

Ashwini

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 9401 OF 2022

Sanjay Ramchandra Dhivare ...Petitioner

Versus

The State of Maharashtra through the Secretary, ...Respondents
School Education Department & Ors

Mr Narendra Bandiwadekar, Senior Advocate, i/b Ashwini N
Bandiwadekar, for the Petitioner.

Ms PN Diwan, AGP, for the Respondent-State.

CORAM G.S. Patel &
Neela Gokhale, JJ.

DATED: 28th March 2023

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1. This is actually a third round of litigation. We trust there will not be a fourth. As the facts below will show, thanks to the conduct of the management, Respondent No. 7, and the conduct of Respondent No. 5, the State Government is no longer, in our considered view, required to bear the financial burden imposed by this Court for payment of the Petitioner's salary from 14th September 2012 until 25th December 2016.

2. The Petitioner had filed Writ Petition No. 1311 of 2013. This was taken up along with Writ Petition No. 11767 of 2012 filed by the present 6th Respondent, Jadhav. Both were disposed of together.

The Division Bench of Pradeep Nandrajog CJ (as he then was) and NM Jamdar J first noted that the contest was between the Petitioner and present Respondent No. 6, Jadhav. The present Petitioner challenged the implementation of an order dated 22nd November 2012 passed by the Deputy Director of Education Nashik Division and which he reiterated after hearing these two persons. Jadhav challenged the order of 22nd November 2012 and a later order of 11th January 2013. The Management Trust was also a party.

3. The Division Bench noted that there was a struggle for power in the management between two persons , one Vijay Panditrao Patil and one Sukhdeo Krishna Sonawane. Both claimed to be the president of the Trust. Sonawane is Respondent No. 5 to the present Petition. He has since passed away. That decision about presidency was never decided by the Deputy Charity Commissioner.

4. The present Petitioner was the head master of the school at Satana run by 7th Respondent Trust. The 6th Respondent Jadhav was the head master of another school established by the Trust at Joran. The trouble began because Sonawane issued a transfer order on 14th September 2012 effectively swapping the posts and positions of the Petitioner and the present 6th Respondent, Jadhav.

5. The present Petitioner approached the Deputy Director of Education. That resulted in the order of 22nd November 2012 effectively ordering a status-quo as of 14th September 2012. The Deputy Director of Education then heard the parties and reiterated his order on 11th January 2013. Despite this the 6th Respondent,

Jadhav went off to Satana and insisted on taking over. It is he who filed the companion Writ Petition No. 11767 of 2012.

6. Before the Division Bench, Counsel for the Petitioner and the 6th Respondent said that the 6th Respondent had been the head master of the Satana School and that the Petitioner had joined as head master of the other school in Joran on 26th December 2016. The Division Bench noted that it would be useless for the Court to decide whether the Deputy Director of Education was justified in passing his two orders. The only issue that fell before the Court was noted in paragraph 7, viz., that the Petitioner had been without wages from 14th September 2012 until 25th December 2016. The reason, as the Division Bench noted was obvious. For that period, the 6th Respondent, Jadhav also functioned as the head master of the school in Satana. The Petitioner wanted to continue to work in that very school. His patience ran out on 26th December 2016 when he finally reported to the other school at Joran.

7. Now the finding returned by the Division Bench was that the problem arose because of the management struggle and therefore, in paragraph 9 of its order, the Division Bench first burdened Sonawane, deceased Respondent No. 5, with the financial liability in the first instance to bear the burden, i.e., to pay the Petitioner's salary and wages from 14th September 2012 until 25th December 2016. He was allowed to make a representation to the Deputy Director of Education for a disbursement of the grant in aid since both schools were aided schools. The Deputy Director of Education was to consider whether the amount should be disbursed, and he

was asked to note the fact that it was Sonawane who had created the problem. Sonawane was given eight weeks to make this payment.

8. This was actually the second round of litigation between the parties. It seems that the Petitioner filed a Review Petition No. 60 of 2015 directed against an earlier order of 7th October 2014. We only note this for the record.

9. The fact of the matter is that Sonawane never obeyed the order of the Division Bench of 16th July 2019. He made no payment. Conceivably, he stood in contempt. There was no order in review and no application for modification, variation or recall of that order. No Special Leave Petition was filed to challenge that order either.

10. Now the Petitioner is once again before us, and he is compelled to ask for the same relief that was already granted to him, viz., that his salary for the period 14th September 2012 until 25th December 2016 be released to him. Presumably, the management, which has studiously stayed away, will now contend that it must receive the funding from the State Government. We reject that argument even before it is made. The president of the Trust is in contempt. That contempt is not purged. It is impossible to accept that the State Government should be responsible for the disobedience by the 7th Respondent Trust or its President of an order of the Court.

11. Mr Bandiwadkar clarifies that from 25th December 2016 the Petitioner is indeed receiving his salary from the State Government

grant and there is no quarrel about that. The only dispute is for this period between 14th September 2012 to 25th December 2016.

12. Finding disobedience with the order of the Court, we require the 7th Respondent Trust to make payment of the Petitioner's salary and wages for the entire period of 14th September 2012 until 25th December 2016. On account of that disobedience of the order of the Court, the 7th Respondent will no longer be entitled to seek reimbursement for the Petitioner's wages for this period. The State's obligation to pay the Petitioner's wages after 25th December 2016 will however continue.

13. The 7th Respondent management will make the payment by within 21st April 2023.

14. Rule is made absolute in these terms and the Petition is disposed of accordingly with no order as to costs.

15. List the matter for compliance on 26th April 2023.

16. Lastly, we put the management to notice that this order is executable for the full amount of salary. If it is not paid by 21st April 2023, the amount will carry interest at the rate of 9% per annum payable by the 7th Respondent with effect from 21st April 2023.

(Neela Gokhale, J)

(G. S. Patel, J)