

Ajay

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**CONTEMPT PETITION NO. 42 OF 2021
IN
WRIT PETITION NO.2398 OF 2007
WITH
INTERIM APPLICATION NO.17430 OF 2022
IN
CONTEMPT PETITION NO. 42 OF 2021**

Deepak T. Kaul

.. Petitioner

Versus

Shashi Thakkar (Acting Chairperson),
Sanjeevani Vidhyalaya Trust and Ors.

.. Respondents

.....

- Mr. G.R. Dwivedi, Advocate for Petitioner.
- Dr. Abhinav Chandrachud a/w. Pranit Kulkarni i/by Mr. Jayant Gaikwad, Advocate for Respondent Nos.1 and 2.
- Mr. C.D. Mali, AGP for the State.

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CORAM : MILIND N. JADHAV, J.

DATE : DECEMBER 05, 2022.

P.C.:

1. Heard Mr. Dwivedi, learned Advocate appearing for Petitioner; Dr. Chandrachud, learned Advocate appearing for Respondent Nos.1 and 2 and Mr. Mali, learned AGP appearing for the State.

2. By filing this Contempt Petition, the Petitioner has prayed for issue of contempt notice and punishing Respondent Nos.1 and 2 for committing contempt of this Court's judgment and order dated 09.01.2020 passed in Writ Petition No.2398 of 2007. In addition,

Petitioner has also prayed for a direction to Respondent Nos. 1 and 2 seeking his reinstatement, arrears of salary and other benefits. At the outset it needs to be stated that Petitioner has admittedly superannuated in September 2021. Hence reinstatement is rendered infructuous. Relief of arrears is the present Contempt Petition is addressed separately.

3. On 27.09.2022, after hearing the parties, this Court passed the following order:-

“1. Heard Dr. Chandrachud, learned counsel for the Respondent Nos.1 and 2, learned AGP for the Respondent Nos. 3,4,5 and 6. None appears for the Petitioner.

2. This Court vide order dated 19th September, 2022 directed non-bailable warrant against the Respondent Nos.1 and 2 for non-responding to bailable warrant. Smt. Shashi Thakkar, aged 89 year, Chairman and the Secretary of Sanjeevani Vidhyalaya Trust, Respondent 1 and 2 is present in the Court. Her affidavit is taken on record.

3. It is evident from the affidavit that, after the order dated 9th January, 2020 passed in Writ Petition No.2398/2007, appropriate order was passed in terms of Section 5(2) of the MEPS Act and posted it on 4th February, 2022 to the Petitioner by Registered Post A.D. on the address disclosed in the cause title of the Writ Petition. The postal envelop was returned on 10th April, 2022 with remark "कोई जानकारी नहीं"; may be for the reason that the addressee was not found at the given address. Thereafter, Petitioner issued a notice to the Respondent Nos. 1 and 2 on 14th June, 2022 alleging non-compliance of order in Writ Petition and threatened of proceedings under the Contempt of Courts Act. The said notice was replied by the manager of the Sanjeevani Vidhyalaya Trust on 13th July, 2022, whereby, Petitioner was informed, about implementation of order. Besides, compliance of the order was also intimated to Advocate representing the Petitioner, on his Whatsapp. Thus, the primary evaluation, the material placed with the affidavit shows the directions issued by this Court in Writ Petition No.2398/2007 vide dated 9th January, 2022 have been duly complied with. Thus, it is to be stated there is no willful disobedience of order of this Court. Even otherwise, Smt. Shashi Thakkar has tendered unconditional apology to this Court. It is accepted. In consideration of above facts, the order

dated 9th September, 2022 directing non-bailable warrant against Respondent Nos. 1 and 2 is hereby recalled and cancelled. In consideration of age of Smt. Shashi Thakkar and facts stated above, her presence in Contempt Petition is dispensed with.

4. List the petition for further consideration on 15th December, 2022.”

4. Perused the judgment and order dated 09.01.2020 of which contempt is alleged.

5. Mr. Dwivedi, learned Advocate for Petitioner submitted that the direction contained in paragraph No.26 of the judgment dated 09.01.2020 has not been complied with by Respondent Nos.1 and 2 and hence they are in contempt.

