Diksha Rane

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 3118 OF 2021

THE STATE OF MAHARASHTRA & ORS ..PETITIONERS
VS.
MADHUKAR ANTU PATIL ..RESPONDENT

Mr. N.K. Rajpurohit, AGP for the petitioners – State.
Mr. Anil Kumar Patil i/b. Vaibhav A. Sugdare for the respondent.

C0RAM : DIPANKAR DATTA, CJ &
M. S. KARNIK, J.

DATE : SEPTEMBER 9, 2021

P.C. :

1. This writ petition is directed against the judgment and order dated June 25, 2019 passed by the Maharashtra Administrative Tribunal, Mumbai, allowing Original Application No. 238 of 2016 presented before it by the original applicant, viz. the respondent herein, as well as the judgment and order dated February 8, 2021 dismissing Review Application No. 21 of 2019, presented by the petitioners herein.

2. The respondent was a State Government employee. On the date of his retirement, i.e., on May 31, 2013, he was

holding a Group 'C' post. Rs.22,690/- was his last drawn basic pay; therefore, he was entitled to have his pension fixed on the last pay drawn. In course of settlement of the pension claim of the respondent, the office of the Accountant General detected that the respondent was granted benefits of time bound promotion well in advance of the dates of entitlement. Accordingly, the respondent's pay was down-graded to Rs. 19,510/-. Orders dated October 6, 2015 and November 21, 2015 were issued to such effect with the result that the respondent was held entitled to a reduced quantum of pension. It is not in dispute that the orders dated October 6, 2015 and November 21, 2015 were issued without granting the respondent any opportunity of hearing.

3. Aggrieved by the orders dated October 6, 2015 and November 21, 2015, the respondent invoked the jurisdiction of the Tribunal. After detailed examination of the rival claims, the Tribunal noted the following factors as admitted:

> "(a) The Applicant was initially appointed on 11.05.1982 as Technical Assistant on Work Charge Basis and continued on the said post till absorption.

(b) By G.R. dated 26.09.1989, 25 posts of Civil Engineering Assistants were created and the Applicant was absorbed on the said post.

(c) Earlier, the benefit of 1st TBP was granted to the Applicant considering his initial period of appointment of 1982 and thereafter, he was also granted the benefit of 2nd TBP on completion of 24 years' service.

(d) The Applicant stands retired on 31.05.2013 and after his retirement, pension proposal was forwarded to the Office of A.G. for grant of pension on the basis of Last Drawn Pay at the time of retirement.

(e) The Office of A.G. raised objection for grant of benefit of 1st TBP to the Applicant considering his date of initial appointment on the basis of letter issued by Water Resources Department, Government of Maharashtra on 19.05.2014."

4. The question that the Tribunal formulated for an answer was, whether the respondent was entitled to the benefit of 1st time bound promotion considering his date of initial appointment in May 1982 or whether he was entitled to the said benefit from the date of his absorption in the year 1989. Findings have been returned by the Tribunal in paragraph 13 of its judgment on the original application that the materials placed on record clearly spell out that it was a conscious decision of the Government to extend the benefit of 1st time bound promotion considering the earlier period of service rendered by the respondent as Technical

