

Dusane

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

WRIT PETITION NO.7697 OF 2023

President / Secretary ...Petitioner
Shivdatta Dnyanprasarak Mandal

V/s.

Mrs. Pratiksha Pundlik Mahalunge ...Respondents
& Ors.

Mr. R.S. Apte, Senior Counsel i/by Jintendra H. Oak
for Petitioner.

Ms. Pooja Singh Malik for Respondent No. 1

Mr. Anand S. Kulkarni for Respondent No.4.

Mr. S.D. Rayrikar, AGP for Respondent No. 5-State.

Mr. Anil Dhondu Bhoir, Respondent No.3, in-person.

CORAM: MADHAV J. JAMDAR, J.
DATE: 30th October 2023

P.C.:

1. Heard Mr. Apte, learned Senior Counsel appearing for the Petitioner, Ms. Malik, learned Counsel appearing for Respondent No. 1, Mr. Kulkarni, learned Counsel appearing for Respondent No.4, Mr. Rayrikar, learned AGP for Respondent No.5 -State and Mr. Anil Dhondu Bhoir, Respondent No. 3, appearing in-person, Incharge Headmaster of Shri Ganesh Vidyamandir, Respondent No.2.

2. The Petitioner, Shivdatta Dnyanprasarak Mandal, a Public Charitable Trust, runs Shri Ganesh Vidyamandir School and is challenging the legality and validity of the order dated 18th April 2023 passed by the learned Presiding Officer, School Tribunal, Mumbai, below Exhibit 5 in Appeal No. 6 of 2023. The learned School Tribunal passed following operative order:

"ORDER

1. The application is allowed in following terms:-

*a) **Respondent Nos. 1 and 2 are hereby directed to reinstate the appellant on the post of Head Mistress in the Respondent No. 2 school i.e. Ganesh Vidya Mandir, Post Diva, Dist. Thane with all the attached benefits as if she was not terminated from the post of Head Mistress of Respondent No. 2- School.***

*b) The termination order of the appellant dt. 06.03.2023 is hereby stayed until final disposal of this appeal or unless **otherwise directed by express order .. shall deemed to have come in force from the date of termination order i.e. 06.03.2023.***

(Emphasis added)

3. Mr. Apte, learned Senior Counsel after arguing the matter for some time, took time to take instructions and accordingly the Petitioner-Trust has filed affidavit dated 30th October 2023 of Mr. Sainath L. Mhatre, who is Secretary of the Petitioner-Trust. The relevant portion of said affidavit dated 30th October 2023 reads as under:

*"1. I say that the **Petitioner trust hereby cancels and withdraws Show cause notice dated 03/08/2022***

(Exh.B to the Petition) and statement of allegations dated 10/12/2022 (Exh. H to the Petition) with liberty to issue fresh show cause notice and fresh statement of allegations including present allegations contained in above-referred communication dated 10/12/2022 (Exh. H to the Petition) and conduct fresh Enquiry De-novo against the Respondent Head Mistress in accordance with Law.

2. I say that the Petitioner trust cancels and withdraws Order of Termination dated 06/03/2023 issued to Respondent Mrs. Pratiksha P. Mahalunge.

3. I say that the Petitioner trust reinstates the Respondent Mrs. Pratiksha Pundlik Mahalunge and Mrs. Pratiksha Pundlik Mahalunge shall resume her duties on 01/11/2023.

4. I say that fresh Enquiry proceedings will be initiated after 1st November 2023 i. e. after reinstatement of the Respondent Mrs. Pratiksha P. Mahalunge.

5. I say that the Ld. Presiding officer School Tribunal was pleased to pass the impugned Order on 18/04/2023 directing *inter alia* that :-

"Respondent No.1 and 2 are hereby directed to reinstate the Appellant on the Post of Head Mistress in the Respondent No.2 School i.e Ganesh Vidya Mandir, Post Diva, Dist. Thane with all the attached benefits as if she was not terminated from the post of Head Mistress of Respondent No.2 School."

