
(2024) 02 BOM CK 0075

In the Bombay High Court

Case No : Contempt Petition No. 683 Of 2017 In Writ Petition No. 5547 Of 2017

Arun

APPELLANT

Vs

Subhash And Others

RESPONDENT

Date of Decision : 27-02-2024

Acts Referred:

Constitution Of India, 1950 — Article 215
Contempt Of Courts Act, 1971 — Section 2(b), 12

Citation : (2024) 02 BOM CK 0075

Hon'ble Judges : R. G. Avachat, J; Sanjay A. Deshmukh, J

Bench : Division Bench

Advocate : Sachin S. Deshmukh, P.S. Paranjape, A.R. Kale, M. M. Nerlikar

Final Decision : Dismissed

Judgement

Sanjay A. Deshmukh, J

1. The petitioner alleged that the respondents have committed breach of the order dated 13.11.2017 passed by this Court in Writ Petition No. 5547 of 2017. The respondents were directed to reinstate the petitioner teacher and to forward the salary bills of the petitioner with the approval of the Education department.

2. The petitioner averred in the petition that he was directed to be reinstated by order of the School Tribunal and the said order was confirmed by this Court in writ petition No. 5547 of 2017 as well as the Division Bench of this Court in Letters Patent Appeal No. 139 of 2012. The said order was challenged by the respondent Nos. 1 and 2 in the Hon'ble Supreme Court by filing S.L.P. Nos.4828/2023 and 4830/2023. The said S.L.P's were also dismissed. Thereafter, Writ Petition No. 6754 of 2016 was also preferred by the daughter of respondent No.1 Smt. Chetna Patil. The said writ petition was also dismissed.

3. It is also averred by the petitioner that clause No.3 of the order dated 28.3.2016 passed by Education Officer (Secondary), Zilla Parishad, Dhule, was to be implemented but it was not implemented. Therefore, the petitioner filed writ

petition No. 5547 of 2017 in which respondent Nos. 1 and 2 made statement pursuant to the letter dated 7.11.2017 that the petitioner would be allowed to join on 14.11.2017. It was in consonance with an appeal No. DHL/11/2009 by which the School Tribunal had directed the petitioner to be reinstated.

4. It is further averred that this Court directed to allow the petitioner to work as an Art Teacher. But respondent Nos. 1 and 2 flouted that order and took a stand that there is no such post of Art Teacher. As per order of this Court dated 13.11.2017, the teacher's work was not assigned to the petitioner as teacher. Thus order was not followed by the respondents. However, the post was created for one Smt. Chetna Patil, as teacher of Arts, who is none other than the daughter of President of the school i.e. respondent No.1. Her approval was found to be forged and fraudulent which reveals from the affidavit of Education Officer in writ petition No. 6754 of 2016. Respondent Nos. 1 and 2 have tried to shield the services of Smt. Chetna Patil, daughter of respondent No.1, who by virtue of fraudulent approval pocketed huge amount of the salary from public exchequer from the year 2009. The petitioner lastly averred that the order of this Court dated 13.11.2017 is not followed by respondent Nos. 1 and 2. The petitioner was not allowed to sit in the staff room and was forced to stay at play ground of the school, which caused humiliation to him. His salary is not paid. He lastly prayed for taking action for contempt of court under Article 215 of the Constitution of India to punish respondent Nos. 1 and 2 for their willful and deliberate act of committing contempt of the court for not following the order dated 13.11.2017 passed by this Court in writ petition No. 5547 of 2017.

5. The contempt notices were issued to the respondents. By an affidavit dated 5.12.2017, respondent No.2 denied all the facts. It is observed in para No.2 of the order of this Court dated 3.12.2018 that Kailas Suryawanshi respondent No.2 filed an affidavit in reply that petitioner was not interested to join the duty and abruptly stopped to attend the duty. He was warned by this Court to submit the salary bills of the petitioner within three weeks.

6. Respondent No.3 Education Officer (Secondary), Zilla Parishad, Dhule, by his affidavit in reply dated 14.11.2022 in para 6 it is contended that the school administration has submitted the salary bills on 05.12.2017 to the Pay and Provident Fund, Dhule. However, the name of the petitioner was not included in the Shalarth ID, a system for processing it. Therefore, a salary bill of the petitioner submitted by the respondent Nos. 1 and 2 was returned back to the concerned school on 7.12.2017 for the compliance. Thereafter also, respondent informed to the school to submit the salary bills after including the name of the petitioner in Shalarth ID system but that proposal was not submitted thereafter. The Deputy Director of Education, Nashik also accorded sanction for inclusion of name of the petitioner in Shalarth ID system on 16.2.2022. Thereafter, for preparing the draft and for filing complete information of the petitioner in the Shalarth ID system, instructions were given to the in-charge Head Master of the School to submit complete information to the Superintendent, Pay and Provident

