

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

**REVIEW APPLICATION NO. 17 OF 2020
IN WRIT PETITION NO. 8488 OF 2018**

Maharashtra Academy of Engineering
& Education Research Pune Through
its President and another

.. Applicants

Versus

Anil Govindrao Kale and others

.. Respondents

Mr. N. P. Patil Jamalpurkar, Advocate for Applicants.
Mr. B. L. Sagar Killarika, Advocate for Respondent Nos. 1 to 5.
Mr. S. G. Karlekar, AGP for Respondent No. 6.

**CORAM : S. V. GANGAPURWALA &
MANGESH S. PATIL, JJ.**

DATED : 10th JANUARY, 2020.

PER COURT:-

. The present review is filed by the original respondents seeking recall of the judgment and order dated 08.08.2019 passed in Writ Petition No. 8488 of 2018 thereby allowing the writ petition and setting aside the transfer order.

2. Mr. N. P. Patil Jamalpurkar, learned counsel for the applicants submits that on the date this Court had passed the order under review, the original writ petitioners were already terminated from service. In view of that the order of transfer ought not have been considered on merits. The learned counsel submits that the present applicants filed

additional affidavit in Writ Petition No. 8488 of 2018 on 09.07.2019 and in the said additional affidavit the factum of the original writ petitioners being dismissed from service was brought to the notice of this Court and the copies of the termination orders were also placed on record along with the affidavit. The said additional affidavit was served on the other sides. The learned counsel submits that as on the date of the judgment delivered by this Court, the writ petitioners were terminated from service, as such the petition itself did not survive. On this count, the learned counsel seeks review of the order passed in Writ Petition No. 8488 of 2018

3. Mr. B. L. Sagar Killarikar, learned counsel for respondent Nos. 1 to 5 / original writ petitioners submits that the copy of the additional affidavit said to have been filed by the present applicants was never served upon the original petitioners or their advocate, even the same was not a part of record of this Court. If such an affidavit is filed, it is filed after the arguments were concluded.

4. We have considered the submissions canvassed by the learned counsel for the respective parties.

5. The only ground agitated in the present review application for review is that on the date of the judgment and order passed by this Court, the original writ petitioners were terminated.

6. The following orders passed are relevant to be considered while deciding present review application.

Order dated 19.06.2019.

. We have heard arguments of Mr. Sagar Killarika, the learned counsel for petitioners, Mr. N. P. Patil Jamalpurkar, the learned counsel for the respondent/institution.

2. At the request of the learned A. G. P stand over to 26.06.2019.

Order dated 09.07.2019.

1. We had already heard the learned counsel for the parties. In fact, the matter was kept for citation. It was kept today at the request of Mr. Jamalpurkar, learned counsel.

2. Mr. Jamalpurkar, learned counsel is absent when the matter is called out.

3. Place the matter on 16.07.2019 for order.

7. Under order dated 19.06.2019, it was observed that we had heard arguments of Mr. Sagar Killarika, learned counsel for petitioners, Mr. N. P. Patil Jamalpurkar, the learned counsel for the respondent/institution and at the request of learned A. G. P the matter was adjourned to 26.06.2019.

8. On 09.07.2019 we had observed that, we have already heard the learned counsel for the parties. In fact, the matter was kept for citation.

It was kept today i.e. 09.07.2019 at the request of Mr. Jamalpurkar, learned counsel. Mr. Jamalpurkar, learned counsel was absent when the matter was called out. The matter was placed on 16.07.2019 for order.

9. Thereafter, on 17.07.2019 the matter was reserved for judgment and ultimately the judgment came to be delivered on 08.08.2019.

10. Additional affidavit dated 09.07.2019 was never tagged to the file. It appears that the same was filed after the arguments were concluded and not during the course of arguments. The submissions were never made that the services of the petitioners are terminated. In review petition also it is nowhere averred that the submission was made on behalf of review applicants during hearing of writ petition that the writ petitioners are terminated from service.

11. Moreover, in the writ petition, we were only considering the legality of the transfer orders passed. It was observed by us that the transfer orders are not sustainable and as such the orders are set aside.

12. We were not called upon to consider the factum of termination of services of the petitioners, nor the said aspect was subject matter of submissions while deciding writ petition. It is for the parties to take

steps accordingly.

13. With these observations, review application is rejected. No costs.

(MANGESH S. PATIL)
JUDGE

(S. V. GANGAPURWALA)
JUDGE

PS.B.