

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

REVIEW PETITION NO. 136 OF 2011

IN

WRIT PETITION NO. 8347 OF 2010

Shaikh Mehboob Abdul Rashid ... Petitioner

Vs.

Suprabhat Shikshan Prasarak Mandal & Ors. ... Respondents

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Mr. S. G. Kudle for the Petitioner.

Mr. Vijay Killedar for Respondent No.3.

Ms. Sushma Bhende, AGP for Respondent Nos. 4 & 5.

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**CORAM : S. C. DHARMADHIKARI &
B. P. COLABAWALLA, JJ.**

DATE : MARCH 22, 2017.

P.C. :

1. The Review Petition was admitted by us on the earlier occasion. At the request of both the parties, we have placed it today for final hearing.

2. The Writ Petition was filed by the petitioner seeking to quash and set aside the order dated 25th August, 2010 passed by the Deputy Director of Education, Pune Region, Pune. The petitioner sought a declaration that he is working with the 2nd respondent School as 'Peon' from 1st June, 2000 and as 'Clerk' from 1st January, 2005, and therefore, entitled to all the benefits from the inception of his services.

3. The order dated 25th August, 2010, which was challenged in the Writ Petition, proceeded on the footing that the petitioner was

not appointed on the post he is claiming, rather, he was a student. The order proceeds on the footing that the petitioner was working from 1st June, 2000 as 'Peon' and from 1st January, 2005 as 'Clerk'. These are all oral orders. The main proposal for appointment was scrutinized and it was revealed that the petitioner was studying in a school. He was enrolled as a student. He was enrolled as a student also of a Junior College and later on, of Arts and Commerce College. The petitioner also enrolled himself as a student for Diploma in Education (D.Ed.) course. It is in these circumstances the order proceeds to hold that he was not a full time employee.

4. Upon such records, when the Writ Petition was heard, this Court came to the conclusion that the record reveals that the petitioner did not have even a copy of the appointment order issued in his favour. This Court found that despite the Deputy Director's order holding that there was no valid appointment order, an opportunity was given to the petitioner to produce at least a photo copy of the same. That having not been produced, the Deputy Director's order was upheld and the Writ Petition was dismissed.

5. This Court, on Review Petition, found that the petitioner has heavily relied upon the record produced by the Management. There was a compilation of documents produced alongwith the Review Petition and which was taken on record. That this compilation would be looked into is the order made on 20th August, 2013. Then, on 26th September, 2013, this Court granted time to the contesting respondents to file additional reply dealing with the additional compilation of documents. On 15th October, 2013, this Court passed

the following order :

“ Today, an affidavit has been filed by the first Respondent. It is contended in the affidavit that letter dated 14th February, 2013/18th July, 2013 annexed to the additional compilation filed by the Review Petitioner is fabricated. The said affidavit has been filed by one Shaikh Shabbir Mohammad. It is stated that clause 3 of the said letter which finds place on page 16 of the additional compilation is missing in the copy of the said letter furnished to the first Respondent under the Right to Information Act.

2. We direct the Review Petitioner to produce the original of page 16 along with covering letter received by him. The first Respondent shall also produce the original of the letter annexed to the affidavit. We direct the learned AGP to produce the office copy of the said letter for perusal of the Court.

3. Place the Review Petition on 23rd October, 2013. At this stage, we must also note that there are other documents forming part of the additional compilation tendered by the Review Petitioner. The learned AGP shall produce the originals and/or office copies thereof for perusal of the Court.”

6. After this Court's order as reproduced above was brought to our notice, we proceeded to admit the Review Petition. Then we were informed on 9th December, 2016 that the papers have been collected by the representative of the management. The other Advocate, and now representing the management, came on record on a subsequent occasion. Since Mr. Killedar was appearing for respondent no.3, but the management, though withdrawing papers from the earlier Advocate, made no arrangement, we were constrained to admit the Review Petition and post it for hearing and final disposal.

