

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

910 CIVIL APPLICATION NO.4013 OF 2022
IN RA/87/2022 IN WP/3427/2019

THE SUWARTA ALLIANCE MINISTRIES TRUST
THROUGH ITS CHAIRMAN AND ANOTHER
VERSUS
SHWETA SHIRISH DALAGE AND OTHERS

...
Advocate for Applicants : Mr. Natu Sharad V.
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CORAM : MANGESH S. PATIL, J.

DATE : 22 MARCH 2022

ORAL ORDER :

Heard the learned advocate Mr. Natu for the review applicants who are the petitioners in the writ petition. Though there is an application for condonation of delay, I requested him to satisfy the court regarding existence of sufficient grounds for undertaking the review.

2. The petitioners are the management and the school. The respondent nos. 1 and 3 were in its employment as teachers. As number of students decreased, the Education Officer (Primary) reduced the divisions from 4 to 3. The respondent no. 1 who was yet to complete her probation was terminated on the ground that she was junior to the respondent no. 3. In an appeal under section 9 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977, the School Tribunal allowed her appeal and

quashed and set aside her termination. Aggrieved by the judgment and order passed by the School Tribunal they preferred writ petition which was dismissed by the judgment under review on 07-09-2021.

3. Learned advocate Mr. Natu would vehemently submit that the dispute was mainly regarding *inter se* seniority between the respondent no. 1 and respondent no. 3. The dispute ought to have been decided on the basis of the approval granted by the respondent no. 2 – Education Officer in view of Rule 12 of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981. Approval to the appointment of respondent no. 3 as Assistant Teacher with effect from 15-06-2005 was granted by the respondent no. 2 which was never challenged. When the letters of approval issued by the Education Officer were available on the record and he had not chosen to dispute this, it was an error apparent on the face of the record to undertake scrutiny to ascertain their genuineness. Though the name of respondent no. 3 was not appearing in the seniority list produced by the respondent no. 1 for the period 2009-2010 to 2011-2012, since she was appointed in an unaided school run by the petitioners, her name was bound not to appear in the list and no inference was deducible therefrom. He would, therefore, submit that the afore-mentioned facts and circumstances demonstrate that there are good and sufficient grounds to undertake the review.

4. I have carefully considered the submissions and perused the judgment under review as also the papers.

5. It is trite that the review cannot be an appeal in disguise. Merely demonstrating some error or illegality would not suffice. There has to be formal defect or error apparent on the face of the record to exercise that power.

6. As is observed in the order under review, several circumstances had weighed against the petitioners and the respondent no. 3 and in favour of the respondent no. 1. As regards the approval granted by the respondent no. 2 to the appointment of respondent no. 3, there was inconsistent record. In the seniority list for previous years, her name never appeared which appeared in it for the first time in the year 2012-2013. Even in that seniority list, her date of appointment was shown as 25-04-2012, whereas, admittedly the respondent no. 1 has been in the employment since 18-11-2011. It was also noticed that in a letter issued by the respondent no. 2 granting approval to the appointment of the respondent no. 3, her date of appointment was shown as 23-02-2012, though the Headmaster of the petitioners school had forwarded the letter for approval mentioning her date of appointment as 15-06-2005. It was also noticed that the respondent no. 2 – Education Officer had issued two orders in one of which her date of appointment was shown as 25-06-2005 and in the other, as 27-04-2012. Unlike the first of such letters, second letter did

not refer to the correspondence having been made pursuant to some proposal received from the school for granting approval. All these factors were found to be sufficient to justify the inference that was drawn by the School Tribunal raising a doubt about the genuineness of this correspondence granting approval to the respondent no. 3.

7. Apart from the above state-of-affairs, it was specifically pointed out by the School Tribunal that even the stand of the respondent no. 3 regarding her initial appointment was not consistent throughout. There was also a doubt expressed as to what had made her to appear for interview on 23-04-2012, if she was already in the employment. Referring to all such circumstances, the School Tribunal had allowed the appeal of the respondent no.1 and quashed and set aside termination of the respondent no. 1. The observations were clearly based on a plausible appreciation of the material on the record. It was not found to be perverse or arbitrary so as to call for any interference in exercise of writ jurisdiction and on that premise, the writ petition was dismissed. It cannot be said that it suffers from any formal defect or error apparent on the face of the record.

8. Mr. Natu, the learned advocate for the petitioners would then submit that since the respondent no. 1 was still a probationer, Rules 26 to 28 of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 were not applicable to the respondent no. 1. He would, therefore, submit that the observations in

this regard in paragraph no. 13 of the judgment under review are not legally tenable.

9. It is to be noted that the observations in paragraph no. 13 are in-fact redundant. It is only in the alternative to the earlier part of the reasoning that it was observed that even if the respondent no. 1 was to be terminated, the procedure under those rules ought to have been followed which were not. It is not that it was the sole ground for dismissing the writ petition. If that be so, this cannot be a ground to undertake a review.

10. In the circumstances, I am of the firm view that there are not sufficient grounds which would enable this court to undertake review within the four corners of law. Consequently, there is no point in even entertaining the application for condonation of delay.

11. The Applications are disposed of.

[MANGESH S. PATIL]
JUDGE

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