



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

3 REVIEW APPLICATION (CIVIL) NO.61 OF 2024
IN
WRIT PETITION NO.4168 OF 2022

Late Pandit Shyamprasad Mukharjee Shikshan Sanstha,
Kille Dharur, Tq. Dharur, Dist. Beed
Through it's Secretary.

... Applicant

... **Versus** ...

- 1 The State of Maharashtra
Through it's Secretary,
Department of Social Welfare
and Special Assistance,
Mantralaya, Mumbai.
- 2 The Director for Welfare of
VJNT, OBC & SBC,
Maharashtra State, Pune.
- 3 Regional Deputy Commissioner,
Social Welfare Department,
Aurangabad.
- 4 The Assistant Commissioner,
Social Welfare, Beed,
Dist. Beed.
- 5 Vimal d/o Namdeorao Kurwade,
Age 53 yrs., Occ. Service as Ex Headmistress
at Vasantrya Bhagwat Primary Ashram School,
Soni Moha, Tq. Dharur, Dist. Beed,
R/o Laxminagar, Adas Road,
Kille Dharur, Tq. Dharur, Dist. Beed.

... Respondents

...

Mr. V.V. Bhavthankar, Advocate for applicant

Mr. A.M. Phule, AGP for respondent Nos.1 to 4

Mr. V.D. Salunke, Advocate h/f Mr. P.G. Rodge, Advocate for respondent No.5

...

**CORAM : SMT. VIBHA KANKANWADI &
S.G. CHAPALGAONKAR, JJ.**

DATE : 22nd AUGUST, 2024

ORDER : (PER : SMT. VIBHA KANKANWADI, J.)

1 Present review application has been filed on behalf of original respondent No.5 in Writ Petition No.4168 of 2022 for review of the Judgment and order passed by this Court on 02.04.2024 in the said writ petition.

2 The writ petition was filed for issuance of writ of mandamus against respondent No.5 for direction to reinstate the petitioner forthwith on the post of Head Mistress of Primary Ashram School run by respondent No.5. Original petitioner had challenged the Judgment and order passed by respondent No.3 dated 25.05.2022 in Appeal No.4/2021 on the ground that the appeal itself was not maintainable by holding that the remedies created/formed by the State vide Government Resolution dated 03.10.2017 from clauses 02 onwards were not available to the petitioner. By the said

Judgment and order dated 02.04.2024 this Court allowed the petition. The declaration as prayed was granted. It was also declared that the alleged resignation letter by petitioner dated 02.08.2019 was not voluntary and the action taken by respondent No.5 as per Resolution dated 31.10.2019 was illegal. Respondent No.5 was directed to reinstate the petitioner on the post of Head Mistress.

3 Heard learned Advocate Mr. V.V. Bhavthankar for applicant, learned AGP Mr. A.M. Phule for respondent Nos.1 to 4 and learned Advocate Mr. V.D. Salunke holding for learned Advocate Mr. P.G. Rodge for respondent No.5.

4 It has been vehemently submitted on behalf of applicant that this Court in paragraph Nos.10 and 11 of the Judgment wrongly disbelieved the statement made in affidavit-in-reply by respondent No.5 that the letter dated 24.10.2019 of the original petitioner was received to the respondent society by RPAD on 04.11.2019 as there was bare statement. In fact, the documents to that effect were filed before Deputy Commissioner, Social Welfare, Aurangabad. In all 22 documents were also produced by the society to show series misconduct on the part of original petitioner. In fact, notice dated 02.08.2019 given by the petitioner would show that she had completed 20

years 20 days service and, therefore, give notice for voluntary retirement which was then accepted by the applicant. Further, the appropriate remedy for the petitioner was to approach the competent authority under M.E.P.S. Act. In fact, Ashram school is primary school, which is conducting 1st to 8th standard and remedy of appeal under Section 9 of the M.E.P.S. Act to the employee of Primary Ashram School is before School Tribunal. The said remedy is available after coming into force of the Right to Education Act (Section 20 (2) of R.T.E. Rules, 2011). He relies on the decision in **Latika Rajaram Mane vs. State of Maharashtra and others** decided by coordinate Bench at Principal Seat reported in [2013 (4) Mh.L.J.]. He also relies on the decision by Single Bench of this Court in **Bhaskar Sonerao Deshmukh vs. Ahilyabai Holkar Shikshan Prasarak Mandal, Karepur and another** in Writ Petition No.3995 of 2019 decided on 04.09.2023, wherein it has been held that the appropriate Forum is the School Tribunal in view of Section 9 of the M.E.P.S. Act read with Section 20(2) of the R.T.E. Act.