6. For reference, paragraph No.26 is reproduced below:-

“26 Since Petitioner had completed his probation period, Respondents Nos. 1 and 2 are directed to pass appropriate order in terms of section 5(2) of the M.E.P.S. Act within a period of 30 days from the date of the receipt of an authenticated copy of this order.”

6.1. Respondent Nos.1 and 2 were directed to pass an appropriate order in terms of Section 5(2) of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation, Act 1977 (for short “**MEPS Act**”) within a period of 30 days from the date of receipt of an authenticated copy of the said order.

7. Perusal of Petition, namely paragraph Nos. 7 and 8 indicate that Petitioner obtained an authenticated copy of the judgment dated 09.01.2020 on 04.02.2020 and served the same on Respondent Nos. 1

and 2 in their office on 04.02.2020.

8. According to Dr. Chandrachud, learned Advocate for Respondent Nos. 1 and 2, order in terms of Section 5(2) of the MEPS Act in accordance with the direction of the High Court was issued on 04.02.2020. Without dilating further, it would be appropriate to refer to the Affidavit-in-Reply dated 26.09.2022 filed by Respondent Nos.1 and 2 in the present Petition. Exhibit 'A' to the Affidavit-in-Reply is a copy of order dated 04.02.2020 issued by Respondent No.1 in compliance with the order dated 09.01.2020. The order dated 04.02.2020 is reproduced below for reference:-

"SVTR/2019-20/082

4/2/2020

*To
Shri Deepak T Kaul
R/at J-87, A WHO Colony Sector-29,
Faridabad – 121008*

Sub: Implementation of the directives as given in the judgment of the Honorable Bombay High Court in WP 2398 of 2007.

Dear Sir,

As per the directives of the Honorable Bombay High Court in WP 2398 of 2007, you are now deemed to have been confirmed in the post of Executive Assistant to Deputy Secretary of the Sanjeevan Vidyalaya Trust Panchgani on 1st May 2000, under provision of section 5(2) of the MEPS Act.

*Sd/-
R.S. Deshmukh
Manager
Sanjeevan Vidyalaya Trust"*

9. It is seen that Respondent No.1, chairperson of Sanjeevani

Vidhyalaya Trust has stated on Affidavit that she and the Trust were aware of the order dated 09.01.2020 passed by this Court, *inter alia*, directing the answering Respondents to pass an appropriate order as alluded to hereinabove. That in compliance of the said direction and before the time period stipulated by this Court, compliance was duly made and an intimation about the deemed appointment of Petitioner was dispatched to the Petitioner by registered post acknowledgment due at his address specified in the Petition / judgment at Faridabad. It is pertinent to note that the address of the Petitioner in the proceedings is shown as R/at J-87, A WHO colony, Section-29, Faridabad – 121008. That even in the present Petition it is averred by Petitioner that he is based in Faridabad and his address in the cause title is the same. However, in paragraph No.13 it is stated by the Petitioner that he did not receive any implementation letter dated 04.02.2020 sent by the Respondent Nos.1 and 2 till date.

10. Respondent Nos.1 and 2 have also placed on record the dispatch slip issued by the postal authority at Panchgani sending the dispatch by registered post AD from Panchgani as well as a copy of the front and back of the envelope which is returned undelivered by the postal authorities with a remark “कोई जानकारी नहीं”. Record indicates that Petitioner issued a legal notice dated 14.06.2020 through his Advocate alleging contempt which was received by Respondent Nos.1

and 2. That Respondent Nos.1 and 2 by their reply dated 13.07.2020 informed the Advocate of Petitioner that the Trust had implemented and complied with the direction contained in paragraph No.26 of the judgment dated 09.01.2020. However the said letter was returned back as undelivered to the Respondents. The courier waybill of sending the reply dated 13.07.2020, despite there been a lockdown during the said period is also placed on record by the Respondents. It is further stated that a scanned copy of the letter dated 04.02.2020 was also sent on whatsapp to the Petitioner's Advocate's cell Phone No.9322764235. That proof of the said whatsapp message having been read by the Advocate for Petitioner is also placed on record by Respondent Nos. 1 and 2.

