

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CIVIL APPLICATION NO.10932 OF 2016 IN
(General Secretary Vs.Nagnath Ganpat Khandave)
REVIEW APPLICATION STAMP NO.15996 OF 2016 IN
WRIT PETITION NO.3220 OF 1995

Mr.S.V.Dixit, Advocate for the applicant.

Mr.V.N.Upadhye, Advocate for the respondent.

(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 28/09/2016

PER COURT :

1. It is informed by the learned Advocates for the respective sides today that they could not arrive at a settlement in the matter and this Court may therefore proceed to sign its order dated 16/09/2016 by which the review application was dismissed. The said order reads as under :-

“1. After hearing the learned Advocates for the respective sides on the aspect of delay of 237 days, the same is condoned and the civil application is allowed.

2. On 12/08/2016, this Court had passed the following order :-

“1 The learned Advocate for the Applicant/ Review Petitioner submits that arrears of salary to be paid as a full time employee for the period 29.09.1989 to 30.11.2015 would be about Rs.26,08,584/- and for a part-time employee, the said amount

would be approximately 50%.

2 *The learned Advocate for the Applicant seeks time to take instructions as to within how much time would the Applicant be ready to deposit Rs.13 lac in this Court.*

3 *Shri Patil, learned Advocate for the Respondent/ Employee, submits that presently the Employee is being paid at the rate of Rs.150/- per month which is not only astonishing, but cruel and inhumane.*

4 *Considering the above, the Applicant shall make a statement on the next date, failing which this Court would be constrained to pass appropriate orders.*

5 *Stand over to 19.08.2016. The matter shall appear in the supplementary board.”*

3. Pursuant thereto, Rs.5,00,000/- have been deposited by the Management/Petitioner in this Court.

4. On the review application, the applicant/Management submits as under :-

[a] The ULP complaint filed before the Industrial Court in 1987 was not maintainable.

- (b) The respondent should have approached the School Tribunal under the MEPS Act.
- (c) The school is a separate unit.
- (d) There is no post available for appointing a Peon in the said school.
- (e) The respondent was appointed without seeking prior permission of the Education Officer.
- (f) Respondent cannot be absorbed when there is no post available.
- (g) There is no peon appointed in the said school except the respondent and no post of peon is sanctioned in the concerned school.
- (h) The staffing pattern for the concerned school does not indicate creation of any post of peon.

5. Mr.Dixit has relied upon the following judgments in support of his case :-

1. *Adarsha Shikshan Sanstha through its Secretary and Head Master, Krishi Pandit Bhakojirao Dhekale High School Vs. Jaiprakash Ramvilas Lohia and State of Maharashtra,*
2. *The Principal, Shree Ayurved Mahavidyalaya Vs. Premchand and others,*
3. *Secretary, State of Karnataka and others Vs. Umadevi and others.*

6. Mr.Patil, learned Advocate for the respondent/employee has opposed the review petition. Contention is that all these grounds

raised by the petitioner/applicant have been specifically considered by this Court in paragraph No.6 of its judgment dated 13/08/2015.

7. It is settled law that while entertaining a review petition, an error apparent on the face of the record is to be made out by the applicant. A review petition cannot be entertained as if the Court is rehearing a writ petition.

8. The Hon'ble Supreme Court in the matter of Lily Thomas Vs. Union of India, [AIR 2000 SC 1650] has considered the scope of review in paragraph Nos. 52 and 55, which read as under :-

“52. The dictionary meaning of the word “review” the “the act of looking, offer something again with a view to correction or improvement. It cannot be denied that the review is the creation of a statute. This Court in Patel Narshi Thakershi v. Pradyumansinghji Arjunshinghji, AIR 1970 SC 1273 held that the power of review is not an inherent power. It must be conferred by law either specifically or by necessary implication. The review is also not an appeal in disguise. It cannot be denied that justice is a virtue which transcends all barriers and the rules or procedures or technicalities of law cannot stand in the way of administration of justice. Law has to bend before justice. If the Court finds that the error pointed out in the review petition was under a mistake and the earlier judgment would not have been passed but for erroneous assumption which in fact did not exist and its perpetration shall result in miscarriage of justice nothing would preclude the Court from rectifying the error. This Court in S. Nagaraj V. State

of Karnataka, 1993 Supp(4) SCC 595 held :

