

JPP

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

WRIT PETITION NO. 2075 OF 2020

Ismail Mohammed Nadaf	... Petitioner
V/s.	
State of Maharashtra and Ors.	... Respondents

***with
INTERIM APPLICATION NO. 3121 OF 2021
in
WRIT PETITION NO. 2075 OF 2020***

The President, Sawantwadi Markazi Jammat, Mumbai	... Applicant
---	---------------

In the matter between

Ismail Mohammed Nadaf	... Petitioner
V/s.	
State of Maharashtra and Ors.	... Respondents

Mr. Satyajeet Anil Rajeshirke for the Petitioner
Mr. N.K. Purohit, AGP for the Respondents 1 and 2
Mr. Javed Rashid Patel for the Applicant in IA 3121/21 and for
Respondent Nos. 3 and 4 in WP 2075/20

***CORAM : SUNIL B. SHUKRE &
G.A. SANAP, JJ.***

DATE : 3 MARCH 2022

P.C. :-

Heard the learned Counsel for the parties.

2. The learned Counsel for the Petitioner who submits that the Respondent Nos. 3 and 4 have not complied so far with the directions issued by this Court in its order dated 22 July 2021. The learned Counsel for the Respondent Nos. 3 and 4 submits that the Respondent Nos. 3 and 4 have taken out an Interim Application seeking modification of the stay order. He submits that since the year 2017, the time when the Petitioner had not retired, the Respondent Nos. 3 and 4 are pursuing with the Petitioner to submit his explanation on the three aspects relating to affairs of the school which are : (a) Non deposit of salary grants from the year 2011 to 2014 though these grants were received by the Petitioner; (b) The irregularity committed in implementation of pension scheme; and (c) The irregularity committed in showing date of appointment of a Clerk, who was actually appointed for the year 2006 but was shown to be appointed in the year 2005.

3. The learned Counsel for the Respondent Nos. 3 and 4 submits that if the Petitioner gives his satisfactory explanation on these three aspects, the Respondent Nos. 3 and 4 would consider sending of the pension proposal to the Respondent Nos. 1 and 2.

4. The learned Counsel for the Petitioner submits that the Petitioner has already given his detailed explanation to these allegations and he submits that according to the Petitioner, there was a Clerk in the school who did these irregularities and therefore, the Petitioner had requested the management to take action against that clerk but it was not taken.

5. Whatever may be the allegations and counter allegations, fact remains that if the Petitioner has been allowed to retire from the service of the school and therefore, now no departmental action can be initiated against him, now we see no justification for the Respondent Nos. 3 and 4 to keep in abeyance the process of preparation of pension papers and this is the reason why this Court on the last occasion had directed the Respondent Nos. 3 and 4 to complete the pension proposal of the Petitioner and submit it to the Respondent No.2 for grant of pension. This direction could not have been refused to be complied with by the Respondent Nos.3 and 4 only because they wanted to file some interim application seeking modification of the order.

6. Now, even if the interim application has been filed by the Respondent Nos. 3 and 4, the order dated 22 July 2021 would have to be complied with by the Respondent Nos. 3 and 4 unless any modification to the order has been permitted. But so far no

modification of the order has taken place and therefore, the Respondent Nos. 3 and 4 would have to comply with the order. Even otherwise, the period of two weeks given by the order dated 22 July 2021 for its compliance has already expired long back and therefore, disobedience with this order is complete. Now, the only question is as to whether or not this disobedience is willful but we do not find that any situation to examine this aspect will arise, if the Respondent Nos. 3 and 4 even now comply with the directions given by this Court.

7. About the allegations made against the Petitioner, we must make it clear here that the Petitioner, by his reply sent on 16 August 2018, had given his detailed explanation. This reply shows that the irregularities were committed by one junior clerk by name Wasim Fazaluddin Shaikh against whom police complaints were also made. By this explanation, the Petitioner had called upon the Respondent Nos. 3 and 4 to proceed against Wasim Fazaluddin Shaikh who, according to the Petitioner was the clerk, who had committed the irregularities and not the Petitioner. It is further seen that according to the Petitioner no action was taken against him on the ground that he was the permanent non-teaching staff receiving the salary from the School Education Department, Government of Maharashtra. The learned Counsel for the Petitioner invites our attention to the e-mail received by the Petitioner from the school

management on 24 November 2016 (page 172) wherein the school management, in response to the complaint made by the Petitioner, made a very meaningful statement that all the permanent teaching and non-teaching staff of our aided Central Urdu High School at Baherchawada, Sawantwadi are getting their salary from School Education Department, Government of Maharashtra. According to the learned Counsel for the Petitioner, the only indication given by this statement is that the school management did not wish to take any action against the erring clerk because the salary was not being paid from the pockets of those who were incharge of affairs of the school.

8. The correspondence referred to above would show that there is even greater responsibility placed upon the Respondent Nos. 3 and 4 to consider preparation of pension proposal of the Petitioner and it being sent to Respondent No.2 at the earliest. If the reply given by the school management to the Petitioner is considered in its right spirit, the school management would be obliged to immediately prepare the pension proposal and send it to the Respondent No.2 for its approval. These facts and circumstances, in our considered view, would make filing of the interim application seeking modification of the order as insignificant, atleast at this stage.

9. Therefore, we again direct the Respondent Nos. 3 and 4 to complete the pension proposal of the Petitioner within a period of

one week from the date of the order and send it to the Respondent No.2 for approval and grant of pension within a period of two weeks from the date of the order, failing which, the disobedience of the order dated 22 August 2021 would be considered by this Court for taking appropriate action against the Respondent Nos. 3 and 4.

10. For the aforesaid reasons, the Interim Application No. 3121 of 2021 is rejected.

G.A. SANAP, J.

SUNIL B. SHUKRE, J.

JYOTI
PRAKASH
PAWAR

Digitally signed
by JYOTI
PRAKASH
PAWAR
Date: 2022.03.05
11:33:21 +0530