

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Amk

WRIT PETITION NO. 7681 OF 2015

Suresh Vishwanath Kadam

.. Petitioner

Vs.

The State of Maharashtra & Ors.

.. Respondents

Mr. S. A. Rajeshirke for the Petitioner.

Ms. Nisha Mehra, AGP for Respondent Nos.1 to 4.

Mr. Y. S. Lengare i/b Mrs. Suman Y. Lengare for Respondent No.6.

CORAM : PRADEEP NANDRAJOG, C.J. &
N. M. JAMDAR, J.

DATE : 13th JUNE, 2019.

P. C. :

1. Respondent No.6 against whom the Petition is directed has died. In our opinion, for the facts which we would note hereinafter, the Petition is liable to be disposed of as infructuous because apart from the fact that notwithstanding the death of Respondent No.6, no relief can be granted as prayed for.

2. The Petitioner claims to be a social activist and discloses in the Petition that Respondent No.6 was employed as an Assistant Teacher in a school established by Respondent No.5-Society which was receiving 100% grant-in-aid from the 1st Respondent. Thus, salary received by Respondent No.6 was from the grant-in-aid. It is pleaded in the Petition that Respondent No.6 was elected as a Sarpanch of the

Grampanchayat of village Kauthuli. The Petitioner claims that for the period the said Respondent functioned as a Sarpanch of the Grampanchayat, drawing allowances and wages as Sarpanch of the Grampanchayat, he could not simultaneously draw salary as a teacher. As per the Petitioner, Respondent No.6 came to be elected as Sarpanch and the post of Sarpanch is full time post. Relying upon Rule 42 of the Maharashtra Employees of Private Schools [Conditions of Service] Regulation Act, 1977, it is pleaded that Respondent No.6 was liable to obtain leave while acting as Sarpanch and during this period could not draw salary. The Rule in question permits an employee of a private school, with the previous permission of the management obtained in writing, to contest election to public officers other than those mentioned in Sub-Rule (1) and as per Clause (a) of Rule 5 for the period for which he holds office he has to take leave. It is pleaded that on a complaint made, an order dated 03.11.2008 was passed directing recovery of the salary received by Respondent No.6. As per pleading further made in the Writ Petition, Respondent No.6 sought review of the order passed directing recovery and taking cognizance whereof an order dated 19/22.12.2014 was passed setting aside earlier order directing the recovery to be made. From the response filed by Respondent No.6, it emerges that the post of Sarpanch was not a full time salary post as and when the Sarpanch attended meetings honorarium was paid. As per Respondent No.6, he attended meetings of the Grampanchayat after school hours. That honorarium received by Respondent No.6 has since been credited in the Treasury. The impugned order was preceded by communication dated 16.12.2014

addressed by the Deputy Director, Education to the Education Officer recording therein that the inquiry report based whereon penal order was passed does not record a finding that Respondent No.6 simultaneously recorded attendance in the office of the Grampanchayat as also the school and that before contesting the election, Respondent No.6 has obtained 'No objection;' that Respondent No.6 has since returned allowances received as Sarpanch and salary of the school continues to be paid.

3. Under the circumstances, we hold that there is no infirmity in the view taken that the salary received by Respondent No.6 need not be recovered. On the death of Respondent No.6 the cause of action to seek recovery against legal heirs would be tedious and we propose not to undertake said exercise in a Writ Petition. The Writ Petition is dismissed.

[N. M. JAMDAR, J.]

[CHIEF JUSTICE]