

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

907 CIVIL APPLICATION NO. 11913 OF 2023 **AND**
REVIEW APPLICATION (CIVIL) (ST.) 34665 OF 2022 IN
WRIT PETITION NO. 7437 OF 2019

SHRIRAM KARBHARI MUNDE
VERSUS
THE STATE OF MAHARASHTRA THROUGH
PRINCIPAL SECRETARY AND OTHERS

...
Advocate for Applicant : Mr. Deshmukh Sachin S.
AGP for the respondent – State : Mr. S.G. Sangale
...

**CORAM : MANGESH S. PATIL &
SHAILESH P. BRAHME, JJ.**

DATE : 29 SEPTEMBER 2023

PC :

We have heard the learned advocate Mr. Deshmukh for the applicant who is the original petitioner.

2. Though there is an application seeking condonation of delay in filing the review application, we have requested the learned advocate for the petitioner and the learned AGP to address us on merits of the review application.

3. The applicant who is the original petitioner had put up a challenge to the order dated 22.05.2019 passed by the respondent – Deputy Director of Education whereby, for the reasons recorded therein, the approval granted to the petitioner's appointment as

Assistant Teacher under the provisions of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 (**MEPS Act**) was held to be illegal and the order of the Education Officer dated 22.08.2014 granting approval was cancelled.

4. By the order under review, the writ petition was dismissed.

5. The learned advocate Mr. Deshmukh for the petitioner - applicant would vehemently submit that in-fact, the order that was under challenge passed by the Deputy Director of Education was preceded by a show cause notice dated 23.05.2016. He was called upon to explain as to why the approval granted to his appointment be not recalled for the reason that it was made without seeking necessary prior approval of the competent authority and without following all the parameters required by law for making the appointments. However while passing the order, the Deputy Director of Education had come out with some additional reasons which do not find place in the show cause notice. An attempt was made even to demonstrate as to how the post against which the petitioner was appointed was not sanctioned and that there was backlog of a reserved category candidate. He would submit that the order could not have been passed by resorting to some new grounds which were not indicated to the petitioner in the notice to show cause.

6. He would submit that this aspect could not be brought to the notice of this Court when the order under review was passed. He submits that there was a communication sent by the Education Officer (Primary) - respondent no. 6 dated 18.10.2011 wherein he had expressly informed that there was no backlog in the school.

7. Learned advocate for the petitioner would further submit that since the Deputy Director has taken into account the roster of the year 2007 when the petitioner was appointed in the year 2010 and the roster applicable as on that date ought to have been considered. After considering everything, the approval was granted. There was no reason to cause any interference. He would further submit that a sanctioned post was very well available when the petitioner was appointed. Some similary placed employees had approached this Court and were protected. Therefore, even the petitioner could not have been treated differently.

8. Per contra, the learned AGP Mr. Sangale would submit that this being a review petition, the petitioner is not entitled to make out a new ground and is merely supposed to demonstrate any error apparent on the face of the record. He would submit that the petitioner is not coming with any new material. All the points being agitated have been duly considered by this Court in the order under review and the

application being *sans* any ground as contemplated under section 115 of the Code of Civil Procedure, the review application be dismissed.

9. Needless to state that this being a review application, it is imperative for the petitioner to demonstrate the sustainability of the request within the parameters as are recognized in law for undertaking a review.

10. The points as are being agitated now before us were agitated when the writ petition was being heard. The order under review expressly demonstrates as to how the petitioner's appointment was not strictly in accordance with the provisions of section 5 of the MEPS Act and rule 9 of the MEPS rules. It was also considered that though no prior permission is contemplated under section, an intimation to the Education Officer was imperative so as to solicit an information regarding the backlog. Even the request of the petitioner who falls in NT category candidate against the post which was reserved for S.T. category was considered. In-fact, the management – respondent no. 8 had expressly denied about any such recruitment process was undertaken much less to fill up the backlog. Even the views were expressed pertaining to the argument regarding the roster that was approved in the year 2007.

11. The learned advocate Mr. Deshmukh, in accordance with the stand being taken in the review application submitted that in the show cause notice served to the petitioner, the issue regarding such backlog was not raised but it forms the basis for passing the order by the Deputy Director which he could not have resorted to. However, it is not that something was being added to an order which was already passed. The petitioner was put to notice and was afforded an opportunity of being heard which he availed of and for the reasons recorded therein including the one regarding availability of the backlog was resorted to, to revoke the approval.

12. Pertinently, that was not the sole ground for revoking the approval. As is observed in the order under review, the Deputy Director had revoked the approval on other grounds and this Court had, as is mentioned herein-above, recorded the observations and conclusions demonstrating as to how even the other grounds regarding appointment having been made contrary to the mandate of section 5 of the MEPS Act and rule 9 of the MEPS Rules. Therefore, we are not ready to accept the submission of the learned advocate for the petitioner Mr. Deshmukh that resorting to the ground of backlog which was not indicated in the show cause notice but was made a ground in the order passed by the Deputy Director, which was under challenge in the writ petition, is not sustainable.

13. As far as the ground of parity is concerned, even that was considered and expressly refuted in paragraph no. 19.

14. There is no merit in the review application.

15. The civil application for delay and the review application both are dismissed.

[SHAILESH P. BRAHME]
JUDGE

[MANGESH S. PATIL]
JUDGE

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