

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

**CIVIL APPLICATION NO.12544 OF 2023
IN
REVIEW APPLICATION (ST) NO.29251/2022
IN
WRIT PETITION NO.4061 OF 2017**

Hanmant s/o. Babruwan Dure	...	APPLICANT
VERSUS		
The State of Maharashtra through the Secretary and Ors.	...	RESPONDENTS

**WITH
REVIEW APPLICATION (ST) NO.29251/2022
IN
WRIT PETITION NO.4061 OF 2017**

Hanmant s/o. Babruwan Dure	...	APPLICANT
VERSUS		
1. The State of Maharashtra through the Secretary, in the Department of Education, Mantralaya, Mumbai – 32		
2. The Director, Maharashtra State Educational Research and Training Council, Pune – 32		
3. The Deputy Director of Education, Division Latur, Tq. and Dist. Latur		
4. The Principal District Education and Training Institute, Murud, Tq. and Dist. Latur.		
5. The Education Officer (Secondary), Zilla Parishad, Latur, Tq. and Dist. Latur.		
6. The Manjra Charitable Trust, Khadgaon Road, Latur, through its President		
7. Smt. Sushiladevi Deshmukh Mahila Adhyapak Vidyalaya, MIDC, Plot No.P-43, Barshi Road, Latur, Tq. and Dist. Latur		

- through its Administrator of
Manjra Charitable Trust at Latur
8. The Principal,
Vivekanand D.Ed. College,
Babhalgaon, Tq. and Dist. Latur ... **RESPONDENTS**

...
AND

CIVIL APPLICATION NO.12548 OF 2023
IN
REVIEW APPLICATION (ST) NO.29259/2022
IN
WRIT PETITION NO.3681 OF 2017

- Mahadeo s/o. Prabhu Ghadge ... **APPLICANT**
- VERSUS**
- The State of Maharashtra
through the Secretary and Ors. ... **RESPONDENTS**

WITH
REVIEW APPLICATION (ST) NO.29259/2022
IN
WRIT PETITION NO.3681 OF 2017

- Mahadeo s/o. Prabhu Ghadge ... **APPLICANT**
- VERSUS**
1. The State of Maharashtra
through the Secretary,
in the Department of Education,
Mantralaya, Mumbai – 32
 2. The Director,
Maharashtra State Educational
Research and Training Council,
Pune – 32
 3. The Deputy Director of Education,
Division Latur, Tq. and Dist. Latur
 4. The Principal District Education and
Training Institute, Murud,
Tq. and Dist. Latur.
 5. The Education Officer (Secondary),
Zilla Parishad, Latur,
Tq. and Dist. Latur.
 6. The Manjra Charitable Trust,
Khadgaon Road, Latur,
through its President
 7. Smt. Sushiladevi Deshmukh

- Mahila Adhyapak Vidyalaya,
MIDC, Plot No.P-43, Barshi Road,
Latur, Tq. and Dist. Latur
through its Administrator of
Manjra Charitable Trust at Latur
8. The Principal,
Vivekanand D.Ed. College,
Babhalgaon, Tq. and Dist. Latur ... **RESPONDENTS**

AND
CIVIL APPLICATION NO.12547 OF 2023
IN
REVIEW APPLICATION (ST) NO.29273/2022
IN
WRIT PETITION NO.3680 OF 2017

- Deepak s/o. Shriram Kadam ... **APPLICANT**
VERSUS
The State of Maharashtra
through the Secretary and Ors. ... **RESPONDENTS**

WITH
REVIEW APPLICATION (ST) NO.29273/2022
IN
WRIT PETITION NO.3680 OF 2017

- Deepak s/o. Shriram Kadam ... **APPLICANT**
VERSUS
1. The State of Maharashtra
through the Secretary,
in the Department of Education,
Mantralaya, Mumbai – 32
 2. The Director,
Maharashtra State Educational
Research and Training Council,
Pune – 32
 3. The Deputy Director of Education,
Division Latur, Tq. and Dist. Latur
 4. The Principal District Education and
Training Institute, Murud,
Tq. and Dist. Latur.
 5. The Education Officer (Secondary),
Zilla Parishad, Latur,
Tq. and Dist. Latur.
 6. The Manjra Charitable Trust,
Khadgaon Road, Latur,

- | | |
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| through its President | |
| 7. Smt. Sushiladevi Deshmukh
Mahila Adhyapak Vidyalaya,
MIDC, Plot No.P-43, Barshi Road,
Latur, Tq. and Dist. Latur | |
| through its Administrator of
Manjra Charitable Trust at Latur | |
| 8. The Principal,
Vivekanand D.Ed. College,
Babhalgaon, Tq. and Dist. Latur | ... RESPONDENTS |

