

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.1967 OF 2020

Sureshsing s/o Sattarsing Girase,
Age-42 years, Occu-Service,
R/o Dhule Road, Opp. Raj Darbar Hotel,
Madhuban Colony, Nandurbar,
Tq. and Dist. Nandurbar

-- PETITIONER

VERSUS

1. The State of Maharashtra,
Through its Principal Secretary,
Social Justice and Special Assistance
Department, Mantralaya,
Mumbai - 32,
2. The Commissioner (Disabled Welfare),
Maharashtra State,
Pune - 01,
3. The Regional Deputy Commissioner,
Social Welfare Department,
Nashik Division, Nashik,
4. The District Social Welfare Officer,
Zilla Parishad, Nandurbar,
Dist.Nandurbar,
5. The Accountant,
Salary Verification Squad,
Disabled Welfare Commissionerate,
3, Church Road, Maharashtra State,
Pune - 1,
6. The Superintendent,
Salary and GPF Squad, Nandurbar,
Tq and Dist.Nandurbar,

7. Mahatma Phule Yuvak Vikas Mandal,
6, Maji Sainik Colony, Biladi Road,
Adjacent to D.C.College,
Deopur, Dhule, District Dhule,
Through its President/Secretary,

8. Swa. Shriram Karnakar Niwasi Matimand Vidyalaya,
Kokani Hill Ganesh Nagar, Nandurbar,
Tq. and Dist. Nandurbar,
Through its Head Master.

-- RESPONDENTS

Mr.Y.B.Bolkar, Advocate for the petitioner.
Mr.Rakesh N.Jain, Advocate for respondent No.4.
Mr.Shrikant Patil, Advocate for respondent No.8.
Mr.P.S.Patil, AGP for respondent Nos. 1 to 3.

(CORAM : RAVINDRA V. GHUGE &
S.G. MEHARE, JJ)

DATE : AUGUST 12, 2021

PER COURT :-

1. Respondent Nos. 5 to 7, have not entered an appearance, though served.

2. By this petition, the petitioner has put forth prayer clauses B, C and D as under :-

"B. By way of appropriate writ order or direction in the like nature, this Hon'ble High Court may kindly quash and set aside the impugned order dated 14/01/2020 passed by the District Social Welfare Officer, Zilla Parishad, Nandurbar and further be pleased to restore the approval order dated 31/08/2018 passed by the District Social Welfare Officer, Zilla

Parishad, Nandurbar.

C. By way of appropriate writ order or direction in the like nature, this Hon'ble High Court may kindly direct the respondent Nos. 5 and 6 to disburse the salary/allowances in favour of the petitioner on the basis of the pay fixation order dated 30/01/2019 passed by the respondent No.4-District Social Welfare Officer, Zilla Parishad, Nandurbar.

D. By way of appropriate writ order or direction in the like nature, this Hon'ble High Court may kindly restrained the respondents more particularly respondent Nos. 7 and 8 from taking any coercive action including termination of services of petitioner on the basis of the impugned order dated 14/01/2020 passed by the respondent No.4."

3. Considering the cause of action before us, we would not be entertaining prayer clause D since that prayer has been put forth by the petitioner on apprehension that as the approval granted to his appointment has been withdrawn, respondent Nos.7 and 8, the employer establishment, is likely to terminate his services.

4. The petitioner joined respondent No.8 School on the post of a Superintendent on 30/05/2004. On 24/02/2009, respondent No.8 submitted the proposal for seeking approval to his appointment made almost 5 years ago before the Social Welfare Officer, Zilla Parishad, Nandurbar. As respondent No.4 sat over the proposal and did not pass any order, the petitioner approached the Appellate Officer, who was the Regional Deputy Commissioner, Social Welfare Department, Nashik in 2016 by filing Appeal No.01/2016. By a communication dated 30/03/2017, the

Appellate Authority considered the entire facts and circumstances and directed the District Social Welfare Officer, Zilla Parishad, Nandurbar, respondent No.4 herein, to take a decision with regard to the pending proposal of the petitioner by following the due process of Law and by considering the relevant provisions of the Special School Code. By an order dated 31/08/2018, after about 17 months, respondent No.4 granted approval to the appointment of the petitioner as a Supdt. w.e.f. 01/06/2004.

