

Santosh

IN THE HIGH COURT OF BOMBAY AT GOA
WRIT PETITIONS NO.235 OF 2021 & 236 OF 2021

WRIT PETITION NO.235 OF 2021

Leelamrut s/o. Narayan Karoo,
aged about 66 years, occ. Retired,
r/o. House No.3226, Plot No.41,
Umred Road, Near Gajanan Prasad Convent,
Sarvashri Nagar, Dighori, Nagpur -440 024. ... Petitioner

Versus.

1. Mormugao Port Trust,
through its Chairman and Competent
Authority, Administrative Building, Head
Land, Sada, Goa 403 804,

2. Mormugao Port Trust,
through its Chairman,
Administrative Building, Head Land, Sada,
Goa 403 804, ... Respondents.

WITH
WRIT PETITION NO.236 OF 2021

Ghanshyam Shankar Hedaoo,
aged about 64 years, Occupation : Retired,
F/o. Flat No.304, Aman's Fortune,
Maimollem, Mangor, Vasco-Goa. ...Petitioner

Versus

1. Mormugao Port Trust,
through its Chairman and Competent
Authority, Administrative Building, Head
Land, Sada, Goa 403 804,

2. Deputy Conservator & Statutory Authority,
Engineering Mechanical Department,
Mormugao Port Trust, Head Land,
Sada, Vasco, Goa 403 804,

... Respondents.

**Mr. Sachin Khati, with Mr. P.K. Dhomne and Mr. Narayan
Govekar, Advocates for the Petitioners.**

Mr. Y.V. Nadkarni, Advocate for the Respondents.

**CORAM: M. S. SONAK AND
R.N. LADDHA, JJ.**

RESERVED ON : 27th January 2022

**PRONOUNCED 31st January 2022
ON :**

JUDGMENT:- (Per M.S. Sonak, J.)

1. Heard Mr. Sachin Khate for the Petitioners in both
these Petitions and Mr. Y.V. Nadkarni for the Respondents.

2. The learned Counsel for the parties states that common issues of law and fact arise in both these Petitions and, therefore, both these Petitions can be disposed of by a common Judgment and Order by treating Writ Petition No.235/2021 as the lead Petition. Mr. Y.V. Nadkarni pointed out that there may be some differences in the dates of appointment, superannuation, etc. However, he submitted that such differences do not render the material facts in both the Petitions significantly different. Based on these submissions, we proceed to dispose of both these Petitions by a common Judgment and Order by treating Writ Petition No.235/2021 as the lead Petition.

3. The challenge in this lead Petition is basically to the impugned order dated 18/11/2020, by which the Respondents have imposed a penalty of permanent withdrawal of full pension sanctioned to the Petitioner on his retirement from services of the Mormugao Port Trust (MPT), as Assistant Materials Manager, with effect from 31/8/2015. The impugned order, however, provides that there would be no recovery of any amount, including the pension already paid to the Petitioner till the date of issue of the impugned order dated 18/11/2020. This impugned

order, stopping payment of pension to the Petitioner, was made in disciplinary proceedings initiated against the Petitioner almost 3 years after the date of the Petitioner's retirement on superannuation with effect from 31/8/2015.

4. The Petitioner was appointed as Hospital Assistant by the MPT on 10/6/1976 against a post reserved for the Scheduled Tribe category (Halba Caste). This was based on the Caste Certificate issued by the competent authorities at the relevant time. The Petitioner was promoted from time to time and the last of such promotions promoted the Petitioner to the post of Assistant Materials Manager Grade II.

5. On 3/3/2015, the Caste Scrutiny Committee at Nagpur, invalidated the Caste Certificate issued to the Petitioner, holding that the Petitioner did not belong to the Halba Caste. The order dated 3/3/2015, issued by the Caste Scrutiny Committee, however, did not record any finding of any fraud or misrepresentation practiced by the Petitioner.

6. The Petitioner instituted Writ Petition No.1809/2015 before the Nagpur Bench, in which Rule was issued on 26/11/2015, and by way of an ad-interim order, the services of the Petitioner were protected.

