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

MISC. CIVIL APPLICATION (REVIEW) NO.162/2019
IN
WRIT PETITION NO. 6613/2018
(Decided on 01/11/2018)

Sau. Jaya Chandrashekhar Mhaisane
Vrs.
The State of Maharashtra and others

Office Notes, Office Memoranda of Coram, appearances, Court's Orders or directions and Registrar's order	Court's or Judge's Order

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Shri , R. D. Karode, Advocate for Applicant/petitioner
Mrs. Kalyani Deshpande, A.G.P. for Respondent No.1.
Shri Mangesh Bute, Advocate for Respondent Nos.2 & 3.

CORAM: SUNIL B. SHUKRE & S.M. MODAK, JJ.
DATE : 13th FEBRUARY, 2019.

In this matter, a common ground taken is that this Court while disposing of writ petitions, in respect of which this application is filed, did not consider the law applicable to the facts of the case and without really hearing the petitioner in this matter, disposed of the petitions only on the ground that remedy of appeal was available to each of the petitioners and, therefore, granting liberty to each of the petitioners to exhaust that remedy, disposed of the petition.

However, according to the learned Counsel for the applicant, the fact remains that the law applicable to the facts of the present case, which was about vitiating of the order of punishment, which was passed in each of these cases without following the due procedure of law and granting of adequate opportunity of hearing to these applicant, has not been considered.

On going through the reasons recorded by this Court in the order passed on 01/11/2018, a common order, we cannot but agree with the learned Counsel for the applicant on what he has submitted before us. The law is well settled and it is that no major penalty can be imposed without following the procedure prescribed under the rules. This law also would show that an adequate opportunity of hearing regarding the proposed major penalty is required to be given to the delinquent employee. If this procedure is not followed, it would strike against the fundamental right of the petitioners and also other rights, which have been made available to them under the rules applicable to them. This aspect of the matter, so important one, renders the issue of availability of remedy of appeal quite insignificant and since this was not considered by this Court earlier, we are of the view

that the common order of disposal of this matter needs to be recalled and, accordingly, it is recalled.

Writ Petition be restored to the original file forthwith and placed before this Court immediately for further consideration.

The application is disposed of accordingly.

JUDGE **JUDGE**

Joshi