5 Per contra, learned Advocate appearing for respondent No.5 in the present review application (original petitioner) strongly objected the review application by submitting that all those arguments were in fact available when submissions were made. No such stand was even taken in the affidavit-in-reply in the writ petition that this Court has no jurisdiction to

entertain the petition. In fact, even respondent No.5 had filed the appeal before the Forum, which is made available in view of Government Resolution and had not approached the School Tribunal when in fact, initially the Education Officer had given the decision in favour of the original petitioner.

6 We would like to consider the legal position first in respect of review application. When a detailed order has been passed by this Court after considering the material on record and the submissions by both sides, then it cannot be so easily disturbed. Learned Advocate for review applicant has fairly admitted that none of these grounds, which he wants to raise in review application, were canvassed on behalf of respondent No.5 at the time of writ petition.

6.1 In **Haryana State Industrial Development Corporation Limited vs. Mawasi and others** [(2012) 7 SCC 200] it has been held that “Roving inquiry or *de novo* hearing in guise of review is impermissible.” Reliance therein was placed on the decision in **Thungabhadra Industries Ltd. vs. Government of A.P.** [AIR 1964 SC 1372] (Three Judge Bench), wherein it is observed that -

"11. ... A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected, but lies only for patent error. We do not consider that this furnishes a suitable occasion for dealing with this difference exhaustively or in any great detail, but it

would suffice for us to say that where without any elaborate argument one could point to the error and say here is a substantial point of law which stares one in the face, and there could reasonably be no two opinions, entertained about it, a clear case of error apparent on the face of the record would be made out."

6.2 Further, in **Parsion Devi vs. Sumitri Devi** [(1997) 8 SCC 715] it has been observed that -

"9. ... An error which is not self-evident and has to be detected by a process of reasoning, can hardly be said to be an error apparent on the face of the record justifying the court to exercise its power of review under Order 47 Rule 1 CPC ... A review petition, it must be remembered has a limited purpose and cannot be allowed to be 'an appeal in disguise'."

6.3 In **Kamlesh Verma vs. Mayawati** [(2013) 8 SCC 320] it has been observed that -

"An error which is not self-evident and has to be detected by a process of reasoning is not an error apparent on the face of the record".

6.4 Further, in **State of West Bengal and others vs. Kamal Sengupta and another** [(2008) 8 SCC 612] it is observed that -

"21. At this stage, it is apposite to observe that where a review is sought on the ground of discovery of new matter or evidence, such matter or evidence must be relevant and must be of such a character

that if the same had been produced, it might have altered the judgment. In other words, mere discovery of new or important matter or evidence is not sufficient ground for review *ex debito justitiae*. Not only this, the party seeking review has also to show that such additional matter or evidence was not within its knowledge and even after the exercise of due diligence, the same could not be produced before the court earlier.

22. The term "mistake or error apparent" by its very connotation signifies an error which is evident *per se* from the record of the case and does not require detailed examination, scrutiny and elucidation either of the facts or the legal position. If an error is not self-evident and detection thereof requires long debate and process of reasoning, it cannot be treated as an error apparent on the face of the record for the purpose of Order 47 Rule 1 CPC or Section 22(3)(f) of the Act. To put it differently an order or decision or judgment cannot be corrected merely because it is erroneous in law or on the ground that a different view could have been taken by the court/tribunal on a point of fact or law. In any case, while exercising the power of review, the court/tribunal concerned cannot sit in appeal over its judgment/decision."

7 Here, in this case, we have called the record of Writ Petition No.4168 of 2022 and perused the same. No documents were attached in affidavit-in-reply to show that respondent No.5 had received letter dated 24.10.2019 by original petitioner on 04.11.2019. There was no hurdle for the review applicant to seek directions for calling the record from the said

authority which decided Appeal No.2/2021 or he could have withdrawn those documents from the possession of the said authority and could have produced the same before this Court. Therefore, except bare statement there was nothing before us which can support the statement in affidavit-in-reply that the said letter by original petitioner dated 24.10.2019 was received by respondent No.5 on 04.11.2019. Further, as regards the remedy of appeal under Section 9 of the M.E.P.S. Act, neither this contention was raised in the affidavit-in-reply nor submissions were made by the learned Advocate representing respondent No.5. Therefore, we do not find that there was any error apparent on the face of record when we decided the writ petition. Review is, therefore, impermissible. Hence, dismissed.

(S.G. CHAPALGAONKAR, J.)

(SMT. VIBHA KANKANWADI, J.)

agd