

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD

REVIEW APPLICATION NO.165 OF 2016 IN
WRIT PETITION NO.5131 OF 2015

M.S.R.T.C., Ratnagiri Division,
through Divisional Controller ... APPLICANT

VERSUS

Sadhu s/o Mahadu Chivale
and others ... RESPONDENTS

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Shri M.K. Goyanka, Advocate for applicant
Shri S.M. Vibhute, Advocate for petitioner in W.P.
Shri P.G. Borade, A.G.P. for respondents No.2 and 3

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CORAM: PRASANNA B. VARALE AND
R.G. AVACHAT, JJ.

DATED : 12th JUNE, 2019.

ORAL ORDER :

1. Heard Mr. Goyanka, learned counsel appearing for the review petitioner. Mr. Vibhute, learned counsel for respondent No.1 (for the petitioner in Writ Petition No.5131/2015) and learned A.G.P. for respondents No.2 and 3. With the consent of the parties, review application is taken up for hearing disposal.

2. The applicant, M.S.R.T.C., Ratnagiri Division (hereinafter referred to as the Corporation for the sake of brevity) is before this Court by way of present review application, raising two grounds. The first ground is that, though notice was issued by this Court to the applicant i.e. respondent No.2 in writ Petition No.5131/2015, the notice was served and accepted by the concerned Clerk namely Mr. Manoj Madhav Nene of the Establishment Branch, Ratnagiri Division. It is stated in the review application that, Mr. Nene, who was served with the notice, failed to bring this fact to either the Establishment Officer or the Divisional Personnel Officer. As such, the applicant who was discharging his duties as Divisional Controller, failed to submit the response. It is stated in the review application that the applicant only came to know about the proceedings and the order passed by this Court when the respondent No.1 (original petitioner) has served copy of the order to the applicant on 8.7.2016. It is further stated that, the applicant then immediately made an enquiry in the office and came to know that Mr. Nene failed to inform the applicant or the office about the notice. It is stated that, non appearance before this Court was due to mistake of

the subordinate official of the Corporation and the non-appearance before this Court is an act purely unintentional. The applicant also submits that, he tendered his unconditional apology for the mistake of non-appearance before this Court in spite of service of notice.

3. The second ground raised in the review application challenging the order is by assigning a reason that, the claim of the petitioner for the post of Conductor (Junior) was not considered on account of not possessing the requisite qualification. The learned counsel for the applicant made an attempt to support this ground by inviting our attention to a document placed on record at Exhibit E. It is stated in the said document that, the licence submitted by the petitioner at the time of verification of documents was not operational as the period of licence was already expired on 7/12/2012.

4. The learned counsel Mr. Vibhute, appearing for respondent No.1 vehemently submitted that, this ground, which is assigned in the review application was never communicated to the petitioner. On a specific query made to the learned counsel appearing for the applicant, the counsel

for the applicant also admits that this is the ground at the time of verification of the documents, but this reason of expiry of the licence at the time of verification was not communicated to the petitioner.

5. On going through the original petition i.e. Writ Petition No.5131/2015, it reveals that, the petitioner is based on a communication dated 31/12/2013 and the said communication states that, on verification of the documents, it is revealed that the petitioner is not possessing the validity certificate. As such, the selection of the petitioner is kept under consideration and for the said purpose, the validation of the claim of the petitioner is needed to be considered immediately. Then it is requested to the Scrutiny Committee to take appropriate decision on the claim of petitioner as early as possible.

6. Now, considering the above referred facts, what emerges is, the ground raised in the review application of not possessing the requisite qualification, is the ground supplanted only in the review application and this was not the ground in the communication dated 31.12.2013. At the cost

of repetition, we state that, the learned counsel for the review applicant also admits this fact that the petitioner's licence was expired at the time of verification of the documents, is not communicated to the petitioner at any point of time. Thus, we are of the opinion that the first ground seeking review of the order of this Court, namely non-possession of the requisite qualification is only by way of supplanting the ground and in the limited scope of a review petition, we are unable to entertain such a ground to review the order of this Court, dated 28/6/2016 in Writ Petition No.5131/2015.

7. Insofar as the part of the order in respect of costs imposed upon the applicant, we find merit in the submission of the learned counsel appearing fore the applicant. The application is supported by the affidavit of the applicant, wherein the applicant is tendering his unconditional apology for the mistake of non-appearance. Considering all these facts, the review petition is partly allowed and only the part of the order i.e. imposition of costs reflected in para 5, is recalled. For the rest of the order, we see no reason to show any indulgence. Accordingly the review petition is partly allowed and disposed of. The petitioner is permitted to

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withdraw the amount of costs deposited in this Court. Office
to do the needful in view of our order.

(R.G. AVACHAT)
JUDGE

(PRASANNA B. VARALE)
JUDGE

fmp/-