

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**REVIEW APPLICATION (CIVIL) NO. 259 OF 2019
IN WRIT PETITION NO. 6077 OF 2016**

The Maharashtra State,
Other Backward Class Finance &
Development Corporation Ltd.,
Through its Managing Director

.. Applicant

Versus

Nagesh S/o Jagdishrao Deshpande
Since Deceased Through his Legal Heirs
and others

.. Respondents

Mr. Amit A. Yadkikar, Advocate for the Applicant.
Mr. S. R. Yadav-Lonikar, AGP for Respondent No. 2.
Mr. V. D. Gunale, Advocate for Respondent Nos. 1A to 1C.

**CORAM : S. V. GANGAPURWALA &
SHRIKANT D. KULKARNI, JJ.**

DATED : 26th February, 2021.

PER COURT:-

- . Heard Mr. Yadkikar, learned counsel for the review applicant and Mr. Gunale, learned counsel for the non applicant Nos. 1A to 1C.
2. The learned A.G.P. appears for respondent No. 2.
3. This Court under judgment and order dated 07.01.2019 allowed the writ petition filed by the original writ petitioner and directed the present review applicant to make payment of gratuity amount as admissible within a period of three (03) months.

4. While delivering the said judgment and order this Court proceeded on the ground that at no material point of time the original writ petitioner was terminated from service and on attaining age of superannuation he retired from service and was relieved from the service. Neither the learned counsel for the original writ petitioner, nor the learned counsel for the present applicant during the course of argument made submissions about the original writ petitioner being terminated from service. The learned counsel for the review applicant refers to prayer clause of the writ petition wherein the petitioner had challenged the order terminating him from service.

5. It also appears from the judgment and the documents that petitioner was relieved from the service on attaining age of superannuation probably on the basis of the interim orders operating in the petition. It appears that, subsequently at the time interim orders were not operating in favour of the original writ petitioner the respondents took a decision and terminated the services of the petitioner after the petitioner was superseded from the service.

6. The termination order though was assailed by the original writ petitioner, the same does not appear to have been dealt with in the judgment under review. The legality of the termination order certainly is a relevant factum while deciding the writ petition and precisely was

challenged in the writ petition. As the learned counsel for the parties did not dilate on the same, it was not dealt with in the judgment under review.

7. Whether the respondents could have terminated the services of the original writ petitioner after he attained age of superannuation and with the retrospective effect certainly would be relevant and the future benefits accorded to the petitioner would depend upon the finding on the said issue.

8. As the same has not been dealt with in the judgment under review, it would be appropriate to review the said judgment and restore the writ petition to its original position.

9. In the light of that, the order dated 07.01.2019 in Writ Petition No. 6077 of 2016 is reviewed and recalled. The Writ Petition No. 6077 of 2016 is restored to its original position.

10. The present respondent Nos. 1A to 1C may bring themselves on record in the Writ Petition. Mr. Yadkikar, learned counsel appearing for the review applicant appears for the respondents in the said petition.

(SHRIKANT D. KULKARNI)
JUDGE

(S. V. GANGAPURWALA)
JUDGE

RS.B.