



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

**CONTEMPT PETITION NO. 935 OF 2024
IN
WRIT PETITION NO. 9394 OF 2015**

Mohammed Abdul Rahman S/o
Mohammed Abdul Habib
Age : 43 years, Occ : Surplus teacher,
resident of Mohalla Gani Pura, Nanded
H. no. 8-4-234, Nanded

..PETITIONER

-VERSUS-

1. The State of Maharashtra
2. Smt. Minal Deshmukh
Chief Executive Officer,
Zilla Parishad, Nanded.
3. Shri Madhav Salgare
Education Officer (Secondary)
Zilla Parishad, Nanded.

..RESPONDENTS

...
Advocate for petitioner : Ms. A.N. Ansari
AGP for Respondent- State : Mr. A.V. Lavate

...
**CORAM : SMT. VIBHA KANKANWADI AND
ROHIT W.JOSHI, JJ.**

DATED : 29 NOVEMBER, 2024.

JUDGMENT (PER R.W. JOSHI, J.) :

. The present contempt petition is filed under Sections 10 and 12 of the Contempt of Courts Act, 1971 and under Article 215 of the Constitution of India drawing attention to the non-compliance of the order dated 06.10.2016 passed in Writ Petition No. 9394/2015.

2. The petitioner was appointed as assistant teacher in Noorjahan Urdu High School, Naigaon, a minority institution, in the year 2009. Her appointment was duly approved by the Education Officer (Secondary), Zilla Parishad, Nanded. The said school in which the petitioner was teaching was closed down in the year 2011. She was declared surplus teacher somewhere in the year 2016. The petitioner made representations to the Education Officer and finally filed petition, being Writ Petition No.9394/2015, *inter alia*, praying for directions to declare her surplus and to direct that her services be absorbed in other school receiving grant-in-aid or in a Zilla Parishad School. The said petition came to be allowed vide order dated 06.10.2016 passed by this Court. The order dated 06.10.2016 records that as per Government Resolution dated 13.07.2016, surplus teacher of minority institution is required to be absorbed in schools run by the local bodies. This Court directed that name of the petitioner be included in list of surplus candidates to be absorbed in Zilla Parishad Schools and absorption of services should be done in accordance with seniority as earlier as possible.

3. After the aforesaid order was passed, the services of the petitioner were directed to be absorbed in another minority school, named Madinatul Uloom Secondary and Higher Secondary School, Degloor Naka, Nanded vide letter dated 10.01.2018 issued by the

Education Officer (Secondary), Zilla Parishad, Nanded. However, the said school refused to absorb the petitioner on the ground that a minority institution cannot be compelled to absorb the surplus employees.

4. The present contempt petition is filed alleging non-compliance of the order dated 06.10.2016. It is stated in paragraph 8 of the contempt petition that the name of the petitioner is not included in the list of surplus teachers and her services have not been absorbed in any Zilla Parishad School. The petitioner, therefore, states that the respondents in the contempt petition, particularly respondent Nos. 2 and 3, are guilty of willful and deliberate non-compliance of the order dated 06.10.2016 passed by this Court and liable to be prosecuted and punished for having committed contempt of this Court.

5. Mr. Lavate, learned A.G.P. appearing for respondent No.1 raised issue of limitation placing reliance upon the judgment of the Hon'ble Apex Court in the matter of ***S. Tirupathi Rao Vs. M. Lingamaiah and others*** reported in ***AIR Online 2024 SC 509***. Vide order dated 19.11.2024, on request being made by learned Advocate for the petitioner, we had granted accommodation to her to make submissions on the point of limitation.

6. We have heard learned Advocate for the petitioner and the learned A.G.P. on the point of limitation as also on latches.

