

FARAD CONTINUATION SHEET No.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO. 2415/2015

(HIRENDRA BALIRAMJI MOTGHARE **VERSUS** THE PRESIDENT, INDUSTRIAL COURT, MUMBAI &
 ANOTHER)

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

Court's or Judge's orders

Shri P.D. Meghe, counsel for the petitioner.
 Shri N.S. Khubalkar, A.G.P. for the respondents.

CORAM : SMT. VASANTI A. NAIK AND
A.I.S. CHEEMA, JJ.

DATE : SEPTEMBER 14, 2015.

Heard.

By this petition, the petitioner challenges the communication dated 08.12.2014 issued by the Administrator, Industrial Court, Mumbai informing the Administrative Officer, Industrial Court, Nagpur that two increments of the petitioner were withheld permanently and, therefore, the petitioner would not be entitled to higher pay.

The petitioner was working as a Stenographer in the Labour Court, Nagpur. A full-fledged departmental enquiry was conducted against the petitioner on the ground that the petitioner made numerous mistakes in the typed orders and documents and despite opportunity to the petitioner, the petitioner did not change his ways. The charge levelled against the petitioner in the departmental enquiry was proved and by the order dated 07.09.2011, the disciplinary authority imposed the punishment of withholding two annual increments for two years, and having the effect of postponing future increments. The order dated 07.09.2011 was never questioned by the petitioner either before this Court or before the

appellate authority. The said order was accepted by the petitioner. However, after the expiry of a period of more than two years from the date of the order of the disciplinary authority dated 07.09.2011, the petitioner made a representation to the respondents asking them to release the two annual increments that were withheld in terms of the order dated 07.09.2011. The Administrator, Industrial Court, Mumbai, informed the Administrative Officer, Industrial Court, Nagpur that in view of the order dated 07.09.2011, the two increments of the petitioner could not be released as by the said order, it was made clear that the order would have the effect of postponing the future increments.

On hearing the learned counsel for the parties and on a perusal of the order of the disciplinary authority dated 07.09.2011 as also the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979, specially Rule 5 thereof, it appears that the petitioner cannot effectively challenge the impugned communications dated 11.08.2014 and 16.12.2014. It is clear from the order of the disciplinary authority dated 07.09.2011 that two annual increments of the petitioner were withheld for two years and the order had the effect of postponing the future increments. The petitioner accepted the order without any demur and did not challenge the same before the competent authorities. The petitioner has not challenged the order of the disciplinary authority dated 07.09.2011, even in this writ petition. Since the order dated 07.09.2011 has attained finality, the petitioner cannot be heard to say that the respondents are not entitled to postpone future increments of the petitioner. It is clear from a reading of Rule 5(1)(v) that the respondents were entitled to reduce the pay for a specified period with a further direction whether the reduction will or will not have the effect of postponing future increments. In the instant case, the disciplinary authority had made it clear by the order dated

07.09.2011 that the order had the effect of postponing future increments. Though there is a wrongful mention in the order of the disciplinary authority dated 07.09.2011 to the provisions of Rule 5(1)(iv), we find that the minor punishment has been inflicted by the respondents on the petitioner under Rule 5(1)(v) and not Rule 5(1)(iv) of the Rules of 1979. It is rightly submitted on behalf of the learned Assistant Government Pleader that mere mention of a wrongful provision in the order would not render the order vulnerable if the order could be sustained on any other provision. We find that the order could be sustained under Rule 5(1)(v) if it could not have been rendered by invoking the provisions of Rule 5(1)(iv). In any case, these observations would not be helpful to the case of the petitioner as the petitioner has never challenged the order dated 07.09.2011 and the same has attained finality. The impugned communications merely informed the concerned authority as well as the petitioner that in view of the order dated 07.09.2011, the increments of the petitioner cannot be released. There is no error whatsoever in the impugned communications so as to interfere with the same, in exercise of the writ jurisdiction. It is worthwhile to note that even before imposing the minor penalty on the petitioner under the provisions of Rule 5(1)(v) of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979, a full-fledged enquiry was conducted against the petitioner and the petitioner was found guilty of the charges levelled against him. The petitioner cannot seek the benefit of the judgment of the Hon'ble Supreme Court in Civil Appeal No.8366 of 2014, decided on 29.08.2014 as in the case in the said judgment, the Hon'ble Supreme Court was required to consider the Punjab State Electricity Board Employees Punishment and Appeals Regulations, 1971. In the instant case, we are concerned with the provisions of Rule 5 of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979. The judgment of the Hon'ble Supreme Court is distinguishable on facts.

Since the impugned communications cannot be faulted with, the writ petition is dismissed with no order as to costs.

JUDGE

JUDGE

APTE