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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

REVIEW APPLICATION NO. 25 OF 2018
IN
WRIT PETITION NO. 823 OF 2004

Devidas Dhondiba Tekale

APPLICANT

VERSUS

The State of Maharashtra and Others

RESPONDENTS

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Mr. S. S. Bora, Advocate for the applicant

Mr. S. N. Morampalle, AGP for respondent - State

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[CORAM : SUNIL P. DESHMUKH
AND P. R. BORA, JJ]

DATE : 23rd AUGUST, 2018

ORDER :

1. This review application has been moved in respect of appendage to order dated 16th January, 2018 in writ petition bearing No. 823 of 2004, restricting benefits.

2. Mr. Satyajit S. Bora, learned advocate for petitioner - review applicant submits that the petitioner all along has been requesting for all the benefits arising from Government Resolution dated 28th June, 1994, consequential, ancillary and incidental to upgradation of his post to full time librarian with increase in number of students to one thousand and more.

3. He submits that this court had found that the petitioner is entitled to the reliefs claimed in terms of prayer clause "C",

reading, thus -

“ C. *Appropriate Writ, Direction or Order under Article 226 of the Constitution of India be issued directing the Respondents and particularly the Respondents Nos. 2 and 3 to regularise the services of the petitioner as full – time Librarian with retrospective effect with all consequential service benefits including the increments and arrears of salary and allowances. ”*

4. He submits, it however appears, taking into account orders passed in writ petitions No. 7779 of 2012 and 2732 of 2013 by two division benches of this court wherein it has been considered that the petitioners would not be entitled to claim difference in salary till 2006, relief granted in the writ petition had come with a tag observing in paragraphs No. 12 and 13 in the order under review, as under-

“ 12. *In the circumstances, we consider it to be expeditious to grant writ petition in terms of prayer clause (C) save that petitioner would not be able to claim difference in salary till 2006 as observed in decisions in writ petitions no. 2732 of 2013 and 7779 of 2012.*

13. *Writ petition accordingly, is allowed in terms of prayer clause (C) save that the petitioner would not be entitled to difference of salary till 2006, and disposed of. ”*

5. Mr. Bora purports to point out that the two decisions rendered in writ petitions No. 7779 of 2012 and 2732 of 2013 dated 9th March, 2015 and 1st April, 2015 respectively, were given

having regard to decision dated 20th January, 2015 by Division Bench of this court at Nagpur in writ petitions bearing No. 6630 of 2013, 6631 of 2013 and 6481 of 2013.

6. Learned advocate refers to decisions of high court and government orders and submits that while decision had been given in three writ petitions bearing No. 6630 of 2013 and two others, division bench at Nagpur has unequivocally confirmed that petitioners therein were entitled to grant of up-gradation to full time librarians in terms of dates mentioned in Annexure-A to the petition and that court had also accepted the stand taken by the State Government reflected in order dated 9th February, 2012 in the case of *Vatsala Nana Desai* along with consequential order dated 24th February, 2012 and had held that the petitioners would be entitled to similar treatment.

7. Mr. Bora points out that while the division bench had observed as aforesaid, the court had also to advert to that the petitioners in those three writ petitions had given up their claim of arrears and salary on their volition and the benefits to them were accordingly given to the extent of notional pay fixation and other incidental benefits. He, thus, purports to emphasise that the order passed in writ petition No. 6630 of 2013 and other two writ petitions had been based on concession given by the

petitioners who were not keen on having arrears of monetary benefits from the date from which they were entitled to.

8. Mr. Bora submits that there is no decision as yet, by any court holding incumbents disentitled to the benefits from the date of government resolution. Petitioner in this particular case finds it difficult to give up benefits arising from entitlement on account of various personal reasons. During all this period many liabilities have been incurred and had arisen. Learned advocate, therefore, urges to modify order to the extent that it purports to decline full benefits arising from the entitlement.

9. Learned AGP submits that the two decisions of this court in writ petitions bearing No. 7779 of 2012 and 2732 of 2013, which have been referred to in the order under review, would tend to set a trend in respect of considerations of the requests as have been made by the present petitioner. He submits that since a treatment to similarly placed persons has been given under these two decisions, it may not be said that the order of this court dated 16th January, 2018 in writ petition No. 823 of 2004 is amenable to modification and / or review.

