

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

REVIEW PETITION NO.133 OF 2015
IN
WRIT PETITION NO.5767 OF 2013

Shivaji Yele

Review
Petitioner

versus

State of Maharashtra and others

Respondents

Mr.R.V.Bansode for Petitioner.

Mr.A.I.Patel, AGP, for Respondent nos.1,2 and 5.

Mr.H.G.Wakshe for Respondent no.3.

CORAM : NARESH H. PATIL AND
PRAKASH D. NAIK, JJ.

DATE : 20th August 2016

PC :

1. We have perused the order passed by us on 5 August 2014, which was subject matter of special leave petition before the Apex Court. We have perused the order passed by Apex Court dated 27 April 2015 in Special Leave to Appeal (C) No.11230 of 2015 . The impugned communication dated 28 December 2013 in the Writ Petition No.5767 of 2013 was issued by Chairman of Shri Bhavani Education Society, Aatpadi-Respondent no.3 addressed to the Petitioner. The Petitioner was discharging duties as a peon in the respondent school. He applied for voluntary retirement on 29 June 2012. The said application came to be rejected by impugned communication dated 28 December 2013. The said application was

received by the management, according to the learned counsel for management, on 3 October 2012.

2. Learned counsel for management submitted that on two grounds, the application for voluntary retirement came to be rejected; viz. (i) the management was not satisfied as to whether the Petitioner had completed twenty years of qualifying service, and (ii) the management had proposed to initiate a DE against Petitioner, as management was of the view that the Petitioner was connected with a criminal case wherein first information report was registered, being CR No.14 of 2012, which was registered against an Assistant Teacher Dagadu N. Kumbhar attached to the same school.

3. Learned counsel for the Review Petitioner submitted that the petition was not disposed of on merits. The Petitioner had raised issues relating to rejection of his application by the management in a decision communicated to the Petitioner through impugned communication dated 28 December 2013. Learned counsel for the Petitioner submitted that the petition be heard on merits. He further submitted that an incorrect statement was made before the Court while passing the order under review on behalf of management to the effect that the Petitioner was not attending the school since last nine months after tendering voluntary retirement application. According to the counsel for management, the Petitioner is not attending the school from 31 December 2012. As both the parties dispute the issue of attendance or non-attendance of the Petitioner, we do not express any opinion on the same.

4. In the facts, we are of the view that the petition be heard on merits. Accordingly, order under review dated 5 August 2014 passed by a Division Bench of this Court (Coram : Naresh H. Patil and Ravindra V. Ghuge, JJ.) is recalled. Writ Petition No.5767 of 2013 is restored to the files. It be listed before appropriate Bench for hearing on merits. Review Petition is allowed to the above extent.

5. It is clarified that we have not expressed any opinion on the merits of the petition and on the grounds raised in the petition.

(PRAKASH D. NAIK, J.)

(NARESH H. PATIL, J.)

MST