

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

Misc. Civil Application No.105 of 2014 (for Review)

In

Writ Petition No.3365 of 2012(D)

(Ku. Pranita Bajiraoji Masram v. Maratha Shikshan Prasarak Mandal,
Chandrapur, through its Secretary, and others)

Office Notes, Memoranda of Coram,
appearances, Court's orders or directions Court's or Judge's orders
and Registrar's order

Shri P.N. Shende, Advocate for Applicant.

Shri A.Z. Jibhkate, Advocate for Respondent Nos.1 and 2.

Shri Neeraj Patil, AGP for Respondent Nos.3 and 4.

Coram : R.K. Deshpande, J.

Dated : 14th January, 2015

In Writ Petition No.3365 of 2012 decided by this Court (Shri A.V. Nirgude, J.) on 6-8-2013, the petitioner has been denied the protection of the Government Resolution dated 14-6-2010 on the ground that the Government Resolution applies only to those persons, who were in service on the date of coming into force of the said Government Resolution. Undisputedly, the Government Resolution covered the cases of untrained teachers, in fact in service on 1-4-2010. These are also the facts, which are recorded in the judgment and order under review. The protection has been denied on the ground that the petitioner was virtually terminated on 27-6-2009.

The learned counsels appearing for the parties have invited my attention to the order dated 5-5-2010 placed on the record of the original writ petition on running page 44, terminating the services of the petitioner for want of training qualification with effect from 6-5-2010. If this order is to be considered as the termination, then undisputedly the petitioner was in service on 1-4-2010, even according to the Management.

This Court has observed that “the services of the petitioner got terminated virtually on 27-6-2009”. Shri Jibhkate, the learned counsel for the respondent Nos.1 and 2/Management, has invited my attention to the approval granted to the appointment of the petitioner by an order dated 4-10-2008 by the Education Officer (Secondary), Zilla Parishad, Chandrapur, for the period from 28-6-2008 to 27-6-2009, read with clause 4 of the Government Resolution dated 27-2-2003, which states that those Shikshan Sevaks, who fail to pass the training course within a stipulated period of three years, shall be granted extension of one year only. The fact remains that the petitioner was terminated from service with effect from 6-5-2010. Hence, the finding recorded by this Court that “her services got terminated virtually on 27-6-2009” is based upon misconception of facts. The error is self-evident, as has been laid down by the Apex Court in the decision in the case of *State of West Bengal and others v. Kamal Sengupta and another*, reported in (2008) 8 SCC 612, and, therefore, the judgment and order passed by this Court needs to be reviewed.

Shri Jibhkate for the respondent-Management submits that the continuation of the petitioner in service beyond 27-6-2009 being contrary to the express provisions of the Government Resolution dated 27-2-2003, would neither create a right in favour of the petitioner, nor estoppel would operate against the Management.

So far as the question of estoppel, as has been urged by Shri Jibhkate for the respondent-Management, is concerned, such an issue has not been considered in the judgment and order under review, and the said question is open to be decided upon review of the judgment and order.

In the result, the Misc. Civil Application is allowed. The judgment and order dated 6-8-2013 passed by this Court in Writ Petition No.3365 of 2012 is reviewed. Writ Petition No.3365 of 2012 is restored. The matter be placed for final hearing on the board.

Shri Jibhkate, the learned counsel, waives service of notices for the original petitioners; and Shri Patil, the learned AGP, waives service of notices for the respondent Nos.3 and 4.

Judge.

Lanjewar