7. By order dated 8/6/2016, Writ Petition No.1809/2015, instituted by the Petitioner, was partly allowed, subject to the Petitioner filing an undertaking with the Registry, the Respondents, and the Scrutiny Committee that neither he nor his progeny shall claim any benefit of or status as a person belonging to Halba (Scheduled Tribe), the Petitioner's services shall remain protected. Further, it was directed that if such an undertaking is filed by the Petitioner within 3 weeks, the employer shall arrange to release all retiral benefits in favour of the Petitioner within the next three months.

8. The operative portion of the Order dated 8/6/2016, disposing of Writ Petition No.1809/2015, reads as follows :

“We find that the judgment of the Full Bench of this Court in the case of Arun Vishwanath Sonone vs. State of Maharashtra and ors., reported at 2015(1)

Mh.L.J. 457 is very clear in this respect. The petitioner has joined employment way back in the year 1976 and the Scrutiny Committee did not hold the petitioner guilty of practising any fraud or of tampering with any record for the purposes of procuring either caste certificate or the employment. In this situation, the petitioner is entitled to grant of protection in employment in terms of the Full Bench Judgment of this Court mentioned supra. Accordingly, subject to petitioner filing an undertaking with the Registry of this Court, with his employer, and with the Scrutiny Committee that neither he nor his progeny shall claim any benefit of or status as person belonging to “Halba” (Scheduled Tribe), his services shall remain protected. If such an undertaking is filed by the petitioner within a period of three weeks from today, the employer shall arrange to release all retiral benefits in his favour within next three months.

The writ petition is thus partly allowed and disposed of. No costs.”

9. There is no dispute that the Petitioner filed the undertaking in the aforesaid terms and based thereon, the Respondent-MPT even released the retiral benefits, including the pension payable to the Petitioner.

10. On 6/7/2017, the Hon'ble Supreme Court delivered its verdict in the case of ***Chairman and Managing Director, Food Corporation of India and others vs. Jagdish Balaram Bahira and others***¹ (*FCI* case). In the *FCI* case (supra), the Hon'ble Supreme Court overruled several decisions that had granted protection to employees whose caste certificates had been invalidated by the Caste Scrutiny Committee as long as there was no finding of any fraud or interpolation at the behest of such employees. In particular, the Hon'ble Supreme Court overruled the decision of the Full Bench of this Court in the case of ***Arun Vishwanath Sonone vs. State of Maharashtra and ors.*** - 2015 (1) Mh.L.J. 457, which was relied upon by the Division Bench of this Court in its order dated 8/6/2016, disposing of Writ Petition No.1809/2015, instituted by the Petitioner herein.

11. Based primarily on the decision of *FCI* case (supra), and the decision in ***Dattakishor Kumbhare and ors. vs. State of Maharashtra and ors.***² decided on 17/7/2017 by the Nagpur Bench of this Court, the Respondents vide Memorandum dated 22/5/2018 to the Petitioner, initiated disciplinary proceedings

1. 2017 (8) SCC 670.

2. 2017 (6) Mh.L.J. 449

against the Petitioners for having taken benefit of reservation policy and even though it was ultimately found that the Petitioner did not belong to the Halba Caste, a Scheduled Tribe.

12. The Inquiry Officer who was appointed to inquire into the charges leveled against the Petitioner, by his report dated 16/12/2018 exonerated the Petitioner by concluding that the charges leveled against the Petitioner were not proved due to lack of evidence. The Respondent (Disciplinary Authority), by order dated 30/6/2020, informed the Petitioner that the Disciplinary Authority had disagreed with the findings of the Inquiry Officer and called upon the Petitioner to make a representation/reply within 15 days on the proposed penalty of permanent withdrawal of full pension sanctioned to the Petitioner.

13. After considering the Petitioner's representation/reply, the Disciplinary Authority, vide impugned order dated 18/11/2020, imposed upon the Petitioner the penalty of permanent withdrawal of full pension from the date of issue of the order. Aggrieved by this order, the Petitioner has instituted the present Petition.

