



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

REVIEW APPLICATION NO.08.2021
IN
WRIT PETITION NO.3114 OF 1999

Ashok Raghunath Gadakh,
Age 57 yrs., Occ. Nil,
R/o C/o Shri. U.M. Londhe,
Principal, Shaneshwar Vidyalaya
and Junior College, Sonai,
Dist. Ahmednagar.

... Applicant

... **Versus** ...

- 1 Shri Marutrao Ghule Patil
Shikshan Sanstha, Bhenda,
Tq. Newasa, Dist. Ahmednagar,
Through it's Secretary.
- 2 The Principal,
Jijamata College of Science and
Arts, Dnyaneshwar Nagar,
Bhenda (Bk), Tq. Newasa,
Dist. Ahmednagar.
- 3 The Registrar,
Poona University,
Ganesh Khind, Pune.
- 4 The State of Maharashtra
Through the Presiding Officer,
College Tribunal, Pune.

... Respondents

...

Mr. Y.P. Deshmukh, Advocate h/f Mr. A.D. Kawre, Advocate for applicant

Mr. S.R. Barlinge, Advocate for respondent Nos.1 and 2

Mr. P.D. Patil, AGP for respondent No.4

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CORAM : S.G. CHAPALGAONKAR, J.

RESERVED ON : 05th JULY, 2024

PRONOUNCED ON : 16th JULY, 2024

ORDER :

1 Applicant seeks review of Judgment and order dated 29.04.2019 passed by this Court in Writ Petition No.3114 of 1999.

2 Mr. Yashodeep Deshmukh, learned Advocate appearing for applicant submits that applicant had assailed termination of his services in Appeal bearing No.37/1997 before University and College Tribunal at Pune. The Tribunal after hearing the parties, allowed the appeal vide order dated 19.02.1999 and directed respondents to reinstate applicant with back wages. Respondent – Management assailed order of Tribunal in Writ Petition No.3114 of 1999. This Court heard said writ petition finally and disposed of vide order dated 29.04.2019 replacing the order of Tribunal by directing Management to pay 12 months salary with allowances in lieu of reinstatement. He would submit that order passed by this Court needs to be reviewed. He submit that this Court concurred findings of Tribunal regarding illegal termination, however, replaced order of reinstatement and back wages

with 12 months salary, in lieu of reinstatement on the ground that after 20 years reinstatement cannot be ordered. Mr. Deshmukh submits that this Court relied upon Section 61(2)(E) of Maharashtra Universities Act, 1994, which provides discretion with Tribunal to grant compensation in lieu of reinstatement, but ignored that Tribunal had not exercised such discretion. As such this Court had no reason to replace compensation in lieu of reinstatement as ordered by Tribunal.

3 Mr. Yashodeep Deshmukh would further submit that this Court in support of conclusion observed that applicant has not taken any efforts for early disposal of writ petition for almost 20 years. However, such observations are contrary to record, since applicant has made as many as seven applications for expeditious hearing and disposal of writ petition during this period. However, matter could not be taken up for final hearing. Mr. Yashodeep Deshmukh would, therefore, submit that conclusion recorded by this Court is based on mistake of facts. Therefore, impugned order needs to be recalled.

4 He would further submit that applicant cannot be punished for delay in disposal of writ petition. He relies upon observations of Madras High Court in case of **A.S. Mani vs. Velkumar** in order dated 18.11.2019 in **Crl.O.P (MD)No.13319 of 2015** to contend that act of the Court shall harm none.

5 Having considered submissions advanced, it can be observed that Writ Petition No.3114 of 1999 has been finally disposed by this Court vide order dated 29.04.2019 after hearing parties. This Court observed that applicant was illegally given temporary appointments when he was appointed against clear and permanent vacant post, after following due process of law through duly constituted selection committee. However, while dealing with prayer for reinstatement, this Court observed that applicant accepted such appointment against post reserved for Scheduled Caste candidate without raising protest and worked as a part time Teacher. Taking into account nature of service rendered by applicant before termination, this Court observed that after lapse of 20 years of termination order, there is no propriety in directing reinstatement on post of Lecturer as someone else must be occupied said post. Consequently, taking resort to the enabling power under Section 66(2)(E) of the Maharashtra Universities Act, 1994 this Court directed to pay compensation equivalent to 12 months salary to applicant.

6 Apparently, this Court arrived at definite conclusion taking into account facts and circumstances of case and moulded relief using enabling provisions under the Universities Act. If applicant is aggrieved by view taken by this Court, he could have exhausted remedy by filing Special Leave Petition before the Hon'ble Supreme Court of India. However, disagreement

of applicant with view taken by this Court cannot be a ground to review the order.

7 The scope of application for review is much more restricted in terms of Order 47 Rule 1 of the Code of Civil Procedure, 1908. It is trite that Court may allow review on three specified grounds viz. i) discovery of new and important matter or evidence, which, after exercise of due diligence, not within the applicant's knowledge or could not be produced by him at the time when decree was passed; ii) mistake or error apparent on face of record; and iii) for any other sufficient reason. The term "any other sufficient reason" is interpreted at least analogous to all the specified rules. Pertinently, the Hon'ble Supreme Court of India in case of **Lily Thomas vs. Union of India and others** [AIR 2000 SUPREME COURT 1650] observed that – "*The power of review can be exercised for correction of a mistake and not to substitute a view. Such powers can be exercised within the limits of the statute dealing with the exercise of power. The review cannot be treated as an appeal in disguise. The mere possibility of two views on the subject is not a ground for review.*" Keeping in mind aforesaid parameters of jurisdiction to be exercised in matters of review, contentions of applicant needs to be examined.

8 Although observation of this Court that applicant has failed to take efforts for early disposal of writ petition is factually incorrect, that itself

was not reason for moulding the relief. Even assuming that applicant was not at fault, in spite of his efforts, matter could not be taken up for hearing. What weighed mind of Court while declining relief of reinstatement after 20 years, was short tenure of service rendered by applicant prior to termination and his over all conduct while accepting temporary appointments against reserved posts.

9 In that view of the matter, it cannot be said that conclusion drawn by this Court was totally based on one line observation regarding non taking steps to secure early disposal of writ petition.

10 So far as another contention of applicant that discretion under Section 66(2)(E) of the Maharashtra Universities Act, 1994, available to Tribunal could not have been used by this Court, particularly when Tribunal had directed reinstatement with back wages. This submission cannot be accepted. The writ Court in such cases can exercise all powers available with Tribunal for moulding the relief. Even otherwise this Court possess powers to mould reliefs in writ jurisdiction. Consequently, there is no merit in review application. Hence, review application stands rejected.

(S.G. CHAPALGAONKAR)
JUDGE