



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

Misc. Civil Application (Review) No. 552 of 2024
in

Writ Petition No. 2172 of 2021 (D)

[Mahatma Fule Shikshan Sanstha, Anjangaon Surji, through its President
and ors. **..vs..** Ku. Savita Rangraoji Ingale and anr.]

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. K. S. Chiwarkar, Advocate instructed by Mr. Anand Parchure, Advocate
for the applicants/petitioners
Mr. S. A. Kanetkar, Advocate for respondent no. 1
Mr. S. B. Bissa, AGP for respondent no. 2

CORAM : ANIL L. PANSARE J.

DATED : 20-03-2025

Heard.

2. The review of order dated 10-6-2024 in Writ Petition No. 2172/2021 has been sought.

3. The petitioners in writ petition had approached this Court questioning the legality of the order dated 19-4-2021 passed by the School Tribunal, Amravati in Appeal No. 28/2018. The School Tribunal was pleased to set aside the promotion granted to petitioner no. 3 (promoted Head Master) by petitioner nos. 1 and 2 (the management). The reason why the promotion was set aside was that the post of Head Master in the girls school was filled in breach of sub-rule (4) of Rule 3 of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 (for short 'the Rules of 1981'), which requires the management to promote senior most lady teacher fulfilling the eligibility criteria given in Clause (b) of sub-rule (1) of Rule 3 whereas management had promoted male teacher i.e. petitioner no. 3 despite respondent no. 1 was the senior most lady teacher and was satisfying the criteria.

4. The petition was heard at length to find that what was held by the School Tribunal was in consonance with the provisions of the Rules of 1981.

5. The question now put forth is, is in the given set of facts, whether the School Tribunal should have fastened the liability of payment of back wages on Education Officer. The School Tribunal had directed petitioners to pay difference of arrears of salary to respondent no. 1

6. The review of the judgment passed by this Court is sought on the ground that this plea was taken by the petitioners, however, this Court has not considered the same. According to the petitioners, the liability to pay the arrears of difference in pay ought to have been fastened on Education Officer in terms of the judgment passed by the Supreme Court in the case of *Educational Society, Tumsar and ors. Vs. State of Maharashtra and ors. [(2016) 3 SCC 512]*, wherein the Supreme Court held that as a normal principle, whenever a terminated employee of an aided school succeeds in the challenge, the Government is supposed to bear the burden of back wages. At the same time, the Supreme Court, in the said case fastened the burden upon the management on the count that while terminating services of respondent no. 4 therein, the management acted without jurisdiction and without adhering to the statutory provisions.

7. Similar is the case here. Petitioner nos. 1 and 2 have ignored the statutory provisions viz. Rule 3 as also the judgment passed by the Division Bench of this Court in the case of *Vasant Ambadas Hanchate, Solapur Vs. State of Maharashtra and ors. [1985 Mh.L.J. 699]* to promote male teacher as a Head Master of girls school despite availability of competent candidate in the form of respondent no. 1. Such conduct would attract liability of payment of the arrears of difference in pay.

As such, learned counsel for the applicants/petitioners submits that the promotion granted to petitioner no. 3 was approved by the Education Officer and, therefore, he is equally responsible. However, this argument will be of no help to petitioner nos. 1 and 2 in as much as the initial burden will always be on the management to promote a person in accordance with the provisions of the Act or Rules relevant. Having ignored the provisions while promoting petitioner no. 3, the management will carry a blame of acting arbitrarily. In any case, such conduct will have to be deprecated and one of the ways is to fasten liability of payment upon the management.

8. Learned counsel for the petitioners has then invited my attention to paragraph no. 13 of the judgment in the case of *Educational Society, Tumsar* (supra) wherein the Supreme Court has commented upon the procedure followed by the management while terminating the employee. The Supreme Court held that before terminating the employee, the management ought to have, in terms of Rules, initiated participation of the representatives of the Government in the decision making process right from the decision to initiate the enquiry of the dismissal of respondent no. 4 therein. In such background, the Supreme Court held that such participation would have led to a situation where the State Government/Education Officer would have given its imprimatur to the entire proceedings including order of termination of respondent no. 4. The Supreme Court then proceeds to hold that had the termination order been set aside under such circumstances, it would have amounted to setting aside the order of the Government, making the Government responsible for payment of back wages, as the act of termination, found ultimately illegal, would have been with the blessings of the Government/Education Officer.

9. To my mind, the above findings will be of no help to the petitioners in as much as, the petitioner nos. 1 and 2 herein have not called upon Education Officer to become part of process of promotion, may be because such was not the requirement. The management itself was duty bound to promote senior-most lady teacher in terms of the provisions of the Rules of 1981.

10. Thus, the initial burden was upon the management to adhere to the provisions of the rules of promotion. In the circumstances, merely because the Education Officer has granted approval to promotion, would not exempt the management from payment of arrears of the difference in salary, the management being responsible for the illegality so committed.

11. Here is a case where the management acted grossly in breach of provisions of rules and the Education Officer, later on, proceeded to approve the promotion. The petitioner nos. 1 and 2 have further not shown from the record that the Education Officer was apprised of availability of respondent no. 1's candidature for promotion. In the circumstances, it will be not permissible to fasten liability of payment on the public exchequer. The management, having committed illegality, should pay the difference in salary as penalty in terms of the judgment passed by the Supreme Court.

12. That being so, it cannot be said that there occurred apparent error in the judgment passed by this Court where the present relief sought by the petitioners was not considered in detail, may be because this ground, though is said to have been taken in the petition, was not argued nor was judgment in *Educational Society, Tumsar* cited during the course of argument. In any case, if relief sought is not granted, it would amount to refusal to grant relief in terms of judgment in the

case of *Yashwant Sinha and ors. Vs. Central Bureau of Investigation and ors. [(2020) 2 SCC 338]*.

13. With the above observations, the application is dismissed.

(Anil L. Pansare, J.)

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