

IN THE HIGH COURT OF BOMBAY AT GOA

CIVIL APPLICATION (REVIEW) NO. 19 OF 2014

Mr. Chandrakant Vishram Chavan
Age about 73 years, Occu. Retd.,
Presently residing at 203/1,
Rameshwar Complex,
App. Panchayat Office, Br. Nath Pai Road,
Vengurla, Dist. Sindhudurg,
Pin 416 516.

... Applicant/Petitioner

V e r s u s

1. Union of India
Through Director of Civilian Personnel
Naval Head Quarters, Sena Bhavan,
New Delhi 110 011.

2. Secretary
Ministry of Personnel
Public Grievances and Pension
Department of Administrative reforms,
Sardar Patel Bhavan,
Sansad Marg, New Delhi 110 011.

3. The Flag Officer Commanding in Chief
Western Haval Co.
Bombay 400 023

4. Adminiral Superintendent
Naval Dockyard Bombay 400 023.

... Respondents

Mr. V. A. Lawande an Mr. P. Redkar, Advocates for the Applicant-Petitioner.

Mr. Mahesh Amonkar, Central Government Standing Counsel for the Respondent nos. 3 and 4.

Coram :- **F. M. REIS,**
K. L. WADANE, JJ.

Date : **11th February, 2016**

JUDGMENT (Per F. M. Reis, J.)

Heard Shri V. A. Lawande, learned Counsel appearing for the Applicant-Petitioner and Shri Mahesh Amonkar, learned Central Government Standing Counsel appearing for the Respondent nos. 3 and 4.

2. The above petition pray for the review of the Judgment and Order dated 17.10.2008 passed in Writ Petition no. 310 of 2004.

3. Briefly, the facts of the case as stated by the Petitioner are that the Respondents initiated a scheme of apprenticeship to train and provide skilled tradesman for employment in Naval dockyard Bombay by their letter dated 12.08.1957 with a condition that selected candidates are bound to serve in Naval Dockyard Bombay, for a period of five years after successfully completion of the training of four years. It is further contended that the Petitioner was appointed as trade apprentice after executing five years bound on 11.02.1959 and completed his apprenticeship of four years in the trade of plater. It is further his case that on 20.03.1963, the Petitioner was absorbed as plater Gr. II at Naval Dockyard Bombay. On 01.10.1965, he was promoted to D' man Gade III and posted in Naval Head Quarters New Delhi. Finally, he was promoted to Junior Design Officer Class II Gazetted on 19.12.1973. The Petitioner had opted for liberalized pension rule as per scheme of the Government and on 26.08.1977, the Respondents initiated a voluntarily retirement scheme on completion of twenty years qualifying service. In the year 1978, the Petitioner on account of certain domestic problems,

wished to resign from service and applied for voluntarily retirement on the basis GOI letter dated 26.08.1977 and 30.11.1977. The appropriate Authority verified the service records of the Petitioner and the Petitioner's application was not forwarded to the Ministry of Defence and, in the circumstances, a decision was taken by an Officer not competent to take such decision and the Petitioner was informed that his case for Voluntarily Retirement Scheme could not be considered as the four years apprenticeship could not be included in the computation of qualifying service. But, however, on account of pressing domestic requirements, the Petitioner had submitted his resignation under protest which was accepted w.e.f. 11.03.1979 vide letter dated 13.11.1980. The Petitioner, as such did not receive any pension benefits and he joined Goa Shipyard Ltd and retired after superannuation. The Petitioner further states that he thereafter learnt that other employees placed in similar situation were granted pensionary benefits and four years of apprenticeship service were included in computation of qualifying service for these employees. Therefore, the Petitioner filed a Writ Petition in this Court seeking a writ of mandamus directing the Respondents to process the service record of the Petitioner and grant pensionary benefits as per Order dated 26.08.1977 and 12.09.1986 amongst other reliefs. The Petitioner further points out that this Court after hearing all the parties, dismissed the Writ Petition on the ground that the Petitioner had failed to produce the Order of appointment as an apprentice in Naval Dockyard Bombay. The Petitioner thereafter preferred a Special Leave Petition before the Hon'ble Supreme Court bearing no. 35685 of 2009 which came to be rejected by Order dated 08.03.2010 observing orally that the Petitioner ought to have approached this Court as there was an error apparent on the face of record. Accordingly, the Petitioner filed the above Review Petition.

