

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

CIVIL APPLICATION (C.A.O.) NO.1663/2014

IN

M.C.A. STAMP NO.23577/2014 (REVIEW)

IN

WRIT PETITION NO.4257/2012 (D)

Ku. Mangala d/o Laxmanrao Bodhankar

..Versus..

Khateshwar Maharaj Shikshan Prasarak Mandal and Charitable Trust Bori Arab and
others

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

Court's or Judge's orders

CORAM : Z.A. HAQ, J.

DATE : 9.3.2015

For the reasons stated in the application, the delay of 5 days in
filing the application praying for review of the judgment, is condoned.

The civil application is allowed.

M.C.A. STAMP NO.23577/2014.

Taken up for hearing.

Heard Shri A.Y. Kapgate, the learned advocate for the
applicant/original respondent no.1, Shri V.P. Marpakwar, the learned
advocate for the original petitioner and Shri M.A. Kadu, the learned

A.G.P. for the respondent no.3/Education Officer.

The applicant/original respondent (Management) has filed this application seeking review of the judgment passed in Writ Petition No.4257/2012 on 27th October, 2014. The respondent no.1/Management seeks review of the directions to reinstate the original petitioner/employee in the post in which she was working at the time when her services were terminated.

Shri Kapgate, the learned advocate for the respondent no.1/Management has submitted that the respondent no.1/Management was not represented at the time of hearing of the writ petition and, therefore, the findings recorded by the School Tribunal in paragraph nos.31 and 32 of the order passed by it recording the reasons for not granting reinstatement to the respondent no.1/employee could not be pointed out. The statement made on behalf of the respondent no.1/Management is proper. In paragraph nos.31 and 32 the Tribunal has recorded as follows :-

"31/- As inquiry conducted against the appellant is held to be vitiated, two courses are open, one is to set aside the termination order and to reinstate the

appellant and the other course is to direct the management to hold fresh inquiry. Considering charges leveled against the appellant, one charge in respect of four computers is already discussed, to which even in the appeal the appellant has not given explanation. There is also other charge in respect of distribution of scholarship amount to the students. In this respect, there is letter dated 03.01.2007 of the Special District Social Welfare Officer, contending that Rs.50,000/- was given by Demand Draft on 21.07.2006 for distributing the same scholarship to the students, but in the whole year of 2006-2007, this scholarship was not distributed by the appellant. The management has also filed one chart of scholarship amount received and paid by the appellant and this chart bears signature of the appellant, as it is given under the Right to Information Act. The chart is as follows :-

Sr. No.	Year	Scholarship Received Amt. in Rs.	Scholarship Paid Amt. in Rs.
1.	2003-04	98612	55200
2.	2004-05	153463	105490
3.	2005-06	155460	163885
4.	2006-07	161408	253958
5.	2007-08	138370	138370
6.	2008-09	Till received for 2008-2009	
Total		707313	716903

32/- This statement of scholarship amount and above mentioned letter from Social Welfare Officer shows affairs of scholarship of the students. Bare perusal of above said statement reveals that scholarship was not distributed to the students in the particular year, receipt and distribution of scholarship amount is not tallied. Considering such facts, it will

not be proper to reinstate the appellant in the services. Therefore though the termination order issued on the basis of report of inquiry committee which inquiry is vitiated needs to be quashed and set aside, but still the appellant could not be reinstated. Therefore negative finding is recorded against issue No.6."

The conclusions of the Tribunal in paragraph nos.31 and 32 as recorded were not brought to my notice when the judgment was delivered on 27th October, 2014 and consequently, it came to be recorded in paragraph no.6 of the judgment that once the Tribunal has set aside the termination order the natural consequence was that the original petitioner - employee was entitled for reinstatement with consequential benefits. The Tribunal has given reasons for not granting actual reinstatement to the petitioner - employee which in my view is based on proper appreciation of the material on the record. Shri Marpakwar, the learned advocate for the petitioner - employee has not been able to point out that the findings recorded by the Tribunal in paragraph nos.31 and 32 of the order suffer from any illegality or infirmity.

Therefore, the directions given in the judgment delivered on

27th October, 2014 that the petitioner - employee is entitled for reinstatement for the post in which she was working at the time when her services were terminated are required to be modified. Instead of actual reinstatement it should be treated that the petitioner - employee is entitled for notional reinstatement on the post in which she was working at the time when her services were terminated. The petitioner - employee will not be entitled to actually work in the post.

The Tribunal by the order which was challenged in the writ petition held that the Management is at liberty to hold enquiry against the petitioner - employee through an officer nominated by the Deputy Director of Education, Amravati and if the parties approach the Deputy Director of Education, Amravati, he should nominate an officer to conduct the enquiry as per the order passed by the Tribunal. The Tribunal directed the Management to pay 50% to the petitioner - employee as subsistence allowance during the period of enquiry. The order was passed by the Tribunal on 12th January, 2012. The respondent no.1 - Management has not been able to point out as to what steps are taken by it to hold the enquiry against the petitioner - employee as per the order passed by the School Tribunal. Shri Marpakwar, the learned advocate for the petitioner - employee has

stated that the Management has not taken any steps in the matter. Considering these facts, directions given in paragraph no.7(ii) of the judgment are maintained except for the modification that the petitioner - employee is entitled for notional reinstatement and will not be permitted to perform her duties. The remaining part of the judgment is maintained. With the above modification, the review application is disposed of. In the circumstances, the parties to bear their own costs.

JUDGE

Tambaskar.