



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

20 CONT. PETITION NO. 574 OF 2023

SHUBHANGI RAMESH LOKHANDE

VERSUS

SMT. ANITA VIJAY SURYAWANSHI

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Advocate for Petitioner : Mr. Laxman Vishnu Sangit.

Advocate for Respondent No.1 : Ms. Apoorva Songire h/f Mr. V.
P. Latange.

Advocate for respective Respondent : Mr. Sachin S. Tambe h/f
Mr. Santosh S. Jadhavar.

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CORAM : S. G. MEHARE, J.

DATE : 08.05.2024

PER COURT :-

1. Heard the respective learned counsels.
2. This contempt petition is filed under Section 10 of the Contempt of Courts Act, 1971.
3. By way of this contempt proceeding, the petitioner wants to execute the order of the learned School Tribunal, Solapur passed in Appeal No.28 of 2019, dated 25.03.2022. Section 13 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 (for short "M.E.P.S. Act 1977") provides for the penalty to the Management for failure to comply with the Tribunal's directions. Recently, Division Bench

of this Court in the case of ***Smt. Ahemadi Siddiqui Abdul Majid Vs. The State of Maharashtra and others in Writ Petition No.2036 of 2022, dated 20.06.2022*** has held that the extraordinary writ jurisdiction of this Court under Article 226 of the Constitution of India, cannot be converted into an Executing Court. Section 13 of the M.E.P.S. Act, 1977 adequately takes care of the interest of the litigant, who had succeeded before the Tribunal under Section 9 of the Act and an order/judgment has been delivered in his/her favour under Section 11 of the Act. The petitioner, therefore, has a statutory remedy of getting the order of this Court to go to Tribunal executed under Section 13, inasmuch as, the School Tribunal has awarded punishment to the errant management. Taking this view, the writ petition stands dismissed.

4. What remedy the successful petitioner has against the management has been provided under Section 13 and this question is again before this Court in many matters. This Court in the case of ***Mohammad Salam Anamul Haque Vs. S. A. Azmi; 2001 (1) Mh.L.J. 249*** and ***Chandrakant Vs. Sophy Keely; 1987 Mh.L.J. 1012***, has dealt with the question whether the Court should initiate proceedings against the respondent for contempt. In paragraph No.4, it was observed that the

jurisdiction of the High Court for punishing the person for contempt is a summary jurisdiction and therefore it has to be exercised with great care and caution and only when its exercise is necessary for the proper administration of law and justice. Further in paragraph No.5, it has been observed that one of the aspects to be looked into by the Court before initiating action under the Contempt of Courts Act is to find out whether the petitioner has any other remedy available for enforcing the order, which he is alleging breach by the respondent. In paragraph No.8, the following observations were recorded. "Therefore, the question that arises for consideration and which is to be examined is whether the order made by the Tribunal under Section 11 of the Act can be termed as an executable order made by a Court capable of being executed under the provisions of the Civil Procedure Code." In paragraph No.13, it has been observed that the Tribunal constituted under the Act has all the powers necessary for enforcing its order and an order made by the School Tribunal is an order within the meaning of the Code of Civil Procedure. Therefore, once an order is made in favour of an employer by the Tribunal, the employee can approach the Tribunal for execution of that order and then it becomes the duty of the Tribunal to either execute the order itself or, if it is

found necessary, transfer it for execution to another Civil Court in accordance with the provisions contained in the Code of Civil Procedure. Further in paragraph No.14, it has been observed that the order made by the Tribunal in favour of the petitioner is an executable order and therefore it is open to the petitioner to approach the Tribunal which passed the order, for getting that order executed in accordance with the provisions of the Code of Civil Procedure. The present contempt petition cannot be entertained for the reasons that have been indicated above.

5. Learned counsel for the petitioner submits that before approaching this Court, the petitioner has applied to the Chief Judicial Magistrate. However, it was rejected. Primarily, the petitioner has knocked the doors of the wrong Court. In view of the law laid down in the case of *Chandrakant (supra)* first the petitioner has to move an application under Section 13 to the School Tribunal and then the jurisdiction lies with the School Tribunal to take an appropriate decision whether transfer of said application for execution to another Civil Court is essential. In sum and substance, the law is laid down long back that a correct remedy to execute the order of the Tribunal is available to the petitioner under Section 13 of the M.E.P.S.

Act, 1977. The petitioner wants to execute the order of the Tribunal, High Court cannot be converted into an executing court. Therefore, the contempt petition stands dismissed with a liberty to the petitioner to move an application under Section 13 of the M.E.PS. Act, 1977 to the concerned Tribunal.

6. No order as to costs.

(S. G. MEHARE, J.)

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vmk/-