Assistant. Referring to several decisions of this Court on the point of consideration of past service of employees prior to absorption, viz. those referred to in paragraphs 14 to 18 of its judgment, the Tribunal was of the view that the pay of the respondent had been fixed in accordance with law. Reliance in this regard was placed by the Tribunal on the decision of the Government reflected in letter dated June 18, 1998 whereby the benefit of 1st time bound promotion to the Technical Assistants was granted considering their earlier period of service irrespective of absorption in the Civil Engineering Assistant cadre. The Tribunal also referred to the decision of the Supreme Court in **State of Punjab and ors. vs. Rafiq Masih** decided on December 18, 2014 laying down the situations where the recoveries by the employers, after retirement of their employees, would be impermissible in law. In the present case, no recovery is sought to be effected by the impugned orders and hence, the decision in **Rafiq Masih** (supra) may not have any application. However, we are of the considered opinion having regard to the discussions made by the Tribunal in the impugned judgment dated June 25, 2019 as well as on perusing the decision of the Supreme Court in **Bhagwan Shukla s/o. Sarabjit Shukla vs. Union of India and others**, reported in (1994) 6 SCC 154, that reduction of pay by the employing department behind the back of the employee without following any procedure known to law amounts to flagrant violation of the principles of natural justice. The Supreme Court in **Bhagwan Shukla** (supra) interfered with the order dated September 17, 1993 of the Central Administrative Tribunal (hereafter "the CAT", for short) dismissing the appellant's original application on the ground that fair play in action warrants that no order having the effect of subjecting an employee to civil consequences by reducing his pay should have been passed without putting the employee concerned on notice and giving him a hearing in the matter. Since that was not done, the memorandum under challenge dated July 25, 1991 impugned before the CAT was set aside together with the order of dismissal of the original application by it.

5. The decision in **Bhagwan Shukla** (supra) arose in

respect of an employee in service, whereas the respondent before us has faced reduction in pay after retirement from service. In a way, the fact situation here is worse than the one in **Bhagwan Shukla** (supra). Having regard to the law laid down in such decision, which squarely applies to the facts and circumstances of the present case, we hold that the approach of the Tribunal in setting aside the impugned orders dated October 6, 2015 and November 21, 2015 was quite justified.

6. We have also perused the judgment and order dated February 8, 2021 of the Tribunal dismissing the review application. In such application, certain decisions of the Nagpur Bench of the Tribunal were referred to, where it was held that there was no existence of letters dated March 18, 1998 and June 18, 1998 issued by the Finance Department. Based on such decisions of the Nagpur Bench of the Tribunal and in view of the doubt about existence of such letters, a review of the judgment allowing the original application of the respondent was sought for by the petitioners. The Tribunal held, and in our opinion, rightly that the decisions

of the Nagpur Bench of the Tribunal were in existence prior to the judgment and order dated June 25, 2019 under review and failure to place the said decisions before the Tribunal for consideration did not amount to discovery of new evidence, which could not have been collected despite due diligence, as contemplated under Order 47 Rule 1 of the Code of Civil Procedure. The Tribunal also held that the judgment and order dated June 25, 2019 did not suffer from any error apparent on the face of the record. For such reasons, the review application stood dismissed.

7. Law is well settled that under the guise of a review, the parties are not entitled to re-hearing of the same issue. If any authority is required, one may refer to the decision in **S. Bagirathi Ammal vs. Palani Roman Catholic Mission**, reported in (2009) 10 SCC 464. We may also profitably refer to the decision in **State of West Bengal vs. Kamal Sengupta**, reported in (2008) 8 SCC 612, where the Supreme Court has held that where a review is sought on the ground of discovery of new matter or evidence, such matter or evidence must be relevant and

must be of such a character that if the same had been produced prior to delivery of the final judgment, it would have the effect of altering such judgment. Documents on record would show the existence of the letters dated March 18, 1998 and June 18, 1998 issued, not by the Finance Department, but by the Irrigation Department; and the terms thereof having been satisfied insofar as the respondent is concerned, there could be no valid ground for the office of the Accountant General to object to the 1st time bound promotion that was granted to him. Even otherwise, it has never been the case of the petitioners that because of sharp or fraudulent practice adopted by the respondent, benefits in excess of his entitlement was extended to him. No review was, therefore, maintainable on the ground of discovery of new material which were not produced at the time the original application of the respondent was finally heard and decided.

8. The Tribunal, in our opinion, thus did not commit any error in not reviewing its earlier judgment dated June 25, 2019.

9. For all the reasons aforesaid, we find the writ petition to be devoid of any merit and the same stands dismissed. No costs.

(M.S. KARNIK, J.) **(CHIEF JUSTICE)**