

(2011) 07 BOM CK 0051

In the Bombay High Court

Case No : Contempt Petition No. 241 of 2005 in writ Petition No. 5625 of 2005

Suryabhan Kale

APPELLANT

Vs

Shri. Vishwambhar Maruti Pawar and Others

RESPONDENT

Date of Decision : 20-07-2011

Acts Referred:

Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 — Rule 37

Citation : (2012) 1 ALLMR 701 : (2012) 6 BomCR 470 : (2011) 113 BOMLR 2625 : (2012) 2 MhLj 22

Hon'ble Judges : S.S. Shinde, J

Bench : Single Bench

Advocate : P.S. Dighe, holding for R.L. Kute, for the Appellant; S.T. Shelke, holding for, R.K. Temkar, for Respondent Nos. 1 and 2, D.V. Tele, A.G.P. for State and A.V. Patil, for the Respondent

Final Decision : Dismissed

Judgement

S.S. Shinde, J.—This Contempt Petition alleges disobedience of order dated 24082005 passed by this Court in Writ Petition No. 5625 of 2005.

2. It is the case of the Petitioner that the Petitioner was appointed as Assistant Teacher in Shanteshwar Vidyalaya Sastur, Tq. Lohara, District Osmanabad on 02071973. In 1975 his services were confirmed. In 1984 he was promoted as Head Master and was working continuously as Headmaster till January 2005. The Petitioner was due for retirement on 31082005. Due to some dispute in Management, the Petitioner was issued notice on 24012005. Said notice was received by the Petitioner on 27012005. The Petitioner has replied the said notice on 30012005. It is further case of the Petitioner that on 21022005 Respondent No. 1 without issuing any further notice and without conducting any inquiry has issued termination order. The Petitioner filed Appeal No. 29 of 2005 before the School Tribunal contending that, the said termination is in contravention of Rule 37 of the Maharashtra Employees Private Service Rules, 1981 and the

termination order is void ab-initio. The Petitioner also filed application below Exhibit5 in the said appeal requesting stay to the termination order dated 21022005. On 28072005 the School Tribunal refused to grant stay to the termination order. Therefore, the Petitioner filed Writ Petition No. 5625 of 2005 before this Court. After hearing both the sides, this Court had granted interim relief in terms of prayer Clause (C) to the Petitioner.

3. It is further case of the Petitioner that on 25-08-2005 the Petitioner approached the Respondents and requested to allow the Petitioner to join services as per order passed by this Court. However, Respondent Nos. 1 and 2 though were knowing about the order passed by this Court, did not allow the Petitioner to resume duties. On 25-08-2005 the Petitioner has given the joining report to one of the Trustee i.e. Mr. Dnyanoba Dadarao Mane who has given the acknowledgment. Copy of the said joining report was forwarded by the Petitioner to the Education Officer on 29-08-2005.

It is the case of the Petitioner that Respondent Nos. 1 and 2 alongwith Respondent Nos. 4 to 13 have deliberately acted high handedly and flouted the order passed by this Court. Therefore, Respondent Nos. 1 and 2 and 4 to 13 have committed contempt of the order dated 24082005 passed by this Court. Therefore, the Respondents be dealt with in accordance of the Contempt of Courts Act and ultimately they be punished for not obeying the order passed by this Court on 24082005.

4. Contempt petition was initially heard on 01122005 when this Court was pleased to issue notice to Respondent Nos. 1 and 2. Thereafter, though from time to time contempt petition was listed for hearing, same came to be adjourned and heard on 14062007 when this Court also issued notices to Respondent Nos. 3 to 13. In pursuant to notices, respective Counsel appeared in the matter for Respondents. Matter was again listed for hearing on 25-09-2009 when this Court directed the Registry to place the contempt petition for hearing on the weekly board commencing from 03-11-2009. Again contempt petition was listed for hearing on 21-12-2010 when it was brought to the notice of this Court that another contempt petition No. 339 of 2008 is also pending which has direct bearing on the subject matter of the present contempt petition. Thereafter, Contempt petition Nos. 241 of 2005 and 339 of 2008 were taken up for hearing by this Court on 14-06-2011 when this Court was pleased to dispose of the Contempt Petition No. 339 of 2008 holding that there is no any willful disobedience by the Respondents therein and same contempt petition came to be finally disposed of.

