

(2022) 03 BOM CK 0115

In the Bombay High Court

Case No : Writ Petition No.8940, 8941, 8942, 8943 Of 2017, Civil Application
No.14307, 14308, 14309 Of 2017

Hemraj

APPELLANT

Vs

State Of Maharashtra And Others

RESPONDENT

Date of Decision : 29-03-2022

Acts Referred:

Constitution Of India, 1950 — Article 226
Secondary Schools Code, 2019 — Rule 86.1

Citation : (2022) 03 BOM CK 0115

Hon'ble Judges : Ravindra V. Ghuge, J;S. G. Mehare, J

Bench : Division Bench

Advocate : Kazi, M.A. Deshpande, L.S. Mahajan

Final Decision : Dismissed/Disposed Of

Judgement

S.G. Mehare, J

1. Rule. Rule made returnable forthwith. By the consent of parties heard finally.
2. By these petitions under Article 226 of the Constitution of India, the petitioners have assailed the same order dated 19.06. 2017 passed by respondent no.3, by which he held that in the said matter prima facie irregularity is committed and permitted the complainant/ respondent no. 6 to lodge criminal complaints against the concerned. They have also assailed a communication dated 27.08.2019, by which respondent no.2 again directed his subordinate to inquire against the petitioners about the same allegations.
3. To appreciate the lis, it will be appropriate to refer to the relevant facts in brief. Initially, the petitioners were appointed as special teachers in the mobile units under Integrated Education for the Disabled Children Scheme ("IEDCS" for short), run by Jai Bhavani Rashtriya Prasarak Mandal, Dhule. They were given a sanction from 15.01.2009. Then IEDC scheme was closed, and Inclusive Education of the Disabled at Secondary Stage ("IEDSS" for short), sponsored by

the Central Government, was introduced. The teachers who were working under the IEDC scheme, possessing the qualification to teach in secondary school, were absorbed with the schools. The petitioner Hemraj Patil (W.P. No.8940/2017) was working in N.G. Bagul High School and Junior College at Songir, the petitioner Ulhas Prakash Suryawanshi (W.P. No. 8941/2017) was working in Hajibadlu Sardar Urdu High School Islampura, Devpur, the petitioner Ranjit Zumbarlal Patil (W.P. No.8942/2017) was working in Swami Teuram High School Sakri road, and the petitioner Pratibha Dinkar Sonawane (W.P. No. 8943/2017) was working in Zilla Parishad Vidyalaya, Ardhe (Bk) Shirpur, in Dhule District.

4. On 31.08.2009, respondent no. 1/ State Government issued a Government Resolution holding that the scheme approved by the Central Government under IEDSS is set up in the State of Maharashtra from 2009-2010. Therefore, teachers with the requisite qualification to teach higher secondary school are automatically transferred to such schools. Till April 2012, the respective schools have extended all support to the petitioners.

However, the Accounts/Salary Department issued a letter informing that the salary to the Special Teachers appointed on Mobile Units run by the schools shall be disbursed only after proforma are sent by the Principals. The Principals did not send such proforma. Hence, the petitioners had filed the writ petitions. This Court directed the Director of Education (Primary) to pass fresh orders about their absorption.

5. The State Government/respondent no.1 acted upon the directions of this Court and, by Government Resolution dated 19.10.2015, informed respondent nos. 2 to 4 that the salary arrears till the end of February 2015 were disbursed and deposited in the account of respondent no.2. The Head Master of the school sent a letter along with the salary bills to the concerned by following the procedure. The said Court orders were not obeyed. Therefore, Contempt Petitions were filed. This Court had disposed off those Contempt Petitions by order dated 2nd August 2017, directing the State Government to take appropriate decision in the matter in consonance with the directions issued by this Court on 12.08.2015 in W.P. No.2924/2014 and companion matters, within four months from the date of order. So far as the arrears of salary are concerned, it is observed that it would be the responsibility of the respondents to pay the amount of arrears, as directed by this Court. With the above direction and observation, the Contempt Petitions were disposed off.

6. Respondent no.6 complained to respondent no.3. He held the inquiry calling upon all the petitioners and came to the conclusion that an irregularity is committed in the matter. He directed respondent no.4 not to release the salary of the petitioners, henceforth. He held that Z.P. School teachers, Head Masters, Block Education Officers have no concern with the irregularities and finally granted permission to respondent no. 6 to lodge a criminal complaint against the concerned, as prayed by him. Hence, these petitions for quashing both orders as mentioned above.

7. Respondent no.5, by his affidavit in reply, contended that the salary was not disbursed, as per the impugned order dated 19.06.2017.

