HIGH COURT OF MADHYA PRADESH, PRINCIPAL SEAT AT JABALPUR

Case No.	**R.P. No.776/2020**
Parties Name	*State of Madhya Pradesh and 3 ors.* *vs.* *Dr. Harendra Nath Mishra*
Date of order	**23/11/2020**
Bench Constituted	**Single Bench : Justice Sujoy Paul**
Order passed by	**Justice Sujoy Paul**
Whether approved for reporting	No.
Name of counsel for parties	**For Petitioners:** Shri Pushpendra Yadav, Addl. Advocate General. **For Respondent** : Shri A.P.Shroti, Advocate
Law laid down	**-**
Significant paragraph numbers	**-**

(O R D E R)
23 .11.2020

The department has filed this review petition seeking review/ modification of order dated 05.3.2019 passed in W.P.No.15773/2017 to the extent the benefit of 4th Tier Pay Scale was granted to the original petitioner from back date on notional basis. In lieu thereof, it is prayed that it may be modified by making it applicable w.e.f. from 26.08.2008.

2. Shri Pushpendra Yadav, learned A.A.G urged that by basic circular dated 26.8.2008 Annex.R.P/2, the aforesaid 4th Tier Pay Scale was sanctioned to certain Medical Officers/ Doctors/ Specialists from the date of issuance of this order i.e 26.08.2008. Subsequently, by order dated 23.05.2009 (Annx.R/P/3), it was directed that from the date of grant/ appointment on 4th Tier Pay Scale, the employee shall be treated to be notionally appointed and his fixation be made from the date of appointment on notional basis whereas actual benefit shall be payable w.e.f. 26.08.2008, the date of issuance of basic circular dated 26.8.2008. Indisputably, the second circular dated 23.5.2009 was cancelled on 30.05.2012 (Annx.R.P/4).

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Yet another circular issued in furtherance of previous circular dated 23.5.2009 (Annx.R.P/3) still provides benefit of notional fixation (Column-5). The Division Bench in W.A.No.1073/2018 (State of M.P. Vs. M.P. Medical Officers Association and another) considered all the aforesaid relevant circulars in the order passed on 11.10.2018 (Annx.R.P/7) but as per contention of review petitioners, various paragraphs of this order of Division Bench show that the benefit of 4th Tier Pay Scale are payable only from 26.08.2008, the date of issuance of basic circular (Annx.R.P/2) and no benefit of antedated notional fixation is permissible.

3. It is fairly argued that this Division Bench order dated 11.10.2018 passed in W.A.No.1073/2018 was not brought to the notice of this court when instant W.P.No.15773/2017 was decided on 05.03.2019. Hence, in the teeth of Division Bench order, the order under review may be modified/ reviewed to the extent prayed for.

4. *Per contra,* Shri A.P.Shroti, learned counsel for the original petitioner supported the order dated 05.03.2019. He submits that if order passed in writ appeal aforesaid was not brought to the notice of this court, it cannot be a ground for exercising review jurisdiction. He also placed reliance on various paragraphs of this order dated 11.10.2018 to contend that this matter was related to a different set of employees. The original petitioner herein is not governed by order of writ appeal. No ground analogous to an Order 47 Rule 1 C.P.C are available and hence in view of ***(2006) 4 SCC-78 (Haridas Das Vs. Usha Rani Banik(Smt) and others),*** the review petition may be dismissed.

5. No other point is pressed by learned counsel for the parties.

6. I have heard the parties at length and perused the record.

7. Indisputably, the order passed in W.A.No.1073/2018 was not brought to the notice of this court. Accordingly, this court had no

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occasion to examine the applicability of this order dated 11.11.2018 in the instant matter. Long drawn arguments on the question of applicability of this order cannot be entertained while exercising review jurisdiction. No patent error on the order under review is pointed out. The attempt to revisit the order dated 05.03.2019 on the basis of long drawn arguments must be eschewed while exercising the review jurisdiction. This is trite that the grounds which may be available in preferring an appeal cannot always become foundation for exercising review jurisdiction.

8. This is equally settled that the power of review cannot be exercised to rehear the matter afresh. In the impugned order, no such patent error was established which warrants interference under limited jurisdiction of review. Hence, review petition fails and is hereby **dismissed.**

(Sujoy Paul)
Judge

MKL

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