



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

WRIT PETITION NO.948 OF 2024

(Dinkar s/o Sitaram Jadhav .vs. Education Officer (Secondary), Zilla Parishad, Buldhana
and others)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's Orders.

Court's or Judge's orders.

Shri G.G. Mishra, Advocate for the petitioner,
Shri D.P. Thakre, Additional Government Pleader for respondent no.1,
Shri R.D. Karode, Advocate for respondent nos.2 and 3,
Shri R.S. Bhoyar, Advocate h/f Shri K.P. Mahalle, Advocate for respondent nos.4 and 5.

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CORAM : NITIN W. SAMBRE AND ABHAY J. MANTRI, JJ.

DATE : 29.08.2024.

Heard the learned counsel for the parties.

2. In this petition, the prayer made by the petitioner, an Assistant Teacher, is for issuance of directions to the respondent no.2, who is President of the Public Trust managing the respondent no.3 school, to forthwith provide the duplicate service book, details of Shalarth I.D. and Last Pay Certificate to the respondent no.1-Education Officer, so as to enable him to release and pay the salary of the petitioner with effect from his absorption, i.e. 22.7.2022. The petitioner is not paid salary since 9.1.2019 till the date of absorption i.e. 22.7.2022 and as such the directions to that effect are also sought against all the respondents.

3. The respondent no.2-Society appointed the petitioner as an Assistant Teacher to work in the respondent no.3 school on 28.8.1996. After the services of the petitioner were terminated on 20.6.2005,

the appeal preferred by the petitioner against his termination, being Appeal No.19/2005, came to be dismissed on 3.8.2007. The petitioner was prompted to question the said order of the School Tribunal passed in exercise of powers under Section 9 of the Maharashtra Employees of Private Schools (Condition of Service) Regulation Act, 1977 in Writ Petition No.5208/2007. The said writ petition came to be partly allowed vide order dated 27.4.2015 thereby directing reinstatement after quashing the order of termination. However, for limited purpose of determining the entitlement of the petitioner to back wages, remand order was passed.

4. In compliance with the order of the High Court dated 27.4.2015, the petitioner came to be reinstated by the respondent no.2 in respondent no.3-School on 20.5.2015. The services of the petitioner again came to be terminated, vide order dated 23.9.2015 issued by the respondent no.3 due to closure of classes V to VII.

5. The petitioner subsequent thereto was constrained to approach before this Court through Writ Petition No.144/2016 thereby seeking directions to the respondent no.1-Education Officer to absorb his services as he was an approved teacher on the establishment of the respondent no.3-School.

6. In the aforesaid writ petition on 7.3.2016, this Court allowed the writ petition with a direction to the respondent no.1-Education Officer to absorb the services of the petitioner in some other school than the respondent no.3-School.

7. On 20.4.2017, the petitioner came to be absorbed in a school, which is managed by respondent no.2-Society, pursuant to the directions given by the Education Officer. The petitioner accordingly was paid salary from April, 2018 to November, 2018 by the respondent no.1. The salary payable to the petitioner for a period from March, 2017 to 31.3.2018 is informed to be not paid till this date.

8. To the aforesaid absorption, the Education Officer granted approval on 29.4.2017 with effect from 2.9.1996, subject to condition that he will not be entitled for arrears of salary. However, it is worth to observe here that the petitioner was entitled for salary with effect from March, 2017 onwards. In the said school, which was managed by respondent no.2, again the petitioners services were declared surplus and that being so, the proposal for absorption was forwarded by the Management i.e. respondent no.2, to respondent no.1 on 9.1.2019.

9. In view of the provisions of Rule 26 (iii) of the Maharashtra Employees Private Schools (Condition of Service) Rules, 1981, the services in such an eventuality of declaring the petitioner surplus ought not to have been retrenched till his absorption.

10. The respondent no.2, however, retrenched illegally the services of the petitioner. He has also not submitted the pay bills before an order of retrenchment for the past period for which he has rendered service or for the period for which he was declared surplus and kept on wait list.

11. On 7.3.2019, in compliance with the directions issued by this court in Writ Petition No.5208/2007 on 27.4.2015, the School Tribunal decided the question of back wages and directed the respondent no.2-Management to pay 50% back wages to the petitioner with effect from the date of his termination i.e. 20.6.2005 till the date of his reinstatement i.e. 20.6.2015.

12. In the wake of the petitioner's services having been declared surplus, the services were absorbed under the respondent nos.4 and 5 pursuant to the direction of respondent no.1 on 22.7.2022. After such absorption, it was mandatory for respondent nos.2 and 3, not only to transfer his service book to the newly appointed Management/School, but also provide Last Pay Certificate and Shalarth ID so as to process the request for release of salary. Since the petitioner was not getting his salary, he has approached this Court with the reliefs as claimed hereinabove.

13. On September 01, 2022, the respondent no.2 preferred an appeal-objection against the order dated July 22, 2022 declaring the petitioner surplus. The said appeal was on the ground that the original appointment of the petitioner was in the respondent no.3-School managed by the respondent no.2-Society and who was thereafter terminated. However, in view of the orders of the School Tribunal and then by the High Court in Writ Petition No. 5208 of 2007, the petitioner was reinstated on 20.05.2015 in compliance of the order dated 27.04.2015. It is claimed that the petitioner is not entitled for reinstatement as he is not qualified inspite of being confirmed and approved teacher, which issued is claimed to have been raised in Writ Petition No. 2778 of 2019.