4. Shri V. A. Lawande, learned Counsel appearing for the Petitioner, has submitted that the only ground on which this Court has passed the Judgment disposing of the Writ Petition is that there was no material to show that the Petitioner was appointed as an apprentice to avail of the four years to make up for the deficit qualifying service to be entitled for the Voluntarily Retirement Scheme. Learned Counsel further pointed out that this Court has also taken a view that the Petition was barred by laches when it is well settled by the Apex Court in the Judgment reported in **2008(8) SCC 648** in the case of **Union of India & Ors. vs. Tarsem Singh** that refusal to pay pension is a recurring wrong and, as such, at the most, the Court can grant such pension for a period of three years prior to the filing of the Petition. Learned Counsel further pointed out that it is well settled that such period of apprenticeship can be considered to make up for the qualifying service as held by the Apex Court in the Judgment in the case of **Anuj Kumar Dey & Ors. vs. Union of India & Ors. Dated 28.11.1996** in Civil Appeal no.1110 of 1992. Learned Counsel further pointed out that whether the employment carried a salary or a stipend is immaterial for the purpose of qualifying services. Learned Counsel has also relied upon the Judgment reported in Gujarat Law Reporter Vol. XVI page 1039 in the case of Dr. B. M. Rana & Ors, vs. Ahmedabad Municipal Corporation & Ors. The learned Counsel has also relied upon the Judgment reported in (1971) Supreme (Kar) 148 in the case of Selection Committee for Admission to Medical & Dental Colleges vs. M. R. Nagraj. In support of his contention that non-consideration of a binding precedent can be a case for review. The learned Counsel has also relied upon the Judgment of the Apex Court reported in **AIR 1983 SC 130** in the case of **D. S. Nakara & Ors. vs. Union of India**. In support of his

contention that giving of pension is neither a bounty nor a matter of grace depending on the sweet will of the employers. Learned Counsel further submits that even though the Special Leave Petition filed by the Petitioner came to be rejected, it does not prevent the Petitioner from filing the above Review Petition as the Special Leave Petition was not disposed of on merits and in support thereof has relied upon the Judgment of the Apex Court reported in **(2011) 4 SCC 602** in the case of **Gangadhara Palo vs. Revenue Divisional & anr.** and **(2000) 6 SCC 359** in the case of **Kunhayammed & Ors. vs. State of Kerala & anr.** Learned Counsel as such submits that there is an error apparent on the face of record which calls for the review of the said Judgment.

5. On the other hand, Shri Mahesh Amonkar, learned Central Government Standing Counsel appearing for the Respondent nos. 3 and 4, has disputed the said contentions. Learned Counsel has pointed out that the Petitioner preferred a Special Leave Petition before the Apex Court which came to be rejected and, as such, the question of raising the same contentions and filing the above Review Petition is an abuse of the process of the Court. Learned Counsel pointed out that the Petitioner also filed an application for review before the Apex Court which also apparently has been rejected. Learned Counsel further pointed out that the averments in the Petition suggests that there was an oral leave granted by the Apex Court to file the Review Petition which is not at all found in the Order dismissing the Special Leave Petition. Learned Counsel further submits that the Petitioner has chosen to approach this Court only after he superannuated from the service of Goa Shipyard Ltd and, as such, the question of entertaining the above Review Petition is only an abuse of the process of the Court. Learned Counsel

further pointed out that the Petitioner did not satisfy the requirements to avail of the Voluntarily Retirement Scheme which clearly provides that even in cases of trainees, they should be employed in an available post and as the Respondents disputed the said aspect, the Petitioner was asked to produce his original appointment letter which he has deliberately suppressed from the Court. Learned Counsel further pointed out that there is no error apparent on the face of record which would call for any review of the Judgment passed by this Court especially when a Special Leave Petition has been rejected.

