

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

WRIT PETITION NO.12010 OF 2018

Madhav s/o Dattatraya Dahikalambekar .. Petitioner

Versus

Shubh Sandesh Shikshan Prasarak
Mandal, Degloor, Taluka Degloor,
District Nanded, through its
Secretary and ors. .. Respondents

Mr G.J. Karne, Advocate for petitioner
Mr B.L. Sagar Killariker, Advocate for respondent no.1
Mrs P.V. Diggikar, A.G.P. for respondents no.3 to 5

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

DATE : 14.1.2020

ORAL ORDER :

1. Heard the learned Counsel for petitioner.
2. On a submission that though the petition is listed before this Court today, the petitioner apprehends that the petition may not reach, as such, an urgency is claimed for posting the petition for hearing before this Court at 2.30 p.m. Considering the prayer, though the petition is posted before this Court and listed in the cause list today, the matter was taken up for hearing and disposal at 2.30 p.m.
3. The petitioner is before this Court with a principal prayer, Prayer Clause (A) and the same reads thus :

“A) For a writ of certiorari, order of directions in the nature of certiorari the respondent no.1 and 2 may be

directed to reinstate the petitioner as Assistant Teacher pursuant to the order dated 30.1.2015 passed by the Commissioner, Tribal Development Department, Nashik."

Needless to state that prayer clauses (B) and (C) are the ancillary prayers. As such, it is not necessary to reproduce these prayers.

4. The learned Counsel for petitioner invited our attention to the order placed on record at Exh.'B' dated 30.1.2015. In support of his submission that though the order was passed by the Commissioner, Tribal Development Department, M.S. Nashik and this order was subjected to challenge in a Writ Petition filed at the instance of management bearing Writ Petition No.6730 of 2016 and the Writ Petition filed by the management was dismissed as withdrawn, the order of the Commissioner is not given any effect to. As such, the petitioner is subjected to prejudice. This is the submission of learned Counsel for petitioner.

5. The perusal of the order shows that considering the limited grievance raised in the petition, the Division Bench of this Court directed the respondent-State to file its reply. Then, on 3.4.2019 an affidavit-in-reply is filed on behalf of respondents no.3 to 5 through one Suryakant Raghunath Jagdale. In this affidavit, certain factual aspects are referred to and it is only sort of repetition of the facts namely order being passed by the Commissioner, same subjected to challenge by the management, the grievance of the petitioner that the order was not given effect to. It also refers to

certain further communications between the department and the Secretary of the institution. Then, it refers to the directions to the President and Secretary of the society by communication dated 2.7.2015. A reference is made to an order of the Additional Commissioner, Tribal Development, Amravati dated 27.2.2018. Perusal of this communication would show that such inconsistencies are pointed out by the Additional Commissioner through this communication addressed to the Commissioner and the Additional Commissioner recognises withdrawal of the recommendation of the school. Be that as it may.

6. Then, there is another affidavit filed in this Court on 8.7.2019 through Mr S.R. Jagdale, Junior Education Extension Officer, wherein the pointed queries made in the order of this Court dated 26.4.2019 are replied. Necessary documents are also annexed to the affidavit dated 8.7.2019. In response to the communication forwarded by the respondent-authority, the Head Master informed that there is no post available/vacant in the respondent-institution. This communication of Head Master placed on record, annexed to the affidavit-reply states about certain payments of salary to the petitioner and then it states that as the posts available in the school are already filled in, there is no scope for accommodating the petitioner in the said school. Then, there is a statement in the tabular form giving the details of the posts available in the school and the persons working on the respective posts.

7. Today, learned A.G.P. placed on record the copy of order issued by the Additional Commissioner, Tribal Development Department, Amravati dated 3.1.2020 along with a communication forwarded to the office of the Government Pleader. In the detailed order dated 3.1.2020, it is stated that as there is no post available in the school wherein the petitioner was working, namely Anudanit Ashramshala, Mulzara, Taluka Kinwat, District Nanded, the petitioner is appointed at Anudanit Adiwasi Ashram School situated in Bhosi, Taluka Bhokar, District Nanded. At this stage, the learned Counsel for petitioner submitted his submission with an insistence that the order dated 3.1.2020 is contrary to the order dated 30.1.2015 and then, he submitted insistence of issuing directions to the respondents to pass an order reinstating the petitioner in the very school wherein the petitioner was working. For these submissions, the learned Counsel heavily relied on the order of the Commissioner dated 30.1.2015.