7. From the record that we have perused, and particularly, the affidavit of the Deputy Education Officer (Primary), Zilla Parishad, Solapur filed in this Review Petition on 19th March, 2013, it is apparent to us that the petitioner relied upon his appointment whereas, the Deputy Director supported his conclusions in the order dated 25th August, 2010. The petitioner was accused of perpetrating a fraud and making a false claim. The affidavit shows that Shri Sagar Anant Karnekar was working as Clerk in the said school on 1st January, 2009. As per the approval, only one post of Clerk is approved in the School. Therefore, the petitioner was not working in the said School as Clerk. We are mindful of the fact that the petitioner claims to have been appointed, firstly, as a Peon. The order passed on 25th August, 2010 itself records that he claims to be appointed as a Peon and later on as a Clerk. It is the conclusion that the post of Clerk would not have been held by the petitioner for he was also a student. On record, there is an order dated 21st December, 2008 of appointment of one Sagar Anant Karnekar. The petitioner obtained certain information under the Right to Information Act, 2005 in order to buttress his submission in the Review Petition.

8. In the affidavit-in-reply filed on 23rd October, 2013, copy of which is at pages 52 to 55 of the paper-book, the Deputy Education Officer (Primary), Zilla Parishad, Solapur confirms that the petitioner sought information under the Right to Information Act by making an application on 10th January, 2013. That information pertains to the appointment of non-teaching employees of the Balbharati Primary School, Solapur. Another person called H. L. Hulkund had also made a similar application. The information was provided to both the

applicants. The communications in that regard are relied upon, but then, it is stated that after receipt of the communication dated 14th February, 2013, the petitioner approached one Smt N. A. Damate, Junior Clerk, Primary Education Department, Zilla Parishad, Solapur, and made a grievance that his name is not mentioned in the aforesaid communication and he requested to issue the said communication after mentioning his name. The said Smt. N. A. Damate prepared another document and sent the same through the petitioner for making endorsement thereon. Then, it is stated that there was an endorsement obtained. The subsequent communication issued to the petitioner contains, according to this affidavit, a typographical error. It is in these circumstances that the discrepancy in this communication is sought to be questioned. The information that is provided to the petitioner, and particularly, the letter dated 14th February, 2013/18th July, 2013, states that the office had received the proposal of two non-teaching employees, namely, Shri Sagar Anant Karnekar and Shri Sadiq Shamshoddin Shaikh, but, at the same time, there is another explanation provided, namely, that from Balbharti Primary School, Solapur, there were proposals received for approval for the appointments made from the year 2000 to 2009-10. Those proposals contained the name of the present petitioner. We do not see as to how, if the petitioner's name was never forwarded by the management or that this department namely, respondent no.3's Deputy Education Officer (Primary) discovered that the petitioner had no appointment order in his favour, then, why, when the approval was granted and vide order dated 25th August, 2010, was there any necessity of hearing the petitioner. Why

on that date they thought it fit and proper to hear the petitioner and even comply with this Court's earlier order, has not been clarified at all. We are of the clear opinion that this Court could not have been persuaded to take a view that there was no appointment order in favour of the petitioner. Once this vital information is placed on record, and there is clear inconsistency in the stand of the management and also of the respondents, then, the petitioner should not suffer. It was no fault of the petitioner when he approached the Court initially and even when he challenged the order dated 25th August, 2010.

9. Thus, all parameters enabling us to exercise review jurisdiction are satisfied. The order under review suffers from an error apparent on the face of record. In these circumstances, we would be justified in exercising our powers under Section 114 read with Order 47 Rule 1 of the Code of Civil Procedure, 1908 to recall and set aside the order under review. It is accordingly recalled and set aside. The Review Petition is allowed. Rule is made absolute therein.

10. By consent, the Writ Petition No.8347 of 2010 is heard for admission.

(B. P. COLABAWALLA, J.)

(S. C. DHARMADHIKARI, J.)