7. The order with respect to which the contempt is alleged was passed on 06.10.2016. The contempt petition is filed on 07.10.2024 i.e. after a period of 8 years from the date of order. Learned Advocate for the petitioner initially tried to contend that since the non-compliance and resultant contempt pertains to order passed by this Court, limitation prescribed under Section 20 of the Contempt of Courts Act will not be applicable to the present contempt petition. She would elaborate the submission by contending that constitutional power to punish for contempt, which is recognized by Article 215 of the Constitution of India, cannot be curtailed or circumscribed by a statutory enactment viz. The Contempt of Courts Act, 1971. The said argument made by learned Advocate for the petitioner is rejected in view of the law laid down in the aforesaid judgment of the Hon'ble Supreme Court in paragraphs 33 to 37, which clearly states that the power to punish for its contempt vested with the High Courts under Article 215 of the Constitution of India has to be exercised in accordance with validly enacted law and as such, the period of limitation prescribed under Section 20 of the Contempt of Courts Act will also be applicable to contempt petitions filed invoking Article 215 of the Constitution of India.

8. Learned Advocate for the petitioner next contended that the cause of action for filing the present petition is a continuing cause of action. In fact, this submission is canvassed with greater vehemence. She states that all persons are bound to comply with the orders passed by the Courts of law and till such time the orders are complied, breach of the order continues, providing consequent right to the person in whose favour the order is passed to make a grievance regarding non-compliance of the order by filing a contempt petition. She would submit that the contempt petition is, therefore, not barred by limitation. She has placed reliance on two judgments delivered by the learned Single Judges of this Court in the matters of ***Dr. Kekabad Causashaw Batliwala and others Vs. The Municipal Corporation of Greater Bombay and others*** reported in ***1991(1) Mah. LR 438*** and ***Pioneer Sales Agencies (P) Ltd., Vs. Olympus Superstructures Pvt. Ltd., and another*** reported in ***2004 Cr.L.J. 3498***. In the matter of ***Pioneer Sales Agencies (P) Ltd.***, (supra), a learned Single Judge of this Court has held that limitation for filing contempt petition does not commence from the date of order but from the date of disobedience of the order or failure to comply with the order. In the said case, an assurance and undertaking was given to the Court to execute certain work in a building and to obtain the occupancy certificate. However, the work was not done. In this backdrop, it is held that as long as the

work is not done, the violation of the order will continue and it would be a case of recurring cause of action. Likewise, in the matter of ***Dr.Kekabad Causashaw Batliwala (supra)*** certain directions were issued to remove unauthorized structures and to construct the road within period of one year. However, no steps were taken by the respondents in the contempt petition within the period of one year. In this backdrop, when the contempt petition was filed, defence of limitation under Section 20 of the Contempt of Courts Act was sought to be taken. The learned Single Judge rejected the argument that the contempt petition was barred by limitation holding that as long as the order of the Court is not obeyed, the contempt continues. The observations by the learned Single Judges have been made in the backdrop of facts in the said cases.

9. In the present case, the school in which the petitioner was working was closed down. The petitioner was claiming that her name should be taken in the list of surplus employees and further that her services should be absorbed in any Zilla Parishad School. She has filed petition praying for the said relief. The petition came to be decided finally vide order dated 06.10.2016 directing the Zilla Parishad and Education Officer (Secondary) to place her in the list of surplus candidates to be absorbed with Zilla Parishad schools and thereafter, absorb her services in accordance with seniority. The issue which falls

for consideration is as to whether non-compliance of such a direction will give rise to a continuing cause of action for filing contempt petition.

10. The Hon'ble Supreme Court has in the aforesaid judgment of **S. Tirupathi Rao (supra)** considered in great detail as to when a cause of action for filing contempt petition can be construed as continuing cause of action. The Hon'ble Supreme Court has referred to its earlier decision in the matter of **Balkrishna Savalram Pujari Vs. Shree Dnyaneshwar Maharaj Sansthan** reported in **AIR 1959 SC 798**. Referring to the said judgment, the Hon'ble Supreme Court has expressed that when there is one single act required to be done or performed, which is not so done or performed, the wrong will be a single act of non-compliance and that such act cannot be said to be a continuing wrong. It will be a single act of non-compliance complete in all aspects.

11. As regards the two judgments relied upon by the learned counsel for the petitioner we may record that we are bound by the judgment of the Hon'ble Supreme Court in the matter of **S. Tirupathi Rao (supra)**. The said judgments by learned single Judges of this Court will not come to the rescue of the petitioner in the facts of the present case. We also can not accept the contention of petitioner made by relying upon the said judgments that till such time of order of Court is complied, there will be a breach which shall continue till the

order is complied with. Accepting the argument will render Section 20 of the Contempt of Courts Act, 1971 completely otiose.

