



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR**

**MISC. CIVIL APPLICATION NO. 1041 OF 2023
IN
WRIT PETITION NO. 7591 OF 2019**

Vasant Shankarrao Kose & Ors. ... Applicants
Versus
Prerna Shikshan Mandal Sindewahi,
Chandrapur through President,
Rameshchandra Narayan Raut & Ors. ... Respondents

Adv. A. D. Bhate for the Petitioners.
Adv. S. O. Ahmed for Respondent Nos. 1 and 2.
Adv. Mrunal Naik for Respondent No.3.

CORAM: MANISH PITALE, J.
DATE : 31st JANUARY 2025
(In chamber through V.C.)

P.C. :

. Heard learned counsel for the applicant and the learned counsel for the contesting respondent Nos. 1 and 2 (original petitioners in Writ Petition).

2. By this application, the applicants seek a review of order dated 15th January 2020 passed by this Court in Writ Petition No. 7591 of 2019, whereby the writ petition was allowed and the judgment and order dated 1st December 2016 passed by School Tribunal, Chandrapur, was set aside.

3. The learned counsel for the applicants submits that while allowing the writ petition and making specific observations with

regard to the claim of the original respondent No.1 (predecessor of the applicants herein) as regards the issue of back wages, this Court emphasized on the absence of documents and material placed on record by the original respondent No.1 with regard to any attempt made on his part to join his duties in the school by approaching the headmaster on 29th April 2016 or immediately thereafter. It is submitted that at the relevant time, the concerned documents were not with the respondent No.1 as he had given those documents to his Advocate pursuing execution proceeding before the School Tribunal and in the absence of proper instructions to the Advocate representing him in the writ petition before this Court, the entirety of the documentary material could not be placed on record and therefore, this Court reached an adverse finding against the original respondent No.1.

4. In that regard, the learned counsel for the applicant relied upon documents placed on record with the review application at annexures 'C' to 'N'. It was submitted that the aforesaid documents not only show the efforts made by the original respondent No.1 in the writ petition to join duty, but there were positive directions issued even by the Educational Officer, directing the writ petitioners (respondent Nos.1 and 2 herein) to ensure that the original respondent No.1 was permitted to join duties. It was submitted that a perusal of the said documents would demonstrate that the order dated 15th January 2020, allowing the writ petition, deserves to be reviewed.

5. On the other hand, the learned counsel appearing for the writ petitioners (respondent Nos. 1 and 2 herein) submitted that the aforesaid documents, upon which reliance is placed in the present application, can be of no consequence because the said documents pertained to a period after the judgment and order dated 1st December 2016 was passed by the School Tribunal. It was submitted that a perusal of paragraph 3 of the order dated 18th December 2019, read with paragraph 7 of the order dated 15th January 2020, whereby the writ petition was allowed, would demonstrate that the respondent No.1, at the relevant time and even in the present review application, has not been able to place on record material to answer the specific query put to the said original respondent No.1 in respect of efforts made to join duty, after pursis dated 28th April 2016 was filed before the School Tribunal, specifically stating that the order of terminating service of the original respondent No.1 dated 22nd March 2016 was cancelled on 27th March 2016. On this basis, it was submitted that there was no error on the face of record of the order dated 15th January 2020, allowing the writ petition.

6. This Court has considered the rival submissions. The chronology of events noted in the order dated 15th January 2020, allowing the original writ petition, would show that by the time the writ petition was taken up for consideration and disposal, the only relevant question pertained to the claim of the original respondent No.1 towards back wages. While discussing the claim

of the original respondent No.1 in that regard, this Court took into consideration the events that took place when the appeal of the respondent No.1 was pending before the School Tribunal in the context of order dated 22nd March 2016, terminating his service. The observations made in paragraphs 3 of the order dated 18th December 2019, which is reproduced in the order dated 15th January 2020 and paragraph 7 of the order dated 15th January 2020 of this Court are relevant and they read as follows :

Paragraph 3 of order dated 18th December 2019 :

“3. In the present case, the School Tribunal allowed the appeal of the respondent employee and directed reinstatement with back wages. In view of aforesaid subsequent event of superannuation of the respondent, there is no question of reinstatement and only the question of back wages remains. It is pointed out by the learned counsel for the petitioners that in the reply filed by them in the said appeal before the Tribunal, the petitioners had categorically stated that order of termination of service dated 22/03/2016 was cancelled on 27/3/2016 and that they were ready to reinstate the respondent, but, in the post of Supervisor. A pursis to that effect was filed before the Tribunal on 28/4/2016 and in response to the same, the respondent also filed a pursis on the same day before the Tribunal accepting the proposal of the petitioners for him to join in the post of Supervisor. The petitioners have also placed on record a document dated 29/4/2016, which is a letter submitted by the respondent to the President of the petitioner management for permission to join, in pursuance of the said pursis filed before the Tribunal. On the said letter, an endorsement was made by the petitioner management that similar application could be made by the respondent employee to the Head Master and he could join in the post of Supervisor. It is claimed by the petitioners that despite these developments the respondent employee did not report for duty after 29/04/2016 at all.”

Paragraph 7 of order dated 15th January 2020 :

“7. As noted above, in the order dated 18/12/2019, upon respondent No.1 approaching the President of the petitioner-Management for joining duty as supervisor pursuant to pursis dated 28/04/2016, placed before the Tribunal, he was advised to make such an application before the headmaster of the school and to join duties. On a pointed query put to the learned counsel appearing for respondent No.1 as to whether he approached the headmaster on 29/04/2016 or immediately thereafter, the learned counsel could not place on record or invite attention of this Court to any document to demonstrate that respondent No.1 indeed made any effort to join duties as supervisor by approaching the headmaster. The learned counsel strenuously contended that the post of supervisor was not existing in the school at all and this was evident from an affidavit filed by the petitioners in the other writ petition pertaining to the question of reversion of respondent No.1 from the post of headmaster to supervisor. It was submitted that when the post of supervisor was non-existent, respondent No.1 could not have joined and that his attempts to join even as an assistant teacher with the school were not permitted by the petitioners.”

7. A perusal of the documents filed along with the present application would show that all such documents, whereby the original respondent No.1 allegedly made attempts to join duty, were submitted after the Tribunal eventually allowed the appeal of respondent No.1. The documents even today do not answer the specific query put to the learned counsel then representing respondent No.1 in paragraph 7 of the order dated 15th January 2020.

8. This aspect had a crucial bearing on the manner in which the rival contentions were considered while disposing of original writ

petition by way of order dated 15th January 2020. It is to be noted that the order of termination of service was itself cancelled immediately on 27th March 2016 and a pursis to that effect was placed before the School Tribunal on 28th April 2016, during the pendency of the appeal. The petitioners had informed the original respondent No.1 that he had to report to the headmaster for joining duty. But, there is still no document to indicate as to what efforts were made by the original respondent No.1 on 29th April 2016 or thereafter, to immediately join duties, in order to successfully maintain his claim towards back wages.

9. Therefore, this Court is of the opinion that the review application does not raise sufficient grounds for demonstrating an error apparent on the face of the record for this Court to exercise jurisdiction in order to entertain the present review application.

10. Therefore, the review application is found to be without any merits and accordingly, it is dismissed.

MANISH PITALE, J.