

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

Civil Application [CAW] No.1900 of 2018
in
Writ Petition No.952 of 2001

Dr. Arvind Gulabrao Thakre
vs.
Dr. Baban Ramdasji Kamble & others

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

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Court's or Judge's Orders

Shri B.B. Raipure, Advocate for the Applicant/Respondent No.1.
Shri R.M. Ahirrao, Advocate for the Petitioner.
Mrs. A.R. Kulkarni, A.G.P. for Respondent Nos.2 & 3.

CORAM : S.B. SHUKRE & S.M. MODAK, JJ.

DATE : 24th NOVEMBER, 2018.

Heard Shri B.B. Raipure, learned Counsel for applicant-respondent No.1, who has filed this application, Shri R.M. Ahirrao, learned Counsel for the petitioner and Mrs. A.R. Kulkarni, learned A.G.P. for respondent Nos.2 & 3.

Although, this application has been styled as modification of the order dated 07/08/2015, it is clear from the prayer made therein that this is an application by which review of order dated 07/08/2015 has been sought.

Ground of review is that this Court found that there are other employees, about 950 in number, who are going to be adversely affected, in case the seniority claim raised by respondent No.1 is granted and, therefore, these employees are the necessary parties, is a view wrongly taken by this Court.

The learned Counsel for the applicant in order to support his contention relies upon the case of **B. Prabhakar Rao & others vs. State of Andhra Pradesh & others - AIR 1986 SC 210.**

In our considered opinion and as rightly submitted by the learned Counsel for the petitioner, the ratio of the case of B. Prabhakar Rao would have no application to the facts of the case. In that case, the age of superannuation of some employees, forming one class, was restored from 55 to 58 with effect from one date and these employees as seen from the judgment, formed a distinct class from those employees, who had retired before the ordinance was brought into force and in this context, the Hon'ble Apex Court held that the persons belonging to an entirely different class were not required to be given any notice. Such are not the facts of the present case. In the present case, respondent No.1 is claiming seniority over and above the other employees and in case such a claim is allowed, the other employees are bound to be adversely affected and this would happen without granting any opportunity of hearing. These facts distinguish themselves from the facts of the case of B. Prabhakar Rao and would make the case of B. Prabhakar Rao as not applicable to the facts of the case. In this case, notice to the affected persons would be very much necessary that being the settled law.

If there are some reasons for the respondent No.1 for not being able to effect the service upon the affected or would be affected employees, there are alternate modes of service of notice available to respondent No.1 and as per the order passed by the

Maharashtra Administrative Tribunal on 04/01/2017, substituted service has already been granted in the case pending before it. The Maharashtra Administrative Tribunal has directed it's Registrar to see that the notice is published by the learned Counsel for respondent No.1 in the newspaper and also on the website of the Tribunal. It would be in the interest of respondent No.1 to comply with the order of this Court as well as of the Maharashtra Administrative Tribunal, Nagpur. We, thus, see no merit in the application. The application stands dismissed.

JUDGE

JUDGE

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