10. Perusal of order passed in writ petition No. 6630 of 2013 and two companion writ petitions dated 20th January, 2015 passed by division bench of this court at Nagpur shows that

attention of the division bench had been drawn to order dated 9th February, 2012 passed in the case of *Smt. Vatsala Nana Desai* whereunder post of part time librarian had been upgraded pursuant to government resolution dated 28th June, 1994 to full time librarian from initial date of appointment and thereafter on 24th February, 2012 effective orders came to be passed granting all the benefits accruing to said employee by treating her entitled to post of full time librarian from initial date of her appointment.

11. The division bench at Nagpur had accepted stand of the State government as reflected in the order dated 9th February, 2012 passed in the case of *Smt. Vatsalabai Nana Desai* along with consequential order dated 24th February, 2012 and had found that petitioners in writ petition No. 6630 of 2013 and companion writ petitions would be entitled to similar treatment. The division bench had held that the petitioners are entitled to grant of up-gradation to the post of full time librarian in terms of the dates mentioned in Annexure-A to the petition. However, as the petitioners had given up claim of arrears of salary, it was observed that benefits would be available only for the purpose of notional pay fixation, time bound promotion and pensionary benefits in accordance with rules.

12. Aforesaid decision of division bench at Nagpur had been

relied on by division bench of this court at Aurangabad while passing order in writ petition No.7779 of 2012, as observed in paragraph No. 3, which has been reproduced in the order in the writ petition. Perusal of order in writ petition No.7779 of 2012 shows that the petitioners had been held to be entitled to the benefit of post of full time librarian from the date the strength of students is one thousand and more and that would be the date taken into account for all purposes, such as, notional pay fixation, time bound promotion and pensionary benefits in accordance with rules. In the last sentence of the order, the division bench had further observed - '*however, the benefits of arrears of salary was not extended*' and the order came to be passed, as reproduced in order under review.

13. Perusal of order of another division bench of this court in writ petition No. 2732 of 2013 shows that the writ petition had been allowed for the reasons assigned by division bench of this court at Aurangabad in the case of "*Ravindra Nana Patil V/s State of Maharashtra and Others*" bearing writ petition No. 7779 of 2012 and accordingly operative order came to be passed in writ petition No. 2732 of 2013 in the same terms as in writ petition No.7779 of 2012.

14. The situation, thus, emerges that reliance had been placed

on decisions in writ petitions No. 7779 of 2012 and 2732 of 2013 on behalf of the petitioner in the present case to support his cause to underscore entitlement to the benefit of post of full time librarian from the date when students strength would be one thousand and more, which is stated to be of October, 1994 in his case, while the strength of students is stated to have been one thousand and more. Those orders were not pressed into service for the purpose of curtailment of benefits. It appears from the two orders passed by division benches of this court at Aurangabad attention of the court had not been drawn to the aspect about giving up of benefits accruing from the government resolution dated 28th June, 1994 by petitioners in writ petitions No. 6630 of 2013 and two others and division benches appear to have followed the suit, oblivious of the concession by petitioners therein. Besides, the two writ petitions at Aurangabad appear to have been concerned with government resolution dated 3rd August, 2006. While benefits of resolution dated 28th June, 1994 have been extended to *Smt. Vatsala Nana Desai*, with effect from her initial date of appointment, which is stated to be 9th January, 1995, we do not see any reason as to why such benefits be detained from being given to present petitioner while he has made a request for the same and had not given up his claim to the benefits. In the present case, it is being urged that

5the benefits be given from the date of entitlement pursuant to the government resolution for various reasons and while the petitioner is considered to be entitled to.

15. Request under the review application appears to be legitimate and we consider it expedient to accordingly modify order under review. In the circumstances, the order passed on 16th January, 2018 to that extent would have to be reconsidered.

16. In view of above, order dated 16th January, 2018 passed by this court in writ petition No. 823 of 2004 stands modified deleting the sentences - *“save that petitioner would not be able to claim difference in salary till 2006 as observed in decisions in writ petitions no. 2732 of 2013 and 7779 of 2012”* from paragraph No. 12 and - *“save that the petitioner would not be entitled to difference of salary till 2006”* from paragraph No. 13 of the order and the petition stands granted in terms of prayer clause “C”. Review application is disposed of accordingly.

Dinesh
Ramrao
Pawar

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signed by
Dinesh
Ramrao
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[P. R. BORA, J.]

[SUNIL P. DESHMUKH, J.]

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