



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR
CIVIL APPLICATION NO. 2071 OF 2024
IN
WRIT PETITION NO. 5297 OF 2019**

The Education Officer (Secondary),
Zilla Parishad, Nagpur

... Applicant/
Original Respondent No.2

In the matter between :

Mahesh Vidya Prasarak Shikshan Sanstha,
through Secretary Smt. Shailaja Shailesh
Daburkar

... Petitioner

Versus

Sou. Meena w/o Laxmikant Jumde & Ors.

... Respondents

**WITH
WRIT PETITION NO. 5288 OF 2019**

Mr. Neeraj Patil, AGP for Applicant-Educational Officer.

Dr. B. G. Kulkarni for the Petitioner.

Mr. P. D. Meghe for Respondent No.1.

CORAM: MANISH PITALE, J.

DATE : 28th FEBRUARY 2025

(In chamber through V.C.)

P.C. :

. Heard Mr. Patil, learned AGP for the applicant i.e. Educational Officer (Secondary), Zilla Parishad, Nagpur, as also Dr. Kulkarni, learned counsel appearing for the original petitioner-Management and Mr. Meghe, learned counsel appearing for the original respondent No.1-Employee.

2. By this application, the applicant is seeking review of orders dated 29th March 2022, 8th July 2022, 15th July 2022 and 22nd July

2022 passed by this Court. It is the case of the applicant that the said orders need to be reviewed as the correct position of law needs to be appreciated in the light of the provisions of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 (MEPS Act) and the Rules framed thereunder.

3. The learned counsel for the review applicant submits that if the observations made in the judgment and order of the School Tribunal dated 15th April 2019, which is subject matter of challenge in the writ petition, are taken into consideration and the law laid down by the Supreme Court in the case of *Educational Society, Tumsar & Ors. v/s. State of Maharashtra & Ors., (2016) 3 SCC 512*, is applied to the factual position in the present case, it would be evident that the directions given in the order dated 29th March 2022 passed by this Court and consequential directions given in subsequent orders dated 8th July 2022, 15th July 2022 and 22nd July 2022, deserve to be reviewed and recalled.

4. It is emphasized that paragraph 10 of the aforesaid judgment of the Supreme Court in the case of *Educational Society, Tumsar & Ors.* (supra) when read in conjunction with paragraph 9 thereof, demonstrates that when the management is at fault and it results in termination of service of its employee or an adverse order passed against the employee and additionally when a Competent Tribunal i.e. School Tribunal in the present case, renders a finding to that effect, in no case can the financial burden

pertaining to the reliefs of back wages etc., be foisted on the State Authorities. It is submitted that the aforesaid position of law has been appreciated and applied by the Division Bench of this Court in the case of ***Rajapur Shikshan Prasarak Mandal Ratnagiri v/s. State of Maharashtra & Ors.*** (judgment and order dated 18th April 2018 passed in Writ Petition No. 757 of 2016) and that the said position of law ought to have been followed by this Court, thereby indicating that the orders, of which review is sought, need to be reviewed and recalled.

5. It is submitted that the post occupied by such an employee whose termination is found to be invalid remaining vacant, can be of no consequence because the State Authorities are required to pay the salary and other financial benefits only if the employee concerned has actually worked on the said post and in the event, the post is not filled, the aforesaid fact in itself cannot inure to the benefit of the Management, which is found to have illegally terminated the service of the employee. In that light, it is submitted that the observations made in the Division Bench judgment of this Court in the case of ***Kohali Rural Education Society & Anr. v/s. The State of Maharashtra & Ors.*** (judgment and order dated 24th August 2016 passed in Writ Petition No. 6274 of 2015), as also ***Nutan Vidarbha Shikshan Mandal, Amravati & Anr. v/s. Ambadas Sitaram Satange & Anr.*** (judgment and order dated 10th December 2019 passed in Writ Petition No. 5108 of 2013) and subsequently followed in orders passed by

learned Single Judges of this Court, can be said to be based of an erroneous application of the position of law. Reference was made to the relevant provisions of the MEPS Act and Rules, including Section 11(3) thereof and Rule 34 of the Rules pertaining to payment of subsistence allowance when an employee is suspended. It was submitted that reference to Section 11(3) of the MEPS Act in the judgment and order of the School Tribunal in the present case, ought to be read as a reference to non-salary grant of the Management. Therefore, it cannot be said that since the post in question remained vacant and the salaries were not required to be paid from the State Exchequer, the State Authorities are not entitled to deduct the amount from the non-salary grant, which is eventually found payable to the employee. It is submitted that the aforesaid material clearly indicates the error apparent on the face of record of the orders, of which review is sought, and therefore, the present application deserves to be allowed.

6. On the other hand, Dr. Kulkarni, learned counsel appearing for the Management i.e. the original petitioner in the writ petition, submitted that a proper reading of the judgment of the Supreme Court in the case of *Educational Society, Tumsar & Ors.* (supra) and the peculiar factual position in the present case regarding the post in question remaining vacant, ought to be considered as the basis for the orders passed by this Court, of which review is sought. It is submitted that reliance placed on Division Bench judgment of this Court in the case of *Rajapur*

Shikshan Prasarak Mandal Ratnagiri (supra) is misplaced because in the said case, the peculiar fact about the post remaining vacant did not exist. The Division Bench judgment of this Court in the case of *Kohali Rural Education Society & Anr.* (supra), on the other hand, does indicate such a peculiar factual position which is also found in subsequent cases where the learned Single Judges of this Court have passed directions in the same manner, as this Court has in the orders of which review is sought. It is submitted that even if the aspect of the law laid down by the Supreme Court in the case of *Educational Society, Tumsar & Ors.*(supra) particularly in paragraph 10 is to be taken into consideration, there is material to indicate that in the instant case, the employee was suspended after due permission obtained from the Education Officer and that one of the trigger points for initiating the enquiry against the employee was a preliminary enquiry conducted by the Education Officer itself. This submission was made without prejudice to the basic submission regarding the peculiar fact found in the present case with regard to post in question remaining vacant.

