

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CIVIL APPLICATION NO. 11601 OF 2016
IN
REVIEW PETITION STAMP NO. 19684 OF 2016
IN
WRIT PETITION NO. 269 OF 2000

YADUBA @ ARUN S/O. DHONDIBA GHODE
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

Advocate for Petitioner : A.V. Patil Indrale h/f. D.K. Thote.

Advocate for Respondent No. 1 : Miss S.S. Raut.

Advocate for Respondent Nos. 2 & 3 : Shri S.S. Tope.

CORAM : RAVINDRA V. GHUGE, J.

Dated : March 08, 2017

PER COURT :-

1. This matter was heard on 07/03/2017 and today as well.
2. The applicant submits that the order dated 04/05/2016, passed by this Court in Writ Petition No. 269/2000, contains certain directions for conducting a departmental enquiry against the applicant. Though the applicant has retired from service, the enquiry has been directed in the light of the request and consent of the applicant and his willingness to face the enquiry even after his retirement.

3. By the Review Application, it is submitted that considering the grave hardships suffered, the applicant now requests that the direction to initiate departmental enquiry may be reviewed and the applicant may be granted retiral benefits.

4. Considering the issue, the Civil Application is allowed and the delay of twenty four days is condoned.

5. The Review Application is heard by the consent of the parties.

6. The applicant has tendered an affidavit dated 08/03/2017, which is marked as Exhibit 'X' for identification, putting forth the following request :

(a) The judgment of this court dated 04/05/2016, be modified and the direction to conduct a departmental enquiry be recalled.

(b) The applicant will not pray for any monetary benefits in so far as monthly salary is concerned from 14/07/1994.

(c) His tenure of service may be considered to be in continuity from 01/07/1981 till 1/07/2001, so as to entitle him for pensionary benefits and retiral benefits.

(d) For the period 14/07/1994 till 01/07/2001, the applicant would not claim any salary either from the respondent/Management or from the Government.

(e) He may be deemed to have voluntarily retired from service w.e.f. 01/07/2001.

7. Shri Tope, learned advocate for the respondent/Management and the learned AGP for the State submit that the pay structure of the applicant as in June, 1994, is as per the fourth pay commission recommendations. Without having worked from 14/07/1994 till 01/07/2001, he cannot be granted the benefits of the fifth pay commission recommendations as it would amount to unduly taxing the State exchequer. They would not object if continuity is granted till 1/07/2001, subject to the condition that the pay fixation shall be as per the fourth pay commission recommendations as in June/July, 1994. Gratuity will be calculated on that basis. The Original service book and all such documents as are

required, would be filled in by the applicant and be submitted to the Management for completing the documentation after which the competent authorities of the State would consider the proposal for pensionary benefits.

8. Shri Patil, learned advocate for the applicant submits on instructions from the applicant who is present in the court, that the suggestions of Shri Tope and the learned AGP are acceptable.

9. In the light of the above, this Review Application is partly allowed by consent. The directions of this court set out below paragraph No. 9 of the judgment dated 04th May, 2016 in Writ Petition No. 269/2000, shall stand recalled along with the observations in paragraph No. 8 and the same shall be substituted by the following order :

(a) The applicant shall tender an application for voluntary retirement to the respondent No. 2/Management clearly stating there in that he would accept his deemed voluntary retirement from 01/07/2001, so as to complete his

service of twenty years from 01/07/1981 till 01/07/2001. This application will be submitted within two weeks from today and respondent No. 2/Management shall accordingly accept it.

(b) The applicant shall submit his original service book within two weeks to respondent No. 2 and shall take an acknowledgment receipt.

(c) The respondent No. 2 / Management shall complete the formalities by fixing the salary / pay structure of the applicant as per the fourth pay commission recommendations as were payable to similarly situated and comparable employees (Clerks) as in class-III.

(d) The pay structure / fixation shall be by taking into account the last date of actual working of the applicant which is 14/07/1994.

(e) The respondent No. 2 / Management shall complete this exercise within a period of four weeks, after receiving the documents from the petitioner / applicant and shall forward the same to the competent authorities which are Senior Accountant and Education Officer.

(f) The competent authorities, upon receiving the said

documentation shall grant necessary approval in accordance with the Rules within a period of eight weeks thereafter.

10. Needless to state, since this is a consenting order, the applicant shall be precluded from raising any claim or dispute against the respondent No. 2 / Management or the State in relation to his employment and non-employment with respondent No. 2, before any authority, Court or Tribunal.

(RAVINDRA V. GHUGE, J.)

S.P.C.