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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

REVIEW PETITION NO.145 OF 2015
IN
WRIT PETITION NO.255 OF 2002

Shri Girish B. Rai)
Aged 37 years, Occupation Service,)
R/at : 501, Nav Gokuldharm Co-op.)
Housing Society, Kate Manivli,)
Kalyan (East), District Thane) ...Petitioner

....Versus....

1. Kalindi K. Rai)
Aged Adult, Occupation Service,)
R/o : Rom No.17, New Elizabeth)
House, Shivajinagar, Thane – 400 604)
)
2. Adarsh Vidya Prasarak Mandal)
Neelam Niwas, Mahatma Phule)
Nagar, Opp. Somex Group Kamgar)
Hospital, Thane – 400 604,)
through its Secretary / President.)
)
3. Adarsh Saraswati Hindi High School,)
Shiv Dham, Sant Dnyaneshwar)
Nagar, Wagle Estate, Thane.)
)
4. The State of Maharashtra)
through the Education Officer)
(Secondary), Zilla Parishad, Thane.) ...Respondents

Mr.N.V. Bandiwadekar for the Petitioner.

Mr.M.S. Lagu for the Respondent No.1.

Ms.M.S. Bane, A.G.P. for the State – Respondent No.4.

CORAM : R.D. DHANUKA, J.
DATE : 11TH JULY, 2016.

JUDGMENT :-

1. By this review petition the review petitioner (original petitioner) seeks review of the order and judgment dated 10th January, 2011 passed by this Court in Writ Petition No.255 of 2002 along with Contempt Petition No.111 of 2006. By the said order and judgment dated 10th January, 2011, this Court has dismissed the writ petition filed by the review petitioner and consequently dismissed the Contempt Petition No.111 of 2006 as infructuous. Some of the relevant facts for the purpose of deciding this review petition are as under :

2. The petitioner is having qualification of Shastri (B.A.) from Sampoorananand University and B.Ed. (Physical) from Mumbai University. On 13th June, 1995, the petitioner was appointed as trained graduate teacher in the respondent no.3 school which is the Government recognized and aided private secondary school run by the respondent no.2 society. The appointment of the petitioner was approved by the respondent no.4 i.e. Education Officer (Secondary), Thane on 22nd December, 1999. It is the case of the petitioner that on 11th June, 1996, the petitioner was appointed as In-Charge Headmaster of the respondent no.3 school. According to the

petitioner, that he was promoted to the said post of Headmaster vide order dated 5th May, 2000 with effect from 13th June, 2000. The Education Officer granted approval to the said promotion vide order dated 7th July, 2000. It is the case of the petitioner that the respondent no.2 management also had passed a requisite resolution for granting promotion to the petitioner.

3. It is the case of the petitioner that the respondent no.1 was appointed as Assistant Teacher on 18th June, 1993 in another school i.e. Raje Shivaji Vidyalay (Hindi Medium), Khadegolawadi, Taluka Kalyan, District Thane when she had only passed 12th standard and was not qualified for the appointment to the post of the Assistant Teacher in the school run by the management in which her father was the Secretary. The respondent no.1 passed B.A. In 1994 and B.Ed. in 1999. It is the case of the petitioner that the respondent no.1 thus became qualified for the post of Assistant Teacher only when she passed B.Ed. in the year 1999. The Education Officer granted approval to the appointment of the respondent no.1 as the Assistant Teacher on 30th September, 2000 with effect from 14th June, 1999.

4. It is the case of the petitioner that the father of the respondent no.1 was the Chairman of the respondent no.2 trust and a false and frivolous appointment order dated 29th June, 1994 was prepared to show that the respondent no.1 had been appointed as

Headmistress with effect from 1st July, 1994. According to the petitioner, the respondent no.2 had prepared another false document of appointment dated 30th September, 2000 by which the respondent no.1 was shown to have been demoted from the post of Headmistress to the post of Assistant Teacher. The respondent no.1 filed Appeal (96 of 2000) before the School Tribunal at Navi Mumbai against the management impugning the said purported appointment letter dated 30th September, 2000. The petitioner herein was not impleaded as a party to the said appeal initially but was impleaded subsequently. It is the case of the petitioner that the respondent no.1 in collusion with the management obtained interim order of stay to the order of the alleged reversion from the School Tribunal and also obtained approval to her alleged appointment as Headmistress of the school from the Education Officer. The petitioner thereafter made an application for being impleaded as a party respondent to the said Appeal (96 of 2000) and was joined as a party respondent to the said appeal.

