

Urmila Ingale

URMILA
PRAMOD
INGALE

Digitally signed
by URMILA
PRAMOD
INGALE
Date:
2022.06.08
19:57:52 +0530

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 14419 OF 2018

Shri Hanmant Nivrutti Karade .. Petitioner
Vs.
Union of India .. Respondent

Mr. Vishal Tambat a/w Mr. Amol Wagh, Mr. Sachin Patil, Mr.
Dnyaneshwar Jaibhave i/b Pandit Kasar, for Petitioner.
Mr. Neel Helekar i/b Mr. A. A. Garge, for Respondent.

**CORAM : DIPANKAR DATTA, CJ &
M. S. KARNIK, J.**

DATE : JUNE 7, 2022.

P.C. :

1. The petitioner was proceeded against, for alleged misconduct committed by him, by his disciplinary authority. Following an enquiry that was conducted, the disciplinary authority by its order dated October 5, 2005 imposed on the petitioner the punishment of reduction of pay. The appellate authority of the petitioner, in exercise of its revisional power, directed removal of the petitioner from service by its order dated March 31, 2006. A revision preferred by the petitioner against the appellate order proved abortive. It stood dismissed by an order dated July 27, 2006. The order of removal was challenged by the

petitioner before the Central Administrative Tribunal, Mumbai Bench, Mumbai (hereafter "the Tribunal", for short) by instituting an original application (O.A. No. 395 of 2007). By its judgment and order dated May 7, 2008, the original application was allowed. The Tribunal, *inter alia*, directed as follows:

"We would, therefore, quash and set aside the Appellate Authority's and Revisionary Authority's orders dated 31.3.2006 and 27.7.2006 respectively and direct the respondents to restore the penalty order dated 5.10.2005 of the Disciplinary Authority. The respondents are directed to reinstate the applicant with continuity of service and all other consequential benefits subject to the penalty order dated 5.10.2005. We, however, make it clear that the applicant will not be entitled to any backwages for the period from the date of his removal till the date of his reinstatement or till expiry of the period of two months from today; whichever is earlier. The respondents to comply with the directions within two months from the date of receipt of a copy of this order. The O.A. under consideration stands, accordingly, allowed. No costs."

2. Aggrieved by the said judgment and order, the respondents in the original application invoked the writ jurisdiction of this Court by instituting a writ petition (W.P. No. 5506 of 2008). While admitting the writ petition, a co-ordinate Bench of this Court by its order dated December 3, 2008 had granted stay of operation of the order under challenge. A subsequent order dated April 10, 2014 recorded as follows:

"The Respondent has deposited the amount after 10 days. Based upon the admission and the situation, the Disciplinary Authority has awarded only a major penalty. However, the Appellate/Revisional Authority, suo motu, passed order of removal of service with immediate effect. The learned Central Administrative Tribunal, after hearing both the parties, however, restricted the order passed by the Disciplinary Authority subject to other conditions, including no back wages for the period from date of his removal till the date of his reinstatement. This Court on 3 December 2008, stayed the order of Tribunal. Therefore, the Respondent is out of service since 2006. The issue is at present the interference by a writ court in the reasoned order passed by the Central Administrative Tribunal. After hearing the parties, the Respondent, who is present in Court, has also submitted in addition to above, that he is willing to relinquish his back wages even from 2008 till this date. This in our view, will take care of the issue of major punishment, even if any, so awarded.

Stand over to 6 May 2014 HOB for disposal."

3. Despite the petitioner having expressed his willingness to relinquish back-wages from 2008 till April 10, 2014 and despite the co-ordinate Bench having expressed that the same could take care of the issue of major punishment, the petitioners in W.P. No. 5506 of 2008 did not agree to reinstate the petitioner in service; instead, they invited the co-ordinate Bench to decide the validity and/or legality of the judgment and order dated May 7, 2008 passed by the Tribunal on its merits. Ultimately, by a judgment and order dated December 6, 2016, the co-ordinate Bench dismissed

W.P. No. 5506 of 2008. The concluding paragraph reads as follows:

"10. In view of the above, we are of the considered opinion that the orders passed by the Appellate Authority and Revisional Authority dated 31st March, 2006 and 27th July 2006 are totally unreasonable and arbitrary and cannot be sustained in the eyes of law. It clearly appears to us that the impugned order dated 7th May 2008 passed by the learned Members of the Tribunal is an equitable order and the view taken therein is just right and proper. We see no error, illegality or perversity in the said impugned order to interfere with in our writ jurisdiction under Article 226 of the Constitution of India. Petition is accordingly dismissed with no order as to costs."

4. Despite the judgment and order dated May 7, 2008 of the Tribunal having been upheld by this Court, the petitioner was neither reinstated in service nor paid back-wages. This triggered a contempt petition (Contempt Petition No. 29 of 2017) before the Tribunal at the instance of the petitioner. The prayers in the contempt petition were to the following effect:

"(a) That this Hon'ble Tribunal be pleased to hold and declare that Respondents have committed contempt of court and be punished in accordance with law.

(b) Direct the Respondents to pass the order in terms of the order dated 07.05.2008 and all benefits including 100% back-wages.

(c) Pass any other and further order in the interest of justice."