14. Mr. Sachin Khati, learned Counsel for the Petitioner submits that the issue of protection granted to the Petitioner, as well as the direction for release of retiral benefits, was concluded by the order dated 8/6/2016 made *inter partes* in Writ Petition No.1809/2015, instituted by the Petitioner. He pointed out that this order was never challenged by the Respondents by either filing a review petition before this Court or a Special Leave Petition before the Hon'ble Supreme Court. He submits that since this order has attained finality, the Respondents were not justified in initiating the disciplinary proceedings against the Petitioner and ultimately withholding the retiral/pensionary benefits to the Petitioner based on the very same cause of action. He submitted that the principles of *res judicata* apply in such a matter. He relies on the Judgment and Order dated 4/5/2021 in a batch of Writ Petitions, including Writ Petition No.903 of 2020 (*Raja Tukaram Shinde vs. State of Maharashtra & anr.*), decided by the Aurangabad Bench of this Court to submit that in virtually similar circumstances, the Division Bench did not permit the employers to reopen the matters which had attained finality through judicial orders.

15. Mr. Khati submitted that there is a difference between reversal of a judgment *inter partes* and overruling of an otherwise binding precedent. He submitted that merely because the decision in ***Arun Sonone*** (supra) was overruled in the ***FCI*** case (supra), that does not mean that the order dated 8/6/2016 in Writ Petition No.1809/2015 instituted by the Petitioner, stood effaced or nullified in the absence of any of the Respondents questioning the same by either instituting a review petition before the same Court or a Special Leave Petition before the Hon'ble Supreme Court. He submitted that since this essential distinction was not noted by the Respondents, the impugned order, which overreaches the judicial order dated 8/6/2016, warrants interference.

16. Mr. Khati also referred to the Circular dated 1/6/2020 and the Office Memoranda dated 19/5/1993 and 10/1/2013, to submit that in all probabilities, this Court's Order dated 8/6/2016 in Writ Petition No.1809/2015, was not brought to the notice of the Central Government by the Respondent-MPT and, in any case, the Office Memoranda dated 19/5/1993 and 10/1/2013, only contemplate discontinuation of services of an

employee whose caste certificate is invalidated by way of his removal or dismissal from the service. However, these two memoranda, in terms, provide that in no circumstances should any other penalty be imposed. Mr. Khati submitted that the penalty imposed upon the Petitioner is neither dismissal, nor removal and, therefore, the penalty so imposed, is contrary to the office memoranda that bind the Respondents.

17. Finally, Mr. Khati submitted that the Petitioner retired from the service in the year 2015, after rendering service for almost 39 years. He submits that the pension is not a bounty and, therefore, the Respondents should not have made such a harsh order of withholding permanently the entire pension of the Petitioner at this stage of the Petitioner's life. For all the aforesaid reasons, Mr. Khati submitted that the impugned orders be quashed and set aside and the reliefs as prayed for in this Petition, granted.

18. Mr. Y.V. Nadkarni, learned Counsel for the Respondents submitted that the issue raised in this Petition stands covered in favour of the Respondents by the decision of the coordinate

Bench in *Dattakishor Kumbhare* (supra). He submitted that in the said decision, the Division Bench has held that consequent upon *Arun Sonone* (supra) being overruled in the *FCI* case (supra), the employers are entitled to withdraw all benefits, concessions, privileges received by the persons who are ultimately declared to be non-tribals. He submitted that the action of the Respondents was entirely consistent with the law laid down in *Dattakishor Kumbhare* (supra) and, therefore, the impugned orders warrant no interference.

19. Mr. Nadkarni submitted that the principle of *res judicata* is not attracted in this matter because, the cause of action for instituting Writ Petition No.1809/2015, was the order of the Caste Scrutiny Committee dated 3/3/2015 invalidating the caste certificate issued to the Petitioner and the cause of action for instituting the present Petition is the charge memorandum and the consequent penalty imposed upon the Petitioner based on the inquiry held against the Petitioner, for availing of the benefits of reservation even though the Petitioner did not fall within the Scheduled Tribe category. Mr. Nadkarni relied on *Raju*

*Ramsingh Vasave vs. Mahesh Deorao Bhivapurkar and ors.*³ in support of this contention.

