

(2010) 10 BOM CK 0149

In the Bombay High Court

Case No : Writ Petition No. 1727 of 2009

Dwaraka Bahu Uddeshiya Gramin Vikas Foundation and Shri
Navnath Secondary School

APPELLANT

Vs

Presiding Officer, School Tribunal, Amravati Division,
Satishkumar Rambhau Jumade and The Education Officer
(Secondary)

RESPONDENT

Date of Decision : 15-10-2010

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 114, 96
Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act,
1977 — Section 10, 10(1), 9
Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 — Rule
25A

Citation : (2011) 2 ALLMR 693 : (2011) 1 MhLj 216

Hon'ble Judges : R.K. Deshpande, J

Bench : Single Bench

Advocate : A.A. Kathane, for the Appellant; Mujumdar, AGP for Respondent Nos.
1 and 3 and P.S. Patil, for the Respondent

Final Decision : Allowed

Judgement

R.K. Deshpande, J.—This writ petition is preferred by the Management challenging the judgment and order dated 21-6-2008 passed by the learned Presiding Officer, School Tribunal, in Appeal No. 41 of 2005, partly allowing the appeal filed by the respondent No. 2/employee challenging his termination. The order of termination has been set aside. However, the order of reinstatement has not been passed on the ground that the School was closed down. The School Tribunal has further held that the respondent/employee is entitled to 50% back wages. The Education Officer is directed to include the name of the respondent/employee in the list of surplus staff for the purposes of absorption, as provided by Rule 25A of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 (for short, hereinafter referred to as "the MEPS Rules"), on the ground that the School is closed down.

2. The petition further challenges the order dated 20-3-2009 passed by the School Tribunal allowing Misc. Application/Review Petition No. 36 of 2008 filed by the respondent/employee. By this order, the termination of the respondent/employee effected on 22-11-2005 is declared as illegal and void and the petitioner/Management is directed to reinstate the respondent/employee on the post of Assistant Teacher. Although in the earlier original order the reinstatement was refused on the ground that the School is closed down, that part of the order has been reviewed and the order of reinstatement has been passed. The order of 50% back wages passed earlier has been maintained.

3. The first question, which arises for consideration, is whether the School Tribunal has power to review its own order. Shri Kathane, the learned Counsel appearing for the petitioner, has urged that there is no power of review conferred upon the School Tribunal and it is well settled that unless the power of review is specifically conferred by the Statute, such power cannot be exercised. Shri Patil, the learned Counsel appearing for respondent No. 2/employee, relying upon the provision of Section 10(1) of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 (for short, hereinafter referred to as "the MEPS Act"), has urged that the School Tribunal has power to review its own order.

4. The provision of Section 10(1) being relevant, is reproduced below:

10. General powers and procedure of Tribunal: (1) For the purposes of admission, hearing and disposal of appeals, the Tribunal shall the same powers as are vested in an Appellate Court under the Code of Civil Procedure, 1908, and shall also have the power to stay the operation of any order against which an appeal is made, on such conditions as it may think fit to impose and such other powers as are conferred on it by or under this Act.

Bare perusal of the aforesaid provision reveals that it is for the purposes of admission, hearing and disposal of appeals, the Tribunal has all such powers as are vested in the Appellate Court under the Code of Civil Procedure, 1908. The learned Counsel for the respondent/employee does not dispute that the powers of the Appellate Court under the CPC are contained in Section 96 read with Order 41 of Code for admission, hearing and disposal of appeals. He also does not dispute that the power of review is not conferred upon the Appellate Court under any of these provisions. He, however, submits that the power of review is available to the Appellate Court u/s 114 read with Order 47 of the CPC and hence, the Tribunal can exercise such power.