5. Learned Counsel appearing for the Petitioner submits that in spite of order passed by this Court on 24082005 Respondents did not allow the Petitioner to join services. Learned Counsel invited my attention to the letters addressed to the police authorities by the Petitioner making grievance that the Respondents are not allowing him to join services as per order passed by this Court. He has also invited my attention to the statements of other employees in the concerned

Institution who have stated that the Petitioner went in the school to join services however, Respondents did not allow him to resume duties. Learned Counsel also invited attention of this Court to the pleadings in the petition, annexures thereto and also judgment of the Hon"ble Supreme Court in the case of Patel Rajnikant Dhulabhai and Another Vs. Patel Chandrakant Dhulabhai and Others, and contended that even if there is willful disobedience of interim order passed by this Court, the contemnors are required to be punished for willful disobedience of the said order. Therefore, learned Counsel for the Petitioner would submit that, this Court may punish the Respondents for violating the order passed by this Court on 24-08-2005.

6. Respondent No. 1 has filed affidavit in reply. In Para1 of the said reply, he has tendered unconditional apology, if this Court comes to the conclusion that Respondent No. 1 has committed contempt of the order passed by this Court. It is further stated in the reply that the ;contempt petition is filed by the Petitioner only to harass the deponent. The Petitioner has not disclosed all true, material and relevant facts and has deliberately suppressed some of the few facts with a view to obtain favourable order and therefore, this contempt petition deserves to be dismissed in limine. It is specifically stated in Para3 of the said reply that, in pursuant to the order passed by this Court, the Petitioner should have simply resumed the duties and there was no question of any joining as such. However, the Petitioner has tried to create evidence showing that the order of this Court has been breached deliberately. It is specifically stated in Para3 of the affidavit in reply that, Respondent No. 1 was not keeping well and was suffering from chest pain and had therefore gone to Pune for medical check up and treatment and he was under the treatment of Vishwa hospital during the period from 24-08-2005 to 30-08-2005. Copy of the medical certificate is also placed as Exhibit RI, with affidavit in reply. Respondent No. 1 has also replied the contents of the contempt petition. He has specifically stated that the documents and evidence which has been collected by the Petitioner is a creation after thought and the said documents at Exhibit B and C of the Petitioner are not true and correct and have been prepared by the Petitioner to suit his own purpose and convenience.

? It is further stated in Para5 of the said affidavit in reply that, the appeal preferred by the Petitioner challenging the termination dated 21022005 is still pending before the School Tribunal against the interlocutory order and Writ Petition was preferred only against the rejection of the application of the Petitioner for stay to the termination order.

7. The Petitioner has completed 58 years of age on 31082005. Therefore, relying on the affidavit in reply filed by Respondent No. 1 before this Court, Counsel for Respondent No. 1 would submit that Respondent No. 1 was hospitalized at Pune from 24082005 to 30082005 and was taking treatment there and therefore, there is no question of presence of Respondent No. 1 in the school.

8. Respondent No. 2 has also filed affidavit in reply. In Para1 of the said reply, he has tendered unconditional apology, if the Court comes to the conclusion that he

has committed contempt of the order passed by this Court. In Para2, it is stated that he went to pilgrimage to Lord Balaji in Andhra Pradesh alongwith other devotees. Authorities of Devasthan issued Darshan Token on 29-08-2005 and accordingly, he took Darshan on 29-08-2005 under the Special Entrance Mode. He has also placed on record true and correct copies of receipts issued by the said Devasthan. It is case of Respondent No. 2 that, he had started for the pilgrimage on 24-08-2005 and travel to Tirumala in Andhra Pradesh. Therefore, according to him, he was not present in the said school at the relevant period. It is specifically denied that, he obstructed the Petitioner in resuming his duties, as per Court's order. Affidavits filed by Baburao Mallikarjun Dalal and Dnyanoba Dadarao Mane to show that, Respondent No. 2 obstructed the Petitioner in resuming duties, are misleading, since said persons are opponents and therefore, they have filed such false affidavits to create evidence against the Respondents. It is further stated that the judgment of the School Tribunal has been challenged by the Institution by filing Writ Petition No. 1969 of 2007. The contempt petition is filed by the Petitioner by way of pressure tactics so that Institution should not litigate furthermore against the Petitioner.

9. Education Officer namely Mr. Suresh Bapuji Kulkarni has also filed affidavit in reply who is Respondent No. 3 in the contempt petition stating therein that, he has taken steps to implement order of this Court.

10. I have given thoughtful consideration to the submissions of the Counsel for the Petitioner and learned Counsel for Respondents. I have also perused the averments in the contempt petition, annexures thereto and other documents on record and affidavits filed by the Respondents. The Petitioner has alleged disobedience of the order dated 24-08-2005 passed by this Court. By the said order the Respondents were restrained from interfering with the duties of the Petitioner as Headmaster in Shanteshwar Vidyalaya, Sstur, Tq. Lohara, District Osmanabad, pending hearing and final disposal of the Writ Petition. In the Writ Petition Rule was issued. It is not in dispute that the said Writ Petition came to be dismissed subsequently.

