IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 8311 OF 2019

The Income Tax SC/ST/OBC
Employees Welfare Association
through its office bearer
Mr. Rupesh B. Ukey and ors. .. Petitioners
Vs.
Union of India and ors. .. Respondents

Dr. Suresh T. Mane, for Petitioners.

Mr. Rui Rodrigues a/w Mr. Shailesh S. Pathak, for Respondent No. 1.

Mr. Rahul Walia, for Respondents No. 4 and 5.

CORAM: DIPANKAR DATTA, CJ &
V. G. BISHT, J.

DATE: MAY 4, 2022

P.C.:

1. Original Application No. 209 of 2019 on the file of the Central Administrative Tribunal, Mumbai Bench, Mumbai (hereafter "the Tribunal", for short) has been dismissed by a judgment and order dated July 10, 2019. The said order is under challenge in this writ petition dated July 23, 2019 at the instance of the original applicants.

2. The original applicants/petitioners are (i) The Income Tax SC/ST/OBC Employees' Welfare Association, through its office bearer Mr. Rupesh B. Ukey, (ii) Mrs. Archana Rahul Chikhalkar and (iii) Ms. Archana Kalpak Koli. The petitioners 2 and 3 along with others belonging to the reserved category while serving as Income Tax Inspectors had been granted promotion as Income Tax Officers. Such promotions together with a seniority list dated January 22, 2014 were subjected to challenge by one Mr. Sanjeev Kumar and 4 (four) others before the Tribunal in Original Application No. 623 of 2016. In such original application, Ms. Archana Kalpak Koli and Mrs. Archana Rahul Chikhalkar were arrayed as respondents 6 and 7, respectively, whereas Mr. Rupesh B. Ukey was arrayed as respondent no. 4. For the reasons assigned in its judgment and order dated October 31, 2017, the Tribunal allowed Original Application No. 623 of 2016. The impugned orders dated June 4, 2014 [Annexure 'A-1'], October 17, 2014 [Annexure 'A-2'] and April 25, 2016 [Annexure 'A-4'] as well as the seniority list dated January 22, 2014 [Annexure 'A-3'] were quashed. All other relatable consequential factors/actions stood set aside. The official respondents (Union of India and its officers) were directed to strictly follow the ratio of law laid down by the Supreme Court in its decision reported in (2017) 4 SCC 620 **[B.K. Pavitra & others Vs. Union of India and Ors.]** while promoting officers to the next higher posts and determining the *inter se* seniority of the promoted officers by strictly following the catch-up rule.

3. It is not in dispute that Ms. Archana Kalpak Koli and Mrs. Archana Rahul Chikhalkar did not challenge the judgment and order dated October 31, 2017. However, it was challenged by Mr. Rupesh Ukey by instituting Writ Petition No.848 of 2018 before this Court. A co-ordinate Bench by its judgment and order dated March 5, 2018 dismissed Writ Petition 848 of 2018 for the reasons assigned therein. We find from the judgment and order dated March 5, 2018 that an application seeking intervention being Civil Application No. 539 of 2018 had been filed in Writ Petition No. 848 of 2018 by Income Tax SC/ST/OBC Employees Welfare Association, being the petitioner no.1. The Court observed that since the writ petition itself had been dismissed at the threshold, question of permitting any intervention would not arise.

4. Pertinently, the official respondents had not challenged the judgment and order dated October 31, 2017 as on the date Writ Petition No. 848 of 2018 came to be dismissed; however, almost 2 (two) years after Original Application No. 623 of 2017 had succeeded before the Tribunal, the Union of India belatedly challenged the judgment and order dated October 31, 2017 before this Court by instituting a writ petition on April 26, 2019 being Writ Petition No. 7520 of 2019. The same too stands dismissed by reason of a judgment and order of recent origin of another co-ordinate Bench dated April 13, 2022 [of which one of us (the Chief Justice) was a member].

5. We are informed that the judgment and order dated March 5, 2018 in Writ Petition No. 848 of 2018 affirming the judgment and order dated October 31, 2017 of the Tribunal in Original Application No. 623 of 2017 has not been carried further in appeal before the Supreme Court and has, thus, attained finality.

6. In compliance with the order dated October 31, 2017, the official respondents in Original Application No. 623 of 2017 proceeded to re-draw the seniority list and circulated the same vide a circular dated February 22, 2019. Pursuant thereto, seniority of *inter alia* the petitioners 2 and 3 was re-fixed. They, along with other similarly situated employees who were earlier granted promotion as reserved category candidates, were reverted by an order dated March 23, 2019. The circular dated February 22, 2019 re-drawing the seniority list, initially, was the subject matter of challenge at the instance of the present petitioners before the Tribunal in Original Application No. 167 of 2019. The said application was taken up for consideration on March 11, 2019. Learned advocate for the petitioners did not pray for orders that were claimed by the petitioners vide prayer clauses (a) to (g); instead, he submitted before the Tribunal that the petitioners would be satisfied if their representations dated February 25, 2019 [Annexure A-16 collectively] were directed to be considered by the official respondents within a certain time frame that the Tribunal may fix and in accordance with law. Hearing such submission and considering that a direction for consideration would not prejudice the right of any other employee, the Tribunal proceeded to dispose of Original Application No. 167 of 2019 directing consideration of the said representations and disposal thereof by passing a reasoned order within a period of twelve (12) weeks from the date of receipt of a certified copy of the order. It was further recorded in such order that the merits of the case had not been examined.