5. The cause for filing of this petition is an order dated 14/01/2020 passed by respondent No.4 vide which the New District Social Welfare Officer, who replaced the earlier Officer, has purportedly consulted an Advocate, who was the Legal Adviser of the Zilla Parishad, Nandurbar on 01/01/2020 and has passed the impugned order withdrawing the approval granted. In doing so, he has relied upon the order dated 30/03/2017 passed by the Appellate Authority by terming it to be a confusing order (आदेशामध्ये संभ्रमता असल्याने).

6. The petitioner has relied upon the following judgments of the Hon'ble Apex Court :-

[a] Dr.Smt.Kuntesh Gupta Vs. Management of Hindu Kanya Mahavidyalaya, Sitapur (UP) and others [(1987) 4 SCC 525],

[b] O.P.Gupta Vs. Union of India and others [(1987) 4 SCC 328]

[c] Kalabharati Advertising Vs. Hemant Vimalnath Narichania and others [(2010) 9 SCC 437]

[d] Naresh Kumar and others Vs. Government (NCT of Delhi) [(2019)9 SCC 416].

7. The contention of the petitioner is that there is no power of review under the Special School Code or under any enactment under which the District Social Welfare Officer, Zilla Parishad could cause a review of an order passed about 1½ years ago after the Officer who had earlier granted approval, had been changed. Secondly, no opportunity of hearing was given to the petitioner. Thirdly, after the competent authority granted approval to the petitioner pursuant to a long litigation on 31/08/2018 which is almost 14 years from his appointment, the petitioner became eligible for all service benefits in connection with his appointment as a Superintendent and by virtue of the same, his salary/pay scale was settled. However, he has still not received his salary.

8. Respondent No.4 has entered an affidavit in reply through Mr.Devidas Gangaprasad Nandgaonkar, District Social Welfare Officer, Nanded. In paragraph No.5, he submits that the petitioner was appointed after the GR dated 18/08/2004 and, therefore, the Special School Code, 1997 would not apply to him. The Institution “should not employ illegal employees”. It is then submitted that respondent Nos. 7 and 8 had tendered a proposal letter NO.36/2004 dated 05/11/2004 for administrative approval of the

employees, who were in employment before the GR dated 18/08/2004 was introduced. As respondent No.4 has sent a proposal after 18/08/2004 indicating placement of the petitioner as a Superintendent, the GR dated 18/08/2004 would not apply to him.

9. Though the affidavit is filed by respondent No.4 dated 18/06/2021, he has not expressed any view as to what is the source of his power to review an order passed. He has not stated as to why he selected only 1 file of the petitioner for reviewing an order passed by the earlier Officer. He has also not expressed any view as to how can respondent No.4 draw an impression that the earlier Officer has passed an illegal order. He has also not stated as to how did he get the authority to set aside the order earlier passed by the same authority.

10. We find from the record that though the proposal for seeking approval to the appointment of the petitioner was tendered on 24/02/2019, there was no decision forthcoming from respondent No.4. Being exasperated, the petitioner approached the Appellate Authority and filed an appeal. The Appellate Authority noted that the petitioner was appointed earlier on 01/06/2004 for a period of one year until 31/03/2005. Since his service was found to be satisfactory, such appointment was extended from 01/04/2005 to 31/03/2006, 01/04/2006 to 31/03/2007 and in this manner, he continued in employment for years. The Management

had opposed the appeal filed by the petitioner and had prayed that the appeal may be dismissed.

11. It is then stated that one Mr.Prakash Govind Thakare was appointed from 04/09/2003 to 30/05/2004 and 01/06/2004 onwards. However, the Management does not take a stand that the proposal forwarded to respondent No.4 on 24/02/2009 makes an incorrect mention of the appointment of the petitioner or that the petitioner was appointed after the GR dated 18/08/2004 or that the petitioner was never appointed in service by the Management. By the time, the Appellate Authority delivered its order on 30/03/2017, the records of the Management indicated that the petitioner was in employment for almost **13** years.