12. The Hon'ble Supreme has also specifically held in the matter of ***S. Tirupathi Rao (supra)*** that if the petitioner intends to overcome the delay take shelter of the cause being a continuing wrong offering continuous cause of action it should be specifically pleaded and properly explained. Perusal of pleadings in the contempt petition demonstrate that the petitioner has maintained deafening silence in this regard. The petitioner has not offered any explanation for approaching this Court after a period of over eight years.

13. It is also held in the matter of ***S. Tirupathi Rao (supra)*** that stale claims of contempt should not be entertained. In the present case, the contempt petition is filed after a period of over eight years of the order. After passing of the order, the Education Officer had issued letter dated 10.01.2018 directing that services of the petitioner be absorbed in another minority institution. The said minority institution refused to allow the petitioner to join in service, when she had approached the said school on 13.01.2018 for joining. The petitioner had issued a communication dated 22.02.2018 to the Education Officer pointing out the said fact. After 22.02.2018, he has made another representation dated 26.08.2024 and has filed present contempt petition on 07.10.2024. The petitioner has not taken any

steps right from 22.02.2018 to 26.08.2024. Apart from the limitation, the petitioner is also guilty of unexplained delay and laches.

14. The order passed by this Court directs the respondent – Education Officer to include the name of the petitioner in the list of surplus teachers. This act of including the name was to be performed only once. Therefore, the breach of said direction is not a continuing breach. The second direction in the order is to absorb the petitioner in Zilla Parishad School in order of seniority amongst the surplus teachers. However as stated in paragraph 8 of the petition the name of petitioner is not yet included in the list of surplus teachers. Teachers whose names are included in the list of surplus teachers were to be appointed in Zilla Parishad Schools in order of seniority. Inclusion of name in the list is the first step and absorption in order of seniority is the second step. Since the first part of the order is not complied with and contempt is not filed within the prescribed period of limitation we are of the opinion that the petition is barred by limitation with respect to both directions.

15. The Education Officer directed absorption of the services of the petitioner in another private minority school namely Madinatul Uloom Secondary and Higher Secondary School vide letter dated 10.01.2018. The petitioner had reported for joining service in the said

school on 13.01.2018. However, the said school did not allow the petitioner to join in service. The Education Officer had issued order dated 10.01.2018 for absorption of service of the petitioner in a private school although this Court had directed absorption in a Zilla Parishad School. This also gave a clear indication to the petitioner that his services were sought to be absorbed in a school other than Zilla Parishad School, which was not strictly in accordance with the order dated 06.10.2016 passed by this Court. The letter dated 10.01.2018 followed by the attempt on the part of the petitioner to join in service in the private School on 13.01.2018 can also therefore be considered to be starting point of limitation for filing the contempt petition. The petition is filed after period of six years and nine months approximately from the said date. The petition is hopelessly barred by limitation.

16. In the facts of the present case where the petitioner has approached this Court after a period of around 8 years from the date of order passed in her favour. We find that the contempt petition should not be entertained on account of delay and laches on the part of the petitioner. In such circumstances, it may not be necessary to decide as to whether the non-compliance on the part of the Education Officer gives rise to continuing cause of action in favour of the petitioner.

17. Assuming that the cause of action for filing the contempt is

continuing cause, yet we do not deem it appropriate to exercise our jurisdiction either under the Contempt of Courts Act or under Article 215 of the Constitution of India having regard to enormous unexplained delay on the part of the petitioner in filing the contempt petition.

18. The petitioner has placed on record the Government Resolution dated 15.03.2024, which lays down the procedure for absorption of surplus teachers. The petitioner claims right of absorption on the basis of the said Government Resolution. We clarify that the present order will not be an impediment for the petitioner to avail appropriate remedy to enforce her alleged rights as per the said Government Resolution and that the petitioner may avail of appropriate legal remedy if it is permissible in law.

19. In the result, the contempt petition is dismissed with no order as to costs.

[ROHIT W. JOSHI]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

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