

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

REVIEW PETITION NO. 135 OF 2024

IN

CIVIL WRIT PETITION NO. 10557 OF 2009

Shri Sai Prasad Shikshan Prasarak Mandal,
Sawarwadi Thr President B P Khopkar

... Review
Petitioner

IN THE MATTER BETWEEN

Shri. Shivaji Bhiru Lad

... Petitioner

Versus

The State of Maharashtra & Ors.

...Respondents

Mr. Chetan Patil for the Review-Petitioner.

Mr. Narendra V. Bandiwadekar Senior Advocate a/w Mr. Vinayak R Kumbhar, Mr. Rajendra B. Khaire and Mr. Aniket S. Phapale for Respondent No. 2.

Mr. Prashant Bhavke for the Respondent Nos. 3 and 5.

Coram : Sharmila U. Deshmukh, J.

Date : MAY 5, 2025.

P. C. :

1. By this Review Petition, the Review Petitioner seeks review of the order dated 15th July, 2024 passed in Writ Petition No. 10557 of 2009 by which the Consent Terms entered into between the Writ Petitioner-Employee, the Chairman of the Trust and the Headmaster of the school were taken on record and Writ Petition was disposed of in terms of the Consent Terms.

2. The pre-dominant ground on which the Review of the acceptance of the Consent Term and order of 15th July, 2024 is sought

is that by reason of order of injunction dated 29th November, 2022 passed by the Assistant Charity Commissioner, the trustees of the Trust were restrained from taking any important policy decisions in respect of the Trust and the filing of consent terms was in violation of the injunction order which was not brought to the notice of this Court at the time of acceptance of Consent Terms.

3. Learned Counsel appearing for the Review Petitioner has taken this Court through the order of 29th November, 2022 as well as the Change Reports which were filed by the rival factions of the Trust and submits that there is an error apparent on the face of record and fraud as the order of injunction was not pointed out to this Court.

4. This is sought to be disputed by learned Counsel appearing for the Respondents by submitting that the Consent Terms were executed pursuant to resolution of 14th October, 2022, which was prior to the passing of the injunction order. It is further submitted that the decision of reinstatement of the employer is not policy decision in respect of trust but is an administrative decision taken in respect of the school. The termination was pursuant to departmental inquiry under the provisions of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 and the termination which was challenged in the Writ Petition was sought to be compromised. Reliance is sought to be placed on the decision in the case of ***Vinod s/o.***

Narayan Warhekar vs. Dnyandeo s/o. Kisan Shegokar¹ to contend that as the initiation of departmental inquiry is held not to be policy decision, the subsequent action of compromise cannot be considered to be policy decision.

5. In rejoinder, Mr. Patil, would submit that the order dated 28th March, 2021 passed in the Writ Petition when perused does not reflect the passing of the resolution which would have been definitely pointed out to this Court. In event the same was passed and therefore it is back dated resolution.

6. I have perused the Judgment under review and considered the submissions.

7. In exercise of review jurisdiction it is not open for this Court to go into the validity of the resolution passed by the Trust resolving to execute the consent terms to ascertain whether the same is back dated or not. It is admitted position that there are rival factions claiming to be elected trustees of the Trust and the validity of resolution in review jurisdiction cannot be determined. The fact remains that there is resolution of the Trust, which also finds mention in the consent terms. Though by the consent terms, the liability of payment of back wages was sought to be imposed upon the State, by order dated 15th July, 2024, it was made clear that the acceptance of

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the Consent Term does not amount to direction to the Educational Officer to decide the proposal in any particular manner. As such there is no fraud which is played on the public exchequer by the Consent Terms.

8. Dealing with the issue of the restraint order passed by the Assistant Charity Commissioner, the order of injunction came to be passed in proceedings seeking to challenge the Change Reports filed and it is in that context that the Assistant Charity Commissioner restrained the trustees from taking any policy decision in respect of the Trust. The order of injunction has to be understood in the context of subject matter before the Assistant Charity Commissioner. The restraint order does not place fetters on taking of administrative decisions in respect of the school run by the Trust. The decision relied upon by Mr. Bhavake of ***Vinod s/o. Narayan Warhekar vs. Dnyandeo s/o. Kisan Shegokar (supra)*** observes in the context of the termination of an employee governed by M.E.P.S. Act, that the action of initiation of departmental inquiry against employee of the school cannot be said to be policy decision in respect of the trust. The termination was admittedly pursuant to departmental inquiry initiated under the M.E.P.S. Act and has held not to be a policy decision.

9. Resultantly the act of comprising the termination, which had taken place under the MEPS Act, cannot take a different colour.

Policy decisions are broader and apply generally to the organisation whereas administrative decision are more individual specific or situation specific. The issue of the reinstatement of the employee particularly without any back wages cannot said to be covered by the injunction order passed by the Trust. The order of injunction was not necessary to be brought to notice of Court and no case of fraud or error apparent on face of record is made out.

10. In light of the above, no grounds for review are made out. Review Petition stands dismissed.

[Sharmila U. Deshmukh, J.]