8. Respondent no. 3 also contested the petition by filing an affidavit-in-reply. He came with a defence that the Units granted to Jai Bhavani Rashtriya Prasarak Mandal, Dhule, which appointed the petitioners in 2009, were cancelled vide order dated 29.12.2005. It had assailed the said order in W.P. No. 1030/ 2016. This Court set aside the said order by order dated 25.08.2016 and directed to revive the closed units. The Units were at least not functioning from January 2016 to 2017. The complaint of respondent no.2 was received. Hence, he held an inquiry giving an opportunity of hearing to the petitioners and found substance and passed the impugned order dated 19.06.2017. It is the responsibility of Jai Bhavani Rashtriya Prasarak Mandal, Dhule, to pay the salary to the petitioners as appointing Authority. The petitions deserve to be dismissed.

9. The learned Counsel for the petitioners submitted that the impugned order is bad in law. Respondent no.3 did not consider that the names of the petitioners were included in the Government Resolution dated 19.10.2016. So he ought not to have made any inquiry into the complaint of respondent no.6. The inquiry, in such a situation, is without jurisdiction. Respondent no.6 had no locus to complain to respondent no.3. Instead of granting permission to respondent no.6, respondent no.3 should have directed his subordinates to file a complaint against the petitioners. There was no material before respondent no.3 to conclude that irregularity is committed in the matter. When the higher Authority had held that there was no irregularity, respondent no.3 had no authority to pass the impugned order. She has prayed to allow the petitions.

10. The learned A.G.P. has argued that the investigation into the illegality in the appointments of teachers and payment of salary is within the powers of respondent no.3. He has discharged his duties under the law, and the investigation discovered that the petitioners had received the salaries without doing actual work. Hence, he has correctly recorded his findings. In view of the permission to respondent no.6, F.I.R. is already registered. Various disputed facts have been involved in this case, and hence granting permission to respondent no.6 is within the four corners of the law. The investigation by the police is an appropriate remedy. The petitioners have every right to claim discharge before the Trial Court. The impugned communication dated 27.08.2019 is merely calling upon a factual report. It does not affect the petitioners in any way. He submitted a letter dated 16.02.2022 under the signature of the Director of Education (Primary) Pune, intimating that the information called by the State Government pertaining to the absorption of the petitioners and other similarly situated teachers has been supplied. He also submitted that the petitions are devoid of merits and no loss is caused to the petitioners, and in the light of the registration of F.I.R., petitions have become infructuous.

11. The petitioners are claiming a Writ of Certiorari under Article 226 of the Constitution of India. The Hon'ble Apex Court in the case of the Province of

Bombay Vs. Khushaldas AIR 1950 SC 22 held that, whenever anybody of persons having legal authority to determine questions affecting the rights of the subject and having the duty to act judiciously, act in excess of their legal authority, a Writ of Certiorari lies. Having regard to the nature of a Writ of Certiorari, it is to be issued on the following grounds:-

- (i) Where there is a want or excess of jurisdiction;
- (ii) Where there is a violation of procedure or disregard of principles of natural justice;
- (iii) Where there is an error of law on the face of the record, but not an error of a fact.

12. The chequered history of the cases reveals that the first litigations were opened by the petitioners, namely, Pratibha Dinkar Sonawane, Ulhas Prakash Suryawanshi, and Hemraj Ravindra Patil by way of W.P. Nos. 2924/2014, 2922/2014 and 2925/2014. In view of the facts and the statement made by the learned A.G.P., the said writ petitions were decided by common judgment dated 12th August 2015 by a Co-ordinate Bench of this Court. The previous litigation has relevance with the present petitions; hence, the relevant paragraphs appear to be necessary to be reproduced as follows:-

"5. The learned AGP states that the petitioners in all these petitions are approved teachers. Now, the mobile units have been closed down. As per the recent policy of the Government, the handicapped students are to be imparted education with the regular students and these petitioners will now be required to be absorbed in primary schools."

"6. We have considered the submissions canvassed by the learned counsel for the respective parties. In view of the fact that the scheme, under which the petitioners were directed to be absorbed by the Director of Education, itself has come to an end and that the respondents will be required to pass fresh orders with regard the absorption of the petitioners, the dispute raised in the present petitions, with regard to running the mobile units under any of the Schemes, become redundant."

"7. In view of the same, the Director of Education (Primary) shall pass fresh orders with regard to the absorption of the petitioners. The petitioners, naturally, will be entitled to continuity of service. With regard to the payment of salary for the interregnum period, the Director of Education (Primary) Shall pass fresh ordered expeditiously and preferably within a period of three months."

13. Pursuant to the above order, respondent no. 2 wrote a letter dated 07.11.2015 to the Principal Secretary, School Education and Sports Department, Mantralaya, Mumbai. In the said letter, respondent no.2 contended that considering the directions of the Hon'ble High Court in the above writ petitions, absorption is justifiable. Hence, approval may be granted at the State Level.

