

\$~SB Matters

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) 2117/2012

SHASHI MALIK AND ORS Petitioners

Through
versus

THE CHIEF EXECUTIVE OFFICER AND ANR Respondents

Through: Mr. Parvinder Chauhan Adv. for R-
1/Applicant.

+ W.P.(C) 2118/2012

ANIL KUMAR NASA AND ORS Petitioners

Through

versus

DELHI URBAN SHELTER IMPROVEMENT BOARD AND ANR

..... Respondents

Through: Mr. Parvinder Chauhan Adv. for R-
1/Applicant.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J. MEHTA

ORDER

% **14.03.2016**

**CM No.9177/2016 (condonation of delay of 76 days in filing Review
Petition in W.P.(C) No. 2117/2012**

**CM No.9178/2016 (condonation of delay of 80 days in filing Review
Petition in W.P.(C) No. 2118/2012**

For the reasons stated in the applications delays in filing the review
petitions are condoned.

CMs stand disposed of.

W.P.(C) 2117/2012&conn.

page 1 of 5

**Review Petition No. 128/2016 in W.P.(C) No. 2118/2012 & Review
Petition No. 127/2016 in W.P.(C) No. 2117/2012**

1. Three grounds are argued before this Court to seek review of the judgement dated 11.2.2015 allowing the writ petitions. The writ petitions were allowed by setting aside the impugned order of the respondent dated 22.3.2012 and ACP benefits granted to the petitioners by the order dated 31.3.2009 were held for being continued. The judgment dated 11.2.2015 allowed the relief to the petitioners on the basis of para 11 of the MACP Scheme dated 19.5.2009 applied by the respondent itself that past cases were not to be reopened. Paras 2 and 3 of the judgment dated 11.2.2015 read as under:-

“2. Counsel for the petitioners argues that though the Modified Assured Career Progression (MACP) Scheme in question was notified on 19.5.2009 however w.e.f the back date of 1.9.2008, but, para 11 of the MACP Scheme specifically protected the past cases wherein ACP benefits were already granted. Para 11 of the MACP Scheme dated 19.5.2009 reads as under:-

“11. It is clarified that no past cases would be re-opened. Further, while implementing the MACP Scheme, the differences in pay scales on account of grant of financial upgradation under the old ACP Scheme (of August 1999) and under the MACP Scheme within the same cadre shall not be construed as an anomaly.”

3. It is also conceded before this Court on behalf of the

petitioners that in future petitioners will be governed by the clauses of the MACP Scheme and petitioners cannot and will not take benefit of the ACP Scheme which stands superseded by the MACP Scheme promulgated on 19.5.2009 and w.e.f 1.9.2008 i.e it is made clear that the periods for the benefit of the MACP Scheme so far as the petitioners are concerned, will be counted taking that one ACP benefit stands granted to the petitioners pursuant to the order dated 31.3.2009 and periods for further benefits under the MACP Scheme will be the periods which will be taken from the dates of benefits granted under the ACP Scheme.”

2. Firstly, it is argued on behalf of the review petitioner/respondent no.1 that in similar facts there is a judgment of the Bombay High Court, Nagpur Bench in W.P.(C) No. 3722/2013 and W.P.(C) No. 5296/2013 dated 9.1.2015 and though this judgment was not referred to on behalf of the respondent no.1 at the time of hearing of the writ petitions, however, the judgment dated 11.2.2015 should be reviewed in view of the judgment of the Bombay High Court dated 9.1.2015. The second ground which is urged is that petitioners had given an undertaking that the benefit granted to the petitioners was provisional and subject to further clarification to be issued by the DoPT, and therefore, petitioners are not entitled to setting aside of the

impugned order dated 22.3.2012. The third ground which is urged is of effectively re-arguing the case on merits.

3. Before referring to the grounds urged on behalf of the review petitioner/respondent no.1, it needs to be noted that scope of review jurisdiction is limited. Review can be granted if there is an error apparent on the face of the record or if there are important materials which have been left out, and which if applied would change the result of the case. Both these grounds in my opinion do not arise as per the grounds urged on behalf of the review petitioner before this Court.

4. Firstly, merely because another court has passed a judgment in favour of the respondent no.1 by interpreting the scheme dated 19.5.2009 is not a ground for review, inasmuch as at best it is an alternative view and which alternative view in any case had to be argued when the writ petitions were argued on merits on 11.2.2015 and the judgment passed. Courts cannot allow a review petition on the ground that counsels have done research after the judgment was passed on merits, and the case is to be reargued in view of a judgment which has come to the notice of the review petitioner. The first ground urged on behalf of the review petitioner is therefore rejected.

5. The second ground which is urged on behalf of the petitioners giving an undertaking is misconceived because the undertaking of the petitioners will not bind the petitioners once there is a judgment of a court of law interpreting the scheme dated 19.5.2009 and accordingly benefits are given to the petitioners.

6. The third argument urged seeking for effective re-hearing of the petition does not fall within the scope of review jurisdiction because there is a difference between filing an appeal and a review petition pleading that the impugned judgment is 'wrong'. If the judgment is not 'wrong' because there is no error apparent on the face of the record or that new materials are discovered alongwith the new facts, then the review petitioners being aggrieved of the judgment on merits will have to file an appeal against the judgment dated 11.2.2015 and not a review petition.

7. Dismissed.

VALMIKI J. MEHTA, J

MARCH 14, 2016

ib