

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**WRIT PETITION NO. 2392 OF 2006
WITH
CIVIL APPLICATION NO. 2098 OF 2009**

Union of India & Ors.

...Petitioners

Versus

G. S. Taralekar

...Respondent

Mr. Rui Rodriques with Mr. G. Hariharan and Mr. A. A. Ansan
for Petitioners.

Mr. A. P. Vanarse for Respondent.

**CORAM: SMT. V. K. TAHILRAMANI, Acting C. J. &
M. S. SONAK, J.**

DATE : 05 APRIL 2018

ORAL JUDGMENT :

1] Heard learned counsel for the parties.

2] The challenge in this petition is to the judgment and
order dated 21st September 2005 allowing Original
Application No. 836 of 2004 instituted by the respondent.

3] The operative portion of the impugned judgment and
order reads as follows :

"In view of the above discussion, I am of the opinion that the applicant is entitled to be granted one increment which fell due on 1.4.2002 raising his pay from Rs.9750/- to Rs.10,000/-. His retiral benefits including pension be recalculated and arrears be paid to him accordingly within 3 months from the date of receipt of the order. Accordingly O.A. is allowed. No order as to costs."

4] Mr. Rui Rodriques, the learned counsel for the petitioners submits that the impugned judgment and order is entirely based upon the decision of the Division Bench of the Andhra Pradesh High Court in ***Union of India vs. R. Malakondiah & Ors. 2002(4) ALT 50***. He submits that the Full Bench of the Andhra Pradesh High Court in ***Principal Accountant General, Andhra Pradesh, Hyderabad & Anr. vs. C. Subba Rao & Ors. 2005(7) SLR 128*** has expressly overruled the decision of the Division Bench in the case of *Malakondiah* (supra). On this short ground, Mr. Rodriques submits that the impugned judgment and order made by the CAT is liable to be set aside.

5] Mr. Rodriques makes it clear that this petition has been filed as a matter of principle and also, so that, the impugned judgment and order made by the CAT, is not

cited as a precedent in similar matters.

6] Mr. Vanarse, the learned counsel for the respondent submits that the CAT has relied upon several decisions other than *Malakondiah* (supra) in support of the view which it has taken. He submits that the only relief granted to the petitioner is to take into account one increment of Rs.250/- which admittedly fell due on 1st April 2002, so that, the pay of the petitioner, stood increased from Rs.9750/- to Rs.10000/-. He submits that at the stage when the respondent had instituted OA No. 836 of 2004, the respondent had already retired as a senior post master, any variation, would be harsh.

7] Mr. Vanarse submits that now after the passage of over 14 years, the respondent, is an aged person drawing pension. He submits that if at that stage, any orders are made to disturb the pensionary benefits which the respondent is drawing, grave and irreparable prejudice will occasion to the respondent. He submits that the impugned judgment and order made by the CAT promotes substantial justice and therefore, at this stage, this Court, may not

interfere with the same.

8] From the perusal of the impugned judgment and order, we find that the CAT, has based its reasoning on the decision of the Division Bench of the Andhra Pradesh high Court in *Malakondiah* (supra). As on the date of the impugned judgment and order i.e. 21st September 2005, the Full Bench of the Andhra Pradesh High Court had already over ruled the ruling of the Division Bench in *Malakondiah* (supra) The decision of the Full Bench was delivered on 27th January 2005. However, it appears that the Union of India, did not point out this fact to the CAT.

9] Since, the CAT, in making the impugned judgment and order, has based its reasoning on the ruling of the Division Bench of the Andhra Pradesh High Court in *Malakondiah* (supra) and since, this ruling of the Division Bench has been expressly overruled by the Full Bench in *Subba Rao* (supra), it is obvious that the reasoning of the CAT in the impugned judgment and order will have to be disapproved. Accordingly, we disapprove the reasoning in the impugned judgment and order dated 21st September 2005.

10] The aforesaid disapproval, will redress the basic grievance of the Union of India since, the present petition, was stated to have been instituted as a matter of principle and also, to prevent the impugned judgment and order being cited as a precedent in some cases which might arise in the future. Now that we have disapproved the reasoning in the impugned judgment and order, it is obvious, that the impugned judgment and order, cannot be treated as a precedent any longer.

11] At this point of time, however, we are not inclined to formally set aside the impugned judgment and order taking into consideration the minor extent of benefit which the respondent, has availed in pursuance of the same. The respondent, had already retired when he instituted OA No. 836 of 2004 before the CAT in the year 2004. Today, almost 14 years have passed and the respondent, must be an aged person. Taking into consideration all these aspects, we refrain from formally setting aside the impugned judgment and order.

12] In ***Municipal Board, Pratabgarh & Anr. vs. Mahendra Singh Chawla & Ors. (1982) 3 SCC 331***, the Hon'ble Supreme Court held that legal formulations cannot be enforced *de hors* from the realities of the fact situation of the case and the effect of the laws on the human beings for whom the laws are meant. In the context of exercise of discretionary jurisdiction under Article 136, the Hon'ble Supreme Court has held that the law is to be tempered with equity and if the equitable situation demands after setting right the legal formulations not to take it to the logical end, the Supreme Court would be failing in its duty if it does not notice equitable considerations and mould the final order. In exercise of the extra ordinary jurisdiction under Article 136 the discretion should be so exercised by the court that justice may be rendered to both the parties. Similar considerations apply in the matter of exercise of extra ordinary and discretionary jurisdiction under Articles 226 and 227 of the Constitution of India.

13] For all the aforesaid reasons, whilst we disapprove the view taken by the CAT in the impugned judgment and order, we refrain from actually setting aside the impugned

judgment and order. Rule is disposed of in the aforesaid terms. There shall be no order as to costs.

14] In view of the disposal of the writ petition, civil application does not survive, and is disposed of .

(M.S. SONAK, J.)

(ACTING CHIEF JUSTICE)

CHANDKA