5. On 15th January, 2001, the petitioner made a complaint to the Education Officer, who passed the order after hearing the petitioner and the management thereafter suspending the order dated 3rd January, 2001 by which the respondent no.1 was granted approval to her promotion as Headmistress. The Education Officer however,

passed another order on 31st October, 2001, thereby revoking the approval granted to the respondent no.1 to the post of Headmistress. The respondent no.1 thereafter filed a Civil Suit (1618 Of 2001) in the Court of Civil Judge (Senior Division) Thane. The respondent no.1 withdrew the said civil suit and filed Writ Petition (5662 of 2001) in this Court. This Court granted stay of the operation of the order dated 31st October, 2001 passed by the Education Officer revoking the approval granted to the respondent no.1 to the post of Headmistress till 31st December, 2001 and directed the School Tribunal to decide the appeal expeditiously. By an order and judgment dated 29th December, 2001, the School Tribunal allowed the said Appeal (96 of 2000) filed by the respondent no.1. By the said order and judgment, order of demotion dated 30th September, 2000 passed against the respondent no.1 came to be quashed and set aside.

6. Being aggrieved by the said order and judgment dated 29th December, 2001 passed by the School Tribunal, the petitioner herein filed a Writ Petition (255 of 2002) in this Court.

7. It is the case of the petitioner that since the management was not paying the salary of the petitioner, the petitioner filed a Civil Application (13 of 2006) in this writ petition *inter-alia* praying for a direction against the management to pay the salary of the petitioner. By an order dated 23rd January, 2006, this Court allowed the said civil

application and directed the management to pay the salary of the petitioner. In spite of the order passed by this Court on 23rd January, 2006, since the management did not pay the salary to the petitioner, the petitioner filed Contempt Petition (111 of 2006) against the contemnors for non-compliance of the order dated 23rd January, 2006. The said contempt petition was also heard along with Writ Petition No.255 of 2002. By an order and judgment dated 10th January, 2011, this Court dismissed the said writ petition. In view of dismissal of the writ petition, this Court observed that Contempt Petition No.111 of 2006 pending in the said writ petition did not survive and accordingly the said contempt petition was also dismissed as infructuous. On 6th September, 2011, the petitioner filed this review petition *inter-alia* praying for recall of the order and judgment dated 10th January, 2011 passed in Writ Petition No.255 of 2002 along with Contempt Petition No.111 of 2006. There was some delay in filing this review petition. This Court by a separate order, allowed the said civil application and condoned the delay in filing the review petition.

8. Mr.Bandiwadekar, learned counsel appearing for the petitioner invited my attention to the correspondence annexed to the writ petition and also various observations made by this Court in the said order and judgment dated 10th January, 2011. It is submitted that

though the petitioner had annexed a copy of the letter of appointment of the order of the petitioner as Headmaster and had also annexed the copy of the approval granted by the Education Officer thereby approving the appointment of the petitioner as Headmaster, this Court in paragraph 8 of the said order and judgment dated 10th January, 2011 has observed that the petitioner had neither substantiated his contention nor has brought any material on record to indicate that he was appointed as Headmaster in the year 1999 or that he was functioning as In-Charge Headmaster from 1996. In the same paragraph, this Court further observed that the criminal proceedings had been initiated by the management against the petitioner as well as the Education Officer for fabricating certain documents which indicated that the petitioner had been appointed as Headmaster and that his appointment was approved.

9. It is submitted that the entire order and judgment delivered by this Court rejecting the petition filed by the petitioner on the ground that his appointment as Headmaster was not substantiated or that the petitioner had not brought any material on record to indicate that he was functioning as In-Charge Headmaster from 1996 is contrary to the documents produced by the petitioner in the writ petition and is also inconsistent with the finding recorded in the same paragraph that the petitioner had been appointed as

Headmaster and that his appointment was approved. It is therefore, submitted that that there is an error apparent on the face of order passed by this Court.

10. Learned counsel appearing for the petitioner invited my attention to the annual inspection reports dated 7th October, 1994, 16th August, 1995, 8th October, 1996, 17th October, 1997, 12th January, 1999 and 9th December, 1999 which were annexed to the writ petition. He submits that in the annual inspection report dated 7th October, 1994, which was a statutory record prepared by the Education Department, list of the teachers was prepared. In the list of teachers, appended to the said annual inspection report for the year 1994, the name of Hargovind Pandey was shown as Headmaster. The name of the respondent no.1 was not even shown as Assistant Teacher. Similarly in the annual inspection report dated 16th August, 1995, name of Amarjeet Singh was shown as Headmaster. The name of the respondent no.1 was not even shown as Assistant Teacher. He submits that remaining annual inspection reports for the years 1996 onwards, the name of the petitioner was shown as Headmaster. The name of the respondent no.1 was not even shown as Assistant Teacher till 2000.