AND
CIVIL APPLICATION NO.12546 OF 2023
IN
REVIEW APPLICATION (ST) NO.29263/2022
IN
WRIT PETITION NO.3674 OF 2017

Khalil s/o Maheboob Shaikh ... **APPLICANT**
VERSUS

The State of Maharashtra
through the Secretary and Ors. ... **RESPONDENTS**

WITH
REVIEW APPLICATION (ST) NO.29263/2022
IN
WRIT PETITION NO.3674 OF 2017

Khalil s/o Maheboob Shaikh ... **APPLICANT**
VERSUS

1. The State of Maharashtra through the Secretary, in the Department of Education, Mantralaya, Mumbai – 32
2. The Director, Maharashtra State Educational Research and Training Council, Pune – 32
3. The Deputy Director of Education, Division Latur, Tq. and Dist. Latur
4. The Principal District Education and Training Institute, Murud, Tq. and Dist. Latur.
5. The Education Officer (Secondary),

Dagdu s/o Ratan Tamboli	...	APPLICANT
VERSUS		
The State of Maharashtra through the Secretary and Ors.	...	RESPONDENTS

4. The Principal District Education and Training Institute, Murud, Tq. and Dist. Latur.
5. The Education Officer (Secondary), Zilla Parishad, Latur, Tq. and Dist. Latur.
6. The Manjra Charitable Trust, Khadgaon Road, Latur, through its President
7. Smt. Sushiladevi Deshmukh Mahila Adhyapak Vidyalaya, MIDC, Plot No.P-43, Barshi Road, Latur, Tq. and Dist. Latur through its Administrator of Manjra Charitable Trust at Latur
8. The Principal, Vivekanand D.Ed. College, Babhalgaon, Tq. and Dist. Latur

... **RESPONDENTS**

...

Advocate for applicants/petitioners in all matters : Mr. A.N. Irpatgire

A.G.P for respondent Nos.1 to 5: Mr. S.G. Sangale

Advocate for respondent Nos.6 to 8 : Mr. V.D. Hon, Senior advocate i/b Mr. A.V. Hon in all matters

...

CORAM : MANGESH S. PATIL & NEERAJ P. DHOTE, JJ.

**RESERVED ON : 08.11.2023
PRONOUNCED ON: 29.11.2023**

JUDGMENT (MANGESH S. PATIL, J.) :

Heard the learned advocate for the petitioners, the learned AGP for respondent Nos.1 to 5 and learned Senior advocate Mr. Hon for the respondent Nos.6 to 8, on the applications for delay condonation as also on the review applications.

2. The delays are condoned. The review applicants in all these proceedings who are similarly placed are seeking review of the common order passed by this Court in their individual matters on 11.08.2022,

dismissing the petitions.

3. In substance the applicants' stand in the petitions was that they were appointed and working as lecturers in the respondent No.7 – College being run by the respondent No.6 – Management which illegally closed down the respondent No.7 – College and transferred/absorbed these students in the respondent No.8 – College. The applicants were alleging that they were duly appointed by following selection process and personal approvals were granted to their appointments on 05.06.2006. Since the respondent No.7 – College was not receiving any grant-in-aid, it was the management's responsibility to pay the salaries. The respondent No.6 – Management by resolution dated 17.08.2016 closed down the respondent No.7 – College from academic year 2016-17 and notified its decision to the office of the Deputy Director of Education.

4. Some of the teaching and non-teaching staff lodged a complaint with the Deputy Director of Education (DDE) who granted approval to the proposal for absorption of 48 students of the respondent No.7 – College in respondent No.8 – College, however, did not take any action as far as the teaching and non-teaching staff was concerned. The applicants, therefore, challenged the letter dated 21.10.2016 issued by the DDE.

5. As was the stand of the applicants in the petition, their learned advocate Mr. Irpatgire would submit that the respondent No.6 – Management was running 18 Educational Institutions and the respondent

No.6 – Management ought to have maintained a common seniority list in the office of the Deputy Director for being absorbed in the light of the provisions of Rule 25A and Rule 27(d) of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 (Rules of 1981). He would submit that while dismissing the petitions this Court has observed that there was no such common seniority list maintained though this Court had observed that the circumstances indicated that there was deemed retrenchment even without there being any specific order/communication. However, merely because there was no common seniority list, which was not the fault of the present applicants-petitioners, the prayer for absorption was turned down by the order under review.

6. In addition a false statement was made on behalf of the respondent No.6- Management that there was no vacancy, which prompted this Court to hold that the petitioners could not have been directed to be absorbed. It was not the petitioners' case that there was any actual retrenchment or termination still this Court observed that a suitable alternate remedy was available to them, treating on the basis of the factual scenario, that there was deemed retrenchment.

