

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

**MISCELLANEOUS APPLICATION NO.326 of 2019
IN
ORIGINAL APPLICATION NO.434 OF 2014**

The State of Maharashtra through)
Joint Director,)
Directorate of Vocational Education & Training,)
49, Kherwadi, Aliyaware Jung Marg,)
Bandra East, Mumbai 400051)

..... Applicant (Org. Respondent No.3)

Versus

1. Smt. Manisha Chandrakant Gosavi,)
R/at:202, Monarch Sapphire, Plot No.15,)
Sector 35/E, Near Gokul Dham, Kharghar,)
Navi Mumbai 410 210)

..... Respondent (Org. Appli)

And

2. The State of Maharashtra,)
Through the Secretary,)
Directorate of Vocational Education & Training,)
Annexure Building, Mumbai 400032)

....Org. Respondent No.1

3. Director,)
Directorate of Vocational Education & Training,)
3, Mahapalika Marg, Post Box No.100636,)
Mumbai 400001)

....Org. Respondent No.2

4. M.P. Sonawane,)
The then Principal of the Institute of I.T.I.,)
Vikramgad, Thane)
New address: Industrial Training Institute (Girls))
The Old Mumbai Agra Road, Near Adiwasi)
Vikas Bhavan, Tryambak Naka, Nasik 422002)

....Org. Respondent No.4

Smt. K.S. Gaikwad, learned Presenting Officer for the Applicants (Org. Respondents).

Shri A.D. Joshi, learned Advocate for the Respondents (Org. Applicants).

CORAM : Shri P.N. Dixit, Vice-Chairman
Shri A.P. Kurhekar, Member(J)

DATE : 10.12.2019

PER : Shri A.P. Kurhekar, Member(J)

J U D G M E N T

1. Heard Smt. K.S. Gaikwad, learned Presenting Officer for the Applicants (Org. Respondents) and Shri A.D. Joshi, learned Advocate for the Respondents (Org. Applicants).

2. Original Applicant Smt. Manisha C. Gosavi had filed O.A.No.434 of 2014 which was decided on merit by reasoned judgment on 18.02.2019 by this Tribunal [to which one of us, Shri P.N. Dixit, Member (A) was party]. While deciding O.A.No.434 of 2014, this Tribunal considered following two issues :-

(a) Whether resignation submitted by the Applicant being qualified and conditional was liable to be accepted ?

(b) Whether the Applicant is entitled for relief sought ?

3. Tribunal heard the matter and recorded its conclusion in paragraph No.16, which are as follows :-

"16. If the facts, namely:-

(i) The Applicant claims that she has suffered sexual harassment;

(ii) The Applicant has filed the complaint to the Director;

(iii) An enquiry was initiated but not completed or no findings are declared to the Applicant;

(iv) Applicant was required to undergo leave for high risk pregnancy and she was required to take leave and had submitted leave application;

- (v) *Applicant's medical leave has remained undecided. Applicant was not referred to medical examination as regards her claim as regards high risk pregnancy; and*
- (vi) *Applicant was charge sheeted and she submitted resignation, she has also submitted a detailed complaint /representation dated 22.12.2012; All facts called and described in foregoing text taken together would demonstrate that her resignation was not voluntary, but under duress."*

4. As such Tribunal assessed the material on record and recorded its finding :-

"Issues framed by this Tribunal deserve to be answered as under :

Sr. No.	Issues	Findings
1	<i>Whether resignation submitted by the Applicant being qualified and conditional was it liable to be accepted?</i>	No.
2	<i>Whether the Applicant is entitled for the relief sought?</i>	<i>Yes. As per final order."</i>

5. In paragraphs 20 and 21 of O.A.No.434/2014, the Tribunal held as under :-

"20. In the result, Original Application is allowed. The Applicant shall be entitled to the relief of reinstatement with full back wages. This Tribunal further directs that the department shall conduct inquiry under the Vishakha Guidelines, laid down by the Hon'ble Supreme Court in Vishakha & Ors. (supra) and the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, relating to sexual harassment as well decide Applicant's period of leave so far undecided.

21. In the facts and circumstances of the case, the Applicant shall suffer cost of litigation owing to her misfortune and Respondents shall suffer their own costs."

6. Admittedly, the judgment in O.A. is not challenged and it has attained finality.

7. Now, M.A.No.326/2019 is filed by the State by Original Respondent No.3 on 25.06.2019 i.e. after about four months from the judgment along with the application for condonation of delay.

8. M.A.No.325/2019 which was for condonation of delay was allowed by this Tribunal on 19.11.2019 on the concession made by learned Advocate for Original Applicant.

9. Now, by this M.A.No.325/2019, the original Respondents sought to contend that the contentions raised in reply were not properly considered and therefore requested for rehearing of O.A.No.434/2014 which is the present M.A. This M.A. is strongly objected by original Applicant contending that such course of action is not permissible in law.

10. As stated above, O.A.No.434/2014 was decided on merit with reasoned judgment which has already attained finality. Nor Review is filed neither judgment is challenged before the higher forum. Now, under the garb of this M.A., the learned P.O. is seeking rehearing of O.A. which is not permissible in law.

11. If the original Respondents were aggrieved by the judgment delivered by this Tribunal, it was open to challenge them either by filing Review or by filing Writ Petition before the Hon'ble High Court, which they failed to do so.

12. The judgment delivered on merit cannot be subjected to rehearing except where it falls within the parameters of review which is not the present case. By very novel method, the review and rehearing of the judgment is sought by filing the M.A. The learned P.O. could not point out under what provision such M.A. is maintainable. Be that as it may, there could be no rehearing or reassessment of the matter by such M.A. Suffice to say, M.A. is misconceived and liable to be dismissed.

13. M.A.No.326 of 2019 is accordingly dismissed.

Sd/-

(A.P. Kurhekar)
Member(J)

Sd/-

(P.N. Dixit)
Vice-Chairman

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