12. Respondent No.4, while passing the order dated 31/08/2018 granting approval to the petitioner, had noted the litigation initiated by the petitioner before the Appellate Authority and the directions of the said authority dated 30/03/2017. On the basis of the record, he noticed that the petitioner was appointed by following a procedure and he was qualified to be appointed as a "Superintendent". It was in this backdrop that he passed the order on 31/08/2018 granting approval to the appointment of the petitioner and also placed him in the pay scale applicable since 01/06/2004 and from 01/01/2006.

13. In the above recorded factual background, we have gone through the judgment cited by the petitioner. In Dr.Smt.Gupta's case (supra), the Hon'ble Apex Court held in paragraph Nos. 11 and 13 as under :-

"11. It is now well established that a quasi judicial authority cannot review its own order, unless the power of review is expressly conferred on it by the statute under which it derives its jurisdiction. The Vice-Chancellor in considering the question of approval of an order of dismissal of the Principal, acts as a quasi judicial authority. It is not disputed that the provisions of the U.P. State Universities Act, 1973 or of the Statutes of the University do not confer any power of review on the Vice- Chancellor. In the circumstances, it must be held that the Vice-Chancellor acted wholly without jurisdiction in reviewing her order dated January 24, 1987 by her order dated March 7, 1987. The R said order of the Vice-Chancellor dated March 7, 1987 was a nullity.

13. As the impugned order of the Vice-Chancellor is a nullity, it would be a useless formality to send the matter back to the High Court for disposal of the writ petition on merits. We would, accordingly, quash the impugned order of the Vice-Chancellor dated March 7, 1987 and direct the reinstatement of the appellant forthwith to the post of Principal of the Institution. The judgment of the High Court is set aside and the appeal is allowed. There will, however, be no order as to costs."

14. In O.P.Gupta's case (supra), the Hon'ble Apex Court has concluded in paragraph No.16 as under :-

"16. It is a fundamental rule of law that no decision must be taken which will affect the rights of any person without first giving him an opportunity of putting forward his case. Both the Privy Council as well as this Court have in a series of cases required strict adherence to the rules of natural

justice where a public authority or body has to deal with rights. There has ever since the judgment of Lord Reid in Ridge v. Baldwin LR [1964] AC 40 been considerable fluctuation of judicial opinion in England as to the degree of strictness with which the rules of natural justice should be extended, and there is growing awareness of the problems created by the extended application of principles of natural justice, or the duty to act fairly, which tends to sacrifice the administrative efficiency and despatch, or frustrates the object of the law in question. Since this Court has held that Lord Reid's judgment in Ridge v. Baldwin should be of assistance in deciding questions relating to natural justice, there is always 'the duty to act judicially' whenever the rules of natural justice are applicable. There is therefore the insistence upon the requirement of a 'fair hearing'. In the light of these settled principles, we have no doubt whatever that the Government acted in flagrant breach of the rules of natural justice or fairplay in passing the impugned order. We do not see why the principles enunciated by the Court in [M. Gopala Krishna Naidu v. State of Madhya Pradesh](#), [1968] 1 SCR 355 should not apply with equal vigour to a case like the present. There is no reason why the power of the Government to direct the stoppage of increments at the efficiency bar on the ground of unfitness or otherwise after his retirement which prejudicially affects him should not be subject to the same limitations as engrafted by this Court in M. Gopala Krishna Naidu while dealing with the power of the Government in making a prejudicial order under FR 54, namely, the duty to hear the government servant concerned after giving him full opportunity to make out his case."

15. In Kalabharati Advertising case (supra), the Hon'ble Apex Court held in paragraph Nos. 12 to 14 as under :-

"12. It is settled legal proposition that unless the statute/rules so permit,

the review application is not maintainable in case of judicial/quasi-judicial orders. In absence of any provision in the Act granting an express power of review, it is manifest that a review could not be made and the order in review, if passed is ultra-vires, illegal and without jurisdiction. (vide: [Patel Chunibhai Dajibha v. Narayanrao Khanderao Jambekar & Anr.](#), AIR 1965 SC 1457; and [Harbhajan Singh v. Karam Singh & Ors.](#), AIR 1966 SC 641).

