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

914 CIVIL APPLICATION NO.254 OF 2021
IN RAST/21023/2020
WITH
REVIEW APPLICATION (STAMP) NO.21023/2020
IN WP/1738/2018

KHANDSH EDUCATION SOCIETY AMALNER AND ANOTHER
VERSUS
RAVINDRA PRABHULAL MUNDANKAR AND OTHERS
...

AND
915 CIVIL APPLICATION NO.256 OF 2021
IN RAST/21021/2020
WITH
REVIEW APPLICATION (STAMP) NO.21021 OF 2020
IN WP/1750/2018

KHANDSH EDUCATION SOCIETY THROUGH ITS SECRETARY AND ANOTHER
VERSUS
MAHAVEER PRAVIN JAIN AND OTHERS

...
Advocate for the Applicants : Shri Navandar Manish N.
Advocate for Respondents 1 : Shri B.R. Warma
AGP for Respondents 2 and 3 in Sr.No.914 : Shri S.B. Pulkundwar
AGP for Respondents 2 and 3 in Sr.No.915 : Shri S.R. Yadav Lonikar
...

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

**DATE :- 24th September, 2021**

**Per Court :-**

1. All the litigating parties appearing through the counsel were agreeable to workout the Review Applications today itself. The learned advocate for the original petitioners even stated that the Civil Applications for condonation of delay may be allowed and the Review Applications may be taken up for final disposal.

2. The learned advocate for the Review Applicants is also agreeable.

3. In view of the above, both the Civil Applications seeking condonation of delay of 225 days in filing the respective Review Applications, are allowed and by consent of the parties, the Review Applications are taken up for final hearing.

4. It is well settled in ***Lily Thomas vs. Union of India, AIR 2000 SC 1650,*** that a review petition would not permit a party to canvass such grounds, which would have the semblance of re-arguing the writ petition itself. An apparent mistake in fact and in law has to be pointed out on the face of the order.

5. The learned advocate for the review applicant/ Management is aggrieved by the two clauses of the interim

orders under review dated 24.02.2020 delivered by this Court (both Honourable Judges have now retired) in Writ Petition Nos.1738/2018 and 1750/2018.

6. It would be apposite to reproduce paragraphs 2 to 4 of the interim order passed in Writ Petition No.1738/2018 hereunder :-

> *"2. The Respondent-Management is not disputing that the petitioner had been working with them on daily wages since 2003 and then after the settlement of the dispute before the University & College Tribunal, the petitioner is working on daily wages.*
>
> *3. The Respondent-Management has stated in the reply fled before this Court that the Management is willing to pay the petitioner @ Rs.140/- per day, however, he is not accepting the payment.*
>
> *4. Considering the undisputed facts, following interim order is passed:*
>
> *[i] The Respondent-Management shall make payment to the petitioner in the prescribed pay scale as per the rules, for the post of Peon.*
>
> *[ii] The arrears shall be paid by the Respondent-Management by a Demand Draft or by depositing the amount in the bank account of the petitioner, till 15.05.2020.*
>
> *[iii] The Respondent-Management shall continue to pay the regular salary to the petitioner as per the prescribed pay scale every month along with other emoluments by depositing the amount in the bank account of the petitioner.*
>
> *[iv] The Respondent-Management is at liberty to make claim for disbursement of the amount from the department and if such claim is made, the department shall take decision as per the*

*rules.”*

7. The contention is that the writ petitions have been filed by the original appellants/ employees, who were terminated employees of the review applicant/ Management. Both the parties settled the dispute before the University Tribunal and the Management agreed to reinstate the employees without backwages on the condition that they would be paid salary as per the pay scale. The Management would seek reimbursement of the amount of salary paid to the employees and if the Education Department declines to sanction the payment as per the pay scale, the Management would not be responsible. Since the Education Department declined to sanction salary grants as the employees, according to the Education Department, were not appointed by following the legal procedure, that the employees have preferred Writ Petition Nos.1738/2017 and 1750/2018 for challenging the decision of the Education Department dated 18.08.2017.

8. We find from the record that the learned counsel representing the Management, when the interim orders sought to be reviewed dated 24.02.2020 were passed, is not the advocate,

who has preferred these Review Applications. When the writ petitions are pending and the order sought to be reviewed is an interim order passed therein, the party seeking review should have practiced self imposed restraint and ideally should have approached this Court through the same advocate. Nevertheless, we have extensively heard the learned advocate for the review applicants and we do not intend to go into the issue as to why the Management has opted for a new advocate. We leave this issue to the good conscience and wisdom of the Review Applicants.

9. It is undisputed that the employees at issue were being paid Rs.140/- per day, which is about Rs.4200/- per month. Our judicial conscience is shocked by this fact. We do not expect a human being to keep his mind, body and soul together with a paltry amount of Rs.4200/- per month in which he and his family is to survive.

10. The above aspect was canvassed before the learned Bench which passed the interim orders dated 24.02.2020 and after considering this aspect, the learned Bench has passed the interim orders.

11. The learned advocate for the review applicants/ Management submits that the directions at paragraphs 4(i) and

4(iv) need to be reviewed. The basis for such contention is that the settlement between the employees and the Management does not prescribe that the Management should pay the pay scale to the employees if the Education Department does not sanction the prescribed pay scale. We do not find that the said submission could be sustained for the reason that the compromise between the employees and the Management cannot create a financial burden on the State Government, which is not a party to the settlement between the two outside the Court. No such settlement without participation of the Government, could create a financial burden on the Government, either directly or indirectly. In this backdrop and keeping in view that an employee cannot be expected to sustain himself and his family in Rs.4200/- per month, we do not find that paragraph 4(i) deserves to be reviewed.

12. Insofar as paragraph 4(iv) is concerned, the State Government, which is not a party to the settlement, is not obliged to grant funds for the reasons which are already subject of challenge in the pending Writ Petitions. The fact remains that the Management has reinstated the employees so as to avoid the judgment of the University Tribunal and after the employees

waived the backwages which reduced the financial burden on the Management. Disallowing of the bills, would cast the burden on the Management to make the payment of salary to the employees, who are admittedly working with the Management and cannot be expected to survive with Rs.4200/- per month.

13. In view of the above, paragraph 4(iv) of the interim order does not call for review as no error or mistake apparent on the face of the record is made out.

14. The Review Applications are, therefore, rejected.

*kps* **(S.G. MEHARE, J.)** **(RAVINDRA V. GHUGE, J.)**