

Shephali

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CONTEMPT PETITION NO. 311 OF 2022**

Smita Harishchandra Landge ...Petitioner
Versus
The State of Maharashtra, through Education ...Respondents
Department, through its Secretary & Ors

Mr Ajinkya M Udane, for the Petitioner.
Mr Ashutosh Gavnekar, i/b CG Gavnekar, for Respondents Nos. 4 & 5.
Mr GH Keluskar, for Respondent No. 8.
Mr Nikhil Wadikar, with Pradip Zente, i/b Nandu Pawar, for Respondent No. 10.
Ms SS Bhende, AGP, for the Respondent-State.

**CORAM G.S. Patel &
 Sharmila U. Deshmukh, JJ.**
DATED: 23rd November 2022

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PC:-

1. Contempt is alleged of an order dated 24th February 2021. A copy of that order is at Exhibit “B” at pages 24 and 25 of the paper book. It reads thus:

“1. Heard learned counsel for the Petitioner, learned counsel for Respondent No.4 and learned AGP for the Respondent-State.

2. The subject matter of controversy in the present petition concerns appointment/absorption of the Petitioner as a Shikshan Sevak in a vacant post in Education Department (Primary), Sangli Zilla Parishad or Sangli-Miraj-Kupwad Municipal Corporation or Vita Municipal Council, Tal. Vita, District : Sangli. It is not in dispute that on merits of her case, the Petitioner is entitled to be absorbed and accommodated as a Shikshan Sevak in a vacant post under the Zilla Parishads. In fact, the Director of Education (Primary), Pune Division by addressing a letter to the Additional Chief Secretary of School Education & Sports Department, Maharashtra State, Mantralaya, Mumbai dated 15.07.2019 has required suitable directions for appointment of the Petitioner as a Shikshan Sevak.

3. On these facts, the petition can be conveniently disposed of by directing the Respondents to issue appropriate directions for absorption of the Petitioner in the school maintained by the concerned Zilla Parishads. The Court is informed that there are adequate number of vacancies in that behalf. The Petitioner is a Scheduled Caste candidate and according to the respective rosters, there is a scope for engagement of the Petitioner as a Shikshan Sevak under the respective Zilla Parishads.

4. The petition is accordingly disposed of by directing the Respondents to accommodate or absorb the Petitioner as a Shikshan Sevak in any suitable vacant post in the Education Department (Primary), Sangli Zilla Parishad or Sangli-Miraj-Kupwad Municipal Corporation or Vita Municipal Council, Sangli. To enable the Petitioner's transfer from Zilla Parishad, Alibag to any of these places, suitable orders shall be issued by Respondent No.4- Education Ofcer (Primary), Zilla Parishad, Raigad-Alibag within a period of three weeks from today.

5. The petition is disposed of in the above terms.”

2. What this order evidently directs is that the Petitioner was to be absorbed as Shikshan Sevak “in any suitable vacant post” in the Education Department (Primary) of the Sangli Zilla Parishad or the Sangli Miraj Municipal Corporation or with the Municipal Council Sangli. To enable her transfer to Sangli from the Zilla Parishad Alibaug in Raigad, district suitable orders were to be issued by the 4th Respondent Education Officer (Primary), Zilla Parishad, Raigad at Alibaug.

3. The complaint is that this order has remained without implementation in all this time. At page 32 is a letter of 5th March 2021 from the Petitioner to the Zilla Parishad Sangli, Respondent No. 7, pointing out the High Court order. Then, a similar letter was written on 2nd March 2021 to the Zilla Parishad, Raigad, Alibaug. On 30th March 2021, the Zilla Parishad Sangli wrote to the Director of Education (Primary) in Pune pointing out the order and what was required to be done. On 16th March 2021, the Zilla Parishad Raigad Alibaug wrote to the Director of Education Pune seeking directions to implement the Court order. At page 63 (a copy of which is also at page 48) is a letter from the Director of Education Pune saying that it would be impossible to implement this order because of something that had evidently not been noticed in the order and possibly concealed in the Petition namely that the Petitioner had never in fact joined at the school in question in Alibaug in Raigad District. Without her joining that school, no question of relieving her for the purposes of a transfer to Sangli could ever even arise. She had not even properly taken up employment as required by the applicable rules. It appears that the Zilla Parishad Sangli and Raigad have both done what little was expected of them and have both

written to Director of Education. It is not as if the Director of Education has not acted at all. He has pointed out that there is a failure on the part of the Petitioner to join service in Alibaug.

4. While we disapprove of this approach, and believe it would have been more appropriate for the Director of Education through the learned AGP to seek a clarification of this Court, we have seen a copy of the Writ Petition and we are not able to find from the Petition a single averment that the Petitioner had in fact reported to and joined her services at Alibaug. That she was on the establishment at Alibaug is accepted in paragraph 16 of the Petition at page 18 where the averment is that the Zilla Parishad at Raigad Alibaug was “unable to resume her and accordingly inform the letter dated 18th May 2016”. A copy of this letter does not seem to be annexed.

5. Exhibit 1 to the Affidavit in Reply of the Education Officer of the Raigad Zilla Parishad at page 57 of the Contempt Petition is the appointment letter of 9th November 2016 of the Petitioner. There is also at page 155 of the Writ Petition a communication dated 28th November 2016 from the Petitioner to the Education Minister saying that the Raigad Zilla Parishad was unable to absorb her because of certain proceedings and there was therefore no question of her being able to report or take up position.

6. On 17th February 2018 there was an intimation (page 59 of the Contempt Petition) which says that the Petitioner did not in

November 2016 join her employment at a place of posting at Shrivardhan. There is simply no answer to this.

7. It is difficult to see how in these circumstances it can be said that there is contempt committed by any of the Respondents of the order in question. The action of the Director of Education Pune may be sub-optimal in the form that it took.

8. These are substantially disputed questions and it is difficult to say that in these circumstances that is a wilful disobedience of any judgment, decree, direction or Writ or other process of the Court within the meaning of Section 2(b) of the Contempt of Courts Act.

9. If the Petitioner has any other remedies at this stage, she is at liberty to pursue those. The Contempt Petition is rejected. There will be no order as to costs.

(Sharmila U. Deshmukh, J)

(G. S. Patel, J)