

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

MISCELLANEOUS CIVIL APPLICATION NO.159 OF 2016

IN
WRIT PETITION NO.6572 OF 2013 (D)

Dinesh S/o Shantaramji Kolhe.

Vs.

The State of Maharashtra, through Secretary Deptt. of Social Welfare and others.

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri M. P. Kariya, Advocate for petitioner.

Ms. H. N. Prabhu, Assistant Government Pleader for respondent nos.1
to 3.

Shri A. R. Ingole, Advocate for respondent no.4 and 5.

CORAM : A. S. CHANDURKAR, J.

DATE : DECEMBER 12, 2019.

1. The order passed in Writ Petition No.6572 of 2013 is sought to be reviewed by the original petitioner on the ground that the action of the respondent no.4 orally terminating his service was challenged by filing an appeal before the Regional Deputy Commissioner, Department of Social Welfare. That appeal came to be dismissed as a result of which the petitioner challenged the same in the aforesaid writ petition. By order dated 21.01.2014 the writ petition was summarily dismissed holding that there was no reason to interfere with the adjudication of the respondent no.2. In the review application it stated that in view of the decision of the Hon'ble Supreme Court in **Secretary, A.P.D. Jain Pathshala and others Vs. Shivaji Bhagwat More and others (2011) 13 SCC 99** the

respondent no.2 had no jurisdiction to entertain the appeal and that the remedy to challenge the order of termination was available before the School Tribunal under Section 9 of the Maharashtra Employees of Private Schools (Condition of Service Regulation Act, 1977. Reference is also made to the decision in **Shri Janjagriti Shikshan Prasarak Mandal & Anr. Vs. The State of Maharashtra & Ors. 2015 (6) ALL MR 708** in that regard. It is therefore submitted that since the respondent no.2 had no jurisdiction to entertain the proceedings the orders passed are without jurisdiction. It is therefore prayed that the order dated 21.01.2014 be reviewed and recalled.

2. Shri A. R. Ingole, learned counsel for the respondent no.4 opposed the application and submitted that there was no reason to invoke review jurisdiction. The applicant himself filed an appeal before the respondent no.2 which was thereafter entertained and decided on merits. Since no ground was made out for challenging that order the writ petition was also dismissed. It is therefore submitted that the application deserves to be rejected.

3. The record indicates that the applicant came to be appointed as Hostel Superintendent by the non-applicant no.4. His services were approved by the District Social Welfare Officer.

However, by an oral order of termination the services of the applicant came to be terminated. This oral termination was challenged by filing an appeal before the non-applicant no.2. In **Secretary, A.P.D. Jain Pathshala and others** (supra) it has been held that the jurisdiction in such matters lies that the School Tribunal and not before the Social Welfare Officer. Following that judgment this Court in **Shri Janjagriti Shikshan Prasarak Mandal & Anr.** (supra) has held that the order passed by the Divisional Social Welfare Officer in such appeal was without jurisdiction and liberty was granted to approach the School Tribunal for challenging the order of termination. In the light of this fact and as it is seen that the writ petition was decided after the decision of the Hon'ble Supreme Court, the order passed in Writ Petition No.6572 of 2013 is therefore liable to be recalled. Accordingly the review application is allowed and order dated 21.01.2014 passed in the writ petition is recalled. Application is disposed of.

Writ Petition No.6572 of 2013

1. I have heard learned counsel for the parties. Challenge raised in the present writ petition is to the order passed by the Divisional Social Welfare Officer dismissing an appeal preferred by the petitioner in which the order of oral termination dated 26.10.2009 was under challenge. In view of the decisions in

Secretary, A.P.D. Jain Pathshala and others Vs. Shivaji Bhagwat More and others (2011) 13 SCC 99 and Shri Janjagriti Shikshan Prasarak Mandal & Anr. Vs. The State of Maharashtra & Ors. 2015 (6) ALL MR 708 it is clear that the Divisional Social Welfare Officer did not have jurisdiction to entertain such appeal and that appeal was liable to be filed before School Tribunal under Section 9 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977.

2. In that view of the matter the order passed by the Divisional Social Welfare Officer dated 24.12.2010 is set aside as having been passed without jurisdiction. It is open for the petitioner to avail the remedy under Section 9 of the Act of 1977. All questions on merits are kept open. The period spent in the proceedings before the Divisional Social Welfare and this Court be taken into consideration while adjudicating the question of delay. The Writ Petition is allowed and disposed of. Rule is made absolute accordingly. No costs. The record and proceedings be sent to the office of respondent no.2.

JUDGE