

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

Misc. Civil Application No.1062 of 2014 in
Writ Petition No.1089 of 2006 (D)

(Mah. State Electricity Board and Ors. vs. Sanjay Chandulal Kondane)

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

Court's or Judge's Orders

Mr.R.E.Moharir, Adv. for the applicants.
Mr.C.H.Sharma, Adv. for the respondent.

CORAM : A.P.BHANGALE, J.

DATE : 1.9.2015.

Heard.

By this application, the applicants have sought review of the Judgment and Order dt.2.8.2014 passed in Writ Petition No.1089 of 2006. The writ petitioners (present revision applicants) had challenged Award dt.30.8.2005 bearing Reference IDA No.15 of 2001 passed by the Labour Court, Akola whereby the respondent was ordered to be reinstated after declaring termination of respondent from his service as unlawful. This Court by reasoned Judgment found that the petition was without merits on the ground that no perversity or serious infirmity in the Judgment and Order impugned by the writ petitioner was found and therefore, no interference was required by this Court in exercise of powers of judicial review under the extraordinary writ jurisdiction.

According to the learned Counsel for the applicants, there are some legal and administrative changes

which had taken place during pendency of the reference and Writ Petition as the Maharashtra State Electricity Board was trifurcated in three different Companies. Further, according to the review applicants, the Award which was passed and impugned was not as per law. Thus, the applicants have prayed for review of the Judgment and Order passed in Writ Petition No.1089 of 2006, dt.2.8.2014.

The review application is challenged by the respondent and written submissions are placed on record. According to the respondent, Deputy Commissioner of Labour, Nagpur had considered the failure report submitted by the Conciliation Officer u/s. 12(4) of the Industrial Disputes Act, 1947 and passed Award for reinstatement of the respondent with continuity in service and backwages. The Judgment in Writ Petition No.1089 of 2006 was delivered considering the submissions that the complaint regarding unfair labour practice is maintainable in the Labour Court when there was no question of contract of labour directly or indirectly and that the question as to relationship between the employer and the employee is a pure question of law and ordinarily the High Court would not interfere with the appellant with exercise of power of judicial review. Therefore, it is submitted that the review application is not maintainable and it is without any merits. It is further submitted that the scope and power to review of the Judgment/order is very limited in nature and review application cannot be a substitute to prefer appeal. The submission advanced on behalf of the respondent is that review application can be entertained only when there is an

error apparent on the face of record and order passed is apparently erroneous on the face of the record. According to the respondent, the applicants cannot avail of the remedy of review application as a substitute for appeal nor there is any new discovery of material which could not be produced before the Court. Regarding change of discretion after trifurcation of the Board into three different Companies, it is submitted that with such change of establishment into three different Companies, the service condition of the employees of the erstwhile establishment cannot be changed, though some administrative changes have taken place due to trifurcation of Electricity Board into three Companies.

Considering these submissions, it is true that review application can be entertained only when there is apparent error on the face of the record and it cannot be entertained as a substitute to prefer appeal against Judgment and order passed by this Court. That being so, considering the rival submissions at bar, I do not find any ground to allow the instant application.

Learned Counsel for the applicants, at this stage, makes reference to the ruling in the case of **Regional Manager, SBI .vs. Rakesh Kumar Tewari** reported in **(2006) 1 SCC 530** so as to argue on merits in respect of retrenchment for termination of services of the workmen. Since I have already observed that review application cannot be entertained except when there is error apparent on the face of the record and that Review cannot be considered as a substitute for the appeal, this Court cannot consider the ruling cited at this stage. The present Misc.

Civil Application for review is, therefore dismissed. No order as to costs.

JUDGE

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