

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

MISC. CIVIL APPLICATION (MCA) NO. 25 OF 2021
IN
WRIT PETITION NO. 8421 OF 2019

Jawahar Navodaya Vidyalaya

-- Applicant

Vs.

Suman Rajurkar

-- Non-Applicant

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

Court's or Judge's orders

Dr. R.S. Sundaram, Advocate for Applicant

CORAM : MANISH PITALE, J.

DATE : 14 MARCH 2022

By this application, the applicant is seeking review of order dated 06/01/2020, passed by this Court in Writ Petition No.8421/2019. By the said Writ Petition, the applicant (original petitioner) had challenged an order passed by the Labour Court, Wardha, acting as controlling authority under the provisions of the Payment of Gratuity Act, 1972, whereby the respondent was granted partial relief by awarding a specific amount with interest towards gratuity in terms of the aforesaid Act and Rules framed thereunder. By the said order dated 06/01/2020, this Court disposed of the writ petition by observing that the applicant had directly approached this

Court by filing writ petition, without exhausting statutory remedy available under Section 7(7) of the Payment of Gratuity Act, 1972, for filing an appropriate proceeding before the Industrial Court.

2. While disposing of the writ petition, this Court observed that the applicant may approach the Industrial Court in accordance with law, subject to the law of limitation and time spent by the applicant in this Court from 18/10/2019 till 06/01/2020, will be excused.

3. Notice was issued in the review application on 28/02/2022, for final disposal, returnable today i.e. 14/03/2022. Office note shows that the sole respondent has been served. There is no representation on behalf of the sole respondent.

4. Heard Dr. Sundaram, learned counsel for the applicant. The learned counsel has invited attention of this Court to the Navodaya Vidyalaya Samiti Payment of Gratuity Rules, 2007, which are applicable to the respondent herein. Attention of this Court was invited to the savings clause in the said Rules, which specifically states that the applicability of the aforementioned Act i.e. Payment of Gratuity Act, 1972 to the employees of Navodaya Vidyalaya Samiti stands withdrawn on the date of Notification of the Navodaya Vidyalaya Samiti Payment of Gratuity Rules, 2007. It is submitted that the very applicability of the aforesaid Act was questioned in the

writ petition and, therefore, the question of availability of alternative remedy was not relevant for deciding the writ petition. Yet, this Court disposed of the writ petition by order dated 06/01/2020, in the aforesaid manner.

5. Having heard the learned counsel for the applicant and having perused the Navodaya Vidyalaya Samiti Payment of Gratuity Rules, 2007, this Court is of the opinion that since the very applicability of the Payment of Gratuity Act, 1972, was in question in the writ petition, going to the very root of the matter and jurisdiction of the Labour Court, as controlling authority in passing the order impugned in writ petition is questioned, there is substance in the contentions raised by the applicant that the said order passed by this Court deserves to be reviewed. The order dated 06/01/2020, passed by this Court disposing of the writ petition, proceeded on the basis that the Payment of Gratuity Act, 1972, was applicable to the case of the respondent herein. That appears to be a view taken in ignorance of the Navodaya Vidyalaya Samiti Payment of Gratuity Rules, 2007, placed on record with the writ petition.

6. In view of the above, an error apparent on the face of the record appears to have been made out by the applicant while seeking review of the order passed by this Court.

7. Hence, the review application is allowed. The order dated 06/01/2020, passed by this Court in Writ Petition No.8421/2019, is reviewed and recalled.

8. Consequently, the aforesaid writ petition shall now be listed for further consideration on 11th April 2022.

9. In view of the fact that the order passed by this Court is recalled and the petition will now be considered on merits, a fresh notice will have to be issued on the respondent. Accordingly, issue notice to the respondents, returnable on 11th April 2022.

10. Dr. Sundaram, learned counsel for the applicant points out that since the Tahsildar is proceeding against the applicant on the basis of the order impugned in the writ petition, there is urgency in the matter. The copy of the notice dated 10/02/2022, issued by the Naib-Tahsildar, Wardha, is produced before this Court and it is taken on record and marked 'X'.

11. In view of the aforesaid developments, a case for grant of interim relief is made out on behalf of the petitioner. Accordingly, no coercive action shall be taken against the applicant / petitioner, till the next date of listing in pursuance of the impugned order.