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

**REVIEW APPLICATION NO. 82 OF 2022
IN
WRIT PETITION NO. 8347 OF 2019**

**AHILYABAI HOLKAR SHIKSHAN PRASARAK MANDAL
THROUGH ITS SECRETARY AND ANOTHER
VERSUS
SUDEV NAGNATH KAMBLE AND OTHERS.**

...
Mr. V.D. Sapkal, senior Advocate i/b. Mr. M.S. Taur, Advocate for
applicants,
Mr. A.S. Shinde, AGP for State
Mr. V.D. Salunke, Advocate for respondent No.1

CORAM : S.G. CHAPALGAONKAR, J.

**RESERVED ON : 8th JULY, 2024.
PRONOUNCED ON : 22nd JULY, 2024.**

ORDER :-

1. The applicants are seeking review of the judgment and order dated 20.1.2022 passed by this court in W.P. No. 8347 of 2019.
2. Mr. V.D. Sapkal, learned senior advocate appearing for the applicant submits that the respondent No.1 had filed W.P. No. 3847 of 2019 assailing the judgment and order dated 12th April, 2019 passed in Appeal NO 29 of 2023 by School Tribunal, Latur. The writ petition was finally heard and disposed of vide judgment and order dated 24.1.2022. This court has been pleased to set aside termination order of the respondent dated 27.4.2013 so also the judgment and order dated 12.4.2019 passed by the School Tribunal upholding the termination order and remitted the matter back to the management with liberty to continue inquiry proceeding against petitioner from the stage of issuance of charge

sheet and submission of reply by the petitioner to the said charge sheet.

3. Mr. Sapkal, learned advocate submits that this Court has observed that the inquiry initiated against the petitioner (respondent No.1 herein) was completed in hasty manner and even the report of inquiry was not forwarded to the respondent No.1. It is further observed that in absence of copy of inquiry report being supplied to the petitioner, decision has been arrived to put end to the services of the petitioner. As such, the inquiry was high-handed and unsustainable.

4. Mr. Sapkal submits that aforesaid observations are contrary to record and based on factually incorrect submissions advanced during course of arguments. He points out that in fact report of inquiry was served upon the petitioner. Thereafter management took final decision. By inviting attention of this court to the procedure prescribed under Rule 36 and 37 of the M.E.P.S. Rules of 1981, he submits that once report of inquiry is furnished to the delinquent, he is not expected to offer explanation on report and it is the sole prerogative of the management to proceed on the basis of that report. No opportunity is contemplated at this stage in favour of the delinquent to offer any explanation or otherwise. The non-supply of inquiry report would not, therefore, be fatal or affect the inquiry and merit thereof. He would, therefore, submit that decision rendered by this Court needs to be reviewed and recalled and writ petition needs to be restored to its original position for afresh hearing.

5. Per contra, Mr. V.D. Salunke, learned advocate for respondent No.1 fairly accepts that the statement appearing in the

judgment about non-service of inquiry report to the petitioner is the result of inadvertent submission during the course of hearing before this Court. However, according to him, this Court considered many other aspects of the matter and thought it fit to quash and set aside the termination order as well as decision of the School Tribunal, in appeal.

6. According to Mr. Salunke, the error is not so material that would result in miscarriage of justice and does not constitute good ground for recall of the order.

7. Having considered submissions advanced, it would be apposite to refer to Section 114 of the C.P.C. that deals with the scope of review, which reads thus :-

“114. Review : subject as aforesaid, any person considering himself aggrieved :-

(a) by a decree or order from which an appeal is allowed by this Code, but from which no appeal has been preferred;

(b) by a decree or order from which no appeal is allowed by this Code;

(c) by a decision on a reference from a Court of Small Causes, may apply for a review of judgment to the Court which passed the decree or made the order, and the court may make such order thereon as it things fit.”

8. It is more elaborated under Order XLVII of CPC, which reads thus :-

“Application for review of judgment

(1) Any person considering himself aggrieved-

(a) by a decree or Order from which an appeal is allowed,

but from which no appeal has been preferred,

(b) by a decree or Order from which no appeal is allowed, or

(c) by a decision on a reference from a Court of Small Causes, and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence was not within his knowledge or could not be produced by him at the time when the decree was passed or Order made, or on account of some mistake or error apparent on the face of the record or for any other sufficient reason, desires to obtain a review of the decree passed or Order made against him, may apply for a review of judgment to the Court which passed the decree or made the Order.

(2) A party who is not appealing from a decree or Order may apply for a review of judgment notwithstanding the pendency of an appeal by some other party except where the ground of such appeal is common to the applicant and the appellant, or when, being respondent, he can present to the Appellate Court the case on which he applies for the review.

1[Explanation-The fact that the decision on a question of law on which the judgment of the Court is based has been reversed or modified by the subsequent decision of a superior Court in any other case, shall not be a ground for the review of such judgment.] .

