners impugned that order by preferring Writ Petition No. 8837 of 2015 which was filed on 14.08.2015. It was dismissed on 08.12.2015 and she was reinstated on 31.12.2015. There is also no dispute that the criminal proceeding under Section 13 of the MEPS Act was initiated by the respondent no.2 on

01.09.2015. It is thus quite clear that till filing of the Writ Petition No. 8837 of 2015 already 36 days were consumed and still the petitioners had not reinstated the respondent no.2. For that matter even after dismissal of the writ petition on 08.12.2015 they took further period of 22 days to reinstate her. Therefore, assuming that for the period during which the writ petition was pending in this Court the petitioners had some *bona fide* reason to not to reinstate her, still they have not reinstated her with expected promptitude much less as was directed by the School Tribunal.

11. As far as the Writ Petition No. 8837 of 2015 is concerned, again, the record and proceedings of that writ petition reveals that it was filed on 14.08.2015. Apparently, there was no ad interim relief granted in favour of the petitioners albeit a private notice was served to the respondent no.2. As can be seen from the record and proceedings of that writ petition, the matter appeared before the Court for the first time on 02.09.2015. Neither any interim relief nor any statement / undertaking was recorded which could be have said to have prevented the respondent no.2 in firstly filing the criminal proceeding under Section 13 or secondly preventing her from prosecuting it. It is only on 12.10.2015, a speaking order was passed *inter alia* directing the parties to maintain a status quo as obtaining on that day and the learned J.M.F.C. was directed not to proceed with the criminal proceeding under Section 13 of the MEPS Act. It is thus quite clear that though the writ

petition was filed impugning the order of the School Tribunal, without there being any ad interim relief in favour of the petitioners till 12.10.2015, they had not obeyed the order of the School Tribunal of reinstating the respondent no.2 which clearly constitutes the act which is made punishable under Section 13 of the MEPS Act. Therefore, as far as the facts constituting the criminal liability under that provision is concerned there is absolutely no escape from the conclusion that all the necessary concomitant were writ large when the Criminal Misc. Application No. 6215 of 2015 was initiated by the respondent no.2 under Section 13 of the MEPS Act.

12. In this regard, it is further necessary to note that the legislature in its wisdom has apparently comprehended a situation wherein the School Tribunal is authorised to extend the period for obeying the directions issued by it. The wording of Section 13 is quite eloquent in this regard and Sub-section (1) reads as under:

“(1) If the Management fails, without any reasonable excuse to comply with any direction issued by the Tribunal under section 11 or any order issued by the Director under clause (a) of sub-section (1) or sub-section (4) of section 4A within the period specified in such direction, or as the case may be, under sub-section (5) of section 4A or within such further period as may be allowed by the Tribunal or Director, as the case may, be, the Management shall, on conviction, be punished,-
(Emphasis supplied).

The words emphasised would clearly indicate that if the management has some reasonable excuse to not to comply with the directions issued by the School Tribunal within a stipulated time, the Tribunal is empowered and may allow further period / time to implement its order. The petitioners do not seem to have even approached the School Tribunal seeking extension of time if really they *bona fide* wanted to challenge the order passed by the School Tribunal by preferring the Writ Petition No.8837 of 2015. It is thus apparent that the petitioners did not obey the directions of the School Tribunal of reinstating the respondent no.2 within 40 days, they did not seek any extension of the time to implement the order, though they preferred Writ Petition No. 8837 of 2015, there was no stay to the execution of the direction of the School Tribunal till 12.10.2015. Besides, even after its dismissal on 08.12.2015 they took further period of 22 days in reinstating the respondent no.2. It is under these circumstances, the petitioners by their conduct had clearly demonstrated as to how they were bent upon to disobey the direction passed by the School Tribunal and have incurred the criminal liability under Section 13 of the MEPS Act.

13. Needless to state that being the Chairman and Secretary of the educational institute which runs the school and being the Headmaster of that school the petitioner nos.1 to 3 respectively can be

deemed to have incurred the liability in view of the specific wording of Sub-section 2 of Section 13 which reads as under:

“(2) (a) Where the Management committing an offence under this Section is a society, every person, who at the time the offence was committed, was in charge of, and was responsible to, the society, for the conduct of the affairs of the society, as well as the society, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that, nothing contained in this sub-section shall render any person liable to the punishment, if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of the offence.

(b) Notwithstanding anything contained in clause (a), where the offence has been committed by a society and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any president, chairman, secretary, member, Head or manager or other officer or servant of the society, such president, chairman, secretary, member Head or Manager or other officer or servant concerned shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly. “

By virtue of such a deeming provision, they have clearly incurred the criminal liability which has been provided with an avowed object of *inter alia* providing security and stability of service to an employee.

14. As far as the guidelines in the case of **Bhajan Lal** (supra) are concerned they read as under:

“108. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extra-ordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any Court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines of rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

1] Where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

2] Where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under Section 156 (1) of the Code except under an order of a Magistrate within the purview of Section 155 (2) of the Code.

3] Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and

make out a case against the accused.

4] *Where, the allegations in the F.I.R. do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155 (2) of the Code.*

5] *Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.*

6] *Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.*

7] *Where a criminal proceeding is manifestly attended with mala fide and / or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”*

As far as guideline no.1, 3 and 5 are concerned, as is demonstrated herein-above by no stretch of imagination can it be said that the alleged conduct does not constitute a criminal liability under Section 13 of the MEPS Act. Therefore neither of the guideline nos.1, 3 or 5 would govern the fact situation of the matter in hand. As far as the guideline no.7 is concerned, it has been demonstrated herein-above as

to how there was a genuine reason for the respondent no.2 to initiate a proceeding under Section 13 of the MEPS Act. Merely because the order of the School Tribunal has been subsequently implemented by reinstating her the liability incurred cannot be washed off. It would be easier for the management in such a fact situation to save the skin by showing that it has subsequently obeyed the direction. It cannot be heard to say that and would be rather an afterthought to say that they having reinstated the respondent no.2, the matter being prosecuted by her is being attended with some malice. When the legislature in its wisdom has provided for penalty for not implementing the order passed by the School Tribunal and when it is demonstrated that there was a strong and genuine reason for the respondent no.2 to file a proceeding under Section 13, it cannot be said that she has initiated the proceeding and is attending it *mala fide* with an ulterior motive for raking vengeance with a view to spite the petitioners because of some grudge. Therefore, even the fact situation is not covered by guideline no.7 of the **Bhajan Lal's** case.

15. In this regard, it would be equally important to bear in mind the observations in the case of **Bhajan Lal** (supra) in succeeding paragraph no.109 which read as under:

“109. We also give a note of caution to the effect that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of the rare cases; that the Court will not

be justified in embarking upon an enquiry as to the realibility or genuineness or otherwise of the allegations made in the F.I.R. or the complaint and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the Court to act according to its whim or caprice.”

Bearing in mind these observations, in my considered view, there are no sufficient and cogent reasons for this Court to quash the proceeding. The writ petition is dismissed. The rule is discharged.

16. At this juncture, the learned advocate for the petitioners submits that since the interim relief protecting the petitioners is in operation till this date, the arrangement may be continued for further four weeks to enable the petitioners to approach the Supreme Court.

17. The learned advocate for the respondent no.2 strongly opposes the request.

18. Since an interim arrangement is already in place and as the respondent no.2 has already been reinstated, in my considered view, status quo can continue. Therefore, the ad interim relief shall continue further for a period of four weeks from today.

(MANGESH S. PATIL, J.)