

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

REVIEW PETITION NO. 44 OF 2016
IN
WRIT PETITION NO. 5677 OF 2013

Dr. Vishwambhar Nagnath Ingole	...	Petitioner
V/s.		
State of Maharashtra & Ors.	...	Respondents

WITH
REVIEW PETITION NO. 45 OF 2016
IN
WRIT PETITION NO. 5678 OF 2013

Dr. Suhas Digambarrao Peshwe	...	Petitioner
V/s.		
State of Maharashtra & Ors.	...	Respondents

WITH
REVIEW PETITION NO. 63 OF 2016
IN
WRIT PETITION NO. 12051 OF 2012

Dr. Subhash Madhusudan Karande	...	Petitioner
V/s.		
State of Maharashtra & Ors.	...	Respondents

WITH
REVIEW PETITION NO. 64 OF 2016
IN
WRIT PETITION NO. 12052 OF 2012

Dr. Krantikumar Rangrao Patil	...	Petitioner
V/s.		
State of Maharashtra & Ors.	...	Respondents

WITH
REVIEW PETITION NO. 65 OF 2016
IN
WRIT PETITION NO. 12056 OF 2012

Shivputra Chandramappa Dhuttargaon ... Petitioner
V/s.
State of Maharashtra & Ors. ... Respondents

WITH
REVIEW PETITION NO. 66 OF 2016
IN
WRIT PETITION NO. 986 OF 2013

Dr. Kishore Raghunath Pawar ... Petitioner
V/s.
State of Maharashtra & Ors. ... Respondents

WITH
REVIEW PETITION NO. 67 OF 2016
IN
WRIT PETITION NO. 9821 OF 2013

Shivaji Ambadas Devdhe ... Petitioner
V/s.
State of Maharashtra & Ors. ... Respondents

Mr. T. Prabhakaran i/b. Mr. A. A. Joshi for Petitioners in Review Petition Nos. 44 and 45 of 2016.

Mr. A. Y. Sakhare – Senior Advocate for Petitioners in Review Petition Nos. 63, 64, 65, 66 and 67 of 2016.

Mr. A. I. Patel – AGP for State in all Review Petitions.

Mr. Amit Borkar for Respondent No. 5 – Universities.

**CORAM : NARESH H. PATIL AND
M. S. SONAK, JJ.**

DATE : 26 APRIL 2016

COMMON ORDER :

- 1] Heard Mr. T. Prabhakaran i/b. Mr. A. A. Joshi for review petitioners in review petition nos. 44 of 2016 and 45 of 2016.
- 2] Heard Mr. A. Y. Sakhare, learned Senior Advocate along with Advocate Mr. Uday Mate i/b. Mr. S. S. Deshmukh, Advocates for the review petitioners in review petition nos. 63, 64, 65, 66 and 67 of 2016.
- 3] Heard Mr. A. I. Patel, learned AGP for the respondents – State.
- 4] Heard Mr. Amit Borkar, learned counsel for the respondent no. 5 - Universities.
- 5] Learned counsel for the parties state and agree that these review petitions, which seek review of common judgment and order dated 19 January 2016 in the respective writ petitions instituted by the review

petitioners, can be disposed of with this common order.

6] Mr. T. Prabhakaran, learned counsel for review petitioners in review petition nos. 44 of 2016 and 45 of 2016, at the very outset, submitted that the review petitioners were not seeking review in the context of dismissal of their petitions or the denial of relief as applied for by the review petitioners, in their respective petitions. Mr. Prabhakaran submitted that these review petitions are restricted to seeking review / deletion of the observations / findings recorded in paragraphs 21 to 42 of the common judgment and order dated 19 January 2016, as also the consequential directions in paragraphs 43 (D), 43(E) and 43(F) of the common judgment and order dated 19 January 2016.

7] Mr. Prabhakaran submitted that although the review petitioners in writ petition nos. 1911 of 2013 and 1946 of 2013 were filed through Advocate V. A. Shastry, finally the said Advocate, was substituted by some other Advocates, who actually appeared for and on behalf of the review petitioners. In these circumstances, Mr. Prabhakaran submitted that the observations / findings in paragraphs 22 to 42 of the common judgment and order dated 19 January 2016, which basically concern the manner in which interim orders were obtained in several petitions of this

nature, cannot apply to the review petitioners. Mr. Prabhakaran submitted that the review petitioners have a sterling and unblemished service record and it is possible that the observations / conclusions in paragraphs 21 to 42 are construed as stigmatic to the petitioners and to deny the review petitioners the benefits of their life time achievements in the field of education. Mr. Prabhakaran submitted that even though the review petitioners had also obtained interim reliefs, which enabled them to continue in service beyond the age of 62 years, such interim reliefs were obtained by them in a *bona fide* manner and therefore the review petitioners may not be required to refund the monetary benefits obtained by them upon the strength of such interim reliefs.