11. Learned counsel for the petitioner also invited my attention to the text of the affidavit filed by the Education Officer before the

School Tribunal referred in the order passed by the School Tribunal stating that the respondent no.1 herein had passed her B.Ed. in the year 1999 and during the period between 1988 to 1995, she was serving as Assistant Teacher in Raje Shivaji Vidyalay (Hindi Medium), Khadegolawadi, Taluka Kalyan, District Thane. It was further stated in the said affidavit that since the respondent no.1 herein had passed her B.Ed. in the year 1999, her promotion to the post of Headmistress from 1st July, 1994 was illegal. Her proposal for promotion was not submitted to the office of the Education Officer by the management. No permission was sought from the Education Officer for giving an authority for signing as Headmistress to the respondent no.1.

12. He submits that though the respondent no.1 was not working in the school run by the respondent no.2 from 1994 till she was alleged to have been promoted to the post of Headmistress by the management and had not produced any documents in support of her appointment initially as Assistant Teacher and thereafter also showing her alleged promotion to the post of Headmistress in the respondent no.2 school, this Court committed an error apparent on the face of record and dismissed the writ petition filed by the petitioner. He submits that the respondent no.1 was not even qualified to be appointed as Assistant Teacher in the year 1994 since she had completed B.Ed. qualification only in the year 1999 and thus

the question of submitting her proposal by the management for approval of her promotion to the post of Headmistress therefore, did not arise.

13. Learned counsel for the petitioner also invited my attention to paragraph 9 of the said order and judgment dated 10th January, 2011 delivered by this Court and would submit that the finding recorded by this Court that the contention of the petitioner that there was no material on record nor a certificate produced to indicate that the institution was a minority institution is not correct and that institution had produced a letter from the Education Officer relaxing necessary qualifications for appointing the respondent no.1 as a Headmistress in the respondent no.2 school before the School Tribunal, shows an error apparent on the face of order.

14. It is submitted that the respondent no.2 had submitted an application on 7th October, 2008 to be declared as minority institution. Hearing on that application was conducted on 7th January, 2009. The order was passed by the Education Department on the said application on 22nd January, 2009, declaring the respondent no.2 as a minority institution under section 3(2) of the M.E.P.S. Act, 1977. He submits that though these crucial facts were placed on record before the School Tribunal and also before this Court that the respondent no.2 school was granted the status of minority institution only with

effect from 22nd January, 2009, this Court committed an error apparent on the fact of order by holding that the respondent no.3 had produced a letter from the Education Officer which had relaxed necessary qualifications for appointing the respondent no.1 to the school as Headmistress. There was no question of relaxation of all the conditions under section 3(2) of the M.E.P.S. Act 1977 before an institution is recognized as minority institution.

15. Mr.Bandiwadekar, learned counsel for the petitioner placed reliance on the judgment of this Court in case of **Secretary, Bombay St.Xavier's College Society, Mumbai & Anr. vs. Anwar Hasan Bhombal & Ors., (2008) 5 Mh.L.J. 268** and in particular paragraph 8 and would submit that right to exercise discretion under section 3(2) of the M.E.P.S. Act available to a minority institution is essentially in respect of the direct recruitment of a person and not while promotion. He submits that it was admittedly the case of the respondent no.1 before the School Tribunal that the respondent no.1 was initially appointed as Assistant Teacher in the respondent no.2 school and was thereafter promoted to the post of Headmistress. He submits that the impugned order thus would clearly indicate an error apparent on the fact of the order and thus can be recalled by this Court.

16. Learned counsel appearing for the respondent no.1 on the

other hand submits that the management also had categorically asserted before the School Tribunal that the appointment of the respondent no.1 was made under section 3(2) of the M.E.P.S. Act by exercising discretion of a minority institution. He submits that the respondent no.2 was already a minority institution much prior to the respondent no.2 making an application for obtaining a certificate under section 3(2) of the M.E.P.S. Act, however the certificate could be obtained only in the year 2009. He submits that the respondent no.2 had thus rightly exercised such discretion by relaxing the conditions of seniority in case of the respondent no.1. He submits that this Court cannot review the order passed by this Court on merits.

17. It is submitted by the learned counsel for the respondent no.1 that the petitioner had on the contrary fabricated the record and had obtained approval from the Education Officer based on the fabricated documents. He submits that the School Tribunal has passed strictures against the petitioner in respect of such approval obtained by the petitioner based on the fabricated documents.