20. Mr. Nadkarni also relied on the observations in paragraphs 34 and 56 of the *FCI* case (supra) to submit that the judicial process should not be allowed to be utilized to protect the unscrupulous and to preserve the benefits which have accrued to an imposter on the specious plea of equity.

21. For all the aforesaid reasons, Mr. Nadkarni submitted that this Petition may be dismissed, particularly since the impugned order had made it clear that there are no recoveries of the amount, including the pension already paid to the Petitioner till the date of issue of the impugned order dated 18/11/2020.

22. Rival contentions now fall for our determination.

23. As noted earlier, the Petitioner had challenged the order dated 3/3/2015 made by the Caste Scrutiny Committee invalidating the caste certificate issued to him sometime in the year 1976. In this Petition, the coordinate Bench noted that there

3. (2008) 9 SCC 54

was no finding of any fraud or interpolation at the behest of the Petitioner in the order dated 3/3/2015 made by the Caste Scrutiny Committee. Based upon the same and relying upon the Full Bench decision in ***Arun Sonone*** (supra), the coordinate Bench directed the Respondents to arrange the release of retiral benefits to the Petitioner within three months of the Petitioner filing the requisite undertaking.

24. There is no dispute that the Petitioner filed the requisite undertaking and, as a consequence, even the Respondents released all the retiral benefits then due to the Petitioner. There is also no dispute that the Respondents did not challenge the order dated 8/6/2016 disposing of the Petitioner's Writ Petition No.1809/2015 and to that extent, this order has attained finality, *inter partes* i.e. as between the Petitioner and the Respondents herein.

25. Now, if the charge memorandum dated 22/5/2018, or for that matter, the impugned order dated 18/11/2020, are perused, it is apparent that the disciplinary proceedings were initiated against the Petitioner and the penalty was imposed upon

the Petitioner only on the basis that the decision of the Full Bench of this Court in ***Arun Sonone*** (supra) was overruled by the Hon'ble Supreme Court in the ***FCI*** case (supra). The Inquiry Officer had, in fact, exonerated the Petitioner. The Disciplinary Authority, however, disagreed with the findings of the Inquiry Officer and held that the penalty of permanent withdrawal of all the pensionary benefits was called for. Mr. Nadkarni defended these orders by submitting that the Petitioner had committed a constitutional fraud and, therefore, there was nothing wrong in the penalty imposed.

26. There is a distinction between reversal of a Judgment *inter partes* and overruling a judgment on a point of law. Based upon the decision in the ***FCI*** case (supra), Mr. Nadkarni is justified in contending that not only the decision in ***Arun Sonone*** (supra) stood overruled, but also the view taken in the order dated 8/6/2016 in Writ Petition No.1809/2015 instituted by the Petitioner, stood overruled. However, this is quite different from contending that the order dated 8/6/2016, in so far as it governed the rights and liabilities of the parties *inter se*, stood effaced or that the order dated 8/6/2016, stood reversed. The

order dated 8/6/2016 has, in fact, attained finality for want of challenge and merely because the view taken therein may have been impliedly overruled by the decision of the Hon'ble Apex Court in the *FCI* case (supra), the benefits that were awarded to the Petitioner by the order dated 8/6/2016, could not have been taken away by the Respondents.

27. In almost identical circumstances, the coordinate Bench of this Court in *Raja Tukaram Shinde* (supra) struck down or at least read down the Government Resolution dated 21/12/2019, to exclude the employees whose tribe claims were invalidated, but were granted protection in employment under the judgments/orders of the Court and such judgments/orders had attained finality. The Division Bench considered this issue in great detail and held that once the Judgment of this Court, *inter partes*, has become final and there is no element of fraud at the time of delivering the Judgment by this Court, such Judgment would bind the parties and operate as a *res judicata*. A subsequent judgment of the Apex Court laying down the proposition of law different from the one based on which the judgments were delivered by this Court and have attained finality, cannot be

reopened. Quietus will have to be given to the litigation and the protection granted by this Court to the employment of the Petitioners in the Petitions filed by them earlier, bind the parties and such protection will have to be continued.