In support of his submissions, the learned Counsel has relied upon the Judgment reported in **AIR 1995 SC 2076** in the case of **U. P. Avas Evam Vikas Parishad & anr. vs. Ravi Kumar Anand & Ors.** and **AIR 2012 SC 3722** in the case of **Vinod Kapoor vs. State of Goa & Ors.**

6. We have considered the submissions of the learned Counsel appearing for the respective parties. With the assistance of the learned Counsel, I have also gone through the record. On going through the Judgments of the Apex Court in the case of **Gangadhara Palo vs. Revenue Divisional & anr.** (supra) it has been observed at para 7 thus :

“7. The situation is totally different where a special leave petition is dismissed without giving any reasons whatsoever. It is well settled that Special Leave under Article 136 of the constitution of India is a discretionary remedy, and hence a special leave petition can be dismissed for a variety of reasons and not necessarily on merits. We cannot say what was in the mind of the Court while dismissing the special leave petition without giving any reason,

there is no merger of the judgment of the High Court with the order of this Court. Hence, the judgment of the High Court can be reviewed since it continues to exist, though the scope of the review petition is limited to errors apparent on the face of the record. If, on the other hand, a special leave petition is dismissed with reasons, however meagre (it can be even on just one sentence), there is a merger of the judgment of the High Court in the order of the Supreme Court. (see the decisions of this Court in *Kunhayammed vs. State of Kerala*, *S. Shanmugavel Nadar v. State of T.N.*, *State of Manipur v. Thingujam Brojen Meetei* and *U. P. SRTC v. Omaditya Verma*)."

7. Taking note of the said observations in the present case, we find that the Special Leave Petition came to be dismissed and no reasons are recorded therein. However, the contention of the Petitioner that there was leave granted to the Petitioner to file a review petition before this Court, cannot be accepted as there is nothing on record to establish that in fact such leave was granted to the Petitioner. Apart from that, Mr. Amonkar, learned Central Government Standing Counsel, appearing for the Respondent nos. 3 and 4, has submitted that the Petitioner had also availed of seeking a review of the Order passed by the Hon'ble Supreme Court which also came to be disposed of. It is also to be noted that in the Special Leave Petition filed before the Hon'ble Apex Court produced on record, the Judgment in the case of **Anuj Kumar Dey** (supra) relied upon by Mr. Lawande, learned Counsel appearing for the Petitioner, was also part of such Petition as annexure 'Z'.

8. The only aspect which has to be examined is as to whether there is any error apparent on the face of record within the meaning of Order 47 Rule 1 of the Civil Procedure Code to review the Judgment passed by this Court. On perusal of the Judgment passed by this Court, we find that this Court has noted that the Petitioner claimed that he had successfully completed his four years training period and joined the regular services with the Respondent w.e.f. 20.03.1963. It is also to be noted that the Voluntarily Retirement Scheme was declared in the year 1977 and the Government servants who had completed twenty years of qualifying service alone could be entitled to claim Voluntarily Retirement. It is further noted that in the communication dated 17.02.1979, Voluntarily Retirement was refused to the Petitioner as the period spent by the Petitioner whilst undergoing the training was not regular service more-so in a sanction post. It is further noted that the Petitioner shot back his reply to the said letter by communication dated 19.02.1979 stating therein that the Petitioner's four years of apprenticeship ought to have been counted for the purpose of qualifying service; secondly, the Petitioner unequivocally declares that he has no alternative but to resign from service. It was also noted that the communication dated 19.02.1979 was asked to be treated as a letter of resignation. It is also noted that the Petitioner indisputably joined the service of the Goa Shipyard Ltd. w.e.f. 12.03.1979 i.e. even before severance of relationship of employer from the Respondents. It is further noted that only after a lapse of twenty five years from the accrual of the cause of action i.e. the refusal to permit the Petitioner to avail the benefit under the Voluntarily Retirement Scheme, the Petitioner came to file the Petition.

