

HARSHADA H. SAWANT
(P.A.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.3768 OF 1997

Jain Vidya Prasarak Mandal

.. Petitioner

Versus

Mr. T. C. Shelke and Anr.

.. Respondents

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- Ms. Ruchita Kadam a/w. Mr. Sanjiv A. Sawant and Ms. Samiksha Mane, Advocates for Petitioner.
- Mr. A.I. Patel, AGP a/w. Mr. R.S. Pawar, AGP for the State.

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CORAM : MILIND N. JADHAV, J.

DATE : JANUARY 04, 2024

P.C.:

1. Heard Ms. Kadam, learned Advocate for Petitioner and Mr. Patel, learned AGP for the State. With her able assistance, I have perused the pleadings in the Writ Petition.

2. This Writ Petition is filed by the Trust for setting aside of two orders namely order at Exhibit-D dated 18.12.1996 and order at Exhibit-F dated 16.01.1997. The first order dated 18.12.1996 was passed by the Deputy Charity Commissioner on an Application filed by the Petitioner for framing preliminary issues on jurisdiction. That Application was rejected. The second order dated 16.01.1997 was passed by the Deputy Charity Commissioner, Pune Region, Pune on an Application filed by Petitioner under Section 41A of Bombay Public Trust Act, 1950 (for short "**the said Act**"). Respondent No.1 at the then time was employed as a lecturer in the College run by the

Petitioner and his claim as sought for in the Application under Section 41A of the said Act and pertained to payment of arrears of his salary.

3. It is seen that the Respondent No.1 left his services and was no longer the employee of the Petitioner – Trust.

4. It is seen that thus the *locus* of the Respondent No.1 to maintain the Application filed under Section 41A of the said Act was challenged by the Petitioner. Despite the aforesaid being pointed out, the second Application filed by the Petitioner – Trust was rejected by order dated 16.01.1997.

5. Hence, both the orders have been challenged in the present Writ Petition. When the Writ Petition was heard on the previous date, Respondent No.1 filed Civil Application seeking implementation of the directions given by the learned Deputy Charity Commissioner in the aforementioned two orders. At that time, the said Civil Application was dismissed by order dated 25.07.2002 with liberty to the Respondent No.1 to seek implementation of the said orders in accordance with law by taking out appropriate proceedings.

6. Ms. Kadam, learned Advocate for the Petitioner has today placed before me Judgment delivered on 07.04.2021 in the original Application being Application No.2228 of 1996 filed by the Respondent No.1 under Section 41A of the said Act and would contend that the said judgment be taken on record and considered.

The said Judgment is taken on record and marked 'X' for identification. Perusal of the judgment reveals that Application No.2228 of 1996 has been rejected by the Deputy Charity Commissioner, Pune by giving reasoned findings on maintainability itself.

7. None appears for the Respondent before me today when the matter is called out. In view of the principal Application No.2228 of 1996 having been dismissed, the two interlocutory orders dated 18.12.1996 and 16.01.1997 therefore automatically stand merged with the aforesaid dismissal order and are thus necessarily *non-est*.

8. In that view of the matter, the Writ Petition deserves to be allowed and it is so allowed in terms of prayer clause (b) which reads thus:-

“(b) By appropriate Writs, Directions or Orders, the records and proceedings pending before the Second Respondent the Deputy Charity Commissioner, Pune Region, Pune be called for and after examining the legality and validity thereof, the impugned Orders at Exhibit ‘D’ and Exhibit ‘F’ dated 18.12.1996 and 16.01.1997 respectively may kindly be quashed and set aside.”

9. With the above directions, Writ Petition is allowed and disposed.

H. H. SAWANT

[MILIND N. JADHAV, J.]