5. It is not possible to accept the aforestated contention for the reason that it is only for the purposes of admission, hearing and disposal of appeal, the powers of Appellate Court u/s 96 read with Order 41 of the CPC are conferred upon the Tribunal. Once it is accepted that power u/s 96 read with Order 41 does not include the power to review the judgment, the exercise of such power to review does not arise. When the entire appeal stands disposed of on delivery of

judgment, there exists no scope for re-opening the issues which are concluded. The Appellate Court, under the Code of Civil Procedure, exercises the power of review as per the provisions of Section 114 read with Order 47 of the CPC after the appeal is disposed of. The power u/s 114 read with Order 47 of the CPC can be exercised only if it is specifically conferred. Section 10 of the MEPS Act, reproduced above, does not invest the School Tribunal, the power of review available to the Appellate Court u/s 114 read with Order 47 of the CPC and hence the same cannot be exercised.

6. It is now well settled that unless the power of review is specifically conferred by the Statute, the same is not available to the authority, court or tribunal. In this respect, para 13 of the judgment in *Devendra Gurunath Khedgikar v. Scheduled Tribe Certificate Scrutiny Committee, Pune and Anr.* reported in 2009(3) Mh.L.J. 433, relied upon by the learned Counsel for the petitioner, is relevant and the same is reproduced below:

Having heard rival contentions, it is beyond doubt and now well established that the quasi-judicial authority cannot review its own order unless the power of review is expressly conferred by the Statute under which it derives its power. The power of review is not an inherent power. It must be conferred by law either specifically or by necessary implications. No such provision, in fact, is brought to our notice from which it can be gathered that the Scrutiny Committee has power to review its own order. See *The District Collector of Hyderabad and Others Vs. Ibrahim and Co., etc., and Dr (Smt.) Kuntesh Gupta Vs. Management of Hindu Kanya Mahavidyalaya, Sitapur (U.P.) and Others*, . In view of the law laid down by the Apex Court, we accept the contention of Mr. Jahagirdar that the Scrutiny Committee has no power to review its own order.

In view of the above, the School Tribunal constituted u/s 9 of the MEPS Act, has no power of review. The order of review passed by the School Tribunal on 20-3-2009 in Misc. Application/Review Petition No. 36 of 2008 is without jurisdiction and cannot be sustained. The same is, therefore, quashed and set aside.

7. So far as the challenge to the main judgment and order dated 21-6-2008 passed by the School Tribunal in Appeal No. 41 of 2005 is concerned, Shri Patil, the learned Counsel for the respondent/employee, submits that there was an error apparent on the face of the record when the Tribunal has recorded a finding that the School was closed down on account of de-recognition and, therefore, the order of reinstatement was not granted. He submits that the Tribunal proceeded on the wrong assumption and it has been pointed out to the Tribunal that the School, in which the respondent/employee was appointed, was not actually de-recognized, but it was some other School run by the Management that was de-recognized. If the Tribunal has proceeded on the wrong assumption that the School, in which the respondent/employee was working, was de-recognized, then there is obviously an error apparent on the fact of the record and on that count itself, the original judgment and order dated 21-6-2008 passed by the Tribunal

cannot be sustained. The petitioner/Management has also challenged the said judgment and order on several grounds, which have not been taken into consideration by the Tribunal. At any rate, if the judgment and order dated 21-6-2008 cannot be sustained on the grounds raised by the respondent/employee, then obviously the Tribunal has to decide the matter afresh after giving an opportunity to all the parties to amend their pleadings or to file on record the additional documents in support of their case.

8. In the result, the instant writ petition is allowed. The judgment and order dated 20-3-2009 passed by the School Tribunal allowing Misc. Application/Review Petition No. 36 of 2008 is hereby quashed and set aside and Application No. 36 of 2008 filed by the respondent/employee is dismissed.

The judgment and order dated 21-6-2008 passed by the School Tribunal in Appeal No. 41 of 2005 is hereby quashed and set aside and the matter is remitted back to the School Tribunal for decision of the said appeal afresh in accordance with law within a period of six months from the date of appearance of the parties before it.

The learned Counsel for the parties state that the parties shall appear before the School Tribunal on 30-10-2010.

The learned Counsel for the petitioner submits that an amount of Rs. 50,000/- has been deposited by the petitioner in this Court on 27-10-2009. If this amount is kept in fixed deposit, then the same shall be transmitted to the School Tribunal, Amravati, for passing appropriate orders after the decision of the appeal in accordance with law.

No order as to costs.