9. This Court, thereafter, found that the relevant service rule which regulate the service condition of the Petitioner are neither placed on record nor pointed out to the Court despite of request to make the same available. The Court also noted that the crucial document on the nature of appointment or the status of the Petitioner as trade apprentice has also not been produced,. It is further noted that this document of appointment of apprentice would draw light on the Petitioner's status during such period. The Court also noted that the Petitioner had deliberately withheld the document from the Court and despite of opportunities given, it has not been made available to the Court. The Court further noted that there was nothing on record to indicate the nature of apprenticeship put up by the Petitioner during the training period from the year 1959 to 1963. This Court further noted that in the absence of such crucial documents, it was not necessary to consider any finding in favour of the Petitioner that he had rendered twenty years of qualifying service which would grant eligibility to seek voluntary retirement. The Court also noted that the Petition has been filed belatedly after twenty five years and, consequently, rejected the Petition.

10. It is undisputed that in order to avail of the period of apprenticeship to be treated as qualifying service to get the benefit of Voluntarily Retirement Scheme, such person has to be a paid apprentice against a sanctioned post. The fact that the Petitioner did not qualify on that count was brought to his notice way back in the year 1979. This Court whilst passing the Judgment disposing of the Writ Petition filed by the Petitioner has clearly taken a view that in order to ascertain whether the Petitioner was an apprenticeship on the sanctioned post, the letter of his

appointment would be material. Up to this date, the Petitioner has failed to produce such letter of appointment. This Court also has taken an adverse inference against the Petitioner for not producing such letter despite of the opportunities given to the Petitioner. As the Petitioner has failed to produce the said appointment letter even whilst filing the above Review Petition, we find that it cannot be said that there is any error apparent on the face of record in the Judgment passed by this Court whilst disposing of the above Writ Petition which would entitle the Petitioner to review such Judgment. Apart from that, the Special Leave Petition filed before the Apex Court against the Judgment passed by this Court was also dismissed. The Judgment in the case of ***Gangadhara Palo vs. Revenue Divisional & anr.*** (supra) was also relied upon by the Petitioner whilst filing the Special Leave Petition before the Apex Court. Consequently, we find that the Petitioner has not brought any additional material which could help the Court to examine whether there is any other justifiable reason to review the Judgment passed by this Court. The situation might have been different in case the letter of Appointment was produced or any other material was placed on record to examine the nature of such service. The attempt of Mr. Lawande, the learned Counsel appearing for the Petitioner, to avail an inference based on the Circular of the Government, cannot help the Petitioner as this exercise cannot be carried out in a Review Petition and it by itself does not establish that the Petitioner was appointed on a sanctioned post.

11. It is well settled that a Review Petition cannot be an Appeal in disguise. It is not open for this Court to re-appreciate the material and to ascertain whether any error is committed by the Court whilst disposing of the Writ Petition by appreciating the material on record as this cannot be a ground to review the