The said objection was dealt with by the Deputy Director of Education in his order dated 17.11.2022 with a clear finding that it was the respondent no.2-Society who has acted in defiance of the statutory provisions of the Rules and illegally terminated the services of the petitioner as has been held by this Court while deciding the writ petition that the services of the petitioner were rightly absorbed. The entitlement of the petitioner to the back-wages was an issue which was answered in Writ Petition No. 2778 of 2019 on 28.02.2023.

14. In such an eventuality, the fact remains that since beginning the respondent no.2-President is targetting the petitioner by not only illegally terminating his services but also by not paying the salary to him though ordered by the Courts. Apart from above, without any authority, the respondent no.2 has raised an objection to the absorption of the petitioner and has not released the 'Shalarth' ID, the service book and the Last Pay Certificate so as to enable the new Management/employer to release his salary post absorption. The conduct of the respondent no.2 has not only created unwarranted litigation but also the same can be viewed as the petitioner being unnecessarily targetted by the said respondent.

15. This court initially caused notice on 12.2.2024 with directions to the respondent nos.2 and 3 as to why the documents are not furnished as has been sought in relation to the employment of the petitioner so as to facilitate release of his salary.

16. In that case the respondent nos.2 and 3 have sought considerable time for filing reply and report the compliance of the

aforesaid order dated 12.2.2024. On 4.4.2024, the reply tendered by the respondent nos.2 and 3 is taken on record.

17. This court, after hearing the matter on 4.4.2024 on the basis of the reply filed by the respondent nos.2 and 3, has observed that the Headmaster and the Management of the Institution i.e. respondent nos.2 and 3 shall revisit their stand.

18. On 10.4.2024, this court has passed the following order :

The affidavit dated 4.2.2024 sworn by Gajanansingh Shakarbaba More, who is informed to be not only President of respondent No.2 Society but also is a Headmaster i.e. respondent No.3. After the said affidavit is placed on record, this Court expressed its displeasure on 4.4.2024 as the order dated 21.3.2024 was not complied with in its true letter and spirit by the said respondent.

2. This Court on 4.4.2024 having noticed that the respondent Nos. 2 and 3 has not complied the order, has orally directed the learned counsel Mr. S.S. Deshpande appearing for said respondent to keep said respondent present before the Court. Fact remains that the said respondent is not present before the Court. Mr. S.S. Deshpande, appearing for respondent Nos. 2 and 3 is not disputing that such oral direction was issued to respondent Nos.2 and 3 on last date this Court has noticed non compliance.

3. However, Mr. S.S. Deshpande on his own assures that respondent Nos.2 and 3 will physically remain present before this Court on 12.4.2024, as this Court was about to issue non-bailable warrant against the said respondent for showing disrespect and disregard to the orders dated 21.3.2024 and 4.4.2024.

4. Hence, we accept the statement made by the counsel appearing for respondent Nos.2 and 3. Said

respondent shall physically remain present before this Court on 12.4.2024.

5. *Stand over to 12.4.2024, first on board.*

19. In view of the stand taken by the respondents, which was contrary to the orders delivered in Writ Petition No.5208/2007 and Writ Petition No.144/2016, the court was constrained to issue contempt notice to the President of the respondent no.2-Society, so also its Headmaster i.e. respondent no.3.

20. The respondent nos.2 and 3 thereafter continued their journey acting in defiance of the aforesaid orders, which has prompted this court to pass an order on 23.4.2024, wherein this court was about to direct the attachment of the property of the respondent no.2 for recovery of the back wages to which the petitioner was entitled. Subsequent thereto, the respondent no.2 deposited an amount of Rs.5,00,000/- (Rupees Five Lakhs) in this court and the hearing was deferred thereafter so as to enable the respondent no.2 to deposit additional amount, which till this date has not been deposited.

21. This court as such was about to take up the matter for further hearing, however, at this stage, the learned counsel for the respondent nos.2 and 3 has informed that the Special Leave Petition taken out by the petitioner against the order of this court passed on 23.4.2024 is scheduled for hearing on 2.9.2024.

22. In view of above, we deem it appropriate to defer the hearing of the present petition on 9.9.2024.

23. We deem it appropriate to sensitize the respondent nos.2 and 3 to bring the present order in response to the court's query.

24. The counsel appearing for respondent nos.2 and 3 submits that the present order shall be brought to the notice of the Apex Court during the course of hearing on 2.9.2024.

25. We would also like to take it on record that the respondent no.2 Society is managing all three schools, including that of respondent no.3-School, and the President of respondent no.2-Trust is working as Headmaster in one of the three schools managed by respondent no.2-Trust, as is informed by the counsel for respondent no.2, on instructions, from the respondent no.2, who is present in the court.

26. Stand over to 9.9.2024.

(ABHAY J. MANTRI, J.)

(NITIN W. SAMBRE, J.)