28. The Division Bench in ***Raja Tukaram Shinde*** (supra) also held that the decision of a court having jurisdiction, even if it is erroneous, is binding between the parties, unless set aside by a higher Court or unless the judgment is reviewed by the same Court. The correctness or otherwise of the decision of the High Court protecting the services of the Petitioners would not be relevant. Once the judgment is concluded *inter partes*, the parties cannot be allowed to re-agitate the issue decided by the Court of competent jurisdiction based on a subsequent judgment of the Hon'ble Apex Court.

29. Therefore, applying the reasoning in ***Raja Tukaram Shinde*** (supra), the impugned order will have to be quashed, since, such an order, runs contrary to this Court's order dated 8/6/2016 in Writ Petition No.1809/2015 which, as noted earlier, has attained finality, *inter partes*.

30. The facts and circumstances in *Dattakishor Kumbhare* (supra), upon which heavy reliance was placed by Mr. Nadkarni, are quite different. In Writ Petition No.3373 of 2002, instituted by the Petitioner Dattakishor Kumbhare, the Petitioner's caste certificate was invalidated by the Caste Scrutiny Committee by order dated 26/11/2001. He then filed Writ Petition No.3314/2002 before the High Court, which was dismissed on 30/9/2003 and it is this order that had attained finality.

31. Dattakishor Kumbhare, by instituting Writ Petition No.3373/2002 applied for a limited relief of protection of his service based, *inter alia*, on the decisions of the Hon'ble Supreme Court in *State of Maharashtra vs. Milind and ors.* - (2001) 1 SCC 4, *State of Maharashtra vs. Om Raj*, - (2007) 14 SCC 488, *Sanjay Madhusudan Punekar vs. State of Maharashtra and ors.* - 2002 (2) Mh.L.J. 300 and the decision of the Full Bench in *Arun Sonone* (supra).

32. By the time Dattakishor Kumbhare's Writ Petition No.3373/2002 came up for final hearing, the Hon'ble Supreme Court in the *FCI* case (supra), had expressly overruled the various

decisions relied upon by him, including the decision of the Full Bench in *Arun Sonone* (supra). It is in this context that the coordinate Bench ruled that no protection could be claimed or could be granted to the said Dattakishor Kumbhare and his Petition was dismissed.

33. Several other writ petitions were also dismissed by the common judgment and order dated 17/7/2017 *Dattakishor Kumbhare* (supra). However, Mr. Nadkarni was unable to point out that in any of the dismissed cases, any protection orders had already been made by this Court and such protection orders had attained finality, either for want of challenge or because the Special Leave Petition against the same was dismissed. The observations in paragraphs 26 and 27 of *Dattakishor Kumbhare* (supra) have, therefore, to be read and construed in the context of such facts, namely, that in none of these cases there were any orders of protection earlier made which had attained finality. Rather, the facts in *Dattakishor Kumbhare* (Writ Petition No.3373/2002) indicate that his earlier Writ Petition No. 3314/2002, challenging the invalidation of his caste certificate, was dismissed and it is this dismissal order that had attained

finality. Therefore, based on ***Dattakishor Kumbhare*** (supra), the Respondents were neither justified in initiating the disciplinary proceedings against the Petitioner nor were they justified in making the impugned order, withholding permanently the entire pensionary benefits payable to the Petitioner.

34. The decision in ***Raju Ramsingh Vasave*** (supra) and the observations therein on the aspect of *res judicata*, were made in the context of the facts which are again, quite different from the facts in the present case. There, the order made by the High Court in the earlier petition was only in the context of a challenge to the caste certificate issued to the Petitioner. Further, the said order was made on the wrong premise that the Hon'ble Supreme Court in the case of ***Milind*** (supra), had passed an interim order when this was not the case. Based on these distinguishing features, the Hon'ble Supreme Court held that the principle of *res judicata* would not apply. The facts in the present case are quite different and, therefore, based on ***Raju Ramsingh Vasave*** (supra), the impugned action of the Respondents cannot be sustained.

