

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

REVIEW APPLICATION NO. 97 OF 2014
IN
WRIT PETITION NO. 6590 OF 2013

Vidya d/o Laxmanrao Ghule
Age 38 years, occp. Service,
R/o Bharat Vidyalaya, Osmanabad,
Khaja Nagar, Taluka and District
Osmanabad .. Petitioner

versus

01. Kamlakar s/o Murlidhar Gore,
Age 46 years, Occup. Service,
R/o Chhatrapati Shivaji Vidyala,
Washi, Taluka Washi, District
Osmanabad
02. The State of Maharashtra,
through its Secretary,
Department of School Education
and Sports, Mantralaya,
Mumbai – 32
03. Shri Shivaji Shikshan Prasarak
Mandal, Barshi, Near Shivaji College,
Barshi, Tq. Barshi, District Solapur,
through it's General Secretary
04. Chatraphati Shivaji Vidyalaya, Washi,
Tq. Washi, District Osmanabad,
Through it's Head Master
05. The Education Officer [Secondary],
Zilla Parishad, Osmanabad .. Respondents

Mr. Santosh S. Jadhavar, Advocate for applicant
Mr. S. A. Wakure, Advocate for respondent no. 1
Mr. S. D. Kaldate, Asstt. Govt. Pleader for respondents no. 2 & 5
Mr. A. N. Nagargoje, Advocate for respondents No.3 and 4

CORAM : S. S. SHINDE AND SUNIL P. DESHMUKH, JJ.

DATE OF RESERVING JUDGMENT : 11-08-2015
DATE OF PRONOUNCING JUDGMENT : 30-10-2015

JUDGMENT (PER : SUNIL P. DESHMUKH, j)

1. This application has been moved by respondent no. 2 in writ petition no. 6590 of 2013, purportedly to have review of order dated 14-03-2014 passed in said writ petition.

2. Writ petition No.6590 of 2013 had been moved by present respondent no.1, requesting to set aside and/or recall order dated 03-08-2012 in writ petition no.11408 of 2010 whereunder a division bench (comprising Justice B.P. Dharmadhikari and Sunil P. Deshmukh) had directed respondent no. 4 therein, namely, the Head Master, Chhatrapati Shivaji Vidyalaya, Washi, Taluka Washi, District Osmanabad, to submit proposal in accordance with law to respondent no.5-Education Officer (Secondary), Zilla Parishad, Osmanabad for consideration of the same within a period of three months, recording that nobody had put in appearance on behalf of said respondent no. 4.

3. Writ petition no.11408 of 2010 referred to hereinabove had been moved by present review petitioner seeking *mandamus* to respondent no. 4 therein – The Head Master, Chhatrapati Shivaji Vidyalaya, Washi for submission of proposal for promotion / appointment on the post of full time librarian with effect from 01-04-2006 and to respondent no. 3- The Education Officer (Secondary), Zilla Parishad, Osmanabad to accord approval to the same. Directions were also requested against said respondents no.

3 and 4 for sanction of salary to review petitioner in the pay scale of full time librarian and to take appropriate steps in respect of the same.

4. In writ petition no. 6590 of 2013 filed by present respondent no.1, however, it had been pointed out that he was the senior-most among the librarians appointed by respondent no. 3-management i.e. Shri Shivaji Shikshan Prasarak Mandal, Barshi (hereinafter will be referred to as 'Mandal') in the schools run under its aegis. He was appointed under order dated 10-12-1994. He had referred to that pursuant to the relevant rules / government circulars while promoting an employee from the post of part time librarian to the post of full time librarian working in different schools run by the same management, the senior-most person should be promoted. He brought to the notice of the court that present review petitioner had been appointed much later than him i.e. on 15-04-2000 as part time librarian in Chhatrapati Shivaji Vidyalaya, Washi, whereas present respondent no.1 – petitioner in writ petition no. 6590 of 2013 had been working since 1994 in Mandal's Bharat Vidyalaya, Khaja Nagar, Osmanabad as part time librarian. It was further pointed out that the post of part time librarian in Chhatrapati Shivaji Vidyalaya, Washi had been converted into full time librarian with effect from 01-04-2006 and accordingly he (present respondent no.1) had staked claim to said post being the senior-most librarian from part time librarians appointed by Mandal having

been working from 1994 over and above other part time librarians in the schools / institutions run under the aegis of Mandal.

5. It appears that having regard to the position emerging, the Mandal had under order dated 04-12-2010 transferred present review petitioner from Chhatrapati Shivaji Vidyalaya, Washi to Bharat Vidyalaya, Khajanagar, Osmanabad wherein present respondent no. 1 was working as part time librarian since 1994.

6. Aforesaid transfer order had been subject matter of challenge in writ petition no. 11141 of 2010 by present review petitioner. In said writ petition, present respondent no. 1 was respondent no. 6. Said writ petition came to be disposed of by an order dated 06-05-2011 by a division bench of this court to which one of us (Justice S.S. Shinde) was a party. Text of said order is as under:

“ 1. The grievance of the petitioner is that he is serving on the post of Librarian which is now converted into full time post of Librarian. Thereafter, he has been transferred to the post which is a part time post. It is not in dispute that appointment of respondent No. 6 was on a part time post of Librarian but in a different Library. On conversion of the post on which the petitioner was working, from part time to full time, respondent No. 6, being senior to the petitioner, came to be appointed as Full Time Librarian on the post so converted.

