

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

904 CONT. PETITION NO.414 OF 2017

IN

WRIT PETITION NO.11367/2014

UTTAM VITHAL VAIDYA

VERSUS

**SHRI NANDKUMAR, SECRETARY, SCHOOL EDUCATION
DEPARTMENT AND OTHERS**

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Advocate for Petitioner : Mr Kolhare S.R. And Mr P S Kochar

AGP for Respondents State: Mrs M A Deshpande

Advocate for Respondents No.3: Mr. S.R. Bagal

Advocate for Respondent No.4 : Mr Rajendra S. Deshmukh

**CORAM : PRASANNA B. VARALE &
ANIL S. KILOR, JJ.**

DATE : 27th November, 2019

ORDER:

1. Heard learned counsel for the petitioner on the grievance raised in the petition that inspite the order being passed by this Court dated 20th March, 2017 in Writ Petition No. 11367 of 2018, the respondents have not complied the order, as such, they have committed an act of disobedient of the order of this Court.

2. As initially there was no response to the notice, this Court by order dated 18th January, 2018, issued show cause notice to respondent no.2 Deepak R. Chavane, under the provisions Contempt of Courts Act. In response to the notice, affidavit in reply is filed on behalf of respondent No.2 Shri Deepak Chavane, Education Officer (Secondary), Zilla Parishad, Hingoli. On perusal of the affidavit in reply, conjointly with the order of this Court and the representation

submitted by the petitioner dated 05.04.2017 along-with reminders dated 27.04.2017 and 09.05.2017, we are of the clear opinion that the present contempt petition is nothing but an act of assumption and presumption and on misreading of the order of this Court.

3. On perusal of the order of this Court dated 20th March, 2017, it reveals that contentions of the parties were recorded by the Division Bench of this Court. The Court took a note of the fact that the petitioner acquired qualification of postal B.Ed. course in the year 2004. The contention of the petitioner was also recorded that though the petitioner was appointed long back, without granting the petitioner seniority on acquiring requisite qualification, the respondents declared the petitioner surplus and such declaration is unsustainable. Considering the rival contentions, this Court deem it appropriate to permit the petitioner to go before the Education Officer and in turn, the Education Officer to decide the same, needless to state, on merits, within eight weeks from the date of tendering representation. The petitioner was permitted to submit representation within 15 days from the date of order.

4. It may be useful for our purposes to refer to the specific directions issued to the Education Officer. The directions read thus:

"7. It would be open for the petitioner to tender representation to the Education Officer (Secondary). If

petitioner tenders representation within a period of 15 days from today, the Education Officer (Secondary) shall deal with the representation and pass appropriate order after extending an opportunity of hearing to petitioner and the educational institution, as expeditiously as possible, preferably within a period of 8 weeks from the date of tendering of representation. The Education Officer shall consider the issue as regards fulfillment of reservation quota by the institution as well as the issue as to whether petitioner who belongs to Nomadic Tribe category can be declared as surplus when the vacancy for the prescribed category exists. The Education Officer is also expected to consider the seniority of petitioner from the date of acquisition of training qualification and shall pass appropriate order. Rule made absolute to the extent specified above. No costs.” (Emphasis added by us).

5. Contention of the petitioner in his representation is irrespective of seniority and challenge to the declaration that the petitioner is a surplus teacher. In the entire order of this court dated 20th March 2017, there was absolutely no reference of any direction to the Education Officer to consider the claim of the petitioner relating to grant of arrears of salary to the petitioner. The representation dated 05.04.2017 submitted by the petitioner is interesting enough. In the said representation, the petitioner has claimed entire arrears of salary and it is stated by the petitioner that the said relief is granted by this Court. In the reminder, the petitioner again reiterates the same prayer i.e. grant of arrears of salary and again made such statement

that it should be done as per order of this Court.

6. We are surprised to see the tenor of the representations. When this Court directed the petitioner to submit representation to the Education Officer particularly on three aspects namely the issue as regards (1) fulfillment of reservation quota by the Institution on the backdrop of the petitioner belonging to Nomadic Tribe category (2) whether the petitioner can be declared as surplus on this backdrop and (3) the seniority of the petitioner from the date of acquisition of training qualification. When that was specific direction, the petitioner, in the representation, expanded the scope of the order of the Court with a payer which was never granted by this Court in its order.

7. On the backdrop of these facts, the affidavit in reply filed by respondent No.2 assumes importance as the Education Officer clearly states that the petitioner was permitted to join the service post the order of this Court and then his proposal was forwarded to the superior authorities i.e. the Deputy Director of Education and in turn, the Deputy Director of Education forwarded the proposal to the Director of Education. It is also stated in the affidavit in reply, for the delay caused in taking decision, that the proposal was forwarded firstly to the Deputy Director of Education and in turn to the Director of Education. Respondent No.2 has submitted his unconditional apology.

8. The facts emerged from the perusal of the material and as

referred to by us in the foregoing paragraphs, are clear enough to form an opinion that the representation submitted by the petitioner itself was not in consonance with the order passed by this Court. No fault can be found with the respondents in complying the order of this Court.

9. Considering these facts, we are of the opinion that the present contempt petition is devoid of any merits and deserves to be dismissed. The same is accordingly dismissed.

10. At this stage, learned counsel for the petitioner pray for liberty to submit appropriate representation to the authority. Liberty granted. If such proper representation is submitted to the Education officer within two weeks, the Education Officer shall decide the same within four weeks from the date of receipt of the representation, by giving opportunity of hearing to all the concerned parties.

11. Contempt petition is accordingly disposed of. No costs.

(ANIL S. KILOR, J.)

(PRASANNA B. VARALE J.)

JPC