

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 9044 OF 2005

Meenakshi B. Chaudhari ...Petitioner
Versus
The State of Maharashtra and ors. ...Respondents

Smt. Varsha Palav for the Petitioner.
Mr. C.P. Yadav, AGP for Respondent Nos.1,2,4 to 7/ State

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

DATE : 05.07.2018.

ORAL JUDGMENT:

- 1] Heard learned counsel for the parties.
- 2] At the time of issuance of Rule in this petition on 29.8.2006, this court, made the following order:

"1. Heard. In the facts and circumstances disclosed from the record as well as in the facts and circumstances in which the impugned order was passed, and considering the delay in approaching the Court, the petition is directed to be admitted for final hearing by issuing rule, subject to the petitioner's depositing a sum of Rs.10,000/- within a period of four weeks from today in this Court. The said amount shall be subject to the final decision in the petition. Meanwhile, the same shall be invested in any nationalised bank and shall be kept so invested till further orders in the petition. In case the petitioner fails to deposit the said amount of Rs.10,000/- within a period of four weeks from today, the order passed

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issuing the rule shall stand automatically recalled and the petition shall stand dismissed without being referred to the Court."

3] Ms Palav, learned counsel for the petitioner, states that the amount of Rs.10,000/- as directed in the order dated 29.08.2006 has already been deposited by the petitioner in this court within the period prescribed.

4] Ms Palav points out that the challenge in the present petition is to the order dated 28.07.2004, by which, the Maharashtra Administrative Tribunal (MAT) Mumbai dismissed O.A. No. 927 of 2003 instituted by the petitioner and some other seeking for benefit of regularisation of their services. She submits that the petitioner had entrusted the matter to her advocate and was confident that the advocate would attend the matter with due diligence. She submits that the petitioner was also under the *bonafide* impression that her colleagues would be pursuing the matter with the said advocate. She submits that since the advocate did not attend the proceedings before the MAT, but the O.A. came to be dismissed for non-prosecution. She submits that at that time, the petitioner was advised that an application for setting aside or recall of such an order dismissing the O.A.

for default is not maintainable before the MAT and therefore, the petitioner instituted the present petition.

5] Ms Palav submits that from the order dated 29.08.2006, it is quite clear that this court, intended not only to dispose of the petition at an early date, but further to allow the petition, subject to the petitioner's paying costs of Rs.10,000/- in favour of the respondent. Ms Palav submits that an opportunity may be granted to the petitioner to put forth her case before the MAT by setting aside the impugned order.

6] Mr. C.P. Yadav, learned AGP for the respondent/State, submits that there is no case made out to interfere with the impugned order. In any case, he points out that on account of subsequent developments, grant of any relief to the petitioner even before the MAT, is quite out of question. In particular, he refers to the decision of the Hon'ble Supreme Court in case of ***State of Maharashtra and ors. vs. Anita and anr. - (2016) 8 SCC 293***, the issue raised before the MAT is now squarely covered by this decision against the petitioner. He therefore, submits that no useful

purpose will be served by remanding the matter, at this belated stage.

7] At this stage, we are not inclined to examine the matter on merits. The limited issue before us is in the context of the order dated 28.07.2004, by which, the MAT dismissed the petitioner's O.A. No. 927 of 2003 for default. The impugned order dated 28.07.2004 reads as under:

"Order: 28.07.2004

Heard the learned P.O. Since last several dates, the applicant and his advocate are absent. Today also no body is present since morning. The O.A. is therefore, dismissed for default. No order as to costs."

8] The explanation furnished by the petitioner is a plausible explanation. In such matters, there is bound to be some lapse on the part of the parties seeking for a recall of dismissal for default order. However, there has to be a balanced assessment of the lapse and consequences arising out of the order under challenge. There are no *mala fides* alleged against the petitioner. The petitioner, in terms of the order dated 29.08.2006 has already deposited the amount of Rs.10,000/-, which was towards security of costs payable to the respondents, in case, this petition were to be allowed

and the matter remanded to the MAT. There was an order made for investment of this amount in a nationalised bank.

9] Upon cumulative consideration of all the aforesaid circumstances and without going into merits and demerits of the rival contentions, we accept the explanation for non-appearance before the MAT on the date the impugned order was made and on such basis we set aside the impugned order dated 28.07.2004 and restore the O.A. No. 927 of 2003 to the file of MAT. However, we clarify that such restoration is only *qua* the petitioner and not *qua* the remaining original applicants in O.A. No. 927 of 2003. This is because none of the other applications in O.A. No. 927 of 2003 have chosen to challenge the impugned order dated 28.07.2004, which has consequently, attained finality insofar as they are concerned.

10] The impugned order dated 28.07.2004 is therefore, set aside *qua* the petitioner alone. Respondent No.2, who is really contesting party is permitted to withdraw the amount of Rs.10,000/- deposited by the petitioner in pursuance of the order dated 29.08.2006 together with interest which

may have accrued thereon, unconditionally. O.A. No. 927 of 2003 is remanded to the MAT, which shall decide the same on its own merits and in accordance with law. It is once again clarified that restoration is only *qua* the petitioner and not the remaining applicants in O.A. No. 927 of 2003.

11] The petitioner and authorised representatives of the respondents to appear before the MAT on 30.07.2018 and produce an authenticated copy of this order.

12] All contentions of all parties are expressly kept open for adjudication by the MAT.

13] Rule is made absolute to the aforesaid extent.

14] All concerned to act on the basis of authenticated copy of this order.

(M.S. SONAK, J.)

(ACTING CHIEF JUSTICE)