

Shailaja

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.2471 OF 2015**

Mansi Vivekanand Gurav	]	Petitioner
Vs.		
Primary Education Board, Kolhapur	]	
Municipal Corporation, Kolhapur	]	
Through Administrative Officer and others.	]	Respondents
a/w		

**INTERIM APPLICATION [STAMP] NO.13751 OF 2021
IN
WRIT PETITION NO.2471 OF 2015**

Bhakti Seva Vidyapeeth Society	]	Applicant
<u>IN THE MATTER OF:</u>		
Mansi Vivekanand Gurav	]	Petitioner
Vs.		
Primary Education Board, Kolhapur	]	
Municipal Corporation, Kolhapur	]	
Through Administrative Officer and others.	]	Respondents

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Mr. M.S. Topkar a/w Ms. Pavitra Manesh, for Petitioner.

Mr. Suresh M. Kamble, for Respondent No.1.

Mr. V.M. Mali, A.G.P, for Respondent No.3-State.

Mr. Mihir Desai, Senior Advocate a/w Mr. Mihir Joshi, for Respondent No.2 for Applicant in I.A. (Stamp) No.13751 of 2021.

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

DATE : 4th MARCH, 2022.

P.C.

1. Rule.
2. Rule made returnable forthwith.
3. Heard finally by consent.
4. The facts of this case have already been summarized by this Court while passing order on 12th March, 2020 giving further time to the respondent-Management for obtaining appropriate instructions.
5. While granting time to respondent-management for taking further instructions, reference is made as “respondent-management” as rightly pointed out by the learned Counsel for the petitioner and also by learned Counsel for respondent No.2. This reference ought to have been to “respondent No.1” as till that time, nobody had appeared for respondent No.2-Management. Therefore, Interim Application filed for seeking modification of the order at least to the extent, it seeks modification with regard to making of reference to “respondent-Management” has to be allowed and it is allowed accordingly.

6. Interim Application also seeks modification of the entire order dated 24th June, 2021 by seeking a specific direction to respondent No.1 for releasing salary grants of salary of the petitioner from 1st June, 2003 till date and further to continue to pay her regular salary on monthly basis. This prayer, of course, will be considered appropriately in the remaining part of the order.

7. Coming back to the facts of the case, as stated earlier, facts have been stated precisely in the order dated 12th March, 2020. For the sake of convenience, they are reproduced as under;

“1. The petitioner was appointed as Assistant Teacher in the primary School run by respondent no.2 on 1st August, 2005, in place of one Kanchan Sanjay Bhopale, who was terminated from the service. There was a litigation in respect of this termination before the School Tribunal and ultimately it went to the Apex Court granting permission to the Management to conduct an inquiry and then take appropriate action. Accordingly, the management conducted the inquiry and terminated services of the said employee on 6th November, 2017. The Appeal No.74 of 2017 fled by the said employee has been dismissed by the School Tribunal at Kolhapur.

2. In the aforesaid background, the petitioner is asked to give an undertaking that if the teacher Kanchan Sanjay Bhopale is required to be reinstated in the services as per the order of the competent Court, then the

petitioner will have to leave the job. According to the petitioner, such undertaking was already given when the initial appointment was made on 1st August, 2005 and it shall continue to remain in force even till today. The petitioner has not been paid salary from 13th May, 2013.

3. *In view of the aforesaid position, prima facie, we do not find any impediment in releasing salary of the petitioner from 13th May, 2013 till this date and further to continue the payment of salary for the reason that the petitioner has agreed for continuation of undertaking given on 1st August, 2005 till the finality is attained in respect of the termination of the services of Kanchan Sanjay Bhopale. The learned Counsel for the respondent-Management seeks time to take instructions in this matter”.*

8. After passing all the order, nothing specific has been submitted by respondent No.1 so as to convince this Court to not confirm it's view already expressed in a *prima facie* manner in the order dated 12th March, 2020. On the contrary, respondent No.1 in the reply filed by him only states that the petitioner be directed to submit indemnity bond and respondent No.1 would release salary of the petitioner. Indemnity bond contemplated by respondent No.1 is nothing but an undertaking for refund of salary which she has received till submission of the undertaking and which she would receive in future in case the appeal filed by the erstwhile Headmaster Mrs. Kanchan Sanjay Bhopale against her

termination was decided in her favour by the School Tribunal. This undertaking at page No.17 has been submitted by the petitioner way back in the year 2002. Date of the undertaking is 30th July, 2002. Since the undertaking has already been submitted to respondent No.2 - Management, it would be appropriate that respondent No.2 is directed to send it to respondent No.1 for the sake of record. We say so because keeping this undertaking on record is now only matter of academic interest.

9. It is an admitted fact that Mrs. Bhopale, erstwhile Headmaster has retired on attaining superannuation on 30th September, 2018 and that the latest appeal being Appeal No.74 of 2017 filed by her before the School Tribunal has also been dismissed on 12th February, 2020.

10. Of course, the order of dismissal has been challenged by the former Headmaster by filing a Writ Petition being Writ Petition No.3197 of 2020 which is stated by learned Counsel for respondent No.1 is still pending for admission before this Court.

11. In view of the above, writ petition is allowed in terms of prayer clauses (a) and (b) subject to the result of the writ petition No.3197 of 2020.

12. Salary with arrears shall be released by respondent No.1 within a period of four weeks from the date of the order.

13. Rule is made absolute in the above terms. No costs.

14. In view of the order passed in the writ petition, Interim Application stands disposed of.

[G.A. SANAP, J.]

[SUNIL B. SHUKRE, J.]