7. Mr. Irpatgire would submit that in spite of availability of 27 to 28 vacancies and in spite of availability of the vacancies even now, in violation of the provisions of Rule 25A, 26 and Rule 27(d) of the Rules 1981 the applicants have not been absorbed. Information has been

solicited under the Right to Information Act, 2005 regarding availability of vacancies.

8. Lastly, Mr. Irpatgire would submit that while passing the order under review, only the prayer clauses regarding absorption was considered. Simultaneously, the applicants-petitioners were claiming arrears of salary but the point was not considered and was not decided. He also placed reliance on the full bench decision of this Court in the matter of **Kanhaiyyalal s/o Sonbaji Gajbhiye Vs. Bhartiya Jagruti Shikshan Sanstha, Sawari (Jawahar Nagar) and Ors.; 2020 SCC OnLine Bom 7461.**

9. The learned AGP and the learned advocate for the respondent Nos.6 and 7 would strongly opposes the review applications. They would submit that the Management was running the D.Ed College for women on permanent non-grant basis. A decision was taken to close it down due to scarcity of students. A resolution was passed. The College in which the applicants-petitioners were appointed being on non-grant basis they could not have been absorbed in other institutes being run by the Management which were receiving grants. In any case, this Court had recorded cogent reasons in the order under review while refusing to issue any mandamus directing absorption.

10. They could also submit that this Court cannot sit in appeal. The order under review being erroneous, cannot be a ground to resort to the remedy of review. It was always open for the applicants-petitioners to

challenge the order and the applications be dismissed.

11. Bearing in mind the inherent limitations in review jurisdiction, we are of the considered view that no ground exists to invoke that jurisdiction. This Court in the order under review had merely pointed out that though there are provisions contained in Rule 25A, 26 and Rule 27 regarding retrenchment and absorption of the employees governed by the M.E.P.S. Act and the Rules, it was also indicated that no combined seniority list was in existence, which was a *sine qua non* for considering the request of absorption.

12. Admittedly, the college was closed down, the students were absorbed in another college and practically the college was nonfunctional. However, simultaneously, there were no orders of termination or retrenchment as well. Nothing was communicated to the applicants-petitioners. No prior notice as is required by Rule 25A and Rule 26 of the Rules of 1981 was issued to the petitioners by the Management and in the circumstances, we had concluded that it could be a case of deemed retrenchment on account of failure to follow the prescribed statutory provisions. It is in light of such peculiar circumstances this Court observed that alternate efficacious remedy of preferring an appeal to the School Tribunal, challenging the retrenchment could be availed of by the petitioners.

13. It is in the process that it was observed that absence of any evidence demonstrating availability of the vacancies was also a fact for

not considering the request for absorption.

14. Admittedly, though the respondent No.6 – Management has been running several institutions, no common seniority list of the teaching and non-teaching staff has ever been maintained which is a prerequisite for claiming the absorption. In the absence of which, the order under review observes that the petitioners could not be directed to be absorbed.

15. Again, the stand of the respondents that since the petitioners were appointed in the respondent No.7 – College which was not receiving any grant-in-aid from the Government and consequently the authorities were not obliged to direct petitioners' absorption in other institutes being run by the same management which were receiving grant-in-aid, was neither met at the time of the hearing of the petitions nor has any submission been made before us while deciding these review applications.

16. Pertinently, even now the applicants-petitioners though claim to have applied under the RTI Act to solicit the information regarding the vacancies, they have not been provided any as is averred in the review applications. Meaning thereby that even now there is no evidence before us to positively say that there are vacancies in the institutions being run by the same Management.

17. So far as the prayer for arrears of salaries is concerned, true it is that it was not expressly dealt with while deciding the petitions by

the order under review. However, since this Court had expressly observed that the petitioners could avail of the remedy of preferring an appeal under Section 9 of the M.E.P.S. Act before the School Tribunal for the deemed retrenchment/termination, their right to claim arrears was apparently not argued and in all probability was kept open to be considered by the School Tribunal. These being the review applications in our considered view, issuing a clarification in this regard would serve the purpose, to the effect that all the issues including that of claim regarding salaries have been kept open. That would cause no prejudice to either of the parties.

18. In view of such peculiar state of circumstances which even prevail now, there are no sufficient and cogent grounds which would enable us to undertake review.

19. The Review applications are rejected. However, it is clarified that the petitions were dismissed by keeping open the issue regarding arrears of salaries.

[NEERAJ P. DHOTE]
JUDGE

[MANGESH S. PATIL]
JUDGE