

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.13698 OF 2018

GANPAT BABURAO PATIL AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

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Advocate for the Petitioners : Shri Gunale V.D.
AGP for Respondents 1 to 3 : Shri S.R. Yadav Lonikar
Advocate for Respondent 4 : Shri S.D.Kaldate
Advocate for Respondents 5 & 7 : Shri S.P.Dhoble

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CORAM : RAVINDRA V. GHUGE
&
S.G. MEHARE, JJ.

DATE :- 17th August, 2021

Per Court :-

1. Respondent No.4 is present before us after we had issued bailable warrant against him vide our order dated 22.07.2021, which reads as under :-

- “1. Mr. Gaikwad, the learned advocate submits that he had entered an appearance on behalf of respondent Nos.5 and 7. However, since Mr. Dhobale has now caused his appearance, he would desire to withdraw his appearance. Shri. Dhobale confirms that he is appearing for respondent Nos.5 & 7. As such, the appearance of Mr. Gaikwad on behalf of respondent Nos.5 and 7, stands discharged.
2. Respondent Nos.5 and 7 have filed an affidavit-in-reply dated 18.07.2021. It is contended that there were certain objections with regard to the employment of the petitioners. Respondent No.4

called for an explanation. Respondent Nos.5 and 7 have taken a stand that these petitioners were not in employment with their institution / school. As respondent No.4 had sought an explanation, such explanation was tendered on 21.09.2018 by respondent Nos.5 and 7. By order dated 23.10.2018, respondent No.4 cancelled the earlier granted administrative approval to the appointments of the petitioners.

- 3. This impugned order is said to have been passed ex-parte as the petitioners were not served with any notice of hearing, muchless a hearing having been granted.*
- 4. Despite service of Court notice, no appearance has been entered on behalf of respondent No.4, either in person or through an advocate. It is obvious that, due to the non-cooperation of respondent No.4, the hearing in this petition cannot progress, in the light of the submissions of the petitioners that the order dated 23.10.2018 was passed by respondent No.4 without hearing them.*
- 5. In view of the above, issue a bailable warrant in the sum of Rs.20,000/- (Rupees Twenty thousand only) to ensure the presence of respondent No.4, on 17.08.2021.*
- 6. Insofar as Civil Application No.6564 of 2021 is concerned, the petitioners / applicants submit that as the order dated 23.10.2018 cancelling their approval was passed and was also not communicated to them till filing of the affidavit-in-reply by respondent Nos.5 and 7, on 18.07.2021 that the applicants need to amend the petition as per the proposed amendment.*
- 7. The learned AGP and Mr. Dhobale, do not oppose since the said development has occurred just prior to the filing of this petition, which was not within the knowledge of the petitioners.*
- 8. Consequentially, this civil application is allowed. Amendment be carried out on or before 31.07.2021 and copies of the amended petition be supplied to the learned advocates for the respondents.*
- 9. List the petition on 17.08.2021.”*

2. An affidavit has been filed by Shri Nagnath Revanappa Choughule, District Social Welfare Officer, Zilla Parishad, Osmanabad. No apology is tendered before the Court, except stating that he has got the bailable warrant cancelled by appearing before the concerned Police Station. When we indicated to Mr.Choughule in the open court that he is not regretful or remorseful of his conduct of compelling the Court to issue notices on two occasions with a rider that the bailable warrant will be issued, which was eventually issued, he makes a statement that he will now tender an apology. Apparently, such an apology is being tendered because Mr.Choughule is fearful of the action at the hands of the Court for his acts of defiance as he did not intend to assist the Court in delivering justice.

3. In the light of the above, since Mr.Kaldate, learned advocate, submits that the apology affidavit will be tendered today, that we will accept the said affidavit. However, we are imposing costs of Rs.10,000/- (Rupees Ten Thousand) on Mr.Choughule, who shall deposit the said amount in this Court through his salary bank account, on or before 15.09.2021. This order would be recorded in his service book by respondent No.3/ Regional Deputy Commissioner of Social Welfare, Latur.

4. The only grievance of the petitioners is that the administrative approval granted to their appointments has been cancelled by respondent No.4 only on the ground that respondent No.7/ Headmaster intimated to him that these three employees are not punctual and are not working. With such communication received by respondent No.4, he has unilaterally cancelled the administrative approval which was granted for five years w.e.f. 16.06.2014 in relation to the increase in the number of employees. The impugned order dated 23.10.2018 does not contain any reason and it is admitted that these petitioners were not granted a reasonable opportunity of hearing, more so when the Headmaster had levelled the allegation of unauthorised absenteeism. Moreover, it is apparent that the employer of these petitioners is respondent No.5/ Educational Institution, who has not initiated action against them. If these petitioners are not working in discipline or are habitually absent, respondent No.5 has to follow a particular procedure to initiate action against these petitioners. The Headmaster requesting respondent No.4 to cancel the administrative approval is not a disciplinary action to be initiated de-hors the rules.

5. The learned advocate for respondent No.4 submits,

on instructions, that he is unable to state as to whether, he has powers to cancel his own order of granting administrative approval and whether, it would amount to review of his order dehors the provisions of law.

6. In view of the above, this Writ Petition is partly allowed. The impugned order dated 23.10.2018 stands quashed and set aside. We leave it to respondent No.3 and respondent No.5 to deal with these petitioners strictly in accordance with law and by following the procedure recognized by law.

7. Insofar as the prayer for non payment of salary of the petitioners is concerned, respondent No.7/ Headmaster and the President of respondent No.5/ Institution shall ensure that the salary bills of the petitioners for the period they have worked are forwarded to respondent No.4 for sanction and based on the same, their unpaid salaries shall be released and paid to them within four weeks from today.

kps

(S.G. MEHARE, J.)

(RAVINDRA V. GHUGE, J.)