

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**REVIEW PETITION NO.29 OF 2017
IN
WRIT PETITION NO.79 OF 2015**

Mrs. Veenita Dass

.. Petitioner

Vs.

The Principal,

Modern College of Arts, Science &

Comm., Pune.

.. Respondent

Mr. Verma Kalika Shankar for the petitioner.

Mr. S. R. Nargolkar i/b. A.V.Joshi for the respondent.

CORAM : A.K. MENON, J.

DATED : 13TH DECEMBER, 2017

P.C. :

1. By this review petition, the petitioner seeks recall of an order dated 17th March, 2015 passed in writ petition no.79 of 2015. He submits that when the order sought to be reviewed was passed, he was not aware of Government Resolution dated 17th August, 2004, 20th May, 2010 and 9th January, 2014 and that he came to learn of which only after the order in review was passed. The order sought to be reviewed reads thus:-

“1. Admit.

2. Ad-interim order in terms of prayer clause (b).”

2. It is evident that the writ petition was admitted on the said date and an ad-interim order in terms of prayer clause (b) in the petition which reads as follows:-

"That pending hearing and final disposal of the writ petition, this Court be pleased to stay the execution, implementation and operation of the impugned judgment and order dated 19th November, 2014 passed by the Member, Industrial Court, Pune in Complaint (ULP)No.202 of 2009, to the extent that it is declared that the petitioner has indulged in unfair labour practice under item 5 of Schedule IV of the Act, thereby directing the petitioner to desist from engaging in unfair labour practice as mentioned in item 5, and thereby further directing the petitioner to pay to the respondent the scale as per standard code/as granted by the State Government and as made applicable from time to time to junior clerks in aided colleges from the date of her initial appointment till today and continue to pay her salary as per the said scale and further directs the petitioner to pay arrears of salary to respondent within three months from the date of judgment and order at Exhibit E."

3. It is not in dispute before me that the review petitioner's Advocate was present and was heard on that said date when the order under review came to be passed. Later, it appears that as stated by Mr. Verma, Civil Application came to be taken out by the respondent on 4th May, 2015 when according to him he came to learn of the aforesaid Government Resolutions. The copies of civil application is annexed at Exhibit K to the review petition and in effect it seeks the following reliefs:-

“(A) During pendency and final hearing of the writ petition the Court be pleased to by way of equitable interim relief, to direct the opponent to pay of the applicant the scale of Rs.5,200/- – Rs.20,200/- with grade pay of Rs.1900/- and other prescribed allowances such as DA, HRA, etc. from the date of the admission of the petition.

Or

Direct the respondent to deposit the full arrears of salary of the applicant and the same may be kept in the fixed deposit in a commercial bank and monthly interest thereon be paid to the applicant during pendency of the writ petition.

(B) Any other equitable relief deemed to be just and necessary in the interest of justice and fair play.”

4. The aforesaid civil application came to be heard on 25th April, 2016 when before the learned Single Judge the applicant/respondent sought leave to withdraw the civil application with liberty to institute the review petition. Liberty was granted and the civil application came to be disposed of. Thereafter it appears that the review petition came to be filed on 4th June, 2016. Thus, after withdrawing the Civil Application No.2450 of 2015, the review petition came to be presented after almost 2 months from withdrawal of the Civil Application. Mr. Verma submitted that in the Review Petition, on account of the delay, Civil Application No.41 of 2017 came to be taken out seeking condonation of delay. However, on the date when the matter was listed, he was absent and even on the subsequent date, he could not remain

present. As a result of which the Civil Application and the Review Petition came to be rejected. On a query from the Court, Mr. Nargolkar, the learned counsel appearing on behalf of the original petitioner has produced two orders, one is dated 6th February, 2017 and second is dated 14th February, 2017. The order dated 6th February, 2017 records that the applicant (present review petitioner) was not represented, hence, stand over to 13th February, 2017. On 13th February, 2017, it appears that the matter was not taken up but came up on 14th February, 2017 and once again none remained present for the review petitioner. As a result, the Civil Application came to be dismissed for default. In view of the dismissal of the Civil Application, the Review Petition also came to be disposed of.

5. Civil Application No.41 of 2017 and the Review Petition No.29 of 2017 came to be disposed of by the learned Judge who had admitted the petition and whose order is now made subject matter of the review. However, in the meantime, the petition is now being placed before this Court after the said learned Judge had retired. Mr. Verma submitted that in the meantime, Civil Application No.131 of 2017 was filed in order to set aside the order of dismissal and restore the Review Petition to file. This Civil Application came to be allowed vide order dated 13th June, 2017 and that is how the Review Petition is listed today before

me.

6. In the course of making submissions, Mr. Verma stated that the Government Resolutions were not available to the respondent as on date of passing the order admitting the petition and granting the relief. He therefore, submitted that the present Review Petition be allowed. Essentially, it appears that the Review Petition has sought enhancement as evident from the prayer clause (a) in Civil Application No.2450 of 2015 this application has since been withdrawn. By seeking review of the original order of the admission of the petition, the prayers in Civil Application No.2450 of 2015 cannot be granted. The petition is already admitted and the respondent/petitioner was heard on the date of admission. Although it is submitted across the bar that the dismissal before the learned Judge who passed the order under review came to be passed in his absence and his inability to attend the Court. Mr. Verma stated across the bar that the matter came to be mentioned for restoration on the same day but the learned Judge directed the respondent-review petitioner to move an appropriate application. Be that as it may, the order sought to be reviewed is merely one of admission of the petition. The respondent has since filed affidavit-in-reply dated 8th September, 2015, all contentions now sought to be urged have been admittedly taken in that reply. The relief that the

respondent sought in the Civil Application cannot be granted by way of a review. In the circumstances, there is no ground for interference. There is nothing erroneous about the order admitting the petition. Accordingly, this review petition is not entertained and I pass the following order:-

- (i) Review Petition is dismissed.
- (ii) No orders as to costs.

(A.K. MENON,J.)