14. The petitioners then had filled Contempt Petitions bearing Nos.31/2016, 32/2016 and 27/2016 for willful disobedience of the order passed in the earlier writ petitions dated 12.08.2015. A Co-ordinate Bench of this Court, by its order dated 2nd August 2017, disposed off all the contempt petitions by directing the State Government to take appropriate decision in the matter in consonance with the directions issued in Writ Petition No. 2924/2014 with companion matters, dated 12.08.2015, within four months from the date of order. The process of absorption is in progress as per the latest letter dated 16.02.2022.

15. On verification of the eligibility of the petitioners and documents of salary by the Deputy Director of Education (Primary), the State Government noticed that 77 special teachers, including the petitioners were appointed between 1990 and 1st of March 2009, under IEDS. They possessed educational qualifications of B.A., B.Ed. and were working under Secondary stage and their salaries were paid from 100% grants of Central Government under IEDS till July 2012. Since the salaries of those teachers were unpaid, the State Government by Resolution dated 19.10.2016, provided a fund of Rs.12.55 Crore along with the list of teachers entitled to salary for the year 2012-13 and 2013-14. The salaries were then accordingly paid to the petitioners.

16. In view of the above facts, the issue of arrears of salary was resolved at the State level, but respondent no.6 complained to respondent no.3 that the petitioners have taken the salary for the work they did not perform. Hence, the inquiry was initiated and the impugned order dated 19.06.2017 was passed.

17. Respondent no. 3 gave a hearing to the petitioners. However, none of the petitioners appeared before him. Hence, he made the inquiry with other witnesses. He found that there was an irregularity. Soon after the said impugned order, the present writ petitions have been filed. This Court passed the interim orders that no criminal action be taken against the petitioners. The said interim order, by various orders of this Court, is continued till today. The petitioners harped upon the earlier Govt Resolution dated 19.10.2016.

18. The petitioners have come with a case that vide Government Resolution dated 31.08.2009, the teachers holding the requisite qualification to teach at the higher secondary school level are automatically transferred to the said school, and at the same time, they are also fighting for their absorption. Be that as it may, the fact remains that respondent no.3 did not act abruptly. He has collected the evidence and is satisfied with the material and he came to the conclusion that there is an irregularity.

19. Rule 86.1 of the Secondary Schools Code 2019 provides that the amounts granted from public funds for aiding secular education in Maharashtra State are administered under the control of the Director in accordance with the conditions set forth in the Rules. This provision relates to the salary grants. The provision is clear that the money paid by the Government for secular education under the salary grants is under the control of the Director of Education. Respondent no.3

is Regional Deputy Director. So, he is responsible for the proper management of the salary. It is his power to inquire if any complaint is received in regard to the misuse of the salary grants.

20. Prima facie evidence came before respondent no.3 that the petitioners were not actually working. The rule is 'no work - no pay'. Fraud vitiates everything. The petitioners did not face the inquiry, nor did they produce evidence that the allegations were baseless and that they did not accept the salary when they did not work. They preferred to let the inquiry go ex parte. Again, by Resolution dated 19.08.2019, the State Government released the fund of Rs. 4.40 Crore for the salary of 71 special teachers, including the petitioners for the year March 2017 to May 2019. In this Government Resolution, the Government put a condition that the appointment/approval of such teachers is to be confirmed. Whether in the salary period, the Units were running or not? Whether the teachers were actually doing the jobs or not? The salary is paid only for the period of work done. Respondent no. 2 again received a complaint from respondent no.6 and he has called for a report from respondent no.3, by the impugned communication dated 27.08.2019.

21. In view of the above, we are of the opinion that after granting the fund for salary does not prevent the Competent Authority to make an inquiry. As discussed above, the salary fund comes to the Director and it is paid under his control. If a mess is created, he is competent to make an inquiry. In fact, he could have made a discreet inquiry. Yet but he called the petitioners for a hearing. But they did not respond to him.

22. So far as the arguments of the learned counsel for the petitioners, that instead of granting permission to respondent no. 6, respondent no.3 himself or through him should have initiated the proceedings is concerned, the law is settled that anybody can put the criminal law into motion. Apart from the departmental inquiry against the erring employee, there is no bar to initiate the criminal proceeding if the acts prima facie amount to a crime. None of the grounds to issue a Writ of Certiorari are established by the petitioners. Since we do not find substance in the petitions, these Writ Petitions stand DISMISSED.

23. Needless to mention here that, the right of the petitioners to claim discharge from the criminal proceeding is not disturbed. The Criminal Court shall not get influenced by the findings recorded by us, during the trial of the criminal case against the petitioners, if any.

24. We further make it clear that we have not touched the proceeding of absorption of the petitioners and other teachers at the Government Level in pursuance of the orders passed by a Co-ordinate Bench of this Court in W.P. No.2924 of 2014 with companion petitions, dated 12.08.2015.

25. Rule stands discharged.

26. No orders as to costs.

27. In view of the dismissal of the writ petitions, pending Civil Applications do not survive and stand disposed off accordingly.