“Review literally and even judicially means re-examination or re-consideration. Basic philosophy inherent in it is the universal acceptance of human fallibility. Yet in the realm of law the Courts and even the statutes lean strongly in favour of finality of decision legally and properly made. Exceptions both statutorily and judicially have been carved out to correct accidental mistakes or miscarriage of justice. Even when there was no statutory provision and no rules were framed by the highest Court indicating the circumstances in which it could rectify its order the Courts culled out such power to avoid abuse of process or miscarriage of justice. In *Prithwi Chand Lal Choudhary v. Sukhraj Rai*, AIR 1941 FC 1 that Court observed that even though no rules had been framed permitting the highest Court to review its order yet it was available on the limited and narrow ground developed by the Privy Council and the House of Lords. The Court approved the principle laid down by the Privy Council in *Rajunder Narain Rae v. Bijai Govind Singh* (1836) 1 Moo PC 117 that an order made by the Court has final and could not be altered.

“.....nevertheless, if by misprison in embodying the judgments, by errors have been introduced, these Courts possess, by Common Law, the same power which the Courts of record and statute have of rectifying the mistakes which have crept in The House of Lords exercises a similar power or rectifying mistakes made in drawing up its own judgments, and this Court must possess the same authority. The Lords have however gone a step further, and have corrected mistakes introduced through in inadvertence in the details of judgments; or have supplied manifest defects in order to enable the decrees to be enforced, or have added explanatory matter, or have reconciled inconsistencies. Basis for exercise of the power was stated in the same decision as under :

‘It is impossible to doubt that the indulgence extended in such cases is mainly owing to the natural

desire prevailing to prevent irremediable injustice being done by a Court of last resort, where by some accident, without any blame, the party has not been heard and an order has been inadvertently made as if the party had been heard.'

Rectification of an order thus stems from the fundamental principle that justice is above all, it is exercised to remove the error and not for disturbing finality. When the Constitution was framed the substantive power to rectify or recall the order passed by this Court was specifically provided by Art. 137 of the Constitution. Our Constitution makers who had the practical wisdom to visualise the efficacy of such provision expressly conferred the substantive power to review any judgment or order by Art. 137 of the Constitution. And Cl. (c) or Art. 145 permitted this Court to frame rules as to the conditions subject to which any judgment or order may be reviewed. In exercise of this power Order 40 had been framed empowering this Court to review an order in civil proceedings on grounds analogous to Order 47 Rule 1 of the Civil Procedure Code. The expression, 'for any other sufficient reason' in the clause has been given an expanded meaning and a decree or order passed under misapprehension of true state of circumstances has been held to be sufficient ground to exercise the power. Apart from Order 40, Rule 1 of the Supreme Court Rules this Court has the Inherent power to make such orders as may be necessary in the interest in justice or to prevent the abuse of process of Court. The Court is thus not precluded from recalling or reviewing its own order if it is satisfied that it is necessary to do so for sake of justice."

The mere fact that two views on the same subject are possible is no ground to review the earlier judgment passed by a Bench of the same strength."

- "55. It follows, therefore, that the power of review can be exercised for correction of a mistake and not to substitute a view. Such powers can be exercised within the limits of the statute dealing with exercise of power. The review cannot be treated an appeal in

disguise. The mere possibility of two views on the subject is not a ground for review. Once a review petition is dismissed no further petition of review can be entertained. The rule of law of following the practice of the binding nature of the larger Benches and not taking different views by the Benches of co-ordinated jurisdiction of equal strength has to be followed and practiced. However, this Court in exercise of its powers under Art. 136 or Art. 32 of the Constitution and upon satisfaction that the earlier judgments have resulted in deprivation of fundamental rights of a citizen or rights created under any other statute, can take a different view notwithstanding the earlier judgment.”

8. The facts of this case does shock the judicial conscience of the Court. The respondent is working as a peon from 1983, has put in 33 years till today and is about 54 years of age. The petitioner/ Management is paying him a paltry amount of Rs.150/- per month in the last 33 years, which is not only shocking, but alarming. It requires no debate that this respondent employee may not have found it possible to keep his mind, body and soul together by earning a paltry amount of Rs.150/- as his monthly salary.

9. The view taken by this Court in the Adarsh Shikshan Sanstha judgment (supra) and in the Principal, Shri Ayurved Mahavidyalaya (supra) is with regard to the MEPS Act providing a remedy u/s 9 for approaching the School Tribunal. Section 9 reads as under :-

Section 9 - Right of appeal to Tribunal to employees of private schools.