2. In this view of the matter, no grievance can be made by the petitioner in this respect. However, in case any additional full time post is created in future, the claim of the petitioner shall be considered appropriately and as per the Rules and seniority. For

joining on the transferred place, the petitioner is given one months time.

3. *Subject to above directions, Writ Petition stands disposed of. No order as to costs. “*

7. It was further pointed out that pursuant to the same, approval came to be granted to the promotion of respondent no. 1 under order dated 25-07-2011 by Education Officer (Secondary) Zilla Parishad, Osmanabad

8. Writ petition no. 11408 of 2010 was disposed of as stated hereinabove on 03-08-2012 by a division bench to which one of us (Sunil P. Deshmukh) was a party as referred to hereinbefore earlier.

The text of said order is as under:

“1. Advocate Jadhavar points out that the number of students exceeded in April 2006 and hence, post of part time librarian is upgraded as full time librarian. However, Respondent No.4-school did not forward the proposal. Therefore, the petitioner, though working as full time librarian, is not receiving salary for the said post.

2. Learned A.G.P. submits that if the proposal is submitted, it can be considered in accordance with law.

3. Nobody appears for Respondent No. 4.

4. In this situation, we direct Respondent No. 4 to submit proposal in accordance with law to Respondent No. 3 within a period of three months. On receipt of the same, Respondent No. 3 shall consider it within further period of three months.

5. Petition stands disposed of, accordingly. No costs.”

9. This, according to present respondent no. 1, had posed a threat to the approval accorded to his promotion as full time librarian and was causing problem even to the authorities concerned and under these circumstances, writ petition no. 6590 of 2013 at his behest was necessitated seeking recall of said order dated 03-08-2012 passed in writ petition no. 11408 of 2010 in favour of present review petitioner. In writ petition no. 6590 of 2013, it has been referred to that respondent-management could submit proposal of present respondent No. 1 as only one post of full time librarian being available and petitioner therein (present respondent no. 1) being the senior-most part time librarian, and accordingly said post stood occupied by respondent no. 1 with approval by the concerned authorities.

10. Division Bench while passing order on 14-03-2014 in writ petition no.6590 of 2013, has also recorded that though directions had been given in the order passed on 03-08-2012 in writ petition no.11408 of 2010 to consider proposal within three months from date of said order, the same could not be given effect to having regard to aforesaid position. In the circumstances, order dated 03-08-2012 in writ petition No. 11408 of 2010 had been recalled.

11. The applicant herein, seeking review of the order dated 14-03-2014 in writ petition no. 6590 of 2013 prays for a relief of approval from the respondents to her work as full time librarian for

the period from 01-04-2006 to 04-12-2010, for such specific period. Having regard to the factual position that respondent no. 1 would be having better claim over that of review applicant, request by her for approval for such a period is untenable and it would generate other issues.

12. As hearing of the review application progressed and having regard to position emerging as aforesaid, gradually, the review applicant has resiled to a situation wherein she has confined her claim only to monetary benefits for payment as full time librarian, those could possibly be derived for performance of duty as a full time librarian with effect from 01-04-2006 to 04-12-2010. During said period, according to her, she was working in said school as a full time librarian.

13. Since the review applicant restricts her claim to monetary benefit of payment of full time librarian for the period referred to hereinabove, an equitable solution can be worked out without creating any rights and liabilities in favour or against the parties.

14. Even otherwise the review is unsustainable on the background referred to hereinabove. Though it is being contended that the order in writ petition No. 11408 of 2010 could not be recalled, it having already been executed, such a submission in the present facts and circumstances indisputably points out that review applicant does not have a claim to the post of full time librarian

better than that of present respondent no. 1 and thus said submission has been rendered inefficacious in the facts of the case and even otherwise, the order in writ petition no. 11408 of 2012 passed on 03-08-2012 having been recalled, compliance of the same has been rendered redundant in the facts and circumstances. In any case, upon said submission review applicant would not be able to derive any tangible benefits.

15. The order of which review has been sought hardly can be said to be amenable for review on the grounds referred to in the review application and the grounds subsequently amended / added. It cannot be said that there is an error apparent on the face of record, or for that matter, it was a case of something being missed out from consideration or there subsists any other reason to have review of the order.

16. With review applicant having confined claim as referred to above, the purpose with which review application had been moved in process appears to be otiose.

17. Review Application, as such, stands dismissed.

18. The position appears to be hardly disputed by present respondents, that review applicant having worked as a full time librarian, during the specific period referred to above, it may be equitable to consider that she is paid according to scale of pay

applicable to said post with effect from 01-04-2006 to 04-12-2010 – the date of her transfer since there is sanction to said post.

19. Learned Assistant Government Pleader refers to the affidavit-in-reply filed on behalf of respondent no.5 that review petitioner had not been appointed as full time librarian and continued to be a part time one, yet, if it is not disputed that she had actually worked on the post as a full time librarian during the period 01-04-2006 to 04-12-2010, her case may be treated as a special case, and respondents No. 4 and 5 i.e. the management and education officer (secondary) would consider her case for payment in the pay scale applicable to the post of full time librarian for the period 01-04-2006 to 04-12-2010 and she may be paid accordingly without creating any right and / or equity in her favour to claim any benefit on the basis of such payment and same would / shall be without detriment to interest of others and respondents may do the needful in respect of the same.

20. Review application accordingly stands disposed of.

SUNIL P. DESHMUKH
JUDGE

S. S. SHINDE
JUDGE

pnd