11. From careful perusal of the relief granted by this Court on 24-08-2005, it is crystal clear that Respondents were restrained from interfering with the duties of the Petitioner as a Headmaster. Therefore, there was no question of joining as Headmaster afresh. Interim order was confined to restrain the Respondents from interfering with the duties of the Petitioner as a Headmaster.

12. From the perusal of the affidavit filed by the President of Shanteshwar Shikshan Samiti, Sastur, Tq. Lohara, District Osmanabad, it is clear that for the relevant period he was taking treatment at Pune from 24-08-2005 to 30-08-2005 and Respondent No. 2 went on Pilgrimage to Tirumala as stated by him in affidavit in reply. From the perusal of the compilation of the contempt petition, there is no any rejoinder affidavit filed by the Petitioner to the affidavit in reply filed by Respondent Nos. 1 and 2. Therefore, their statement on oath in the affidavit in reply that, they were not present in the school or in the said village

from 24-08-2005 to 30-08-2005 has to be accepted. Nothing has been brought on record to suggest contrary by way of filing rejoinder affidavit.

13. It is true that affidavit has been filed by Respondent No. 9 who is also trustee, to suggest that the alleged contemnors have restrained the Petitioner from resuming the duties. When Respondent No. 2 in his affidavit in reply has stated that, since the persons who have filed affidavits in support of the contentions of the Petitioner that he was restrained/prevented from resuming the duties are from the opposite group of Respondent Nos. 1 and 2, said contentions in the affidavit in reply of Respondent No. 2 has not been controverted or denied by way of filing rejoinder affidavit by the Petitioner. It is also not in dispute that finally Writ Petition came to be dismissed. Writ Petition which was filed was against the interim order of the School Tribunal refusing stay to the termination order.

14. From careful scrutiny of the entire documents placed on record and affidavit in reply filed by Respondent Nos. 1 and 2 i.e., alleged contemnors who were holding the post of President 16 cp241,05 and Secretary in the said Institution at the relevant time, this Court is not convinced to hold that, there was willful disobedience of the order on 24-08-2005. From the perusal of averments in the petition and annexures thereto, it appears to this Court that the Petitioner did indulge in creating evidence by addressing letters to police authorities and also by taking affidavits of other employees and trustee of the said institution so as to make out the case that, the Respondents have deliberately violated the order passed by this Court.

15. There cannot be any quarrel that even if the interim order of this Court or any other competent Court is violated by any person, they can be dealt with in accordance with the Contempt of Courts Act and other relevant provisions and can be punished. However, in the present case, on careful scrutiny of the entire material placed on record, it is difficult to hold that the Respondents have willfully disobeyed the order 17 cp241,05 passed by this Court. At the cost of repetition, it has to be stated that, affidavits in reply filed by Respondent Nos. 1 and 2 have not been controverted by the Petitioner by way of filing rejoinder affidavits. Other Respondent i.e. Respondent No. 3 Education Officer has filed affidavit stating his efforts to see that the order of this Court is implemented and there is no question of any willful disobedience by Respondent No. 3 of the order passed by this Court.

16. So far other Respondents are concerned, the general allegation is that, Respondent Nos. 1 and 2 tried to restrain/prevent the Petitioner from resuming duty as a Headmaster and other Respondents assisted them to restrain/prevent the Petitioner from resuming duties in spite of specific order of this Court passed on 24-08-2005. In fact, presence of Respondent Nos. 1 and 2 from 24-08-2005 to 30-08-2005 in the said school/institution has not been established by the Petitioner. On the contrary, Respondent No. 1 has 18 cp241,05 stated in his affidavit in reply that he was suffering from chest pain and therefore, he went to

Vishwa hospital at Pune and to that effect, medical certificate is produced on record which shows that he was under treatment from 24-08-2005 to 30-08-2005 for chest pain. Respondent No. 2 has also stated in his affidavit in reply that he went on pilgrimage on 24-08-2005 and he was there at Tirumala on 29-08-2005. Photo copies of certain documents are placed on record with affidavit in reply to show his presence at Tirumala on 29-08-2005.

17. Taking overall view of the matter, it has to be concluded that there was no any willful disobedience of the order dated 24-08-2005 passed by this Court in Writ Petition No. 5625 of 2005. Hence Contempt Petition is dismissed. Notice stands discharged.