Judgment disposing of the Writ Petition. The contention of Mr. Lawande, learned Counsel appearing for the Petitioner, that a Petition claiming pension cannot be dismissed on the ground of laches would depend upon the facts and circumstances of each case. Indisputably, in the present case, the records reveal that when his application for availing of the Voluntarily Retirement Scheme was rejected and even before severance of relationship with the Respondents, the Petitioner had joined the services with the Goa Shipyard Ltd. The Petitioner has worked with Goa Shipyard Ltd up to the age of superannuation. This conduct of the Petitioner is very relevant to examine whether relief can be granted despite of laches which have been considered by this Court while holding that the Petitioner approached the Court belatedly. The other material produced by the Petitioner in support of his contention that there was a Central Government direction for recruitment dated 12.08.1957, which sanctioned an annual intake of general and trade apprentice, does not by itself help the Petitioner as there is no material on record to show that the Petitioner was a paid apprentice for a sanctioned post which could be ascertained only in case his letter of appointment was produced. No doubt, the power of review in inhere in every Court to prevent miscarriage of justice or to correct grave and palpable errors committed by it. But, such power can be exercised only if there is an error on the face of record or there is a discovery of a new material or document which despite of due diligence could not be produced when the earlier Order was made. An error is said to be apparent on the face of record only in case it does not require long drawn up process of reasoning. In the present case, to examine the contentions of Mr. Lawande, learned Counsel appearing for the Petitioner, a process of long reasoning would be required to re-appreciate the material on record which is not permitted in a Review Petition.

12. The Apex Court in the Judgment reported in **(2014) 7 SCC 663** in the case of ***Usha Bharti v. State of U.P.***, has observed at paras 68 to 70 thus :

“68. We have no hesitation in accepting the submission of Mr Bhushan that the High Court or this Court, in exercise of its powers of review can reopen the case and rehear the entire matter. But we must hasten to add that whilst exercising such power the court cannot be oblivious of the provisions contained in Order 47 Rule 1 CPC as well as the rules framed by the High Courts and this Court. The limits within which the courts can exercise the powers of review have been well settled in a catena of judgments. All the judgments have in fact been considered by the High Court in pp. 16 to 23. The High Court has also considered the judgment in *S. Nagaraj v. State of Karnataka*, which reiterates the principle that: (SCC p. 619, para 19)

“19. Review literally and even judicially means re-examination or reconsideration. Basic philosophy inherent in it is the universal acceptance of human fallibility. Yet in the realm of law the courts and even the statutes lean strongly in favour of finality of decision legally and properly made. Exceptions both statutorily and judicially have been carved out to correct accidental mistakes or miscarriage of justice. Even when there was no statutory provision and no rules were framed by the highest court indicating the circumstances in which it could rectify its order the courts culled out such power to avoid abuse of process or miscarriage of

justice.”

69. These principles are far too well entrenched in the Indian jurisprudence, to warrant reiteration. However, for the sake of completion, we may notice that Mr Bhushan had relied upon *Board of Control for Cricket in India v. Netaji Cricket Club and Green View Tea & Industries*. It would be useful to reiterate the following excerpts:

69.1. In *Board of Control for Cricket in India*, it was observed that: (SCC p. 765, para 90)

“90. Thus, a mistake on the part of the court which would include a mistake in the nature of the undertaking may also call for a review of the order. An application for review would also be maintainable if there exists sufficient reason therefor. What would constitute sufficient reason would depend on the facts and circumstances of the case. The words ‘sufficient reason’ in Order 47 Rule 1 of the Code are wide enough to include a misconception of fact or law by a court or even an advocate. An application for review may be necessitated by way of invoking the doctrine ‘*actus curiae neminem gravabit*’.

.69.2. This Court in *Green View Tea & Industries* reiterated the view adopted by it in *S. Nagaraj*. Therefore, the ratio of *Green View Tea* is not applicable in this case.

70. In view of the observations made in the aforesaid judgments, this Court would not be justified in holding that the High Court has erred in law in not reviewing its earlier judgment.”

13. Taking note of the said observations and as we find that there is no error apparent on the face of record which would call for a review of the Judgment passed by this Court nor that any provisions of law have been misconstrued as contended by the Petitioner, we find that there is no case made out for the Petitioner to grant any relief in the above Review Petition.

14. In view of the above, Review Petition stands accordingly rejected.

K. L. WADANE, J.

F. M. REIS, J.

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