

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR**

**CIVIL APPLICATION (CAO) NO. 510/2021
&
CIVIL APPLICATION (CAO) NO. 250 OF 2022
IN
MISC. CIVIL APPLICATION (ST) NO. 243/2021
IN
WRIT PETITION NO. 176 OF 2013(D)**

Prathibha Ramchandra Kawale

-- Petitioner /
Applicant

Vs.

Tukaram Shikshan Sanstha, Kadholi and
others

-- Respondents /
Non-applicants

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

Court's or Judge's orders

Mr. K.V. Deshmukh, Advocate for Applicant

CORAM : MANISH PITALE, J.

DATE : 8th APRIL, 2022

By this application, the applicant is seeking review of judgment and order dated 28/07/2014, passed by this Court, disposing of Writ Petition No.176/2013, whereby this Court refused to interfere with order passed by the School Tribunal.

2. The review application was accompanied by an application for condonation of delay. But, in the light of the settled position of law that this Court is concerned with a writ

petition and now with a review application filed therein, the application for condonation of delay was not necessary. In this situation, the applicant referred to an application to amend the review application for bringing on record the facts to explain as to why the applicant approached this Court, invoking review jurisdiction in April 2022.

3. Considering the position of law and the statements made in the proposed amendment, the amendment is allowed.

4. This Court has heard Mr. K.V. Deshmukh, learned counsel appearing for the review applicant. It is strenuously urged that despite dismissal of Special Leave Petition, challenging the order of this Court dated 28/07/2014, passed in Writ Petition No.176/2013, the present review application is maintainable. It is further submitted that a perusal of the order passed by this Court would show that it was held that the appointment of the applicant was not in consonance with Section 5 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 (hereinafter referred to as 'MEPS Act'), for the reason that the management never made correspondence with the Education Officer to ascertain whether any surplus teacher was available before issuing advertisement, which led to the appointment of the applicant. By relying upon a letter dated 22/08/2014, received under the Right to Information Act, the learned

counsel for the applicant urged that the position of surplus teachers would show that even if there were surplus teachers, they had qualifications of BA, B.Ed., indicating that they were not eligible for the specific post on which the applicant was appointed as a Science Teacher. Hence, even if there was to be correspondence by the management before issuing advertisement, it would have been of no consequence. On this basis, it was submitted that the judgment and order passed by this Court deserved to be reviewed.

5. This Court has considered the contents of the application and the documents filed therewith. There can be no dispute about the fact that despite dismissal of Special Leave Petition against the order of this Court, a review application would be maintainable. The endeavour on the part of the applicant is to indicate that there has been an error apparent on the face of record in the said order dated 28/07/2014, disposing of the writ petition, in as much as the very basis of holding against the applicant is taken away by communication dated 22/08/2014, received by the applicant under the Right to Information Act.

6. In the present case, the applicant was appointed, way back in the year 2000 and her service stood terminated on 25/06/2005. The appeal filed before the School Tribunal was dismissed and the said order stood confirmed by the

aforesaid judgment and order dated 28/07/2014, passed by this Court.

7. The principal contention raised on behalf of the applicant is that, with the new material that has come on record, it could not be said that there was violation of Section 5 of the MEPS Act and that, therefore, the very basis of the judgment passed by this Court is taken away and a case for entertaining the review application is made out. A perusal of Section 5(1) of the MEPS Act, particularly, the provision thereto shows that it is mandatory that before a permanent vacancy is filled in the management is supposed to ascertain from the Education Officer whether any suitable person on the list of surplus teachers is available for absorption in other schools. This Court found that no such correspondence was initiated by the management with the Education Officer before issuing the advertisement, which led to appointment of the applicant. A perusal of the communication dated 22/08/2014, received by the applicant under the Right to Information Act does indicate the names of two teachers having been rendered surplus and thereafter being absorbed. Much emphasis is placed on their qualifications to claim that insofar as appointment to post of Science Teacher was concerned, there was no surplus teacher for absorption and that, therefore, the observations made by this Court in the judgment and order dated 28/07/2014, were rendered

unsustainable and amounted to an error apparent on the face of the record.

8. This Court is not in agreement with the aforesaid contention raised on behalf of the applicant, firstly, for the reason that there is no denial about the fact that before issuing the advertisement, there was no ascertainment from the office of the Education Officer as regards the status of availability of surplus teachers for absorption. Secondly, as to whether the communication received by the applicant post facto on 22/08/2014, could be relied upon to contend that there was an error apparent on the face of the record, itself is a doubtful proposition. This Court is of the opinion that the applicant has failed to make out a case for further examination and enquiry into the matter, particularly when the service of the applicant stood terminated as far back on 25/06/2005 and part relief was granted to the applicant by directing that compensation would be paid to her and it was specifically directed that the compensation payable would be as per guidelines provided under Section 11(1)(e) of the MEPS Act.

9. In view of the above, the application is dismissed.

JUDGE