

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
REVIEW PETITION NO.60 OF 2015
IN
WRIT PETITION NO.11767 OF 2012**

Shri S. R. Dhivare

..Petitioner

Vs.

Nashik District Vidhayak Karya Samiti Satana & Ors ..Respondents

Mr. N. V. Bandiwadekar i/b Mr. S.A.Mane for the Review Petitioner

Mr. Tapan Thatte for the Respondent / original Petitioner

Ms Leena Patil for original Respondent No.1

Mr. R. S. Sawant AAGP for the Respondent Nos.3 to 5 & 7

**Mr. N. V. Bandiwadekar a/w Ms Nazia Shaikh for the original Petitioner in
Writ Petition No.1311 of 2013**

**CORAM : R. M. SAVANT, &
A. S. GADKARI, JJ**

DATE : 3rd MAY , 2018

(IN CHAMBER AT 2.45PM.)

P.C.

1 The above Review Petition has been filed seeking review of the order dated 7-10-2014 passed by a Division Bench of this Court of which one of us A. S. Gadkari J., was a party. The above Review Petition is placed before us in view of the extant arrangement.

2 The review is sought on the ground that the relief which has been granted to the Petitioners vide the order under review i.e. the order dated 7-

10-2014 is de hors the challenge raised in the Writ Petition. The challenge in the above Writ Petition No.11767 of 2012 is to the order dated 22-11-2012 passed by the Deputy Director of Education by which order the Deputy Director had directed the status-quo to be maintained in respect of the post of headmaster occupied by the Review Petitioner and the Respondent No.6 at the respective places where they were working as such. The Writ Petition also challenges the order dated 26-11-2012 by which order the Education Officer had authorised the Review Petitioner to sign the documents as Head Master of the school at Satana. In view of the supervening event of the Deputy Director of Education passing the order dated 11-1-2013 whereby he had cancelled the orders of transfer of the Review Petitioner as well as Respondent No.6. The above Petition was amended so as to incorporate a challenge to the said order dated 11-1-2013.

3 At this stage it is required to be noted that the Review Petitioner had also filed a Writ Petition in this Court being Writ Petition No.1311 of 2013 , in which Petition the Review Petitioner had sought implementation of the order dated 22-11-2012 and the order dated 11-1-2013 passed by the Deputy Director of Education. The said Writ Petition No. 1311 of 2013 and Writ Petition filed by the Respondent No.6 being the above Writ Petition No.11767 of 2012 were being heard together by the Division Benches of this Court as can be seen from the orders which are annexed to the above Review

Petition at pages 28 to 32. However, on 7-10-2014 it is only the above Writ Petition No.11767 of 2012 which was listed before the Division Bench. As indicated above the Division Bench by order dated 7-10-2014 disposed of the said Writ Petition by directing the Respondent No.3 and 4 to take steps and pass appropriate orders and release the salary with arrears if any to the Petitioner therein i.e. the Respondent No.6 herein. As indicated above the said relief which was granted is dehors the relief which was sought by the said Writ Petition No.11767 of 2012, the challenge in which Petition has already been adverted to hereinabove.

4 The consequence of the order dated 7-10-2014 of which review is sought is that the Petition filed by the Review Petitioner being Writ Petition No.1311 of 2013 has virtually turned infructuous without the Petitioner being heard. No doubt the Review Petitioner was represented when the said order dated 7-10-2014 was passed and the factum of both the Petitions being heard together ought to have been pointed out to the Division Bench which passed the order dated 7-10-2014. However, the said fact being not pointed out to the Division Bench cannot be come in the way of the Review Petitioner whilst seeking review of the order dated 7-10-2014. The fact that admittedly both the Petitions were heard together till 7-10-2014 when only the above Writ Petition No.11767 of 2012 was listed cannot be lost sight of. In our view therefore, for the reasons aforestated, case for review of the order dated

7-10-2014 is made out. The interest of justice would be served if the Review Petition is disposed of by issuing the following directions:

(i) The order dated 7-10-2014 is set aside and the Writ Petition No.11767 of 2012 is restored to file.

(ii) Both the Writ Petitions i.e. Writ Petition No.11767 of 2012 filed by the Respondent No.6 and Writ Petition No.1311 of 2013 would be listed together and heard together as was done on the earlier occasion.

(iii) The status-quo as on date in so far as the Respondent No.6 is continued but the same would be contingent upon the decision that would be rendered in the above Writ Petitions.

(iv) It is made clear that mere continuation of the Respondent No.6 would not create any equities in his favour.

(v) The contentions of the parties on merits are kept open for being urged before the Division Bench which would hear the said Petition.

(vi) In the event the parties are moving either of the Petition for they being heard, prior notice of the same to be given to the other party. Both the Learned Counsel assure the Court that they would follow the said course of action.

5 The above Review Petition is accordingly disposed of.

(A. S. GADKARI, J)

(R.M.SAVANT, J)