

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT NAGPUR, NAGPUR.

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WRIT PETITION NO. 1433 OF 2010

Rashtriya Shikshan Prasarak Mandal, Pusad

..Petitioner

versus

The Special District Social Welfare
Officer, Yavatmal and another

..Respondents

Mr. Omkar Ghare, Advocate for the Petitioner

Ms.Shamsi Haider, Assistant Government Pleader for Respondent
No.1

...

CORAM: NITIN JAMDAR &
ANIL L. PANSARE,JJ
DATED : 21 APRIL 2022.

P.C. :

Heard the learned Counsel for the parties.

2. The Petitioner has challenged the order passed by the Lok Ayukta dated 8 December 2009 whereby the Hon'ble Lok Ayukta had directed the Special District Social Welfare Officer, Yavatmal to deduct an amount of ₹ 69,169/- from the grant payable to the Petitioner-Institution and pay the same to Respondent No.2 who was working with the Petitioner-Institution. The main ground of challenge by the Petitioner is that the Lok Ayukta did not have jurisdiction to pass such an order and the amount which has been

deducted from the salary grants by the Respondent-Social Welfare Officer be returned to the Petitioner.

3. It is the basic principle of exercise of writ jurisdiction, which is equity jurisdiction, that if the order which is stated to be without jurisdiction is set aside the result would be reviving the position of injustice, the writ court may not exercise its extraordinary jurisdiction.

4. As to the entitlement of the Respondent No.2, the learned Counsel for the Petitioner submitted that the Respondent No.2 has specifically given an undertaking that he will not claim this amount and, therefore, there was no need to issue such a direction by the Hon'ble Lok Ayukta and there is no injustice if the order is set aside.

5. We have perused the undertaking dated 6 December 2005 which is stated to be given by the Respondent No.2 to the Petitioner. The undertaking states that on 2 September 1996 the Petitioner was promoted and transferred as Head of the school, however the approval was not granted by the Social Welfare Officer and, therefore, the Respondent No.2 will not claim salary of that period from the Petitioner. The Petitioner being the employer, is primarily responsible to pay to its employees and such undertaking whereby the Respondent No.2 was stated to have given up his claim

would be against this position. The consequence of passing an order in favour of the Petitioner would be giving effect to such an undertaking which we are not inclined to do. The Respondent No.2 has been paid salary for the period September 1996 to 1997 which ought to have been given by the Petitioner as a primary employer. We therefore are not inclined to grant any relief to the Petitioner. Legal issue of jurisdiction raised will be considered in appropriate petition.

6. The writ petition is disposed of. Rule discharged.

[ANIL L. PANSARE,J.]

[NITIN JAMDAR,J.]

sahare