Fund, Dhule on 8.3.2022. The proposal for inclusion of name of the petitioner in Shalarth ID system was collected through special messenger from the office of the Deputy Director of Education, Nashik on 16.2.2022. The bill of arrears of the salary of the petitioner was forwarded to the office of Education Officer, however, the bills were of previous years i.e. prior to one year old and therefore, the same was forwarded to the Director of Education, Secondary and Higher Secondary Education, Maharashtra State, Pune through the office of the Deputy Director of Education, Nashik on 4.11.2022. It is further averred in the said affidavit in reply that as soon as the bills are sanctioned, the same will be submitted to the treasury and after sanction from the treasury, all the arrears of salary bills can be credited in the bank account of the petitioner immediately. Respondent No.3 lastly averred that the directions of this Court are followed on his part as per said order. However, the respondent Nos. 1, 2 and 4 are responsible for not completing the process of inclusion of the name of petitioner in the Shalarth ID system, due to which salary is not paid to him. Respondent No.3 had complied its part and hence is not responsible for not complying of the order.

7. On behalf of respondent Nos. 1, 2 and 4, Subhash Sahebrao Patil (respondent No.1), President of the said school filed an affidavit in reply dated 28.8.2023. It is contended that the bills were submitted on 5.12.2017 to the office of Pay and Provident Fund, Dhule, however, the said bills were never returned back on 7.12.2017 as the name of the petitioner was not included in the Shalarth ID system. The documents submitted alongwith the said affidavit in reply of respondent No.3 at page Nos. 107, 108 and 109 are of the year 2022. As per the directions of this Court, the petitioner was allowed to join on 14.11.2017 and within three weeks his salary bills were presented to the concerned Education Department. Therefore, no such directions remained to be complied with on the part of the school management as per the order dated 13.11.2017. The directions were issued to Pravin Ahire, the then Education Officer are not complied with by respondent No.3 Education Officer. It is alleged that respondent No.3 is acting hand in gloves with the petitioner. Respondent No.3 has specifically directed the school management by letter dated 26.7.2023 that the petitioner who is a drawing teacher was appointed to teach Marathi, Hindi, History and Geometry. This is absurd and beyond scope of the Education Officer, Dhule. It is lastly prayed that no such contempt of court is committed by the respondents, hence, they be exonerated from the liability of contempt of order of court.

8. By an additional affidavit dated 22.12.2023 submitted by respondent No.2 Kailash Jayram Suryawanshi, who was then Headmaster and now a teacher of the school submitted that no such correspondence returned back to the said letter dated 5.12.2017 on 7.12.2017. It is not found noted in the inward register of the school maintained for the purposes of keeping track of correspondence. A photocopy of the said inward register is annexed with an affidavit. However, outward number of covering letter returning the pay bill dated 7.12.2017 is not mentioned in the affidavit by respondent No.3 Education Officer, Mr. Desle. It is lastly averred that Mr. Pravin Ahire, the earlier Education Officer (Secondary),

Zilla Parishad, Dhule never filed an affidavit in reply contending that on 7.12.2017 pay bill of the petitioner was sent back. It is lastly submitted to dismiss the petition.

9. During the course of arguments, learned advocates for the petitioner and respondent No.3 submitted and pointed out the Government Resolution issued by the School Education and Sports Department of the State of Maharashtra, dated 7.11.2012 in which the responsibility to draw the Shalarth ID number and fill up the data entry is fixed on the Head Master of the said school as shown in the clause No.3 of it's table.

10. By orders dated 29.10.2018 and 03.12.2018, this Court observed displeasure that respondent Nos. 1 and 2 are not making any effort to comply with the said order passed by this Court and making a farce of submitting salary bills only by giving assurance and that they are more interested in running the paper horses than complying with the order passed by this Court. The respondent Nos. 1 and 2 were directed to remain present in this Court with positive statement showing full and complete compliance of the order passed by this Court. Similar observations were made by this Court in the orders dated 3.12.2018 and 22.2.2019.

11. By order dated 22.2.2019, a legal notice of contempt of courts order was issued to respondent Nos. 1 and 2 by observing against them that the orders of this Court are taken for ride with lethargic mind. Thereafter, charge was framed against respondent No.1 Subhash Patil and respondent No.2 Kailash Jayram Suryawanshi, Head Master of the school, by an order dated 22.4.2019. In the order dated 2.5.2019, unconditional apology was tendered by respondent Nos. 1 and 2 and their counsel submitted that the respondents have complied with the order of reinstatement of the petitioner. Thus, by compelling they followed part of the said order and petitioner was allowed to join his services.

