

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR

MISC. CIVIL APPLICATION NO.362 OF 2016 (FOR REVIEW)

IN

WRIT PETITION NO.2701 OF 1995

Western Coalfields Limited, thr its General Manager, Nagpur and another

..vs..

Director of Mines Safety, Nagpur Region, Seminary Hills, Nagpur and ors

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

Court's or Judge's Order

Shri S.C. Mehadia, Counsel for the applicants/Orig. Resp.Nos.2 & 3.

Shri V.A. Dhabe, Counsel for NA Nos.3 to 6/Orig. Petitioners.

Mrs. Venkatraman, Counsel for NA No.1/Orig. Resp.No.1

**CORAM : B.P. DHARMADHIKARI &
PRASANNA B. VARALE, JJ.**

DATED : AUGUST 19, 2016.

Heard.

The prayer is to review of judgment dated 9.4.2012 on the ground that the subsequent promotions of petitioner Nos.2, 3, and 4 debars them from challenging earlier cancellation of promotion orders dated 16.6.1995. Petitioner No.5 also, later on, came to be promoted on the post of Clerk i.e. on administrative side and, hence, he cannot claim the post of 'Mining Sirdar'. Petitioner No.1 retired on 31.3.2007 i.e. five years before the impugned judgment and notice of this review petition is not issued to him on 18.3.2016.

Learned counsel Shri S.C. Mehadia for the applicants/original respondent Nos.2 and 3 submits that promotions were required to be cancelled because of

the directions issued by respondent No.1 and, hence, public entity, like respondent Nos.2 and 3, should not be saddled with liability for idle period.

Learned counsel Mrs. Venkatraman appearing for non-applicant No.1/original respondent No.1 submits that respondent No.1 has already implemented the directions issued to him and necessary certificates are issued to the petitioners.

Learned counsel Shri V.A. Dhabe for the original petitioners submits that cancellation has come after the petitioners joined on promotional posts and worked for two months. It is found to be without jurisdiction and, as such, this Court has rightly granted them all benefits, retrospectively. Our attention has also been drawn to developments during pendency of the writ petition.

In writ petition, on 28.5.1996, the Vacations Judge of this Court has considered the request for grant of *interim* relief. The petitioners wanted postponement of examination then scheduled to be held on 30.5.1996. The Vacations Judge found that the challenge can be finally considered by the Court and the petitioners may also get consequential relief with necessary emoluments. It found that, at that stage, no *ad interim* relief was warranted.

The writ petition was very much pending before this Court. The petitioners also attempted to

obtain *interim* orders and, hence, by appearing in subsequent examination it cannot be said that they have given up their challenge in the pending writ petition.

This Court has found cancellation of earlier examination, conducted on 28.4.1995, unwarranted and arbitrary. Therefore, promotional orders dated 16.6.1995 were restored. The petitioners, therefore, got benefits from that date and on later dates i.e. 25.5.1999, 28.4.1998, and 31.10.1998, petitioner Nos.2, 3, and 4 have been actually promoted again to that post. Petitioner No.5 has, later on, shifted to administrative side. Thus, till these events, petitioner Nos.3 and 4 as also No.5 are entitled to receive arrears.

Learned counsel Shri S.C. Mehadia for the applicants, without prejudice to his contention, also submits that this Court may release notional increments for the above period. However, in review, we cannot and are not inclined to undertake that exercise. Such arguments could have been advanced when the writ petition was decided.

Since no case is made out, the misc. civil application is rejected and disposed of accordingly. No costs.

JUDGE

JUDGE

!! BRW !!

C E R T I F I C A T E

I certify that this Order/Judgment uploaded is a true and correct copy of original signed Order.

**Uploaded by : Bhushan R.Wankhede.
(Personal Assistant)**

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