

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR.

Writ Petition No.1944 of 2016
(Mahesh Gangadhar Mankar .vs. Headmistress, Rani Laxmibai Girls School
and others.)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders or directions Court's or Judge's orders.
and Registrar's orders

Mr. A.M. Jaltare, Advocate for Petitioner.
Mr. K.L. Dharmadhikari, AGP for Respondent No.2.

CORAM : Manish Pitale, J.
DATED : January 28, 2019.

By this writ petition, the petitioner has challenged order dated 30.10.2015 passed by the respondent no.3 -State Information Commissioner, on an appeal filed by the petitioner.

2. The facts of the present case show that the petitioner had applied for information before the respondent no.1 Headmistress of Rani Laxmibai Girls School, tahsil and district Washim, seeking information pertaining to details of members of the Interview Committee which was constituted by the Management pursuant to directions given by the respondent no.2- Education Officer, names of candidates who had applied and certain other information. The respondent no.1 being the Information Officer, firstly rejected the application of the petitioner on the ground that the information sought was vague and thereafter sent a communication to the petitioner stating that the information sought was in respect of the Sanstha

(Management) and, therefore, the information could not be provided.

3. Aggrieved by the said response given by the respondent no.1 Headmistress/Information Officer of the School, the petitioner filed appeal before the first appellate authority i.e. respondent no.2- Education Officer (Secondary), Zilla Parishad, Washim. By order dated 30.04.2013, the said first appellate authority disposed of the appeal by directing the respondent no.1 to provide the information sought by the petitioner within a period of eight days from the said order. According to the petitioner, this order was not being obeyed by the respondent no.1.

4. In these circumstances, instead of applying for execution of the said order, the petitioner inadvertently filed a second appeal before respondent no.3 i.e. the State Information Commissioner. This appeal was entertained by respondent no.3 and response was called from the respondent no.1. By the impugned order dated 30.10.2015, while holding that the second appeal filed by the petitioner was unnecessary, the respondent no.3 went into the merits of the matter and set aside the order of the first appellate authority and restored the response dated 21.03.2013 sent by the respondent no.1 to the petitioner.

5. The learned counsel for the petitioner submitted that the petitioner had erroneously filed

second appeal before the respondent no.3. When the first appellate authority had held in his favour, he ought to have filed an application for execution of the said order instead of filing the second appeal. It was pointed out that when the respondent no.3 as second appellate authority had found that the appeal filed by the petitioner was inappropriate and unnecessary, the respondent no.3 could not have entered into the merits of the matter.

6. Mr. K.L. Dharmadhikari, learned AGP, has appeared on behalf of respondent no.2 while respondent no.3 is a formal party. The record shows that the respondent no.1 being the contesting respondent, was served as per the office note dated 02.09.2016, yet none has appeared on behalf of the said contesting respondent.

7. Having heard the learned counsel for the parties, it is evident that the impugned order dated 30.10.2015 passed by the respondent no.1 is unsustainable. It is surprising that when the respondent no.3 itself found that the appeal filed by the petitioner was unnecessary and inappropriate, yet the said respondent no.3 entered into the merits of the controversy and disposed of the appeal, by setting aside the order of the first appellate authority and restoring that of respondent no.1. Thus, the petitioner was rendered worse off by filing an appeal against the order of the first appellate authority that was essentially in his favour. Instead of filing an application for

execution of the said order, the petitioner had erred in approaching the respondent no.3 second appellate authority. It clearly shows that the appeal filed by the petitioner was inappropriate and unnecessary and it was not the correct forum for seeking execution of the order passed by the first appellate authority in his favour.

8. Even though the respondent no.3 being second appellate authority was aware about the said error committed on the part of the petitioner and having held that the appeal was unnecessary, the respondent no.3 could not have entered into the merits of the matter, much less it could have set aside the order of the first appellate authority and restored that of respondent no.1.

9. In these circumstances, the present writ petition is allowed, the impugned order dated 30.10.2015 passed by the respondent no.3 is quashed and set aside and the order dated 30.04.2013 passed by the first appellate authority i.e. respondent no.2 is restored. Accordingly, the respondent no.1 is directed to provide the information in terms of the said order dated 30.04.2013 within a period of eight days from today to the petitioner.

10. The learned counsel appearing for the petitioner submits that direction be given against respondent no.1 for payment of penalty in terms of the provisions of Right to Information Act, 2005. This Court in writ jurisdiction refrains from passing any order in this

context. But liberty is given to the petitioner to make an application in terms of the provisions of the said Act for recovering the amount of penalty from respondent no.1, which shall be decided in accordance with law.

JUDGE

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