

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

**REVIEW APPLICATION NO. 114 OF 2021  
IN  
WRIT PETITION NO. 6044 OF 2020**

Vilas Sampat Mule

..APPLICANT

VERSUS

Bhausahab Zarkar Secondary Residential  
Ashram School, Majalgaon  
through In-charge Head Master  
Vikas Marutrao Tanpure and Others

..RESPONDENTS

....

Mr. G.K. Naik-Thigale, Advocate for applicant  
Mr. A.D. Pawar, Advocate for residential no.1  
Mr. N.T. Bhagat, A.G.P. for respondent nos. 2 to 6

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**CORAM : R.G. AVACHAT, J.  
RESERVED ON : 28<sup>th</sup> MARCH, 2023  
PRONOUNCED ON : 26<sup>th</sup> APRIL, 2023**

**ORDER :**

1. Heard. Delay occurred in filing this review application is condoned.

2. This application has been moved for review of order dated 10<sup>th</sup> June, 2021 passed in Writ Petition No. 6044 of 2020. By the order sought to be reviewed, writ petition preferred by Respondent No.1 – Bhausahab Zarkar Secondary Ashram School, Majalgaon came to be allowed. The challenge in the said writ petition was to the order passed by Deputy Commissioner of

Labour, Nashik Division, Nashik on 21<sup>st</sup> July, 2020, whereby industrial dispute raised by the applicant herein came to be referred to Labour Court, Ahmednagar for adjudication.

3. This Court allowed the said writ petition with the reasons that as per Clause 2.5 of Ashram School Code for Secondary and Higher Secondary Ashram Schools, teaching and Non-teaching staff thereof were directed to be covered by the Maharashtra Employees of Private Schools (Condition of Services) Act, 1977 ('M.E.P.S. Act') and Rules of 1981. Relying on Full Bench judgment of this Court in case of *Suryakant Sheshrao Panchal Vs. Vasantrao Naik Vimukta Jati Bhatakya Jamati Aadarsh Prasarak Mandal and Ors, 2002(5) Bom.C.R. 95*, this Court held that Ashram school running secondary and higher secondary class cannot be covered by M.E.P.S. Act. An employee working in the Ashram School (Secondary and Higher Secondary) has a right to approach the School Tribunal by filing appeal under Section 9 of the said Act against an order of punishment/termination of services or for redressal of the grievances.

4. Learned counsel for the applicant would submit that applicant was serving as Superintendent of the Ashram School. In view of definition of the term, "workman" given in Section 2(s) of the Industrial Disputes Act, an employee doing clerical or supervisory work is also covered by the term "workman". Reliance on the judgment of this Court in case of *The President,*

*Anatha Mahila Ashram, Kolhapur Vs. J.G. Ajagaonkar, MANU/MH/0367/1995* was placed.

5. According to learned counsel, there are catena of judgments holding an employee even doing clerical or supervisory work would be a 'workman' within the definition of 'workman' given under Section 2(s) of the Industrial Disputes Act. He would further submit that the Apex Court in case of *Sundarjas Kanyalal Bhatija and Ors. Vs. Collector, Thane, Maharashtra and Ors, 1989(3) SCC 396* has categorically held that where a Single Judge or a Division Bench does not agree with the decision of the Bench of co-ordinate jurisdiction, the matter shall be referred to a Larger Bench. He would further submit that High Court being a Constitutional Court, needs to correct it's own mistake crept in order/judgment. In support of this contention, he placed reliance on the judgment of Apex Court in case of *Board of Control for Cricket in India Vs. Netaji Cricket Club and Ors., (2005) 4 SCC 741*. He also relied on the judgments of this Court in case of *Tirumala Shikshan Sanstha and Ors. Vs. Santosh and Ors., 2022 SCC Online Bom. 4586* and *Balasaheb Bagadu Yeole Vs. Sangamner Taluka Vikas Pratishthan*, delivered by this Court in Writ Petition No. 1572 of 2015 on 09<sup>th</sup> December, 2016.

6. Learned counsel for the respondent would, on the other hand, submit that review application is not maintainable. The remedy of the appeal is only available for the applicant. According to learned counsel, if any other

remedy is made available by the government under various government resolutions, the applicant may have recourse thereto. Learned counsel has also submitted that the respondent – Ashram School has now been closed. He, therefore, urged for rejection of the application.

7. Considered the submissions advanced. Perused the authorities relied on. Admittedly, the respondent is a Secondary Residential Ashram School. The applicant was appointed as a Hostel Superintendent with effect from 01<sup>st</sup> July, 2002. On completion of probationary period of two years, he continued in service. It is the case of the respondent that the applicant voluntarily gave resignation of his post on 14<sup>th</sup> April, 2005. Little over thirteen years thereafter he raked up the said issue. The record further indicates that the respondent – school on due compliance of the rules and regulations filled-up vacancy generated due to resignation given by the applicant. Be that as it may.

8. This Court relying on the Full Bench judgment of this Court in Suryakant Sheshrao Panchal (supra) has held that an employee working in Ashram school which is mainly a higher secondary Ashram school has a right to approach School Tribunal for filing appeal under Section 9 of the said Act against an order of punishment or termination of his service, or for redressal of grievances enlisted in the said section.

9. The authorities now sought to be relied on in this review application were not brought to the notice of this Court while the writ petition was being heard on its own merits. It is not that those authorities are squarely applicable to the case of the applicant. Learned counsel, who was representing the applicant in the said proceeding must blame himself for not bringing to the notice of this Court the authorities he proposed to rely in this review application. There can be no two views over a legal proposition that an earlier judgment of a co-ordinate Bench is binding on another co-ordinate Bench.

10. In case of *National Insurance Co. Vs. Mohd. Sultan Asim and Ors., the High Court Jammu and Kashmir* in *Review Application No. 5 of 2003* has observed thus :-

“9. .... In our opinion, a judgment rendered per incuriam may be set-aside in appeal, but that is no ground for review. As is well known, review is admissible to correct mistake or error apparent on the face, of the record or on the basis of discovery of new and important material which, not being within the knowledge of the applicant despite exercise of due diligence, could not be produced by him when the judgment was delivered. The judgment rendered in ignorance of a binding decision of the court cannot be said to be an error apparent on the face of the record nor it can be said to be discovery of a new material.”

11. Moreover, this Court is of the view that the applicant was doing supervisory work and would in no way be termed to be a 'workman' amenable to the jurisdiction of the Labour Court under the Industrial Disputes Act. It is also informed that the respondent – Ashram School has now been closed down. Learned counsel for the respondent himself has placed on record Government Resolution dated 03<sup>rd</sup> October, 2017 relating to constituting disputes redressal forum for the employees of government recognized and aided residential Ashram schools.

12. If the appellant has remedy thereunder, he may have recourse thereto. This Court shall not be misconstrued to have observed that the applicant has remedy under the said government resolution. Needless to mention this Court finds no merit in the review application. Same is, therefore, dismissed.

**( R.G. AVACHAT, J. )**

13. After pronouncement of the order, learned counsel for the applicant submits that the applicant will approach School Tribunal and the time spent in this review application may be directed to be excluded while computing the period of limitation for preferring the appeal before the School Tribunal.

14. In addition to the four weeks period earlier granted while disposing of the writ petition, the period spent in prosecuting the present review application be excluded while calculating the delay in approaching the School Tribunal.

**( R.G. AVACHAT, J. )**

SSD