(1) Notwithstanding anything contained in any law or contract for the time being in force, ¹[any employee in a private school, -

(a) who is dismissed or removed or whose services are otherwise terminated or who is reduced in rank, by the order passed by the Management; or

(b) who is superseded by the Management while making an appointment to any post by promotion,

and who is aggrieved, shall have a right of appeal and may appeal against any such order or supersession to the Tribunal constituted under section 8.:

Provided that, no such appeal shall lie to the Tribunal in any case where the matter has already been decided by a Court of competent jurisdiction or is pending before such Court, on the appointed date or where the order of dismissal, removal, otherwise termination of service or reduction in rank was passed by the Management at any time before the 1st July, 1976.

(2) Such appeal shall be made by the employee to the Tribunal, within thirty days from the date of receipt by him of the order of dismissal, removal, otherwise termination of service or reduction in rank, as the case may be :

Provided that, where such order was made before the appointed date, such appeal may be made within sixty days from the said date.

(3) Notwithstanding anything contained in sub-section (2), the Tribunal may entertain an appeal made to it after the expiry of the said period of thirty or sixty days, as the case may be, if it is satisfied that the appellant has sufficient cause for not preferring the appeal within that period.

(4) Every appeal shall be accompanied by a fee of five hundred rupees which shall not be refunded and shall be credited to the Consolidated Fund of the State.”

10. It cannot be ignored that the respondent had approached the Industrial Court under Items 5, 6, 9 and 10 of Schedule IV of the MRTU and PULP Act, 1971, which read as under :-

Item 5 reads as under :- To show favouritism or partiality to one set of workers, regardless of merits.

Item 6 reads as under :- To employ employee as “badlis”, casuals or temporaries and to continue them as such for years, with the object of depriving them of the status and privileges of permanent employees.

Item 9 reads as under :- Failure to implement award, settlement or agreement.

Item 10 reads as under :- To indulge in act of force or violence.

11. I do not find that the learned Advocate for the applicant is right in submitting that the claim of the respondent/employee for seeking permanency in the employment of the applicant/Management school keeping in view the judgment of the Hon'ble Supreme Court (Seven Judges Bench) in the matter of the Banglore Water Supply and Severage Board Vs. A.Rajappa and others, [AIR 1978, SC 548], was available to the employee u/s 9 of the MEPS Act. The applicant has failed to point out any judicial pronouncement indicating that the claim for permanency and regularization in employment is maintainable u/s 9 of the MEPS Act, before the School Tribunal. Needless to state, the judgment of the Hon'ble Supreme Court in the matter of Maharashtra State Road Transport Corporation and another Vs. Casteribe Rajya Parivahan Karmchari Sanghatana, [2009(8) SCC 556] lays down the law that despite the judgment of the same Court in Umadevi case (supra) and any other act providing an alternate remedy, would not denude the jurisdiction of the Industrial Court under the MRTU and PULP Act, 1971.

12. The contentions raised by the applicant/Management need to be rejected also for the reason that it would cause grave injustice and manifest convenience to the respondent/employee, besides adding insult to injury, by taking up the issue of jurisdiction after 29 years

of lodging of the complaint before the Industrial Court and keeping in view that he has been working on Rs.150/- per month for these last 33 years. Nevertheless, I am of the view that the remedy available to a non teaching Class IV litigant under Items 5, 6 and 9 of Schedule IV of the MRTU and PULP Act, 1971, would not be available u/s 9 of the MEPS Act.

13. So also, the entire contentions raised by the applicant in the review application have been specifically listed out in paragraph No.6 of the judgment of this Court dated 13/08/2015 and have been dealt with in the said judgment.

14. In the light of the above, I do not find that the petitioner has pointed out any error apparent on the face of the order dated 13/08/2015.

15. This review petition is, therefore, dismissed by imposing costs of Rs.25,000/- (Rs.Twenty five thousand only) on the applicant/Management for its yet another attempt to tire out a starving employee. The said amount shall be paid by the applicant directly to the respondent within a period of 4 (four) weeks from today.”

2. In the light of the above, the above quoted order dated 16/09/2016 hereby stands signed.

(RAVINDRA V. GHUGE, J.)