

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

Misc. Civil Application No.1029 of 2014 in
Writ Petition No.1323 of 2004 (D)

*(The Secretary, Millat Educational Social Welfare Association, Nagpur .vs. Mahjabeen d/o.
Taslim Ahmed Khan and anr.)*

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders

Mr.S.Zia Qazi, Adv. for the applicant.
Mr.U.P.Deopujari, Adv. for respondent no.1.
Mr.Majid Sheikh, Adv. for respondent no.2.

CORAM : A.P.BHANGALE, J.

DATE : 27.7.2015.

Heard.

This application is preferred by original respondent no.1 in Writ Petition No.1323 of 2004 decided by this Court by Judgment and Order dt.31.7.2014. Learned Counsel in support of the review application submitted that the writ petitioner had made incorrect statement and suppressed material facts and misled this Court in order to seek an order for reinstatement as a Head Mistress for the School of the review applicant. It is also contended that this Court need to consider the judicial precedent in proper perspective so as to apply them in the facts and circumstances of the case as, according to him, the review applicant's resignation letter was in Urdu, but other communications were in English and that the writ petitioner was already enjoying service as a teacher drawing salary for ten years in other school.

My attention is invited to the ruling in the case of Anna Manikrao Pethe .vs. Presiding Officer, School Tribunal, Amravati and Aurangabad Division, Amravati and Others reported in 1997 (3) Mh.L.J. 697. In para 15 thereof, the Division Bench of this Court has observed as under :

“When such applications under section 9 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977, are filed before the School Tribunals by the teachers challenging any act of termination on the part of the management, it will be necessary for the Tribunal to frame and decide three preliminary issues, viz., whether the school was a recognized school as defined under the M.E.P.S. Act; whether the appointment of the concerned teacher was made as per section 5 of the M.E.P.S. Act and the Rules thereunder; and whether such an appointment has been approved by the Education Officer in pursuance of the provisions of the Act as well as the Rules framed thereunder including the Government Resolutions issued from time to time regarding reservations etc. These preliminary points are required to be framed and decided before the appeal proceeds on merits and even if such points are not raised by any of the parties to the appeal, it would be proper on the part of the Tribunal to frame such issues suo motu before examining the merits of the case. In case the findings to any of the preliminary

issues are in the negative, the appeal must fail then and there itself, so far as the relief of reinstatement/continuation in service is concerned. ”

My attention is then invited to para no.61 of another ruling in the case of **Rasiklal Manikchand Dhariwal and another .vs. M.S.S. Food Products** reported in **(2012) 2 SCC 196**, wherein it is observed as under :

“ It is true that in the counter-affidavit filed by the respondent, nothing has been said about the above statement made in the synopsis. However, in our view, in case the contentions raised by the appellants were not considered by the High Court, the proper course available to the appellants was to bring to the notice of the High Court this aspect by filing a review application. Such course was never adopted. In view of this, we are not persuaded to permit the appellants to challenge the orders passed by the trial Court on the interlocutory applications now and argue that the trial Court erred in not adhering to the pre-trial procedures.”

It appears that the appellants in that case were expected to bring to the notice of the High Court the contentions in their affidavits for filing review application. Therefore, the appellants were not allowed to challenge the order passed by the trial Court on the interlocutory application on the basis that the trial Court erred in not

adhering to pre-trial proceedings.

As against these rulings, the learned Counsel for the respondents made a reference to the case of **Parsion Devi .vs. Sumitri Devi** reported in [1997 DGLS (Soft) 1251 : 1997 (8) JT 480] to argue that under Order 47, Rule 1 of the Code of Civil Procedure, as observed in para no.9 of the said ruling by the Apex Court, there are limited grounds for review such as mistake or an error apparent on the face of the record. Thus, an error which is not self-evident and has to be detected by a process of reasoning, can hardly be said to be an error apparent on the face of the record justifying the court to exercise its power of review under Order 47, Rule 1 Civil Procedure Code. It is not permissible for an erroneous decision to be “reheard and corrected” by means of review petition. A review petition has a limited purpose and cannot be allowed to be “an appeal in disguise”.

It appears that this Court considered the rulings cited at the bar and the rival submissions at the bar on the point that resignation has to be voluntary and not being fraudulently obtained or being coerced or forced by the Management. This Court has observed that Section 7 of the MEPS Act requires an employee intending to resign his/her post in any private school to draw up the letter of resignation in duplicate and sign both the copies of the letter, putting the date thereon, forwarding one copy to the management by registered post and retaining the other copy. Thus, intention to resign on the part of the employee has to be clearly indicated by an act of employee i.e. drawing up the resignation letter in duplicate and signing both the copies, putting the date thereon, sending the

resignation letter by registered post to the management. The requirements are safeguards statutorily laid down to ensure that the school teacher concerned is not subjected to coercion or duress of any kind if Management has any crafty corrupt elements intermingled in it. Management must not have taken any disadvantage of any involuntary act of the resignation induced by it.

Thus, considering and bearing in mind that no such care was taken by the School Tribunal having onerous duty to ensure that termination of the employee was not for the reasons otherwise but that resignation was truly voluntary with free consent of the employee concerned and after compliance of statutory requirements. That being so, the order impugned was set aside and the petitioner was held entitled to be reinstated to the post of Head Mistress with all consequential benefits w.e.f. The date of termination of her services upon the pretext that she had resigned from service as Head Mistress of the school run by the respondent/Management. As such, the prayer of the applicant need not be considered while deciding this review application in view of limitation upon this Court under Order 47, Rule 1 as stated in the ruling of Parsion Devi (supra) unless there is an error apparent on the face of the record. Thus, jurisdiction to review the order passed after hearing the parties is not permissible unless there is clear error on the face of record or any sufficient cause to review the Judgment and Order passed. Merely for the sake of consequence of order passed by this Court for Head Mistress concerned, it will not be just and proper for this Court to effect changes in the order at the instance of the

Management of the School. I am not, therefore, inclined to entertain this review application. There is no compelling ground made out to exercise review jurisdiction. Hence, the Misc. Civil Application is dismissed.

JUDGE

//jais//