35. In *S.G. Barapatre vs. Ananta Gajanan Gaiki*⁴, the Hon'ble Supreme Court noted that the employees were already protected by the Division Bench of this Court in its Judgment dated 1/11/2012 in Writ Petition No.5198/2009 and connected cases. The employer-Food Corporation of India had challenged the said order by filing a Special Leave Petition, which was dismissed on 12/4/2013. Even the review petition was dismissed on 26/2/2014. In this context, the Hon'ble Supreme Court observed that the said Judgment *qua* the employees, who were parties to this writ petition, has become final. The benefits which were granted to the said Petitioners could not be taken away in *collateral proceedings*.

36. In *The Chief Regional Officer, The Oriental Insurance Co. Ltd. vs. Pradip and anr.*⁵, the challenge was to the order made by the Division Bench of this Court granting protection based on *Arun Sonone* (supra). The Hon'ble Supreme Court reversed the decision of the Division Bench of this Court by pointing out that the *FCI* case (supra) had already overruled the decision in *Arun Sonone* (supra). On behalf of the

4. AIR ONLINE 2018 SC 715

5. AIR 2020 SC 4858

employers, however, reliance was placed on ***Barapatre*** (supra). The Hon'ble Supreme Court, however, explained that the observations in the said judgment make it abundantly clear that the challenge by the employer to the order of this Court, granting limited protection to the employees, had been rejected by the Hon'ble Supreme Court on 12/4/2013 and, as a result of the decision *inter partes*, the order of the High Court had attained finality. Consequently, the Hon'ble Supreme Court clarified that only the employees covered by the earlier judgment would be entitled to the benefits which have been granted specifically by the High Court in its judgment.

37. Therefore, the decision of the Hon'ble Supreme Court in the case of ***Barapatre*** (supra), as explained in ***The Chief Regional Officer, The Oriental Insurance Co. Ltd.*** (supra), also makes it clear that where the decision of the Division Bench has attained finality *inter partes*, the benefit obtained by the employees in terms of such judgment cannot be taken away from such employees based on the decision in the ***FCI*** case (supra).

38. Though not in the precise context of retention of the benefits once the caste certificate is invalidated, the Hon'ble Supreme Court in the case of *Vice Chancellor of Anand Agricultural University vs. Kanubhai Nanubhai Vaghela and anr.*⁶ and in the case of *Neelima Srivastava vs. The State of Uttar Pradesh & ors.*⁷, has held that mere overruling of the principles, on which earlier Judgement was passed by a subsequent Judgment of higher forum, will not have the effect of uprooting the final adjudication between the parties and setting it at naught. There is a distinction between overruling a principle and reversal of the judgment. The judgment in question itself has to be assailed and got rid of in a manner known to or recognized by law. The mere overruling of the principles by a subsequent judgment will not dilute the binding effect of the decision *inter partes*.

39. In *Vice Chancellor of Anand Agricultural University vs. Vice Chancellor of Anand Agricultural University* (supra), the contention before the Hon'ble Supreme Court was that its decision in *Gujarat Agricultural University vs. Rathod Labhu*

6. Civil Appeal No.4443 of 2021 decided on 26/7/2021

7. Civil Appeal No.4840 of 2021 decided on 17/8/2021

Bechar & ors.- (2001) 3 SCC 574 was overruled by the subsequent decision in *Secretary, State of Karnataka and ors. vs. Umadevi and ors.* - (2006) 4 SCC 1. Therefore, it was contended that there was no obligation on the University to follow the directions in *Gujarat Agricultural University* (supra). The Hon'ble Supreme Court rejected such contention by observing that it was not impressed with such submissions. The Hon'ble Supreme Court held that the Judgment in *Gujarat Agricultural University* (supra), in fact, has become final and is binding on the University. Therefore, even though, according to paragraph 54 of *Umadevi* (supra) any judgment, which is contrary to the principles settled in *Umadevi* (supra), shall be denuded of status as precedent, such an observation does not absolve the University of its duty to comply with the directions in *Gujarat Agricultural University* (supra).