12. The notice of contempt was issued to Mahananda Subhash Patil (Suryawanshi) who became Headmistress of the said school was arrayed as respondent No.4. It was pointed out before this Court on 7.7.2023 that petitioner was not allowed to work as teacher. This Court directed respondent Nos.1 and 2 to remain present before this Court on 18.7.2023. This is aggravated form of contempt of Court. Thereafter, the petitioner was allowed to resume his duties on 19.7.2023. Thus, the part of the said order is complied with anyhow on insistence of this Court. This conduct shows that respondents were compelled to comply said order of this Court.

13. It was pointed out that petitioner's salary bill was not submitted along with inclusion of his name in Shalarth ID system. His past bills of salary were also not submitted because his name was not included in Shalarth ID system. It is a mandatory compliance. On 6.11.2023, all the respondents were present before this Court. Respondent Nos. 1, 2 and 3 were not including the name of the petitioner in the Shalarth ID, therefore, the Superintendent of Pay Unit of

Education Department was directed to visit the school for including name of this petitioner in Shalarth ID. The petitioner was also directed to remain present at that time for giving requisite information as per the directions given by this Court in the order dated 6.11.2023. On 8.11.2023, the directions as per communication of the Education Officer were given that the formalities of service book, Shalarth ID etc. shall be complied with by the school management and the Head Mistress-respondent No.4. It was not complied with. It was communicated by respondent No.3 by letter dated 1.12.2023. Therefore, by order dated 4.12.2023, this Court directed the Head Mistress (Respondent No.2) to remain present before this Court with service book of the petitioner and his salary bills ready in all respects and for being handed over the same to the Education Department. On 8.12.2023, the Head Mistress (respondent No.4) who was present before this Court made statement that the salary bills of the petitioner would be made available/ready in all respects for being submitted to the Education Officer within 8 days. The directions were also given to her that the salary bills should be submitted to the Education Officer before the next date. But those directions were not complied by the respondent Nos. 1, 2 and 4 till today.

14. Though with the permission of this court, thereafter, an additional affidavit in reply was submitted by respondent No.2 and contended that the pay bill of the petitioner was submitted to the Education Officer, Zilla Parishad, Dhule on 5.12.2017, it is sufficient compliance of the said order. No doubt, it is not noted in the inward register of the school, a copy of which is filed on record.

15. Learned advocate Mr. Sachin Deshmukh for the petitioner submitted that if the pay bill was not returned as alleged by respondent No.2, it is not clarified as to what steps are taken by the respondent Nos.1, 2 and 4 to comply with the orders of this Court passed from time to time thereafter is not established by them. Further, from 7.12.2017 till today, though it was the duty of respondent Nos. 1 and 2 to include name of the petitioner in the Shalarth ID number, it is also not drawn up. The service book is prepared. Even the officials of the Education Office were directed to help respondent Nos. 1 and 2 by the order of this Court dated 06.11.2023 for complying Shalarth ID process. He also pointed out the correspondence of respondent No.3 with respondent Nos. 1 and 2 dated 18.8.2018, 8.11.2022 and 24.11.2022. Further, a letter sent to Government Pleader of this Court by the Education department regarding this matter dated 10.8.2018, shows that respondent Nos. 1, 2 and 4 are deliberately avoiding to comply with the order of this Court. 12. The affidavit of respondent no.1 praying for unconditional apology cannot be accepted when the process of salary bills of the petitioner is deliberately not complied with by these respondent nos.1, 2 and 4 for years together. They have failed to follow their legal duty. He therefore, submitted that considering the hesitating conduct of willful disobedience of the said order on the parts of the respondent Nos. 1, 2 and 4 is established. Therefore, as per the provisions of Section 12 of Contempt of Courts Act, 1971 maximum sentence of six months with fine be awarded to them. He is relying on

the judgment of Hon'ble Supreme Court in the case of T. N. Godavarman Thirumulpad vs. Ashok Khot and another, reported in (2006) 5 SCC 1 in which law is laid down that exemplary costs would not be adequate punishment if persons are holding high positions.

16. Learned advocate Mr. Paranjape, for the respondent Nos. 1, 2 and 4 submitted that admittedly the salary bill of the petitioner was submitted but it was not returned after 7.12.2017 to the school for compliance as per the inward register of the school. Therefore, it was not duty of these respondents to comply with the said order. He therefore, prayed to dismiss the contempt petition, as the alleged contempt of the Court's order is not established by the petitioner.