18. A perusal of the record clearly indicates that the petitioner had annexed copy of the appointment order issued by the management on 12th June, 1995 appointing the petitioner as Assistant Teacher in the respondent no.2 school. The respondent no.2 school had issued another appointment letter dated 11th June,

1996 appointing the petitioner as In-Charge Headmaster in the respondent no.2 school. On 22nd December, 1999, the Education Officer (Secondary), Zilla Parishad, Thane had granted approved to the appointment of the petitioner on probation pursuant to a letter addressed by the management on 20th December, 1999. On 5th May, 2000, the respondent no.2 appointed the petitioner as Headmaster in the respondent no.2 school. The Education Officer vide his letter dated 7th July, 2000, addressed to the respondent no.2 approved the appointment of the petitioner as Headmaster in the respondent no.2 school with effect from 13th June, 2000. Though all the letters of appointment and approval were annexed to the writ petition itself by the petitioner, this Court contrary to these documents on record has rejected the petition on the ground that the petitioner had not substantiated the contention that he was appointed as Headmaster in the year 1999 nor he brought any material on record to indicate that he was functioning as In-Charge Headmaster from 1996. In my view the order and judgment dated 10th January, 2011 passed by this Court shows error apparent on the face of order and judgment delivered by this Court.

19. Similarly, this Court rejected the contention of the petitioner that the respondent no.2 was granted status of minority institution much after purported appointment of the respondent no.1

as Headmistress and there was no question of any relaxation of any condition under section 3(2) of the M.E.P.S. Act when the respondent no.1 was purported to have been promoted to the said post.

20. A perusal of the record further indicates that though the petitioner had annexed annual inspection reports from 1994 till 2000 not showing the name of the respondent no.1 as Assistant Teacher and on the other hand showing the name of the petitioner as Headmaster since 1996 which annual inspection reports were not disputed by the management or by the respondent no.1, this Court totally overlooked such undisputed documents on record and recorded a contrary finding that the petitioner had not produced any document to show that the petitioner was appointed as In-Charge Headmaster in the year 1996.

21. Insofar as the contempt petition is concerned, the said proceedings were filed by the petitioner alleging contempt of the order dated 23rd January, 2013 passed by this Court in Civil Application No.13 of 2006 directing the management to pay the salary of the petitioner which order was not complied with by the management even till the disposal of Writ Petition No.255 of 2002. This Court by the said order and judgment dated 10th January, 2011 dismissed the said contempt petition also on the ground that in view of dismissal of the writ petition, the contempt petition did not survive

and dismissed as infructuous. In my view, Contempt Petition No.111 of 2006, which was an independent proceedings alleging contempt of the order passed had nothing to do with the final out come of Writ Petition No.255 of 2002. Even if the writ petition is finally dismissed, the parties cannot refuse to enforce interim orders passed by this Court. In my view, the order and judgment dated 10th January, 2011 passed by this Court shows error apparent on the fact of the order on this ground also.

22. A perusal of the order and judgment dated 10th January, 2011 further indicates that this Court has recorded a finding that the management had relaxed the conditions in respect of the appointment of the respondent no.1 to the post of Headmistress under section 3(2) of the M.E.P.S. Act in view of the status of minority institution granted to the respondent no.2. In my view, even this finding of this Court shows error apparent on the face of order in view of the fact that under section 3(2) of the M.E.P.S. Act, discretion available to a minority institution for granting relaxation in case of qualifications can be exercised only in respect of the direct recruitment and not while making a promotion. In this case, it was the case of the management as well as of the respondent no.1 before the School Tribunal that the respondent no.1 was granted promotion to the post of Headmistress from the post of Assistant Teacher. The

view taken by this Court in the said order and judgment dated 10th January, 2011 is contrary to the principles of law laid down by this Court in case of **Secretary, Bombay St.Xavier's College Society, Mumbai & Anr.** (supra).

23. In my view, the petitioner has thus made out a case for recall of the order and judgment delivered by this Court on 10th January, 2011.

24. I therefore, pass the following order :-

a). The order dated 10th January, 2011 passed by this Court in Writ Petition No.255 of 2002 along with Contempt Petition No.111 of 2006 is recalled. Writ Petition No.255 of 2002 and the Contempt Petition No.111 of 2006 are restored to file.

b). Place the Writ Petition No.255 of 2002 along with Contempt Petition No.111 of 2006 on board for hearing and final disposal on 2nd August, 2016.

(R.D. DHANUKA, J.)