8] Mr. Prabhakaran also submitted that the interim reliefs obtained by the review petitioners were not blanket. The interim orders required the authorities to examine the case of the review petitioners on merits and only if found meritorious, were, the petitioners directed to be continued in service beyond the age of 62 years. He submitted that upon undertaking this exercise, the review petitioners were found to be meritorious and were therefore continued in services beyond 62 years. In these circumstances, Mr. Prabhakaran submitted that the directions for refund of the benefits availed by the review petitioners were not called for. Mr.

Prabhakaran submitted that the review petitioners are well qualified educationists, who have, by now, retired. Therefore, he submitted that the case of these two review petitioners is required to be considered sympathetically, particularly with regard to the directions for refund of benefits availed in pursuance of interim orders.

9] Mr. A. Y. Sakhare, learned Senior Advocate for the review petitioners in review petition nos. 63, 64, 65, 66 and 67 of 2016 also submitted that the case of review petitioners was restricted to the observations / findings in paragraphs 21 to 42 and to the directions contained in paragraphs 43(D), 43(E) and 43(F) of the common judgment and order dated 19 January 2016. Mr. Sakhare made it clear that no review was being applied for in respect of the denial of reliefs to the review petitioners in respective petitions instituted by them. Again, Mr. Sakhare also submitted that these matters are required to be considered sympathetically, as, the review petitioners have already retired from the position of principals, after putting service in the said post beyond the age of 62 years. Mr. Sakhare also submitted that the review petitioners whom he represents had obtained interim orders on 26 February 2013 and 11 March 2013, which is much before the order dated 24 April 2013 made by the Nagpur Bench in case of Dr. Nirmala

Wankhede (writ petition no. 2296 of 2013 and renumbered as writ petition no. 5679 of 2013). Mr. Sakhare also submitted that the interim orders obtained by the review petitioners prior to 24 April 2013 stand on a different pedestal and therefore, the case of the review petitioners was required to be considered differently.

10] Mr. Sakhare placed reliance upon the decision of the Hon'ble Supreme Court in the case of ***State of Punjab & Ors. etc. vs. Rafiq Masih (White Washer) etc. [Civil Appeal No. 11527 of 2014 decided on 18 December 2014]***, to submit that any benefit granted, mistakenly to any employee, may not be recovered at the stage when the employee has retired or is due to retire within one year of the order of recovery. For all these reasons, Mr. Sakhare submitted that the review petitions may be allowed to the extent now pressed by the review petitioners.

11] Mr. A. I. Patel, learned AGP, at the very outset submitted that the review petitions do not raise any ground sufficient for the exercise of review jurisdiction. Mr. Patel submitted that the grounds now pressed by and on behalf of the review petitioners, are not grounds sufficient for the exercise of review jurisdiction and therefore, for this reason alone, the review petitions may be dismissed. Mr. Patel further submitted that the

review petitioners have availed benefits which they were not entitled to by virtue of the interim orders obtained by them. Now that, the petitions instituted by the review petitioners have been dismissed and the petitioners make no grievance about the dismissal, there is no question of permitting the petitioners to retain the benefits obtained by them on the basis of the interim order. The directions which review petitioners seek to review are mainly in the nature of restitution, which the Hon'ble Supreme Court, in series of decisions has held, that it is the duty of the court to order. Mr. Patel submitted that in case the petitions were allowed, the State Government would have been directed to pay the petitioners the benefits which were due to them. Therefore, as a corollary, the petitioners cannot insist upon retaining the benefits which they have obtained, even though, it was ultimately found that there was no merit in their petitions. Mr. Patel submitted that no orders may be made only on sympathetic consideration, particularly as the review petitioners seek to retain tax payers moneys, even though, the review petitioners have no legal or equitable right to retain the same. For all these reasons, Mr. Patel submitted that the review petitions may be dismissed.

12] Mr. Borkar, learned counsel for respondent no. 5 – Universities submitted that he has no submissions to make, since the universities are

not directly concerned with financial benefits paid to the review petitioners.

13] We have carefully considered the aforesaid submissions made by and on behalf of learned counsel for the parties. We have also once again carefully perused the record and the common judgment and order of which the review has been applied for. In the facts and circumstances involved in the present batch of review petitions, we are satisfied that the review petitioners have not made out any case for warranting the exercise of review jurisdiction. The petitioners have neither pointed out any error apparent on the face of record nor have they even raised any other grounds sufficient to warrant the exercise of review jurisdiction. On this ground itself, the review petitions are liable to be dismissed and the same are hereby dismissed.

