

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

REVIEW APPLICATION (CIVIL) NO. 24 OF 2017
IN WP/5569/2016
WITH RA/25/2017 IN WP/5570/2016
WITH RA/26/2017 IN WP/5571/2016
AND CP/828/2016 IN WP/5571/2016
WITH CP/830/2016 IN WP/5569/2016
WITH CP/831/2016 IN WP/5570/2016

THE STATE OF MAHARASHTRA
VERSUS
ASHTA SHIKSHAN SANSTHA AND OTHER

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AGP for Applicant : Shri Bhagat N.T.
Advocate for Respondents 1 & 2 : Shri Gunale V.D.
Advocate for Respondent 3 : Shri Sabnis A.N.

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CORAM : RAVINDRA V. GHUGE, J.
Dated: February 08, 2017
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PER COURT :-

1. I have heard the learned Advocates for the respective sides at length.

2. By this Review Application, the applicant prays that the judgment of this Court dated 26.7.2016, by which, the petitions filed by the petitioner / management were allowed, be reviewed only to the extent of the observations in paragraph No.8 of the judgment. The grievance is that by the said observations, this Court has set aside the direction of the School Tribunal, by which, the management was to pay full backwages to the employees, who were appellants before the School Tribunal. This Court has concluded that

the management need not pay the said backwages and that the said backwages should be paid from the salary grants payable to the school operated by the management.

3. The applicant - Education Officer (S), Zilla Parishad, Osmanabad submits that this Court has erred in directing the payment of the backwages from the salary grants. The material information was not placed before this Court and, therefore, this has absolved the management from paying the backwages from its own coffers.

4. The grounds for review put forth by the State are that the fact about the letter dated 22.6.2012, issued by the management to the Education Officer, the names of surplus peons supplied by the management, vide letter dated 25.6.2012, the advertisement published by the management in Daily Bandhuprem on 25.6.2012, the appointments made by the management disregarding the directions of the Education Officer and the mandate of the proviso to Section 5(1), were not brought to the notice of this Court.

5. After considering the strenuous submissions of the learned AGP, Shri Gunale, learned AGP on behalf of the management and Shri Sabnis, learned Advocate appearing on behalf of the employee, I find that the management had issued a letter dated 22.6.2012 bearing

Outward No.507/2012 calling upon the Education Officer (S), Zilla Parishad, Osmanabad to inform whether eligible surplus candidates are available for absorption. Without there being any time restriction under the proviso to Section 5(1), the management imposed a restriction of ten days on the Education Officer to intimate the names of surplus employees. By communication date 25.6.2012, which is after three days of the letter of the management, it was intimated by the Education Officer that the surplus persons mentioned in the said letter are eligible for absorption. However, the management got an advertisement published on 25.6.2012 in an unknown paper by name, Daily Bandhuprem and thereafter, proceeded to recruit the employees who were the appellants before the School Tribunal.

6. The School Tribunal while allowing the appeal, had directed the management to pay the backwages of the appellants. It cannot be ignored that the management strenuously supported the employees / appellants before the School Tribunal. Aggrieved by the direction of the Tribunal, the management should pay the full backwages and ancillary benefits, the management preferred Writ Petition Nos. 5569 to 5571 of 2016.

7. By order dated 26.7.2016, this Court concluded that since the management society was running a school with 100% grants in aid,

the backwages could be paid from the said grants. It was however, not brought to the notice of this Court that the management had violated the mandate of the proviso to Section 5(1) of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 ("the MEPS Act" for short) and by ignoring available surplus teachers, communicated by the Education Officer by letter dated 25.6.2012 had recruited fresh hands.

8. It is trite law that if surplus teachers who are to be absorbed are ignored the new appointees would not be paid salaries from the grants by the Education Officer. In a judgment delivered by this Court on 31.8.2016 in Writ Petition N.9075 of 2016, the Department of School Education was directed to scrupulously enforce the mandate of the proviso to Section 5(1). It was noticed that hundreds of surplus teachers in the State of Maharashtra were being ignored and fresh appointments were being made by the private managements. By a circular issued by the Additional Secretary, Government of Maharashtra dated 31.12.2016 and 2.1.2017, all the Education Officers in the State are directed to ensure the absorption of surplus teachers and violation of the said directions would lead to disciplinary proceedings as well as prosecution.

9. I find that when this Court modified the directions of the School Tribunal, mandating the management to pay the backwages,

the fact of the management's letter dated 22.6.2012, the communication of the Education Officer dated 25.6.2012 and the advertisement published by the management in Daily Bandhuprem on 25.6.2012, which was followed by fresh appointments of the original appellants, were not brought to the notice of this Court. Had such violation of the proviso to Section 5(1) been brought to the notice of this Court, there would have been no need to modify the direction of the Tribunal mandating the management to pay full backwages.

10. Considering the above, these Review Applications are allowed. The direction of this Court in paragraph No.8 of the judgment dated 26.7.2016, directing the Education Department to pay the backwages is recalled and the direction of the School Tribunal in Clause (3) of its judgment, directing the management to pay full backwages till approval is granted, is restored. Rest of the observations in the said judgment are maintained. Consequentially, the Writ Petitions filed by the management, which were partly allowed, stand dismissed.

11. Considering this order, the grievance set out in the Contempt Petitions does not survive and consequentially the Contempt Petitions stand disposed off.

(RAVINDRA V. GHUGE, J.)

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