11. In this background, the present Contempt Petition is filed on 05.01.2021. No Affidavit-in-Rejoinder has been filed by Petitioner denying the contents of the Affidavit-in-Reply.

12. Mr. Dwivedi has fairly informed the Court that the Petitioner has superannuated in September 2021 and is now based in Faridabad.

13. In so far committing contempt is concerned, in view of the aforementioned undisputed facts placed on record alongwith the documentary evidence, it is seen that the direction contained in paragraph No. 26 of the judgment dated 09.01.2020 has been effectively complied with by Respondent Nos. 1 and 2. That

appropriate order in terms of Section 5(2) of the MEPS Act was issued by the said Respondents within the stipulated period and there is no failure on their part to comply with the judgment dated 09.01.2020.

14. In addition to issue of contempt notice, Mr. Dwivedi has drawn my attention and persuaded me to look into the Interim Application taken out by the Petitioner in the present Contempt Petition. The Interim Application seeks relief as prayed for in prayer clause (b) of the Contempt Petition, *inter alia*, pertaining to arrears of salary and other benefits.

15. Admittedly, in so far as reinstatement of the Petitioner is concerned, it would be out of question since the Petitioner has now passed his retirement age and can no longer be employed/reinstated and is deemed to be retired.

16. In so far as payment of backwages is concerned, the said relief cannot be granted in the present Contempt Petition. It shall be open to the Petitioner to claim the said relief for arrears of salary and other benefits by taking out appropriate proceedings as available to the Petitioner in law in the appropriate forum/Court.

17. In so far as initiation of contempt proceedings against Respondent Nos. 1 and 2 are concerned, from the evaluation of the material evidence placed on record by Respondent Nos.1 and 2, it is seen that there is no willful disobedience whatsoever of the judgment

dated 09.01.2020 passed by this Court as alleged by the Petitioner. The said Respondents have also tendered their unconditional apology in their Affidavit-in-Reply to this Court. In the order dated 27.09.2022 this Court has also heard the said Respondents, considered their Affidavit-in-Reply and dispensed with theailable warrant issued against them and have also exempted and dispensed with the presence of Respondent No.1.

18. It is stated that the purpose behind filing the Contempt Petition is to bring to the notice to the Court violation of the Court's order. Contempt proceedings and execution proceedings are two separate remedies that can be invoked simultaneously. As held above, there is admittedly no willful disobedience on the part of Respondent Nos.1 and 2, the alleged contemnors in not complying with the direction contained in paragraph No.26 of the judgment dated 09.01.2020. The defence submitted on behalf of Respondent Nos. 1 and 2 which has been alluded to hereinabove appears to be bonafide.

19. Mr. Dwivedi has urged the Court that in view of the fact that the Petitioner has since retired on and from September 2021, he would be entitled to backwages. He submitted that Petitioner has prayed for backwages in the Contempt Petition itself under prayer clause 'b' and further preferred an Interim Application seeking backwages by giving the entire computation and calculation according to the Petitioner.

20. Perusal of the Contempt Petition clearly envisages and alleges non-compliance of the direction contained in paragraph No.26 of the judgment dated 09.01.2020. Admittedly, the Petitioner has since superannuated from September 2021. Since this Court has arrived at a finding that there is no willful disobedience of the order dated 09.01.2020 and Respondent Nos.1 and 2 have issued the order dated 04.02.2020 in compliance of the direction given by this Court, the prayers for initiating contempt proceedings stand rejected. However, it is clarified that in so far as Petitioner's claim for backwages/arrears is concerned, he shall be entitled for the same in accordance with law in appropriate proceedings and before the appropriate forum / Court/ Tribunal.

21. Thus, there is no merit in the Contempt Petition filed by the Petitioner. In view of the above findings and observations, Contempt Petition is dismissed. Interim Application is also accordingly dismissed.

[MILIND N. JADHAV, J.]

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by AJAY
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