

IN THE COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR
Civil Application (o) No. 1401/2017
in
REVIEW PETITION NO...../2017
IN
WRIT PETITION NO. 4704/2017

(Samiksha D/o Raju Dhole and another vs. Union of India and others)

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

Court's or Judge's order

.....
S/Shri T.D. Mandlekar/Malviya, Advs. for petitioners/applicants
Mrs.Mugdha Chandurkar, Adv.for respondent no.1
Mrs.B.P.Maldhure, Adv. for respondents 2,3 and 4

CORAM : B.P. DHARMADHIKARI &
ARUN D.UPADHYE, JJ.

DATED : 3rd November, 2017.

Heard respective counsel.

2. We find that had Kerala view been brought to the notice of this Court, the policy decision extending the meaning of “insurable person” even to cover break period could have been noted by this Court and a particular view thereafter could have been reached. It is apparent that the exercise then possible could not be undertaken and in absence of Kerala view, which may have only persuasive value or then the policy decision dated 5.12.1999, this Court has decided the controversy.

3. In this situation, while passing orders in the matter on 13th October 2017, we have in paragraph 3 found some merit in contention of learned counsel for applicant/petitioner but then we have also observed that filling in of existing vacancy (if any) or creation of supernumerary post at this level was not possible

in present facts.

4. We, therefore, restricted further consideration only to Civil Application No.1401/2017 for passing appropriate orders on failure or omission on part of respondents to bring the true and correct facts to the notice of this Court. The reasons behind such omission or failure are not being pressed into service by respondents.

5. The affidavit filed by Rajkumar, Director General, ESIC, in paragraph nos.2,3 and 4 reads as under :

“ 2. I say and submit that Writ Petition No.4704 of 2014 and Writ Petition No. 4761 of 2017 were dismissed by the Hon’ble Court on 10.08.2017.

3. The Hon’ble High Court, Kerala at Ernakulam passed judgment on 24-07-2017 in Writ Appeal No. 1546 of 2017 and other writ appeals. These judgments were envisaged to be challenged before the Hon’ble Apex Court and, therefore, at the relevant time, it was not brought before this Hon’ble Court. Seven SLPs challenging Kerala High Court judgment were filed on 04.08.2017 and were dismissed on 25.08.2017 i.e. after the decision of writ petition No.4704 of 2017 and 4761 of 2017 filed before this Hon’ble Court. In these circumstances, the judgment of Hon’ble Kerala High Court at Ernakulam was not brought before this Hon’ble Court and there was no intention to suppress any fact before this Hon’ble Court.

4. *However, I tender unqualified apology for the inconvenience caused to this Hon'ble Court."*

6. Thus, the affidavit itself shows knowledge of judgment and also its relevance. It brings on record an intention to suppress it from this Court. As already noted, not only the judgment has been suppressed but then fact of Government Resolution dated 5.12.1999 considered by the Kerala High Court and relevant for adjudication has also been suppressed.

7. Though the deponent tendered an unconditional apology, in present facts, considering the possible impact which that judgment or then the resolution dated 5.12.1999 might have on adjudication in Writ Petition No.4704/2017, we are not inclined to accept the apology. We warn said Officer and direct that such decisions on relevance or correctness should be left to Courts and entire material should be presented to it for consideration.

8. Accordingly, we dispose of the Civil Application.

JUDGE

JUDGE

sahare