17. Learned A.G.P. for respondent No.3 submitted that respondent No.3 has complied with the directions and always tried to execute the said order of this court. He pointed out entire correspondence between respondents and submitted that the respondent Nos. 1, 2 and 4 have deliberately flouted the order of this Court and therefore, respondent No.3 deserves to be exonerated from the liability. He lastly prayed to award maximum punishment to respondent Nos. 1, 2 and 4 as they have committed willful disobedience of the order of this Court and also not followed directions given by this Court at various times.

18. At this stage, it would be proper to reproduce various orders passed by this Court from time to time. Para No.5 of the direction given by this Court dated 13.11.2017 in writ petition No. 5547 of 2017, reads as under:-

"5. The respondent - Institution shall forward the salary bills of the petitioner as per the approval granted to the petitioner within a period of three (3) weeks. Upon receipt of the said salary bills the Education Officer shall process the same within a period of three (3) weeks thereafter. As far as the salary of the petitioner for interregnum is concerned, the petitioner may make an application to the Institution in that regard which would be considered by the Institution on its own merits."

19. An order of this Court dated 06.11.2023 reads as under:-

"1. Headmistress of the school is present. Education Officer too. An understanding has been arrived at to the effect that Superintendent of Pay Unit of the Education Department would visit the school tomorrow i.e. 07th November, 2023 at 11:00 in the morning to ensure that the Headmistress would duly fill-in the information in SEVARTH and submit it to the Education Officer. The petitioner shall also remain present to give requisite information to do the needful in this regard."

20. An order of this Court dated 08.11.2023 reads as under:-

"1. Learned A.G.P. places on record communication dated 07th November, 2023 made by the Education Officer (Secondary), Zilla Parishad, Dhule. Same is taken on record. Last paragraph of the said communication indicates some formalities have to be completed by the management and the Headmistress."

21. When this case for contempt action was pressed, an order passed by this Court dated 04.12.2023 reads as under:-

"On the next date, respondent No. 4 Head Mistress shall remain present before this court alongwith service book of the petitioner ready in all respects. She shall also bring with her salary bills, ready in all respects, for being handed over to the Officer of the Education Department."

22. An order of this Court dated 08.12.2023 reads as under:-

"The Headmistress, who is present before us, makes a statement that the salary bills of the petitioner would be made ready in all respects for being submitted to the Education Officer within 8 days. She concedes to direct the concerned employee of the Education Department to visit the school and verify whether the salary bills are ready in all respects. On his certification of the bills being ready in all respects, she would submit the same to the Education Officer before the next date."

23. Thus, we have given full opportunity to the respondents to comply with the order. However, all the above directions of this Court show subsequent conduct of the respondent Nos. 1, 2 and 4 that they are deliberately avoiding to comply with these directions even when this Court was facilitating and insisting them to comply the said order.

24. The liability to draw the salary bills, preparing service book for fixing salary etc., alongwith inclusion of name of the petitioner in Shalarth ID lies upon respondent Nos. 1, 2 and 4. As per the State Government Resolution dated 7.11.2012 name of the petitioner was not included in Shalarth ID by respondent Nos.2 and 4 deliberately.

However, they have not complied with those directions and even as per the order of this Court dated 08.12.2023, no such salary bills of the petitioners were drawn and forwarded to the Education Officer alongwith Shalarth ID number. Further service book of the petitioner, which is required for calculation of his salary is not prepared by respondent Nos.1, 2 and 4. It was not prepared deliberately even after directions of this Court. The defence taken by respondent Nos. 1, 2 and 4 is not legal, correct and acceptable that they are not responsible for including the name of the petitioner in Shalarth ID system as per the resolution of the State Government dated 07.11.2012.

25. As per Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 and Rules, 1981, it is administrative duty of administration to comply all formalities strictly. There are specific directions of this Court to respondent Nos. 1, 2 and 4 to process the salary bills of the petitioner and to prepare the service book of the petitioner which is necessary for the office of Education department for further processing of salary bills of the petitioner. As per the order passed by this Court they had opportunity to comply with the order of this Court dated 13.11.2017. They took the defence at belated stage of this

litigation that they have not received such a communication after so many years when additional affidavit in reply was filed by respondent No.3. This is their conduct. Thus, they did not comply the said order without any legal or factual justification.