40. Therefore, applying the aforesaid principles to the facts of the present case, the impugned order dated 18/11/2020 will have to be set aside.

41. In this case, by making the impugned order depriving the Petitioner of the retiral benefits, the Respondents have virtually sought to review this Court's order dated 8/6/2016 in Writ Petition No.1809/2015 instituted by the Petitioner. This order has attained finality because the Respondents did not challenge the same by either filing a review petition before this Court or instituting a Special Leave Petition before the Hon'ble Supreme Court. Even the Explanation to Order XLVII, Rule 1 of the CPC, provides that the fact that the decision on a question of law on which the judgment of the Court is based has been reversed or modified by the subsequent decision of a superior Court in *any other case*, shall not be a ground for the review of such judgment. In this case, the Respondents had no authority to review the judgment made by this Court. Based upon the subsequent decision in the *FCI* case (supra), Respondents have sought to review the order of this Court or in any case, acted contrary to what was ordered by this Court in its order dated 8/6/2016 in Writ Petition No.1809/2015 instituted by the Petitioner. According to us, this will not be a proper exercise on the part of the Respondents.

42. Although there is no necessity to advert to other submissions made by Mr. Khati in more detail, we must note that the reliance placed by Mr. Nadkarni on the Circular dated 1/6/2020 by the Ministry of Shipping, is by no means sufficient to sustain the impugned action. In the first place, there is no clarity as to whether the MPT in its reference dated 30/12/2019, or its letter dated 22/3/2020, had apprised the Central Government of the order dated 8/6/2016 in Writ Petition No.1809/2015 instituted by the Petitioner and the fact that this order had attained finality *inter partes*. Secondly, such a circular, at the highest, is like executive instructions, and the same cannot efface a binding order made by the competent Court of law.

43. Further, even the Circular dated 1/6/2020, advises action in terms of OMs dated 19/5/1993 and 10/1/2013. Now, these OMs speak about the removal or dismissal of employees who were not qualified or eligible in terms of the Recruitment Rules or had furnished false information or produced false certificates to

secure appointments. These OMs, however, provide that under no circumstances should any other penalty be imposed.

44. Finally, we also note that this is a case where the Petitioner has retired on superannuation on 31.08.2015 after putting in almost four decades (39 years) of service. The impugned orders have the effect of depriving the Petitioner of his pensionary benefits. At this point, such an action indeed appears to be harsh and disproportionate, particularly since such pension and retiral benefits were released to the Petitioner based on judicial orders which have attained finality. Besides, as was observed in *D.S. Nakara and ors. vs. Union of India*⁸, pension is neither a bounty nor a matter of grace depending upon the sweet will of the employer, nor an *ex gratia* payment. It is a payment for the past service rendered. It is a social welfare measure rendering socio-economic justice to those who in the heyday of their life ceaselessly toiled for the employer on an assurance that in their old age they would not be left in a lurch. Pension, as a retirement benefit, is in consonance with and furtherance of the goals of the Constitution. The most practical

8. (1983) 1 SCC 305.

raison d'être for pension is the inability to provide for oneself due to old age.

45. As noted earlier, there is no distinction between the material facts as obtained in both the Writ Petitions. Therefore, both the Writ Petitions are, hereby, allowed and the impugned orders dated 18/11/2020 (in Writ Petition No.235/2021) and the impugned order dated 18/11/2020 (in Writ Petition No.236/2021) are, hereby, quashed and set aside. The Rule is made absolute and the Respondents are hereby directed to release the full pension to the Petitioners as was withdrawn, or withheld by the impugned orders. The arrears should be paid to the Petitioners within two months from today.

46. In the facts of the present case, there shall be no order for costs.

R.N. LADDHA, J.

M. S. SONAK, J.