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

901 CIVIL APPLICATION NO.3532 OF 2018
IN/WITH RA(ST.)/5515/2018

THE STATE OF MAHARASHTRA, THROUGH EDUCATION
OFFICER (SECONDARY), Z.P., JALGAON
VERSUS
RAVER TALUKA URDU EDUCATION SOCIETY, THROUGH
IT'S CHAIRMAN AND OTHERS

...
Mr S. B. Yawalkar, A.G.P. for applicant;
Mr V. J. Dhage, Advocate for respondent Nos.1 & 2;
Mr S. P. Brahme, Advocate for respondent No.3

CORAM : RAVINDRA V. GHUGE, J

DATE : 26th November, 2021

PER COURT:

1. Having heard the learned Advocates for the respective sides and taking into account that the delay of 327 days is not inordinate or deliberate, the present civil application is allowed.
2. The learned Advocate for the respective sides are ready to address the Court on the review application and hence, the review application is taken up for hearing, forthwith. Heard the learned counsel for the parties, at length.
3. This Court had delivered a judgment dated 28/02/2017 in Writ Petition No.10938/2015. The importance of the Art Teacher was the issue that was considered. The Employee Mohammad Abdul Rauf Abdul Wahab was appointed on 11/08/2009 prior to the introduction of the Rights of Children to Free And Compulsory Education Act,

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2009 (for short “RCFCE Act, 2009). He was granted approval. Upon his oral termination, he had approached the School Tribunal, Nashik, in Appeal No.73/2012, which was allowed on 20/08/2015. The Management was before this Court. By the judgment dated 28/02/2017, the Writ Petition was dismissed and certain directions were issued to the respondents. The employee was reinstated in service on 25/04/2018.

4. The petitioner – Management, before this Court, had approached the Hon’ble Supreme Court of India, by preferring Special Leave to Appeal No.13614/2017. By an order dated 01/05/2017, the Hon’ble Apex Court concluded that *“We do not find any justification for the Management to pursue the grievance, since the Institution is receiving grant-in-aid. Therefore, the special leave petition is dismissed.”*

5. It is pursuant to the above that the State of Maharashtra preferred this Review Application on 05/04/2019 and though interim relief was not granted and it was observed that there shall be no impediment for implementing the order, the directions of this Court have still not been complied with.

6. The learned A.G.P. has restricted his grievance to paragraph 31 of the judgment under review, which reads as under :-

“31. Taking into account the overall pathetic situation with regard to the appointment of Art Teachers significance of art education, I deem it proper to direct the Department of Education, State of Maharashtra to

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implement the Government Resolution dated 21.05.1979, the Government Resolution dated 30.07.1980, the letter of the Director of Education dated 06.09.1985, the letter of the Arts Director dated 06.09.1985 and the State Policy, to ensure appointment of an Art Teacher in every school imparting education from the V to VII standards. It needs to be ensured that such Art Teachers are engaged in such schools as expeditiously as possible and preferably till the time of the commencement of academic year 2017-2018.”

7. He refers to the sub-paragraph below paragraph 30 of the judgment dated 06/06/2017, delivered by the learned Division Bench of this Court in Writ Petition No.11771/2015 and several other matters, in which it has been observed as under :

“The powers to amend the schedule to the R.T.E. Act vest with the Central Government. If appointment of guest instructors as is sought to be made by the respondent is allowed to be sustained, the same would be contrary to the schedule, which prescribes appointments of part time instructors. The State Government would not have any authority to do so. The same would result in amending the schedule by the State Government, which is not permitted. Sec. 20 of the R.T.E. Act bestows that power only upon the Central Government.”

8. It is well settled that a review petition has a limited scope and a party canvassing a review petition, cannot canvas the original proceeding, as like a writ petition before the Court. **(Lily Thomas,**

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etc. vs. Union of India, AIR 2000 SC 1650)

9. In view of the above and as the Management has not preferred a review in the light of specific observations of the Hon'ble Apex Court, in it's order dated 01/05/2017, there shall be no impediment for the Education Department in granting approval to the original appointment of Shri. Mohammad Abdul Rauf Abdul Wahab.

10. The learned A.G.P. submits that the two Government Resolutions dated 21/05/1979 and 30/07/1980 have been superseded by the Government Resolution dated 07/10/2015, which was followed by the Government Resolution dated 01/09/2017, which enable the appointment of a 'Part Time Instructor' for imparting education for Art, Physical Education and Work Education (Experience). As such, there could be 'Part Time Teacher' in each of these disciplines. It appears that this aspect of the two Government Resolutions, having been superseded, was not brought to the notice of this Court when the judgment was delivered on 28/02/2017.

11. In view of the above, paragraph 31 of the judgment under review shall stand deleted and shall be replaced by the following paragraph :-

“31. Taking into account the overall pathetic situation with regard to the appointment of Art Teachers and the significance and importance of art education, the State of Maharashtra has provided for appointment of a 'Part Time Instructor' for

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imparting education in each of the disciplines, like Art, Physical Education and Work Education (Experience) in each school. This shall, however, not come in way of the employee Mohammad Abdul Rauf Abdul Wahab, since his appointment was prior to the introduction of the RCFCE Act, 2009.

12. Considering the above, the learned A.G.P. has sought for four weeks time to enable the State Government to sanction the post of Art Teacher that is occupied by Shri. Mohammad Abdul Rauf Abdul Wahab. The learned Advocate for the Management submits that the name of the petitioner, in order to be entered in the 'Shalarth Pranali', has already been forwarded. The Education Officer, therefore, shall approve the same within four weeks while granting sanction to the post.

13. Thereafter, the learned Advocate for the Management submits that the Management would immediately forward the bills of the outstanding salary of Shri. Mohammad Abdul Rauf Abdul Wahab, within two weeks. In the light thereof, the Education Officer shall sanction the said bills and ensure that the amounts are deposited in the account of Shri. Mohammad Abdul Rauf Abdul Wahab, as expeditiously as possible and preferably within two weeks.

14. Considering that more than four years have been consumed on the pretext of the pendency of the review application, the request for extension of time shall not be entertained. The arrears shall be paid

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within four weeks.

15. The review application is partly allowed, in the above terms.

(RAVINDRA V. GHUGE, J.)

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