

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CONTEMPT PETITION NO.349 OF 2018

Khandu Nagnath Deokate

...Petitioner

Vs.

S. D. Sonawane, The Education Officer
(Secondary) and Ors.

...Respondents

Mr. I. M. Khairdi for the Petitioner.

Mr. Ashutosh Kumbhakoni, Advocate General with Smt. Pratibha
Gavhane, AGP for the Respondent-State.

CORAM : NITIN JAMDAR &
AMIT B. BORKAR, JJ.

DATED : 10 JANUARY 2022.
(Through Video Conferencing)

P. C. :

The contempt petition alleges that the Respondents have committed contempt of court by not implementing the order passed by this Court in Writ Petition No.5768 of 2016 dated 5 December 2017. Rule has been issued in this Contempt Petition.

2. The Petitioner was appointed in a school meant for the

physically challenged. He was appointed as an Attendant. His appointment was approved and the Petitioner was working as permanent employee. Since the recognition to the 'handicapped unit' of the concerned Education Institute was cancelled, the Petitioner was left without any services and filed the contempt petition.

3. The Writ Petition was disposed of on a statement made on behalf of the Education Officer(Secondary) which was recorded as under:-

"8. On taking instructions from the official of the concerned Department, who is present in Court, Mr. Samant , learned AGP makes a statement that the petitioner Khandu Nagnath Deokate would be absorbed in a school meant for handicapped and functional at Solapur itself. That school would be directed to absorb the petitioner in its services with effect from 1st January, 2018. The appointment order to that effect would be issued and duly served on the petitioner on or before 28th December, 2017.

9. We accept both these statements made on instructions as undertakings to this Court. The name of the institution/school, where the petitioner would be absorbed, reads as under:

"Chandrabhagabai Yelgulwar Prashala, Solapur."

4. Since the Petitioner was not absorbed the present contempt petition was filed. In this Petition reply affidavit has been filed by the Education Officer (Secondary) Zilla Parishad. In reply affidavit the stand taken is as follows:

"5. I say that, while making the said statement before this Hon'ble Court in Writ Petition No.5768 of 2016, I bonafidely believed that, Chandrabhagabai Yelgulwar Prashala, Solapur is having handicapped unit and Petitioner can be absorbed in the same school. However, after passing of an order, when I made the enquiry with the said school, it was found that, the said school is not having handicapped unit but having blind unit and Deaf and dumb unit. I say that, when the said writ Petition was disposed of, I was under bonafide impression that, the said school is having the handicapped unit and under the said bonafide impression, the statement came to be made on my part. I therefore, tender unconditional apology to this Hon'ble Court for such statement made during the hearing of Writ Petition No.5768 of 2016 but I never had any intentions to mislead this Hon'ble Court or to make any false statement during the course of the hearing.

6. *I say that, on aforesaid backdrop when I noticed that, the said school, i.e. Chandrabhagabai Yelgulwar Prashala, Solapur is not having handicapped unit, on 19/01/2018 I called directions from the Education Director (Primary) Pune by forwarding the order of this Hon'ble Court in Writ Petition No. 5768 of 2016 for the purpose of absorption of the Petitioner in the handicapped school situated in District Solapur the copy of the said letter dated 19/1/2018 is hereto annexed and marked as Exhibit -1.*

7. *I say that, in the entire district of Solapur there is no handicapped unit is running and therefore on 31/1/2018 the letter was forwarded to the Head Master of Sambhajirao Shinde Prashala for sending a proposal to again start the handicapped unit as the recognition of the said school was cancelled. The copy of the said letter dated 31/01/2018 is hereto annexed and marked as Exhibit-2.*

8. *I say that, thereafter the said school by letter dated 31/1/2018, informed that, since they do not have the suitable number of students to start the unit again, they are unable to send the proposal for seeking again recognition for*

handicapped unit and as and when the number of minimum students are there the proposal will be sent accordingly. The copy of the letter dated 31.01.2018 is hereto annexed and marked as Exhibit-3.

9. *I say that, thereafter I came to be transferred to the Osmanabad as the Education Officer (C.E) on June, 2018 and since then I am working at Osmanabad and hence, the further follow up in the matter could not be taken on my part.*

10. *I say that, the statement in the said Writ Petition was made for the absorption of the Petitioner in Chandrabhagabai Yelgulwar Prashala, Solapur on bonafide impression that the said school is having the handicapped unit but was not the case. I thereafter made my sincere efforts for the purpose of complying the order of this Hon'ble Court even on 13/2/2019 I requested the Education Officer (Secondary), Solapur to see as to how the order of this Hon'ble Court can be complied with. A copy of the said letter dated 13/2/2019 is annexed and marked as Exhibit-4.*

11. *I say that , as far as my information, the policy decision requires to be taken for the purpose of absorption of similarly situated employees by the State and endeavour is required to be made to comply the directions of this Hon'ble Court as well as the order of the Hon'ble Division Bench at Aurangabad. I say that, since in Solapur District the handicapped unit is not available then in such circumstances if the Petitioner is ready to go another nearby District to*

Solapur, the proposal can be sent to the State of Maharashtra for approval purpose for the purpose of absorption of the Petitioner in the handicapped unit."

5. Apart from this statement in the affidavit, the learned Advocate General stated that additional modalities can be worked out and also stated that the Petitioner can be absorbed based on his last salary drawn. However, the Petitioner has shown disinclination.

6. The learned counsel for the Petitioner states that the order can still be implemented irrespective of the stand of the State based on the Government Resolution dated 15 September 2010 and suitable directions be issued.

7. In contempt jurisdiction it is not possible for us to adjudicate the issues at the first instance which were not adjudicated when the original Writ Petition was decided. The petition was decided on the statement made by the Education Officer and why it has not been complied with is placed on record by affidavit. In contempt jurisdiction we have to examine whether the stand taken by the Education Officer is contemptuous and undermine the authority of the court and we cannot adjudicate new rights and issue fresh directions. Having considered the reply affidavit it cannot be said that the stand taken is to undermine the authority of the Court, as there appears to be

genuine difficulty in implementing the order. Alternate offer has been made and it is for the Petitioner to take up the same or not.

8. As regard the Government Resolution dated 15 September 2010 that is not the basis on which the original order was passed. According to us the Petitioner can make representation to the State based on the Government Resolution dated 15 September 2010 for absorption and depending upon the outcome of such representation can take proceedings further.

9. Contempt Petition is accordingly disposed of.

10. The Petitioner may make representation to the Respondent within four weeks. State Government will decide the same within six weeks thereafter and inform the Petitioner of the outcome. Needless to state that if the outcome is adverse it is open to the Petitioner to challenge the same on the grounds as may be available in law and facts.

(AMIT B. BORKAR, J.)

(NITIN JAMDAR, J.)