

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT NAGPUR

MISC.CIVIL APPLICATION (REVIEW) NO. 167 OF 2021

IN

WRIT PETITION NO. 7168 OF 2017 (D)

(ADARSH SHIKSHAN PRASARAK MANDAL & ANR...VS.. RAKESH SADASHIV TADE & ANR.)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri S.O.Ahmed, Advocate for Applicants/Petitioners.

CORAM : Z.A.HAQ, J.

DATED : MARCH 05, 2021.

Heard.

2. Respondent No.1-employee was working in petitioner No.2 school as Assistant Teacher. The respondent No.1-employee had filed appeal before School Tribunal contending that his services were orally terminated w.e.f. 3rd July 2015. The petitioners had filed their reply before the School Tribunal stating that the claim of the employee that his services were terminated orally, was not correct and the employee himself had stopped reporting on duty. In the reply filed before the School Tribunal it was stated that the management had issued two notices dated 13th July 2015 and 28th July 2015 calling upon the employee to report on duty, still he had not reported on duty. The Tribunal allowed the appeal filed by the employee by order dated 24th March 2017. This order was challenged by the petitioners in Writ Petition which is dismissed by order dated 3rd January 2019, of which review is sought by the petitioners.

3. Learned Advocate for the petitioners submitted that before filing of the writ petition, the respondent No.1-

employee was reinstated on 25th May 2017 and was being paid regular salary after his reinstatement. According to the petitioners, the challenge in the writ petition was to the order passed by the School Tribunal directing the management to pay back-wages. According to the petitioners, the employee is not entitled for back-wages as he himself opted to remain absent and was not attending the duty in spite of the notices issued by the management to him.

4. The submission made on behalf of the management is not in consonance with the challenges in the petition. The petitioners had challenged the entire order passed by the School Tribunal and had also prayed for stay of the effect and operation of the order passed by the School Tribunal. Had the management challenged the order passed by the School Tribunal only to the extent of grant of back-wages to the employee, the situation would have been different.

5. The learned Advocate for the petitioners relied on the judgment given by this Court in Writ Petition No.7591 of 2019 on 15th January 2020 to contend that the employee who himself defaults in attending the duty would not be entitled for back wages.

6. As observed earlier, had the management restricted its challenge to the grant of back-wages to the employee, situation would have been different, but the management has chosen to challenge the entire order passed by the School Tribunal, which clearly shows that the management was opposing the reinstatement of the employee also. Hence, the judgment delivered by this Court in Writ

Petition No.7591 of 2019 will not be of any help to the petitioners.

7. The petitioners have not been able to point out anything on the basis of which it can be said that any relevant document or material is not considered by the Court while deciding the writ petition. It cannot be said that there is any error apparent on the face of the record, which enables this Court to exercise the review jurisdiction.

8. Hence, the Miscellaneous Civil Application is **dismissed**.

(Z.A.HAQ, J.)

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