

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.270 OF 2019
IN
REVIEW PETITION (ST.) NO.31176 OF 2018
IN
WRIT PETITION NO.8063 OF 2005

Jaising D. Tamboli	...Petitioner
vs.	
Municipal Corporation of Greater Mumbai	...Respondent
Ms. Vidula S. Patil, for the Petitioner	
Ms. Sheetal Mane, for the Respondent	

CORAM : R. G. KETKAR, J.

DATE : AUGUST 02, 2019

P.C.:

. This is an application for condonation of one year and two days delay for filing the Review Petition. For the reasons stated in the Civil Application, the delay of one year and two days is condoned. Civil Application is disposed of.

2. By consent, Review Petition (St.) No. 31176 of 2018 is taken up for admission. By this Petition under section 114 read with Order XLVII Rule 1 of Code of Civil Procedure, 1908 the Petitioner has sought review the order dated 21st September, 2017 passed by this Court in Writ Petition No. 8063 of 2005. By that order, the

Writ Petition was allowed and Respondent Corporation was directed to pay backwages to the Petitioner from 15th July, 1991 to 25th February 1995. The Petitioner had instituted Writ Petition against the impugned order as he was not given full backwages and continuity of service from 16th July, 1998 and he was ordered to be appointed as a fresh candidate/ recruitee. The Petitioner has sought review of the order on the ground that the trial Court directed the Respondent to appoint the second party as fresh candidate/ recruitee and as the Petitioner was not given full backwages and continuity of service from 16th July, 1998 and he was ordered to be appointed as a fresh candidate/ recruitee.

3. In support of this Petition, Ms. Patil taken me to paragraphs 8, 37 and 38 of the order wherein it is held that the termination was effected in violation of principles of natural justice as he was not issued charge sheet and that enquiry was not conducted as per Model Standing Order. This Court ought to have allowed the Writ Petition by granting continuity of service instead of directing the Corporation to appoint a fresh candidate/ recruitee. She has taken me through the Review Petition and submitted that as the order to this extent suffers from the errors apparent from the face of record,

the same be corrected.

4. On the other hand, Ms. Mane supported the order under review.

5. I have considered the rival submission advanced by the learned counsel appearing for the parties. I have also perused the material on record.

6. The paragraph Nos. 8, 37 and 38 of the order dated 21st September, 2017 read thus:

8. W.P. No.8063/2005 is instituted by Jaysing D. Tamboli against the Corporation under Articles 226 and 227 of the Constitution of India challenging the judgment and award dated 17.8.2014 made by the Labour Court. By that order, the Labour Court partly allowed the Reference and directed the Corporation to appoint the second party as fresh candidate/ recruitee. The workman is aggrieved as he not given full backwages and continuity of service from 16.7.1998 and he is ordered to be appointed as a fresh candidate/recruitee.

37. W.P. No.8063/2005 filed by Jaysing D. Tamboli challenges the judgment and order dated 17.8.2014 made by the Labour Court. By that order, the Labour Court partly allowed the Reference and directed the Corporation to appoint the second party as fresh candidate/ recruitee. The workman is aggrieved as he not given full backwages and continuity of service from 16.7.1998 and he is ordered to be appointed as a fresh candidate/recruitee.

38. A perusal of the impugned order and in particular paragraph 8 shows that the Labour Court held that the workman proved that his services were terminated in violation of principles of natural justice as he was not issued chargesheet and that enquiry was not conducted as per M.S.Os. The Corporation failed to prove the misconduct before the Court. There is no iota of evidence to show that the workman has committed misconduct. The Labour Court, however, declined to grant backwages for a period from 15.7.1991 to 25.2.1995. In my opinion once the findings were recorded by the Labour Court about termination of services without issuing any chargesheet as also conducting enquiry as per M.S.Os, the Labour Court ought to have awarded backwages for the period from 15.7.1991 to 25.2.1995. The wages for this period were denied to the workman only on the ground that the demand letter was sent by the workman to the Corporation on 25.2.1995. In view thereof, said direction deserves to be set aside thereby directing the Corporation to pay the backwages to the petitioner from 15.7.1991 to 25.2.1995. The petition accordingly succeeds. Rule is made absolute in aforesaid terms with no order as to costs.

7. In so far as the grievance that this Court did not order continuity of service is concerned, the learned Judge of the Labour Court has considered this aspect while answering issues 3 and 4. The learned Judge observed that the Petitioner was initially appointed as trainee and thereafter on probation for a period of two years. During the period of two years, he has committed misconduct of quarreling with another security guard. He was terminated from 16th July, 1991. As the Petitioner had behaved in undisciplined manner and committed misconduct, the learned

Judge directed to reinstate the Petitioner as fresh employee.

8. In the case of In the case of **Kamlesh Verma Vs. Mayawati**, **AIR 2013 SC 3301**, the Apex Court while considering scope of review has observed thus :

“The jurisdiction and scope of review is not that of an appeal and it can be entertained only if there is an error apparent on the face of the record. An error which is not self-evident and has to be detected by a process of reasoning can hardly be said to be an error apparent on the face of the record justifying the Court to exercise its power of review. A review is by no means an appeal in disguise whereby an erroneous decision is re-heard and corrected, but lies only for patent error. Error contemplated under the rule must be such which is apparent on the face of the record and not an error which has to be fished out and searched. It must be an error of inadvertence. The power of review can be exercised for correction of a mistake but not to substitute a view.”

9. In view thereof and applying the tests laid down by the Apex Court in the case of **Kamlesh Verma** (*supra*),, I do not find any error much less error of law while partly allowing the Writ Petition, any ground is made out for seeking review of the order. Hence, the Petition fails and is dismissed.

10. Order accordingly.

(R.G. KETKAR, J.)