8. The learned Counsel then made an attempt to submit before this Court that there is a compilation prepared by him and this Court may refer to the compilation so as to consider the submissions of the learned Counsel. We were surprised to see the insistence of the petitioner submitted through his Counsel, which in our opinion is not only uncalled for but is unworthy also. We deprecate such practice.

9. The order of the Commissioner placed on record dated 30.1.2015 of which implementation is sought for in prayer (A)

clearly states of reinstatement of the petitioner to perform the academic duty. It is stated in the words that "श्री. दहिकळंबेकर यांना सेवेतून कमी करून कागदपत्रांची पूर्णपणे छाननी करून सेवेतून कमी करणे आवश्यक होते. संबंधितांना जन्मठेप नसतांना जन्मठेपेचे कारण देवून सेवेतून कमी केल्याचे दिसून येते. याबाबत आपणांस कळविण्यात येते की, शासन निर्णय दि. २५ सप्टेंबर, २००६ व आयुक्तालयाचे वरील संदर्भ क्र. ४ मधील शर्ती प्रमाणे श्री. दहिकळंबेकर यांना शालेय कामे तात्काळ रूजू करून घेणे बाबत आपल्या स्तरावर कार्यवाही करण्यात यावी." By any stretch of imagination and on reading multiple admissions, this part of the order by the learned Counsel for petitioner nowhere it is reflected that this order should be read as the Commissioner is directed by this Court to reinstate the petitioner in the very school that is the school of choice of the petitioner.

10. Secondly, the learned Counsel also insisted for referring to the compilation. Firstly, such an insistence itself is not acceptable for the simple reason, this compilation is neither the part of the pleading of the petition nor is placed on record by any way of the settled procedure, such as either seeking permission prior to placing reliance on the compilation by way of an amendment to the petition or by way of filing an application for production of the documents before this Court.

11. Though this is an attempt which cannot be approved of on the submission of the learned Counsel that this Court should do it in the interest of justice, we have gone through the compilation of

the documents and what emerged from the perusal of documents is, all these documents are referring to the period i.e. from 2009 to 2017 i.e. prior to filing of the petition on 19.10.2018. If this sequence of events is considered, nothing prevented the petitioner to place on record these documents along with the petition when these documents were in possession of the petitioner and this could have been done at the time of filing of petition, but for the reasons best known to the petitioner, the petitioner is expecting of this Court to consider some documents which are presented before this Court as if something is done of the calf by a magician.

12. Now, the petitioner by prayer (B) seeks reinstatement of the petitioner in respondents no.1 and 2 schools and prayer (C) seeks directions to pay the back wages from termination till reinstatement of the petitioner. One fails to understand that how these prayers can be considered when the petitioner in his principal prayer is seeking implementation of the order dated 30.1.2015 and in that order at the cost of repetition, we state that there is not a single word to state that the petitioner be reinstated in the school of respondents no.1 and 2, nor the order states anything about the back wages. If the petitioner, for the reasons best known to him is not challenging the order passed by the Commissioner dated 30.1.2015 and is only insisting for implementation of the order of Commissioner in his principal prayer, the other ancillary prayers made, the scope of the communication dated 30.1.2015 are certainly beyond the scope of consideration by this Court.

13. An another feature which requires mention is, the affidavit-in-reply in respect of the pointed queries of this Court was filed in this Court on 8.7.2019 and the copy of the reply was handed over to the Counsel for petitioner and there is an endorsement of the receipt of the copy. When the affidavit-in-reply was made available to the petitioner, the petitioner made no attempts to file any rejoinder or counter reply to the reply dated 8.7.2019 till date. The petitioner is insisting of hearing and disposal of the petition without filing any counter to the reply and all the submissions were made before this Court orally.

14. Considering all the above referred facts, we are of the opinion that the purpose of approaching this Court by filing the present Writ Petition is more than served. As such, the petition is disposed of. If the petitioner is aggrieved by the order dated 3.1.2020, and if so advised, he may take appropriate steps to challenge the order.

(ANIL S. KILOR, J.)

(PRASANNA B. VARALE, J.)

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