14] In these cases, the review petitioners, seek to retain the benefits availed by them in pursuance of interim orders. Upon detailed consideration of the facts and the law, we have held that the writ petitions as instituted by the review petitioners deserve dismissal. In fact, the review petitioners do not even challenge dismissal of their respective petitions. The observations / conclusions in paragraphs 21 to 42 are

mainly in the context of restitution, once, this court comes to the conclusion that the petitions deserve to be dismissed. In numerous decisions, which have been referred to in the common judgment and order, it is held that no litigant can derive benefit from mere pendency of a case in a court of law and when the petition is finally dismissed, the interim order stands nullified automatically. In such a fact situation, the Hon'ble Supreme Court has held that the court is under obligation to undo the wrong by neutralising the unfair advantage gained by the parties by invoking the jurisdiction of the Court.¹

15] The circumstance that the cases of some of the review petitioners were considered by the authorities on merits before they were permitted to continue in service beyond 62 years, makes no difference to the matter. This is because in the absence of interim orders, the cases of such review petitioners were not even liable to be forwarded for consideration on merits. In any case, whilst dismissing the petitions we have held that the rule which required the college authorities to make attempts to fill in the post of principal by direct recruitment (by placing

1 1995 LAB I.C. 2471 State of U.P. vs. Harendra Kunwar
(2011) 8 SCC 161 Enviro-Legal Action vs. Union of India & Ors.
(2010) 1 SCC 417 Amarjeet Singh & Ors. vs. Devi Ratan & Ors.
(2010) 9 SCC 437 Kalabharti Advertising vs. Hemant Vimalnath Narichania & Ors.
(1992) 2 SCC 620 Ram Krishna Verma vs. State of U.P.
(2003) 8 SCC 648 South Eastern Coalfields Ltd. vs. State of M.P.

public advertisements) before, the cases of incumbent principals could be considered for extension, is legal and constitutional. The review petitioners have not even questioned this part of the common judgment and order. Therefore, it is quite apparent that the petitioners have obtained financial benefits, only on the strength of the interim orders. Now that their petitions have been dismissed and the interim orders have been vacated, their objection to restitution cannot be entertained by way of these review petitions.

16] We are also unable to accept the distinction between the interim orders obtained prior to 24 April 2013 in the case of Dr. Nirmala Wankhede and the interim orders obtained by the petitioners thereafter. There is no case made out to differentiate between the two sets of cases, particularly when the principle of restitution is involved. The decision in the case of *Rafiq Masih* (supra) is distinguishable. In the said case, the parties were beneficiaries of a mistake committed by the employer and on account of the said unintentional mistake, the employees were in receipt of monetary benefits, beyond their entitlements. It is in these circumstances that the Hon'ble Supreme Court has held that recoveries would be iniquitous, if made from the retired employees or employees who are due to retire within one year, of the order of recovery. In many

case, recoveries were ordered after several years and practically in all cases the employees were themselves not at all responsible for the mistake made by the employer, due to which, they may have obtained certain financial benefits.

17] Apart from the aforesaid grounds, no other grounds were urged before us in support of these review petitions. No doubt, both learned counsel did submit that the matters should be considered sympathetically. In the facts and circumstances of the present cases, there is really no scope for deciding these review petitions only upon sympathetic considerations. The Hon'ble Supreme Court has time and again held that sympathy or sentiments by itself, cannot be a ground for grant of relief to party who have miserably failed to establish a legal right². Even in a matter concerning pensionary benefits, the Hon'ble Supreme Court whilst expressing sympathies, stated that in a society governed by the rule of law, sympathies cannot override rules and regulations.³ This position is reiterated by the Hon'ble Supreme Court by observing that the grant of relief only out of sympathy or humanitarian consideration is not only unconstitutional, but is also fraught with grave peril for the judiciary.⁴

2 (2004) 2 SCC 130 Teri Oat Estates (P) Ltd. vs. U. T. Chandigarh & Ors.

3 (2011) 3 SCC 486 Sudhir Kumar Consul vs. Allahabad Bank

4 (2007) 1 SCC 408 Indian Drugs & Pharmaceuticals Ltd. vs. Workmen, Indian Drugs & Pharmaceuticals Ltd.

18] For all the aforesaid reasons, we dismiss the review petitions.

There shall however be no order as to costs.

(M. S. SONAK, J.)

(NARESH H. PATIL, J.)