

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

REVIEW APPLICATION NO. 58 OF 2019

Sudhir Nathu Raktate ...Applicant

Versus

The State of Maharashtra & Anr. ...Respondents

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Mr. S.D.Joshi, Advocate for the Applicant.

Mr. S.B.Yawalkar, A.G.P. for the Respondent-State.

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**CORAM : RAVINDRA V. GHUGE, &
S.M.GAVHANE, JJ**

DATE : 19-08-2019.

PER COURT :

01. The applicant, original petitioner, seeks review of our Judgment dated 9.3.2018.

02. On 15.4.2019 we had passed the following Order :-

"1. We have considerably heard the learned Advocate for the Review Applicant and the learned AGP, on behalf of the respondents.

2. We are constrained to rethink on our decision of depriving the petitioner of the arrears of salary concerning the post of

Deputy Collector, for the period February 1991 till 2003, in view of our conclusion that, The State Government shall proceed on the basis that the petitioner stood at Sr. No. 9 in the merit list and hence entitled for the benefits available to the post of Deputy Collector.

3. We also find that we had allowed the State to consider on the basis of it's record, as to whether the petitioner would be entitled for the post of Deputy Collector, in that case, the notional benefits be given to the petitioner for the purpose of reckoning seniority, continuity and pensionary benefits, as well as other benefits, as permissible under the Rules, on the basis of continuity of service as a Deputy Collector, since his appointment till his retirement on attaining the age of superannuation", in paragraph NO.21.

4. The learned Advocate for the Review Applicant submits that the arrears would not be much and, in his conservative assessment, would be some where between Three to Five Lakhs, though he assures us that he would prepare the accurate chart of arrears to be placed before the Court on 25.4.2019. The learned AGP submits that he would address upon paragraph No. 21 of our judgment dated 9.3.2018.

5. S.O. To 25.4.2019 at 4.30 p.m."

03. The hearing on this review application was adjourned on a few occasions since the learned A.G.P. desired to take instruction as to whether the State Govt. would be preferring a challenge to the Judgment delivered by us on 9.3.2018, before the Apex Court. Subsequently, we were informed on 12.7.2019 that the State of Maharashtra was not inclined to prefer a Special Leave Petition.

04. On 26.7.2019 we had passed the following order :

"1. The learned A.G.P. submits that he is yet to receive instructions from the State as to whether it intends to file a Review Application in this Court. He, however, submits that the State has contracted the Maharashtra Public Service Commission and has called for certain papers in relation to the decision of this Court in the matter of Dilip Shirlal V/s State of Maharashtra and Anr, Writ Petition No. 1544 of 1984, decided on 25.2.1987, so as to consider the revised seniority list of the candidates. After receiving the said documents, the State will have to take a decision as is observed in the opening portion of the Order at page No. 39 of the review petition paper book. He submits that the State would positively make a statement on the next date and would work out this matter.

2. Considering the above, stand over to 16.8.2019."

05. The learned A.G.P. has tendered a copy of the communication dated 14.8.2019 from the Joint Secretary of the State of Maharashtra addressed to the Govt. Pleader. The said copy is taken on record and marked as "X" for identification.

06. The learned A.G.P. submits on the basis of the said communication "X" that the Govt. has decided to give the benefits to the petitioner as per the directions of this Court set out in the Judgment dated 9.3.2018. Consequentially, the petitioner would be deemed to have been appointed as a Deputy Collector from 1984 till 1991. He would be notionally included in the list of persons to be designated as Deputy Collector for the said period.

07. The learned Counsel for the petitioner submits that he has filed this review petition in view of the fact that this Court has deprived him of the monetary benefits for the period 1991 to 2003. He hastens to clarify that he is voluntarily giving up the monetary claims for the period 1984 to 1991, since he had not worked as a Deputy Collector during the said period. He has however, discharged his duties as a Deputy Collector from 1991 till 2003.

08. Now, that he has succeeded in being designated as a Deputy Collector from 1984 and since his pay fixation is now being done by the Govt. in view of the communication "X", he would be entitled to the pay scale from 1991, at par with all those colleague Deputy Collectors, who were working in the said capacity from 1984 till 1991. Though he is giving up the monetary claim for this period, upon proper pay fixation, he would be entitled to the benefits from 1991 onwards till 2003. The pensionary benefits then would also have to be re-calculated after he is superannuated in 2013.

09. The learned A.G.P. has strenuously opposed and has relied upon the affidavit-in-reply. The request for monetary benefits for the period 1991 to 2003, on the ground that we have specifically deprived the petitioner of the said benefits, is opposed.

10. We have re-visited our observations in paragraph No. 21 and especially the portion appearing on page No. 29 of our Judgment. If the entire paragraph is read, we find that the petitioner was granted a berth in the revised list of candidates prepared by the State Govt. pursuant to the decision of this Court in the case of Dinesh Shivilal, Writ Petition No. 1544/1989. We had then observed that if the petitioner was entitled for the appointment on the

post of Deputy Collector, he would be entitled to a placement in seniority, continuity and pensionary benefits, as well as other benefits as are permissible under the rules on the basis of his service as Deputy Collector.

11. We find that we have given notional benefits to the petitioner for the period 1984 to 1991 since he had not actually worked as a Deputy Collector.

12. The petitioner was appointed as a Deputy Collector in 1991. He has worked as a Deputy Collector in between 1991 and 2003. Upon proper fixation of his pay, during the period from 1984 to 1991 as he was granted notional appointment as a Deputy Collector, he would be entitled to all the benefits inclusive of the monetary benefits from 1991 to 2003. We find that we have indicated to the State that in case the petitioner was entitled for the post of Deputy Collector, mainly for the period 1984 to 1991 as he was already a Deputy Collector from 1991, he would be getting the notional benefits.

13. We, therefore, find that there is no hurdle in the path of granting monetary benefits to the petitioner after his pay fixation is done since he would then be treated at par with identically placed Deputy Collector

and since he has already worked as a Deputy Collector from 1991 till 2003.

14. In the last sentence appearing at page NO. 30 of our Judgment, we had deprived the petitioner, of arrears of salary merely because he had retired in 2013. The learned Counsel for the petitioner points out that he can not be deprived of these legitimate benefits only because he had retired. The petitioner was agitating his grievance from 1987 when he first approached this Court in Writ Petition NO. 1831 of 1987, which was transferred to the Maharashtra Administrative Tribunal and re-registered before the MAT as Transfer Application No. 2309 of 1992. Having suffered an adverse Order before the Tribunal, he approached this Court by filing Writ Petition No. 1545 of 2000.

15. In view of the above, we hereby partly allow the review petition. The review petitioner shall be entitled to the monetary benefits for the period 1991 to 2003. In view of the above the State Authorities shall, accordingly, initiate the appropriate steps and shall ensure that this Order is implemented within a period of 12 weeks from today. The pensionary benefits of the review petitioner will also be re-calculated accordingly,

as expeditiously as possible, and preferably within a period of 8 weeks from today.

[S. M. GAVHANE]

JUDGE

[RAVINDRA V. GHUGE]

JUDGE

Dahibhate/-