9. The Supreme Court of India, in the matter of ***“Kamlesh Verma Vs. Mayawati and others , reported in (2013)8 SCC 320***, observed that the review proceedings have to be strictly confined to the scope and ambit of Order 47 Rule 1 and summarized the principles for exercising review jurisdiction in paragraph 20, as under :-

“20. Thus, in view of the above, the following grounds of review are maintainable as stipulated by the statute:

20.1 (A) When the review will be maintainable:-

(i) Discovery of new and important matter or evidence which, after the exercise of due diligence, was not within knowledge of

the petitioner or could not be produced by him;

(ii) Mistake or error apparent on the face of the record;

(iii) Any other sufficient reason. The words “any other sufficient reason” has been interpreted in Chhajju Ram vs. Neki, AIR 1922 PC 112 and approved by this Court in Moran Mar Basselios Catholicos vs. Most Rev. Mar Poulouse Athanasius & Ors., (1955) 1 SCR 520, to mean “a reason sufficient on grounds at least analogous to those specified in the rule”. The same principles have been reiterated in Union of India vs. Sandur Manganese & Iron Ores Ltd. & Ors., JT 2013 (8) SC 275.

20.2 (B) When the review will not be maintainable:-

(i) A repetition of old and overruled argument is not enough to reopen concluded adjudications.

(ii) Minor mistakes of inconsequential import.

(iii) Review proceedings cannot be equated with the original hearing of the case.

(iv) Review is not maintainable unless the material error, manifest on the face of the order, undermines its soundness or results in miscarriage of justice.

(v) A review is by no means an appeal in disguise whereby an erroneous decision is re-heard and corrected but lies only for patent error.

(vi) The mere possibility of two views on the subject cannot be a ground for review.

(vii) The error apparent on the face of the record should not be an error which has to be fished out and searched.

(viii) The appreciation of evidence on record is fully within the domain of the appellate court, it cannot be permitted to be advanced in the review petition.

(ix) Review is not maintainable when the same relief sought at the time of arguing the main matter had been negated.”

10. In the light of aforesaid principles, it needs to be examined from judgment under review, whether any error apparent on the face of record occurred, particularly, so material or manifest that resulted in miscarriage of justice. This court will have to bear in mind that review is not an appeal in disguise or a means to appreciate or re-appreciate the correctness of decision. In present matter while passing order under review this Court observed as under :-

“The settled principle of law being ‘justice should not only be done but seem to be done’ has been well accepted in the Indian scenario, particularly in the service jurisprudence. The petitioner may suffer serious consequences for indulging in alleged acts of misconduct, which he was accused of, by issuance of show-cause notice and subsequently, the charge-sheet issued on 12-03-2013. If the charges leveled against the petitioner are to be viewed with seriousness, in that contingency, before adjudging him guilty of the said charges, it was expected for the Management to give due opportunity for him to represent himself in the inquiry process. The inquiry committee which was constituted, was objected by the petitioner by filing writ petition and since his petition was found to be without any merit it came to be rejected and therefore, the petitioner would not have insisted upon postponement of the inquiry proceedings in the wake of the decision of the Management to appoint 02 Members Committee. However, the manner in which the inquiry progressed further depict a hasty decision of the Management and the urge to somehow put an end to the proceedings and to the services of the petitioner and this can be reflected from the fact that the petitioner did not remain present before the inquiry officer on 06-04-2013 and on 09-04-2013 the proceedings in the inquiry were completed, in his absence. Even the report of the inquiry is not forwarded to him and this position is not disputed by the learned counsel for Management, which is apparent and manifest from the affidavit-in-reply filed by the Management. In absence of the copy of inquiry report being supplied to the petitioner and the inquiry being concluded within a span of 03 days, and further the report of the inquiry being received by the Management itself on 26-04-2013 without affording any opportunity to the petitioner to submit his comments on the inquiry report or even giving him an opportunity to peruse the same, on 27-04-2013 itself the decision is taken by the

disciplinary Committee to put an end to the services of the petitioner by the Management, speaks volumes and such an high-handed approach on the part of the Management cannot be sustained at all.”

11. The reasoning recorded by this Court while allowing the writ petition takes into account various facets of the matter. Firstly, this court stressed upon non observance of principles of natural justice during inquiry upon which the action of termination has been taken. This Court observed that the inquiry initiated against the petitioner was pertaining the misconduct of the year 2007-2009. The inquiry was initiated vide show cause notice issued in the month of January 2013. This Court recorded that inquiry progressed in a short duration and led to hasty decision that depicts pre-determined approach on the part of management. This Court recorded that during the period from 6.4.2013 to 9.4.2013 inquiry summed and management took final decision on 27.4.2013. This Court noted that the justice should be impartial, fair and equal for all and ensure protection of individual rights and rules of natural justice are required to be followed

12. Overall survey of the order under review depicts that although impugned order erroneously records that report of inquiry was not supplied to the petitioner that itself was not sole reason behind the ultimate conclusion. Many other factors weighed court while reaching to the ultimate conclusion. In that view of the matter, even excluding that part of the order, the decision making could have not have been materially affected. It is difficult to hold that only because incorrect statement of fact, final decision has been arrived by this Court. When decision is based on multiple reasons and one of such reason is based on

erroneous submission, that itself would not constitute good ground for review and to recall the order. Although Mr. Sapkal persuaded this Court to hold that service of inquiry report on the petitioner had no consequence in deciding the validity of the termination order, such contention cannot be considered in exercise of review jurisdiction. Resultantly, there is no merit in the review application. Review application stands dismissed.

[S.G. CHAPALGAONKAR]
JUDGE

grt/-