

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**REVIEW APPLICATION (CIVIL) NO.88 OF 2022
IN WP/5038/2018**

Adarsh Vidyalaya Shikshan Samiti, Manatha ...Applicant

Versus

Kondba Namdeo Sandve and Others ...Respondents

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Mr. Vivek J. Dhage, Advocate for Applicant.

Mr. S.G. Sangale, AGP for Respondent Nos. 2 to 4 & 6.

Mr. V.M. Maney, Advocate for Respondent No.5.

Mr. S.T. Shelke h/f Mr. S.S. Wagh, Advocate for Respondent No.1.

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**CORAM : RAVINDRA V. GHUGE &
S.G. MEHARE, J.J.**

DATED : 23rd FEBRUARY, 2023

PER COURT:-

1. On 29.07.2021, we had passed the following order :

“1. The applicant is the Educational Trust
represented through it's President, who is seeking
review of the order of this Court dated 27.07.2021.

2. The petitioner in the Writ Petition was
Kondba Namdeo Sandve, who is respondent no.1 in the
review application. The petitioner Kondba has
arrayed Subhash Ghansham Tarte as respondent no.4
in the writ petition filed by him. The petitioner
Kondba and the purported Secretary Subhash Tarte,
made a statement before us, which was recorded in
Clauses 'b' and 'c' under paragraph no.3 of our order dated
27.07.2021. Clauses 'b' and 'c' read as under :

“(b) The petitioner has retired from employment on 31.07.2016 as the Headmaster of respondent No.5-School;

(c) Only because the Society did not forward the pension papers of the petitioner to respondent no.6 through respondent No.3, the petitioner is deprived of his pension even till today;”

3. Since it was projected before us by Mr. Tarte, posing as a Secretary and the petitioner Kondba, that we directed in Clause 3(d) that the pension papers of the petitioner can be processed if there is no legal impediment.

4. The review applicant has pointed out the judgment of this Court dated 08.04.2015 delivered in Writ Petition No.11297/2014 filed by the present Education Society. The petitioner Kondba was respondent no.5 in his capacity as the Headmaster and Mr. Tarte was respondent no.6 as Ex-General Secretary. In the said judgment, this Court ruled that respondent no.6 i.e. Mr. Tarte was not having any right or authority to forward the proposal of respondent no.5 i.e. Kondba, for approval. Such proposal should be moved only by the President of the Trust namely Marotrao Shinde or the General Secretary namely Sandeep Shinde. It was thus held that Mr. Tarte had no authority to represent the Trust as a General Secretary.

5. In paragraph no.12, on internal page 12 of the judgment dated 08.04.2015, this Court concluded that the appointment of respondent no.5 i.e. Kondba and also approval of his appointment as Headmaster granted by the Education Officer was not (the word

'not' is missing) at the instance of the petitioners Marotrao Shinde and Sandeep Shinde and that his appointment by respondent no.6 Mr. Tarte is *per se* illegal and the appointment, therefore, cannot be approved. The approval was also held to be unsustainable.

6. It is obvious that the above aspects were suppressed from this Court when the order dated 27.07.2021 was passed and Writ Petition No.5038/2018 was allowed.

7. In view of the above, issue notice to the respondents, returnable on 07.09.2022. Mr. Parghane, the learned Advocate waives service of notice on behalf of respondent no.1. The learned A.G.P. waives service of notice on behalf of respondent nos.2, 3, 4 and 6.

8. Until further orders, our order dated 27.07.2021 shall stand stayed and if steps have been initiated in pursuance thereof, further steps shall be halted and status quo shall be maintained.

9. Since the review application has been filed within limitation, the pending application for condonation of delay does not survive and stands disposed off."

2. The learned advocate now appearing for the original petitioner Kondba, submits that he was not only appointed by purported Secretary Subhash Tarte, but he was appointed by the other faction of the management. In short, both the factions of the trustees had appointed Kondba. When confronted, the learned advocates for

the appearing parties fairly submit that this aspect was not brought to the notice of this Court when the order dated 27.07.2021 was passed and Writ Petition No.5038 of 2018 filed by Kondba was allowed.

3. We find from our order dated 27.07.2021, in the light of the averments in the review petition, that the petitioner was never a full time headmaster or there was a serious dispute about his being appointed as the headmaster, which aspect was not canvassed before us. We were given the impression that the society did not forward the pension papers of Kondba and hence, Kondba was deprived of his pension. We also recorded in para 3(d) that ‘there is no legal impediment indicated, which would be an obstacle for processing the pension papers of the petitioner’.

4. From the review petition, it appears that Kondba and Mr. Tarte came before this Court and material aspects were never divulged to us.

5. The learned advocate for the original petitioner submits that instead of this Court drawing any inferences or conclusions at this stage, it may restore the writ petition and hear the parties afresh and all the material aspects with regard to the legality in the appointment of Mr. Kondba as a headmaster, would be placed before us.

6. In view of the above, the review application is partly allowed. The order dated 27.07.2021 passed by this Court is recalled

and Writ Petition No.5038 of 2018 stands restored to the file of this Court.

7. Since Writ Petition No.5038 of 2018 is restored, the learned advocate for the original petitioner requests us for liberty to correct the description of respondent no.4 and issue fresh notice. In view of the same, leave to correct respondent no.4 is granted. Correction be carried out within one week.

8. Issue notice to respondent no.4, returnable on 05.04.2023. This matter would appear in the urgent category. Shri Maney, the learned advocate waives service of notice on behalf of respondent no.5. Learned AGP waives service of notice on behalf of respondent nos.1 to 3 and 6.

(S.G. MEHARE. J.)

(RAVINDRA V. GHUGE, J.)