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

6 WRIT PETITION NO.3685 OF 2020

SUFYAN AHMED KHAN AJAZ AHMED KHAN
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

...

Mr A. S. Deshpande, Advocate for petitioner;
Mr S. B. Yawalkar, A.G.P. for respondent Nos.1 to 5

**CORAM : RAVINDRA V. GHUGE
AND
S. G. MEHARE, JJ.**

DATE : 20th December, 2021

PER COURT:

1. On 13/07/2021, after briefly considering the submissions of the learned Counsel for the respective sides, we had passed the following order:-

1. The petitioner is before us seeking reimbursement of the fees since he has been admitted against a free seat in the diploma of Dental Surgery in respondent no.7 college. He is the son of Ajaz Ahmed Khan and is the second child of the latter who is claiming reimbursement. Reliance is placed on a judgment delivered by a co-ordinate Bench of this Court dated 19.10.2020 in Writ Petition No.5846 of 2020 filed by Miss Khan Sana Tahedis d/o Ajaz Ahmed Khan vs. State of Maharashtra and others in which this Court has granted the reimbursement. It is, therefore, submitted that as the petitioner herein is the real brother of Miss Sana Khan who is the beneficiary of the judgment dated 19.10.2020, this Court is not required to look any further and pass an identical order.

(2)

2. The learned A.G.P. submits that the Education Department is contemplating filing of a review petition with regard to the judgment dated 19.10.2020 delivered in the case of Miss Sana Khan who is the real sister of the present petitioner. The reason for filing the said review petition is that the Government Resolution dated 19.8.1995 on which the petitioner relies, entitles the biological guardian for reimbursement only if he is employed in the secondary or higher secondary school. The father of the present petitioner and Miss Sana Khan, is working as a Teacher in a Junior college in which vocational education is being imparted and such college imparting vocational education is a junior college and under the control of the Higher and Technical Education Department. This aspect was not brought to the notice of our learned brothers, according to the learned A.G.P., in Miss Sana Khan's case.

3. We find from paragraph 6 of the judgment dated 19.10.2020 in Miss Sana Khan's case that the learned Court has recorded that "Upon consideration of the submissions canvassed by the learned Counsel for the parties, the only issue for determination would be the quantum of the amount, the petitioner would be entitled for reimbursement of the fees." It, therefore, appears to us that the respondents had not raised the issue that the Government Resolution dated 19.8.1995 would not apply to the wards of Shri Ajaz Ahmed Khan since he is imparting education in a vocational junior college.

4. Shri Dharurkar submits that 'Teacher' would mean one who is defined under Section 2 (24) of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977. The learned A.G.P., however, submits that the Government Resolution at issue does not mention that the wards of such Teachers who are defined under the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977, would be entitled for reimbursement.

(3)

5. *Since a review is being filed by the School Education Department in Miss Sana Khan's case taking up the issue as to whether Shri Ajaj Ahmed Khan would not be a teacher covered by the Government Resolution dated 19.8.1995, we deem it appropriate to keep this petition pending so as to enable the learned Bench, which has delivered the judgment in Miss Sana Khan's case, to deal with the review that is being filed.*

6. *The learned A.G.P. submits that a review petition is already prepared and sent for approval and the same would be filed shortly. The Department would request the learned Court to take up the issue within four weeks from today. He further submits that if the Education Department is unable to secure any order from the learned Court within this period, this Court is at liberty to deal with this issue on its own merits.*

7. *In the peculiar facts of this case, the father of the petitioner may deposit the fees of the petitioner, without prejudice to his rights, so as to avoid any coercive action against the petitioner and such payment of fees shall be subject to the result of this petition.*

8. *In view of the above, we are listing this petition on 10.08.2021 in the urgent category."*

2. Vide order dated 10/12/2021, the learned Co-ordinate Bench of this Court dealt with Review Application No.86/2021, filed by the State of Maharashtra and others, and the said review application was rejected for the following reasons :-

"1. The review applicant seeks review of the Judgment and order of this Court dated 19.10.2020. Under the said

(4)

Judgment, this Court directed the present review applicant to extend the benefit of the Government Resolution dated 19th August, 1995 and reimburse the entire tuition fees paid by the petitioner for the Bachelor in Physiotherapy course undergone by the petitioner on the free seat.

2. *Mr Tiwari, the learned Asstt. Government Pleader submits that while passing the Judgment under review, this Court did not consider the fact that the father of the petitioner was not in service under the School Education and Sports Department. He was working under the Director of Technical and Higher Education. The father of the petitioner is a teacher for the vocational courses. The same would not be covered under the Government Resolution dated 19th August, 1995. The learned Asstt. Government Pleader further submits that the appointment of the father of the petitioner is not approved by the Education Department. The learned Asstt. Government Pleader further submits that the entire tuition fees as claimed by the original writ petitioner cannot be reimbursed. In the year 2003, the circular was issued by the Director of Education (Secondary and Higher Secondary) prescribing the quantum of fees to be reimbursed. The petitioner was reimbursed Rs. 6,000/-. The same reimbursement was also erroneous as the petitioner was not entitled for it. The disciplinary action has been taken against the person, who has disbursed the amount to the petitioner.*

3. *We have heard Mr A.S. Deshpande, the learned counsel for the original petitioner. According to him, the petitioner is appointed in Maulana Azad High School. The provisions of the Maharashtra Employees of Private Schools (Conditions of Services Regulation) Act, 1977 as applicable to the Secondary and Higher Secondary Education applies.*

4. *The documents are placed on record. The father of the present non-applicant No. 1/Original Writ Petitioner is*

(5)

appointed as the teacher in Maulana Azad High School. In the said High School, the vocational course is also conducted.

5. It would appear that the Government Resolution dated 19th August, 1995 would apply to the petitioner as her father is officiating his duties in the High School which would be higher secondary school.

6. As far as the quantum of fees is concerned, while delivering the Judgment dated 11.04.2018 in Writ Petition No. 969/2017, we had observed that once the Government has taken a policy decision to provide free education to the wards of the full time teachers teaching in private aided, primary, secondary or higher secondary school, then the authorities implementing the policy, cannot turn around and say that the reimbursement of the tuition fees would be restricted to Rs. 6,000/- only because in the year when the policy was introduced, the tuition fees was Rs. 6,000/- per annum for the Bachelor in Physiotherapy course. Such attitude would render the welfare policy of the Government of giving free education to the wards of full time employees of the aided primary, secondary or higher secondary school superfluous and nugatory.

7. In light of the above, no case for review is made out.

8. The review application accordingly stands disposed of. No costs.

9. Writ Petition No. 3685 of 2020 be de-tagged from Writ Petition No. 5846 of 2020 and place it before the appropriate Court.”

3. In view of the above, the learned A.G.P. submits that as the order dated 10/12/2021 is before the Court, an appropriate order may be passed.

4. As such, considering the Government Resolution dated 19/08/1995, the subsequent Government Resolutions introduced by the State of Maharashtra from time to time, by considering the judgment of the learned Co-ordinate Bench of this Court, dated 19/10/2020 in Writ Petition No.5846/2020 and the order on the review application dated 10/12/2021, this petition is allowed in terms of prayer clause (B), which reads as under :-

“(B) The respondents No. 5 & 6 may kindly be directed to process the application for reimbursement of tuition fees submitted by the petitioner through R-7, in terms of the benevolent policy decision at Exh. ‘A’ dated 19.8.1995.”

(S. G. MEHARE, J.)

(RAVINDRA V. GHUGE, J.)

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