7. In compliance with the order dated March 11, 2019, the official respondents considered the representations of the petitioners and disposed of the same on April 4, 2019. We are informed that no relief was granted to the petitioners. The order of disposal of the representations is, however, not on record.

8. Quite strangely, the petitioners approached the Tribunal once again on March 22, 2019 without waiting for disposal of their representations. They challenged the circular dated February 22, 2019 by instituting Original Application No. 209 of 2019 (out of which this writ petition arises). Several prayers were made which have been quoted in the judgment and order dated July 10, 2019 and, hence, are not repeated. The order of reversion dated March 23, 2019 and the order of disposal of representation dated April 4, 2019 were issued soon after institution of the original application, yet, the petitioners did not make any attempt to amend the original application and to lay any challenge to such orders. No wonder, Original Application No. 209 of 2019 came to be dismissed by the Tribunal by the judgment and order dated July 10, 2019 with costs.

9. It is in this factual background that we are tasked to adjudicate the present challenge laid by the petitioners.

10. In course of hearing today, we called upon Dr. Mane, learned advocate appearing on behalf of the petitioners to demonstrate how the circular dated February 22, 2019 re-drawing the seniority list as well as the order of reversion dated March 23, 2019 suffers from legal infirmity bearing in mind that the same were end-results of compliance of the Tribunal's judgment and order dated October 31, 2017. The only submission advanced before us by Dr. Mane is that the judgment and order dated October 31, 2017 disposing of Original Application No. 623 of 2016 is erroneous and, therefore, any action taken in pursuance of such judgment and order is also erroneous.

11. We are afraid, the question as to whether the judgment and order dated October 31, 2017 suffers from any error of law or facts could not have been agitated either before the Tribunal while it was in *seisin* of Original Application No. 209 of 2019 nor before us in course of these proceedings. The judgment and order dated October 31, 2017 has merged in the judgment and order dated March 5, 2018 passed in Writ Petition No. 848 of 2018 and the latter judgment and order not having been challenged by any party before the Supreme Court, it has attained finality leaving us with little scope to go beyond such judgment and order and to ascertain whether any error, at all, was committed by the Tribunal in the course of disposal of Original Application No.623 of 2016 by its judgment and order dated October 31, 2017. Even such course is also not open to us since in Writ Petition No. 848 of 2018, the said judgment and order has been affirmed.

12. It is evident from a reading of the order dated March 11, 2019 that in course of hearing of Original Application No. 167 of 2019, it was contended on behalf of the petitioners that the seniority list dated January 22, 2016 (sic, 2014) had been prepared following the law pertaining to reservation as the law is clear on the subject that reservation in promotion is permissible. Much the same argument was advanced before the Tribunal in course of hearing of Original Application No. 209 of 2019. The Tribunal having noted the previous orders passed in proceedings between the parties arrived at the conclusion that the issue sought to be raised by the petitioners was barred by the principles of *res judicata*. We share the view expressed by the Tribunal. Once a point is raised before the Court and the Court proceeds to pronounce its decision on such point on merits, it is no longer open to any party to agitate the same point in a subsequent round of proceedings between the same parties. An endeavour on the part of the petitioners, particularly the petitioners 2 and 3, to raise a point which has already been decided without, however, subjecting judgment and order dated October 31, 2017 passed in Original Application No. 623 of 2016 to any challenge before a higher forum proves fatal so far as their interest is concerned and we have no hesitation to hold that the law would not permit them to raise the same point twice over. We have noted that this writ petition has arrayed Income Tax SC/ST/OBC Employees Welfare Association as the first petitioner; however, the association is represented by its office bearer, Mr. Rupesh B. Ukey, who himself was the petitioner in Writ Petition No. 848 of 2018. Having not succeeded in obtaining any relief in Writ Petition No. 848 of 2018, it appears to be an attempt on the part of the said Rupesh B. Ukey to have a second bite at the cherry.

13. Even otherwise, we are of the opinion that institution of Original Application No. 209 of 2019 is an abuse of the process of law. Having invited the Tribunal to dispose of Original Application No. 167 of 2019 with a direction upon the official respondents to consider the representations made against the circular re-drawing the seniority list and the Tribunal having granted 12 (twelve) weeks' time therefor, Original Application No. 209 of 2019 could not have been instituted without any substantial change in circumstances. Nothing adverse to the interest of the petitioners transpired between March 11, 2019 (when Original Application No. 167 of 2019 was disposed of) and March 22, 2019 (when Original Application No. 209 of 2019 was instituted). Without there being an infraction of any legal right in between, Original Application No. 209 of 2019 was not maintainable in law. The Tribunal, therefore, was justified in dismissing Original Application No. 209 of 2019 with costs.

14. For the reasons aforesaid, we hold this writ petition to be devoid of any merit. The impugned judgment and order of the Tribunal is upheld. Accordingly, the writ petition stands dismissed.

15. The cost directed to be paid by the Tribunal is, however, made easy accepting the submission of Dr. Mane that the petitioners ought not to be penalized for the misbehavior and irresponsible conduct of their learned advocate.

(V. G. BISHT, J.) **(CHIEF JUSTICE)**