7. This Court has carefully considered the material on record in the light of the judgments referred to by the learned counsel and also in the light of the provisions of the MEPS Act and Rules. It is to be appreciated that the present application is to be decided on the touchstone of there being an error apparent on the face of the record and not otherwise. The review applicant obviously has

to satisfy a heavy burden to demonstrate before this Court such an error apparent on the face of record to justify the prayer for review of the aforesaid orders.

8. A perusal of the judgment and order dated 15th April 2019 passed by the School Tribunal in the present case, would show that while allowing the Appeal filed by the original respondent No.1, the operative portion of the order was as follows :

“

ORDER

1. *Appeal is allowed.*
2. *The termination order dated 02/03/2009 effective from 02/03/2009 is hereby quashed and set aside vide Section 11(2) of the MEPS Act.*
3. *The respondent No. 1 is hereby directed to notionally reinstate the appellant in service since 02/03/2009 till the date of her superannuation i.e. till 31/01/2017 with full back wages, continuity and all consequential benefits and to give retirement benefits to the appellant after the date of her attaining the age of superannuation, as per Rules within 30 days, from the date of this order, vide Section 11(2)(a) and 11(2)(f) of the MEPS Act.*
4. *The Government of Maharashtra is recommended vide Section 11(3) of the MEPS Act, 1977 that, if the respondents failed to comply with the above order the emoluments to be paid to appellant till she reinstated in service shall be deducted from the grant due and payable or that may become due and payable in future to the Management and it be paid to appellant directly.*
5. *Respondent No. 1 is directed to pay costs of Rs.10,000/- to the appellant.*
6. *Dictated on computer and pronounced in open Court.”*

9. It is crucial that in the present case, in Clause 4 of the above quoted operative portion of the order, the Tribunal referred to Section 11(3) of the MEPS Act and further recorded that if the petitioner-Management failed to comply the order with regard to payment of financial benefits to the respondent No.1-employee, the same would be deducted from the grant due and payable to the Management.

10. It is an admitted position that the post on which the respondent No.1-employee was working, during the period when it fell vacant, due to the termination of service of the employee, remained vacant for 48 months and 26 days. It is also an admitted position that even the Management is not asking for any financial relief beyond the period for which the post had remained vacant. It is therefore clear that during the period that the post remained vacant, the State Authorities were not required to part with that portion of the grant, which was relevant for the aforesaid post occupied by the respondent No.1-employee. In other words, the post remaining vacant did not result in financial burden on the State for the period during which the post remained vacant and in that sense, the grant for the relevant period concerning the said post was not required to be released. This is of immense significance in the facts and circumstances of the present case.

11. It is in such peculiar facts that the Division Bench of this Court in the case of *Kohali Rural Education Society & Anr.* (supra) directed that the payment of back wages and other

financial benefits to the employee would be made from the State Exchequer. The observations made in the said judgment of the Division Bench clearly indicate that the post in the said case also remained vacant. This is the peculiar circumstance prevalent in all the subsequent orders passed by the Division Bench and learned Single Judges of this Court and it is this position that was followed when the orders were passed by this Court, of which review is sought in the instant application.

12. In the case of *Rajapur Shikshan Prasarak Mandal Ratnagiri* (supra), the Division Bench of this Court took into consideration the peculiar facts pertaining to the aforesaid line of judgments in paragraph 12 and found that the earlier Division Bench of this Court was impressed by the same, while passing the said orders. Evidently, such peculiar facts were not found in the case of *Rajapur Shikshan Prasarak Mandal Ratnagiri* (supra), which resulted in the Management exclusively being held liable to make payment to the employee in terms of the order of the School Tribunal.

13. Since a lot of emphasis was placed by the learned AGP, while pressing for reliefs in the present application, on the judgment of Supreme Court in the case of *Educational Society, Tumsar & Ors.* (supra), this Court has considered the said judgment in detail. Undoubtedly, in paragraph 10 of the said judgment, the Supreme Court has referred to situations where the Management is wholly found responsible for illegal termination of the service of the

employee and as to the procedure to be followed while giving financial benefits to the employee, there is no reference to the peculiar fact pertaining to the post in question remaining vacant.

14. Even otherwise, in paragraph 9 of the very same judgment, the Supreme Court has recognized the normal principle that whenever the service of an employee in an aided school is terminated and the same is held to be illegal by a Competent Judicial Forum, wherein directions are given for payment of back wages etc, the Government is supposed to bear the burden. The said principle would apply on all fours in the present case, particularly in the light of the peculiar circumstance of the post in question remaining vacant for the aforementioned period. It is also relevant to note that the judgments rendered by this Court, including the line of judgments starting from *Kohali Rural Education Society & Anr.* (supra), do not appear to have been challenged by the State Authorities at any point in time. Even if that be so, it is not brought to the notice of this Court that any of the judgments have been set aside. In the orders, of which review is sought, this Court has followed the said line of judgments, particularly because the peculiar facts noted in the said line of judgments, do occur in the present case also.

15. Therefore, this Court is of the opinion that the review applicant has failed to demonstrate any error apparent on the face of the record, for exercising review jurisdiction and in that light, the present application must fail.

16. In view of the above, the application is dismissed.

MANISH PITALE, J.