

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

Misc. Civil Application (Review) No. 1351 of 2014 in W.P.No. 5309 of 2012.

Shubham Bahhuddeshiya Sanstha, Waddhamna and another vs. Deputy
Director of Education, Nagpur Division, Nagpur and others.

Notes, Office Memoranda of

Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's
Orders.

**CORAM : B.P.DHARMADHIKARI &
S.B.SHUKRE, JJ**

DATE : 25.3.2015

Heard Advocate Shri A.S.Dhore for review applicant, Shri A.S.Fulzele, AGP for respondents 1 and 3, and Advocate Shri P.N.Shende, for respondent no.3. Prayer is to recall the Judgment dated 31st October, 2014.

2. Shri Dhore, submits that this Court has found the employee entitled to notional increment and continuity in the said Judgment. He submits that the School Tribunal disposed of the appeal filed by the employee on 20.2.2001 and thereafter modification was sought in the Judgment of the School Tribunal by moving M.A.No. 52/2009 by the employee.

The purpose of modification was to secure direction which would entitle the employee to consequential benefits including continuity. That application was rejected by the School Tribunal on 13.1.2012. This order of School Tribunal was not challenged when the Writ Petition No. 5309/2012 was filed before this Court. In that writ petition, there was challenge to the direction dated 8.12.2010 issued by the respondent no.1 Deputy Director of Education, with further prayer to release notional annual increment for the period 1993 to 2002 and then to release arrears on account of difference of salary from April 2003 till date. In Writ Petition, an Application vide Civil Application (W) No. 31/2013 was moved by the employee seeking prayer to quash and set aside the order of the School Tribunal dated 13.1.2012 and to modify the Judgment dated 20.2.2001 passed by it so as to enable him to claim continuity and other consequential benefits. That application was opposed by the Management by filing reply. However, when the writ petition was argued the attention of the court was not invited to that application.

3. Shri Dhore submits that when the School Tribunal has rejected the prayer for grant of continuity, said part ought

to have been pointed out to this court and appropriate orders should have been obtained from it. He also submits that original Judgment of the School Tribunal dated 20.2.2001 was questioned by the Management before this Court in Writ Petition No. 355/2004 and thereafter before the Hon'ble Apex Court. The said Judgment was not questioned at any point of time by the employee.

4. Advocate Shri Shende submits that the School Tribunal, vide Judgment dated 20.2.2001 while setting aside termination order dated 1.2.2003 and ordering reinstatement, has granted the continuity of service and full back wages. The original Judgment of the School Tribunal dated 20.2.2001 shows that while setting aside the termination dated 10.3.1998 the School Tribunal directed the Management to reinstate the employee and granted him the costs of Rs. 1000/- and arrears of emoluments from March, 1993 till his reinstatement within 60 days. He also invited attention to the findings recorded in part above the operative order by School Tribunal to submit that the employee was found entitled to reinstatement in service and to continuity as also back wages from March, 1993. According to him, omission to mention "continuity" is

inadvertent.

5. This Court, while deciding the Writ Petition No. 5309/2012, had no occasion to consider the order of School Tribunal dated 13.1.2012 passed in Misc. Application No. 52/2009. Not only this but Civil Application No. 3413/2013 was moved by the employee petitioner seeking leave to incorporate challenge to the said order dated 13.1.2012. That civil application also could not be considered by this Court as its attention was then not invited to that application by the respective counsel. The learned counsel have got valid explanation for not inviting attention of this Court to the said application or the said development. We need not to go into the correctness or otherwise thereof. Important is that said development having bearing on the grant of relief has escaped consideration.

6. Therefore, without observing anything on the correctness or otherwise of the relief already granted and the arguments being raised, only to consider the impact of the order dated 13.1.2012 passed by the School Tribunal on M.A. No. 52/2009 and whether Civil Application No. 3413/2013

could have been allowed or could not have been granted, we recall the Judgment dated 31st October, 2014 in W.P.No. 5309/2012.

7. Writ Petition No. 5309 /2012 with pending civil applications is restored back to file for its appropriate consideration on merits. Misc. Civil Application No. 1351/2014 is accordingly allowed and disposed of. No costs.

JUDGE

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