13. *In [Patel Narshi Thakershi & Ors. v. Shri Pradyuman Singhji Arjunsinghji](#), AIR 1970 SC 1273; Maj. [Chandra Bhan Singh v. Latafat Ullah Khan & Ors.](#), AIR 1978 SC 1814; [Dr. Smt. Kuntesh Gupta v. Management of Hindu Kanya Mahavidhyalaya, Sitapur \(U.P.\) & Ors.](#), AIR 1987 SC 2186; [State of Orissa & Ors. v. Commissioner of Land Records and Settlement, Cuttack & Ors.](#), (1998) 7 SCC 162; and [Sunita Jain v. Pawan Kumar Jain & Ors.](#), (2008) 2 SCC 705, this Court held that the power to review is not an inherent power. It must be conferred by law either expressly/specifically or by necessary implication and in absence of any provision in the Act/Rules, review of an earlier order is impermissible as review is a creation of statute. Jurisdiction of review can be derived only from the statute and thus, any order of review in absence of any statutory provision for the same is nullity being without jurisdiction.*

14. *Therefore, in view of the above, the law on the point can be summarised to the effect that in absence of any statutory provision providing for review, entertaining an application for review or under the garb of clarification/modification/correction is not permissible. Case dismissed/withdrawn- effect on interim relief: "*

16. In Naresh Kumar and others (supra), the Hon'ble apex Court held in paragraph No.13 while referring to several earlier judgments, as under :-

"13. It is settled law that the power of review can be exercised only when the statute provides for the same. In the absence of any such provision in

the statute concerned, such power of review cannot be exercised by the authority concerned. This Court in Kalabharati Advertising Vs. Hemant Vimalnath Narichania, has held as under :- (SCC pp.445-46, paras 12-14)

....12. It is settled legal proposition that unless the statute/rules so permit, the review application is not maintainable in case of judicial/quasi-judicial orders. In absence of any provision in the Act granting an express power of review, it is manifest that a review could not be made and the order in review, if passed is ultra-vires, illegal and without jurisdiction. (vide: [Patel Chunibhai Dajibha v. Narayanrao Khanderao Jambekar & Anr.](#), AIR 965 SC 1457; and [Harbhajan Singh v. Karam Singh & Ors.](#), AIR 1966 SC 641).

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14. Therefore, in view of the above, the law on the point can be summarised to the effect that in absence of any statutory provision providing for review, entertaining an application for review or under the garb of clarification/ modification/correction is not permissible."

17. The Law is therefore crystallized that review of an earlier order would be impermissible, since the scope of review is a creation of a statute and would flow only from a provision of Law. There cannot be 'deemed power' to review an order passed by the earlier authority. In the instant case, respondent No.4 had passed the order granting approval on 31/08/2018. A new Officer subsequently occupied the position of respondent No.4, who has passed the impugned order on 14/01/2020. In the absence of an express provision of Law, enabling the authority to review his own order and doing so in the absence of Law and without even issuing a show cause notice to the petitioner, though it would not have been legally sustainable, the impugned order cannot be approved. Even if the earlier Officer, who had granted the approval was still occupying the said position, he would not be empowered to review his order in the absence of statutory provision, except on the ground of fraud allegedly played by the petitioner.

18. We find it surprising that the Officer who has passed the impugned order, had no issue before him as regards the approval granted to the petitioner. It is a matter of suspicion as to why did he dig out the file of the petitioner for seeking a legal advise from an Advocate. There was no application moved before him by any person or institution for re-opening the file of the petitioner, though such an exercise would not have been

sustainable. There is, therefore, every scope to draw an inference that respondent No.4 was triggered by someone to open the file of the petitioner and pass an order adverse to him, without having any power to do so and that too surreptitiously.

19. In view of the above, this petition is allowed in terms of prayer clauses "a' and "b", reproduced above.

20. Since we have noticed that the then respondent No.4 Mr.Ashok Patait has retired, we are imposing costs of Rs.25,000/- to be recovered from his salary/pension account.

21. Compliance of the above directions shall be reported to this Court by respondent No.4, on or before 15/10/2021.

(S.G. MEHARE, J.)

(RAVINDRA V. GHUGE, J.)