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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
REVIEW PETITION No. 107 OF 2012
IN
WRIT PETITION No. 2924 OF 2011

Shri Rafiuddin Shahabuddin Inamdar ... Petitioner
Vs.
State of Maharashtra & Ors. ... Respondents

Mr. V. K. Bodhare, for the Petitioner.

Mr. P. G. Sawant, AGP for the Respondent - State.

CORAM : V. M. KANADE, &
ANOOP V. MOHTA, JJ.

DATE : JULY 9, 2015
(In chamber at 2.35 p.m.)

PC.

1. Heard the learned counsel appearing on behalf of the Review-Petitioner. By this review-petition, Petitioner is challenging the order of this Court, dated 12th January, 2012. It is submitted that the said order has been passed without taking into consideration the Division Bench order of this Court in Writ Petition No. 1015 of 1999, which was disposed of by judgment and order dated 15th October, 2008. The Petitioner has put in 31 years of service. By that time, he has attained the age of superannuation. There was, however, a short last break of 01 year, 09 months and 04 days. It is contention of the

Petitioner that the condition imposed in the Government Resolution dated 10th May, 1989 that the benefit under the circular would not be available to the teachers who had superannuated after 1974, is arbitrary and irrational and the Division Bench has, therefore, in the said case condoned the last break of 2 years 3 months and 13 days in the said case and directed the Government to pay pension to the Petitioner therein.

2. Perusal of the impugned order clearly discloses that this fact is not considered by the Division Bench. Therefore, it is an error apparent on the face of the record. Since the petition raises the issue of payment of pension, which has been held to be one of the fundamental rights of an employee in case of – ***D. S. Nakara & Ors., Petitioners Vs. Union of India, Respondent [(1983) 1 Supreme Court Cases, 305]***, we are of the view that since the Petitioner is a retired employee, his case needs to be considered in the light of the said judgment. We, therefore recall the order dated 12th January, 2012 and restore Writ Petition No. 2924 of 2011 to the file. Review petition is accordingly disposed of in the aforesaid terms.

Sd/-
[ANOOP V. MOHTA, J.]

Sd/-
[V. M. KANADE, J.]