

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

MISC. CIVIL APPLICATION NO.420 OF 2021
IN
CONTEMPT PETITION NO.344 OF 2018 (D)
IN
WRIT PETITION NO.4545 OF 2011 (D)

Ujjwala w/o Arun Deshmukh

-vs-

Pratibhatai Mahant, Secretary, Sai-Krupa Kisan Education Society, MIDC, Butibori, Nagpur

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Shri Anand Parchure, Advocate for applicant.
Shri S. S. Ghate, Advocate for respondent.

CORAM : A. S. CHANDURKAR AND G. A. SANAP, JJ.

Date on which arguments were heard : December 15, 2021

Date on which order is pronounced : December 18, 2021

Order : (Per : A. S. Chandurkar, J.)

Admit. Heard the learned counsel.

The applicant seeks review of the order dated 11/08/2021 passed in Contempt Petition No.344/2018. By the said order after observing that the respondent in the said contempt petition had filed an affidavit and had stated that the amount of Rs.3,41,979/- to which the petitioner was entitled had been included in the proposal submitted by the said respondent to the Joint Director of Higher Education, the contempt petition was disposed of by observing that the directions issued in Writ Petition No.4545/2011 had been complied with. In the review application it has been stated that it is the liability of the non-applicant/respondent in the contempt petition to pay the amount of Rs.3,41,979/- and that liability cannot be passed over

on the Joint Direction of Higher Education. For said purpose attention is invited to paragraph 16 of the order dated 17/03/2017 in Writ Petition No.4545/2011 wherein this Court had directed in clear terms that back-wages for the period from 10/09/2011 to 01/08/2013 would be paid by the present non-applicant. Since this clear direction was overlooked while accepting the statement made on behalf of the non-applicant that the amount of back-wages of Rs.3,41,979/- for the period from 10/09/2011 to 01/08/2013 had been included in the proposal that was sent to the Joint Director of Higher Education, there was an error apparent on the face of record warranting exercise of review jurisdiction.

2. Reply has been filed on behalf of the non-applicant opposing the prayer made in the review application. Further a preliminary objection is raised by the learned counsel for the non-applicant to the maintainability of review application on the ground that in view of the decision in *Metal Box India Ltd. vs. State of Maharashtra and ors. 2004 (3) Mh.L.J. 528*, the Court had no power to review its own order passed in contempt proceedings. Reference has also been made to the decision of the Allahabad High Court in *State vs. Baldev Raj 1992 Cri.L.J. 1251* and judgment of Jammu and Kashmir High Court dated 22/05/2013 in LPASW No.179/2010 (*State of J & K and anr. vs. Ravi Kant Sharma and ors.*) to substantiate the aforesaid contention. It is thus submitted that since the review application itself was not maintainable the same was liable to be dismissed. Without prejudice to the aforesaid objection, it was submitted that there was no error apparent on the face of record to

warrant invocation of review jurisdiction.

In response to the aforesaid preliminary objection, the learned counsel for the applicant placed reliance on the decision in *Himanshu Joshi vs. Utpal Kumar and anr.* AIR 2021 Uttarakhand 12 to urge that the High Court being a Court of Record could exercise review jurisdiction in the interest of justice.

3. On hearing the learned counsel for the parties, it is found that the preliminary objection raised by the learned counsel for the non-applicant is without any substance for the reason that the decision relied upon by him in *Metal Box India Ltd.* (supra) has been held as not laying down good law by the Division Bench in *Shyamsundar vs. Lokesh Chandra and ors.* 2011(2) Mh.L.J. 432. The Division Bench therein was answering the reference made to it as to whether the High Court while exercising powers under Contempt of Courts Act, 1971 by virtue of Article 215 of the Constitution of India had jurisdiction to review its own order. It was held that the restrictions in ordinary law as regards review that apply to authorities constituted under Statute would not apply to the power exercised by the High Court under Article 215 of the Constitution of India while dealing with the aspect of contempt. The power of review was available even beyond Section 114 read with Order XLVII of Code of Civil Procedure, 1908 and would be available to advance the cause for which such Court is constituted. In short, the decision relied upon by the learned counsel for the non-applicant cited above has already been held not to lay down good law.

We may in the passing observe that the view as taken by

the Division Bench in *Shyamsunder* (supra) has been considered by the Kerala High Court in *Bhagavat Singh G. vs. Manoj Joseph and ors. AIR 2019 Ker 30* and followed. The observations in *Himanshu Joshi* (supra) relied upon by the learned counsel for the applicant support the maintainability of the review application. We thus find that the preliminary objection as raised to the maintainability of the review application is without any substance and has no legal support.

4. Coming to the grounds raised in the review application we find that in paragraph 16 of the order passed in Writ Petition No.4545/2011 it was observed as under :

“16. Accordingly, we reinstate petitioner back in employment of respondent No.4 for a period from 10/09/2011 till she reached the age of 62 years i.e. upto 01/08/2013. She will be entitled to grant of continuity. Back-wages for said period shall be paid by respondent No.4. ”

These directions clearly indicate that the liability to pay back-wages for the period from 10/09/2011 to 01/08/2013 was on the non-applicant. While disposing of the contempt petition on 11/08/2021 the said directions were overlooked by us and hence we find that this has resulted in an error apparent on the face of record. The submission of proposal for releasing the amount of Rs.3,41,979/- to the Joint Director of Higher Education would be of no consequence for the simple reason that such liability was to be satisfied by the non-applicant herein and not the Joint Director of Higher Education. For aforesaid reasons the order dated 11/08/2021 in Contempt Petition No.344/2018 is recalled. Contempt Petition No.344/2018 is restored for its consideration on merits. The contempt petition

be listed for further consideration on 22/12/2021.

Misc. Civil Application No.420/2021 is allowed in aforesaid terms. No costs.

(G. A. Sanap, J.)

(A. S. Chandurkar, J.)

Asmita