5. C.P. No. 29 of 2017 came up for consideration before the Tribunal on August 3, 2017. It was recorded in paragraph 2 of the order that the petitioner had challenged a direction of the respondent that the petitioner should give an undertaking not to claim back-wages from the date of dismissal (sic, removal) up to April 10, 2014. The Tribunal referred to the interim order dated April 10, 2014 (quoted above) and observed that in view thereof, the question of giving any undertaking by the petitioner does not arise. More importantly, the Tribunal observed that the petitioner does not have any right to claim any back-wages from the date of dismissal (sic, removal) till the date of the order of the High Court dated April 10, 2014. This was based on the concession of the petitioner, as recorded in the said order. Although the Tribunal made a passing reference to the judgment and order of this Court dated December 6, 2016, it failed to appreciate that by reason of the doctrine of merger, the interim order dated April 10, 2014 had merged in the judgment and order dated December 6, 2016 of the co-ordinate Bench which, in unambiguous terms, put a stamp of validity on the judgment and order dated May 7, 2008 of the Tribunal. The net result thereof was that the petitioners in W.P. No. 5506 of 2008 incurred the liability to pay back-wages to the petitioner excluding the period between the order of his removal from service [March 31, 2006] till the date of his reinstatement or till 2 (two) months of the date of the judgment and order dated May 7,

2008, whichever is earlier. On an erroneous interpretation of the orders passed by this Court in W.P. No. 5506 of 2008, the Tribunal disposed of the contempt petition by simply directing the respondents to allow him to resume duty and to pay him back-wages from April 11, 2014 till that date, i.e., August 3, 2017.

6. The order dated August 3, 2017 of the Tribunal disposing of Contempt Petition No. 29 of 2017 is challenged in this writ petition.

7. We have heard Mr. Vishal Tambat, learned advocate for the petitioner and Mr. Neel Helekar, learned advocate for the respondent.

8. Since the petitioner has been paid back-wages from April 11, 2014, the only point that we are tasked to decide is whether the petitioner would be entitled to back-wages between July 7, 2008 [i.e., two months after the judgment and order dated May 7, 2008] and April 10, 2014. Having bestowed our serious consideration, we are of the clear view that the question must be answered in the affirmative.

9. There is no doubt that in course of consideration of W.P. No. 5506 of 2008 on April 10, 2014, the petitioner (appearing in person) had made a submission before the co-ordinate Bench that he is willing to relinquish back-wages from May 7, 2008 till April 10, 2014. It is also not in dispute that the co-ordinate Bench had expressed a view that the same could take care of the issue of major

punishment of removal that the petitioner had suffered. An option was left open for the petitioners in W.P. No. 5506 of 2008 to decide their next course of action either to take back the petitioner in service without paying him back-wages or to press the writ petition on merits. If only the said petitioners were inclined to take back the petitioner in service without paying him back-wages from May 7, 2008 till April 10, 2014, it was open to them to agree to consent terms being filed to enable the co-ordinate Bench dispose of the writ petition finally on April 10, 2014 itself or immediately thereafter. Regrettably, the said petitioners did not choose to pursue this course of action. It appears from the judgment and order dated December 6, 2016 that learned advocate for the petitioners in W.P. No. 5506 of 2008 pressed the writ petition on all points that were available to them in law in order to have the judgment and order dated May 7, 2008 of the Tribunal reversed. However, after hearing the parties, the co-ordinate Bench was of the opinion that the impugned judgment and order of the Tribunal did not warrant any interference and accordingly, proceeded to uphold the same. The judgment and order dated December 6, 2016 was not carried in appeal, with the result that the direction contained in the judgment and order dated May 7, 2008 of the Tribunal, regarding the petitioner's entitlement to back-wages, attaining finality and becoming binding on the respondents in the original application. Thus, they became bound to pay back-wages to

the petitioner from July 7, 2008 onwards without any reservation.

10. Having regard to such clear factual position, it was not open to the Tribunal while disposing of the contempt petition to rely on the interim order dated April 10, 2014 for depriving the petitioner of back-wages resting on the concession that he had made and which was recorded by the co-ordinate Bench on April 10, 2014.

11. Law is well-settled that any order of interim relief, if passed, has to be in aid of the final relief that is claimed in the proceedings and once a final order disposing of the proceedings is passed, any such interim order would merge in the final order and cease to exist except in respect of acts performed in pursuance thereof. There is no order of the coordinate Bench recording acceptance of the concession of the petitioner. The submission that he was willing to relinquish back-wages was only recorded, nothing more nothing less. The submission never crystalised into an order of Court to be binding on the petitioner. As has been noted earlier, the Tribunal failed to appreciate that the order dated April 10, 2014 had merged in the judgment and order dated December 6, 2016 by which W.P. No. 5506 of 2008 was dismissed. With such merger, there was no independent existence of the order dated April 10, 2014 and the petitioners in W.P. No. 5506 of 2008/the respondents in O.A. No. 395 of 2007 were bound to honour the judgment and order dated December 7, 2008 by which the original

application was allowed. The claim of the petitioner for payment of back-wages was perfectly justified which the Tribunal rather illegally spurned.

12. Since we are informed that the petitioner has been paid back-wages from April 11, 2014, we direct the respondent to calculate the quantum of back-wages that the petitioner is entitled to from July 7, 2008 till April 10, 2014 and to release the same together with interest @ 8% per annum, within 3 (three) months from date of receipt of an authenticated copy of this order. In the event, the quantified sum on account of back-wages as above together with interest is not released within the aforesaid time-frame, the petitioner shall be entitled to further interest @ 1% per month till such time the payment is finally made.

13. The writ petition stands allowed with the result that the impugned order of the Tribunal dated August 3, 2017 stands set aside. No costs.

(M. S. KARNIK, J.)

(CHIEF JUSTICE)