Their conduct can be seen from the above noted orders dated 6.11.2023, 8.11.2023, 4.12.2023 and 8.12.2023 that they did not include name of the petitioner in the Shalarth ID system. The petitioner has established that it is willful disobedience on the part of the respondent Nos.1, 2 and 4. There is mens rea behind their omission to comply the order of this Court. Their defence is not established that they have not received communication sent by respondent No.3 dated 07.07.2011. It is because they have by order of this Court during this proceeding did not comply all those formalities.

26. The petitioner's salary is not paid for years together deliberately because of intentional inaction i.e. omission on the part of respondent Nos.1, 2 and 4. They have neither denied their liability nor complied it as per order of this Court. The right to salary of the petitioner is valuable right. It is seriously affected and he suffered. Thus, civil contempt is proved as defined under Section 2 (b) of Contempt of Courts Act, 1971, by committing willful disobedience of the order passed by this Court dated 13.11.2017.

27. The directions of this Court dated 13.11.2017 are also not complied with even though full opportunity was given to the respondents. It is an aggravated contempt in contempt proceeding for which separate charge has to be framed against the respondents. The petitioner was allowed to join the duty by the order of this Court dated 13.11.2017. Further he was not allowed to work. Therefore, we passed an order on 18.7.2023 to reinstate him and he was reinstated thereafter when compelled by this Court. Thus, though the said order is partly complied with by permitting the petitioner to join to the post of teacher, its contempt is committed as his salary bill is not processed and paid by the respondents. It is clarified that respondent Nos. 1 and 2 are only held liable for the contempt of order of this Court dated 13.11.2017 passed in writ petition No. 5547 of 2017. Considering their conduct an apology as prayed in the affidavit dated 28.8.2023 of respondent No.1 is not acceptable and it is not accepted. The defence of the respondents is not acceptable that respondent No.3 is responsible for non-compliance of said order of this Court.

28. The charge is framed for civil contempt of this court against respondent Nos. 1 and 2 as per the order dated 22.04.2019. However, charge is not framed against respondent No.4, who subsequently became the Headmistress of the said school and arrayed as respondent No.4 in this proceedings. Therefore, it would be proper to frame charge against respondent No.4 and give her an opportunity of hearing.

29. The respondents have not complied with the directions of this Court as observed above, for that also separate charge needs to be framed for committing

contemptuous act i.e. willful disobedience to comply with the various orders of this Court in this petition. The contempt of order of this Court dated 13.11.2017 is proved against respondent Nos. 1 and 2 beyond all reasonable doubts. They failed to prove their defence. They are liable to comply the said order. The petitioner succeeded in rebutting their presumption of innocence and proving their guilt of contemptuous act as per section 2(b) of the Contempt of Courts Act, 1971. Therefore, they are held liable for committing contempt of the order of this Court in writ petition No. 5547 of 2017 dated 13.11.2017 punishable under Section 12 of the Contempt of Courts Act.

30. The lenient view cannot be taken if persons like respondent nos.1 and 2 are holding high posts and committing mischief of contempt of order of the Court. Respondent Nos.1 and 2 have abused their power. We are of view that exemplary fine or costs would not be adequate punishment in view of law laid down by the Hon'ble Supreme Court in the case of T. N. Godavarman Thirumulpad vs. Ashok Khot and another (cited supra). Considering the ages of the respondent Nos. 1 and 2 and their status that they hold high position as President of the School and Headmaster of the school, the following sentence and fine will meet the ends of justice which will fulfill the object of the Contempt of Court Act, 1971. We are of the view that imposition of custodial sentence is necessary as the contempt of court on the part of respondent Nos.1 and 2 clearly established. However, this contempt petition cannot be disposed of finally as the said order is not fully complied with. Hence, the following order:-

ORDER

31. Respondent No.1 Mr. Subhash s/o Sahebrao Patil, Age major, Occ. Agri. and President, Dwarkamai Sarvangin Vikas Sanstha, Vishwanath, Tq. and District Dhule and respondent No.2 Mr. Kailas s/o Jairam Suryawanshi, Age major, Occ. Service i.e. Head Master, Jai Yogeshwar Madhyamik Vidyalaya, Vishwanath Tq. and District Dhule, are sentenced to suffer simple imprisonment for three months each with fine of Rs.2000/- each i/d to undergo one month simple imprisonment each.

32. Issue conviction warrant accordingly, forthwith.

(SANJAY A. DESHMUKH, J.)

(R. G. AVACHAT, J.)

33. After pronouncement of judgment, the learned advocate for respondent nos.1 and 2 prays that the execution of this judgment may kindly be stayed for a period of 12 weeks. The learned advocate for the petitioner has strong objections for the same.

34. Considering the nature of the aggravated contempt of order of this Court, the prayer on behalf of contemors is rejected.