6. I say that the Petitioner's school is aided school and as the Respondent would be H. M. she shall submit Pay Bills of her salary for the period of March 2023 to October 2023 to the Respondent No. 4 and 5 to grant and release the back-wages as per the Order of Ld.

School Tribunal, within one week from 1st November 2023. The Petitioner's Trust also may submit its Representation within one week, to the concerned Authorities. **I say that the Respondent No.5 being the Higher Authority be directed to decide the Pay Bills within a period of 2 weeks from the date of Submission of such Pay Bills and such Representations to them in accordance with Law and on its own merits. I say that the Petitioner Trust has given charge of the post of H. M. to Shri Anil Bhoir from 06/03/2023 who has not claimed, and will not claim any additional Salary for the period for which he was in-charge as such there will not be any situation of Double Payment of Grant by the Respondent No.4 and Respondent No.5, for the said period of March 2023 to October 2023. I say that if the pay Bills are finally rejected by Respondent No.5 then the Petitioner Trust will pay the back-wages for the period of March 2023 to October 2023 to the Respondent Head Mistress within a period of 15 days from the date of such Rejection and communication thereof to the Petitioner Trust without prejudice to Right of Petitioner Trust to challenge such Rejection before the appropriate Fora and if Respondent Head Mistress receives such back-wages from Grant released by the Respondent No. 4 and Respondent No.5, the Respondent Head Mistress shall re-pay the amount of the back-wages paid by the Petitioner Trust, immediately.**

7. I say that The Appeal pending before the Ld. Presiding Officer School Tribunal be treated as disposed of in view of what is stated hereinabove and the Ld. School Tribunal be informed accordingly.

(Emphasis added)

4. Thus, it is clear that the show cause notice dated 3rd August 2022, statement of allegations dated 10th December 2022 as well as fresh statement of allegations dated 10th December 2022 and order of termination dated 6th March 2023 are withdrawn by the management. In the said Appeal No. 6 of 2023, which has been filed before the School Tribunal, challenge was to the legality and validity of said termination order dated 6th March 2023.

5. As stated hereinabove since show cause notice, statement of allegations and order of termination dated 6th March 2023 are withdrawn, nothing survives in said Appeal No. 6 of 2023. Ms. Malik, learned Counsel appearing for Respondent No.1 states that therefore she has instructions to withdraw the said appeal and accordingly the said appeal will be withdrawn before the learned School Tribunal.

6. The Writ Petition is disposed of in terms of the affidavit dated 30th October 2023 filed by Mr. Sainath L. Mhatre, Secretary of the Petitioner-Trust. Various statements made in the affidavit dated 30th October 2023 of Mr. Sainath Mhatre are accepted as undertakings given to this Court.

7. Ms. Malik states that from September 2022 to December 2022, Respondent No.1 has been paid 50% of the salary and for the period of January 2023 to February 2023 she has been paid

75% of the salary. It is clarified that the said shortfall in the salary is also to be covered in the pay-bills as mentioned in paragraph 6 of the affidavit and the statements made therein are also applicable to the said shortfall for the period of September 2022 to February 2023.

8. The Respondent Nos. 4 and 5 are directed to expeditiously take decision on pay bills set out in paragraph 6 of the affidavit dated 30th October 2023 of Mr. Sainath L. Mhatre, Secretary of the Petitioner-Trust.

9. It is also clarified that the Petitioner-Trust is at liberty to issue fresh show cause notice and take further steps in accordance with law. It is clarified that all the contentions of both the parties with respect to such fresh action proposed to be taken by the Petitioner-Trust are expressly kept open.

10. In view of above, nothing survives in the challenge to the impugned order dated 18th April 2023 passed by the learned Presiding Officer, School Tribunal, below Exhibit 5 in Appeal No. 6 of 2023.

11. The Writ Petition is disposed of in above terms with no order as to costs.

(MADHAV J. JAMDAR, J.)

BHALCHANDRA
GOPAL
DUSANE

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BHALCHANDRA
GOPAL DUSANE
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