

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO. 1629 OF 2022

Dr. Gajanan Vithoba Jain,
Age 49 yrs., Occ. - Nil
R/o 242, Ramasmruti Apartment, Ghare : **PETITIONER**
Line, Dhantoli, Nagpur - 12

VERSUS

Shiv Vaibhav College of Education, Wardha,
Through its President Kishor Yeshwantrao
Mathankar, : **RESPONDENT**
Age Adult, R/o Hawaldarpura, Near Vitthal
Mandir, Wardha

Mr. R. V. Bhanarkar, Advocate for petitioner
Mr. M.R. Puranik, Advocate for respondent

CORAM : MANISH PITALE, J.

DATE : 22/09/2022

ORAL JUDGMENT

Rule. Rule is made returnable forthwith. Heard finally with the consent of learned counsel appearing for the rival parties.

2. The petitioner, who was an employee of the respondent – Management running a College, is before this Court, challenging order dated 26/10/2021, passed by the Appellate Authority under the provisions of the Payment of Gratuity Act, 1972, whereby an order of

the Controlling Authority was set aside and the matter stood remanded back to the Controlling Authority for fresh consideration and disposal of the application filed by the petitioner for payment of gratuity in terms of the provisions of the said Act.

3. The question that arises for consideration in the present petition is, as to whether the Appellate Authority has the jurisdiction to pass an order of remand under Section 7(8) of the aforesaid Act, considering the specific words used in the said provision as regards the power of the Appellate Authority being to “confirm”, “modify” or “reverse” the decision of the Controlling Authority.

4. The facts of the present case are in a narrow compass. On 01/02/2019, the petitioner had filed an application under Sections 4 and 7 of the aforesaid Act, read with Rule 10 of the Rules framed thereunder, claiming specific amount of gratuity on the basis of statements made in the application and by applying the formula specified under the provisions of the said Act. It is an admitted position that the respondent was served and it appeared through counsel, but, thereafter, the respondent did not participate in the proceedings before the Controlling Authority (in this case the Labour Court). Eventually, the Controlling Authority, after considering the material placed on

record on behalf of the petitioner, allowed the application and held that the respondent was liable to pay amount of Rs.11,65,372/-, towards gratuity to the petitioner with simple interest @10% p.a. from 30/06/2018, till realization of the amount.

5. Aggrieved by the same, the respondent filed appeal before the Appellate Authority (in this case the Industrial Court) under Section 7(7) of the aforesaid Act. In the appeal before the Appellate Authority, the respondent pointed out that since it was proceeded against ex-parte before the Controlling Authority, without effective representation, certain material facts could not be brought to the notice of the Controlling Authority. It was stated before the Appellate Authority that there were acts of vital suppressions on the part of the petitioner, which went to the very root of the matter.

6. The Appellate Authority passed the impugned judgment and order dated 26/10/2021, taking into consideration the submissions made on behalf of the respondent and found that the petitioner had indeed suppressed certain facts from the Controlling Authority. It was found that the Controlling Authority had proceeded on the basis that the petitioner was entitled to the benefit of recommendations of the 6th Pay Commission, while the issue regarding such entitlement was sub-

judice before the competent Authority i.e. the College Tribunal and it was yet to attain finality. There were certain other aspects also, which the Appellate Authority found were serious and deserved to be addressed on merits. Having reached the aforesaid conclusion, the Appellate Authority found it fit to remand the matter to the Controlling Authority, after discussing two conflicting judgments on the question as to whether the Appellate Authority has power to remand, one judgment being that of the Andhra Pradesh High Court in the case of **M/s. East India Commercial Company Limited, Lessee of Shri Krishan Jute Mills, Eluru Vs. The Appellate Authority** reported in 1993(I) A.P.L.J. 180(HC) and other being judgment of the Madras High Court in the case of **Tiruchengode Agricultural Producers Co-operative Marketing Society Ltd. Vs. Appellate Authority** reported in 2002(94) FLR 64. The Appellate Authority found that in the context of the issue that arose before it, power of remand was to be read into Section 7(8) of the aforesaid Act and it was to be exercised in the facts of the present case. Accordingly, the order of Controlling Authority was set aside and matter was remanded to the said authority for disposal afresh.

7. Aggrieved by the order of the Appellate Authority, the petitioner filed the present writ petition, wherein this Court issued notice, upon which the respondent entered appearance through counsel and the

petition was taken up for final disposal.

8. Mr. Bhanarkar, learned counsel appearing for the petitioner submitted that unless the statute specifically provided for the power of remand or that the relevant provisions of the statute were sufficiently widely worded, power of remand could not be read into such a provision. It was submitted that for this reason, the judgment of the Madras High Court in the case of **Tiruchengode Agricultural Producers Co-operative Marketing Society Ltd. Vs. Appellate Authority** (supra), was the correct view and if at all the Appellate Authority was of the opinion that certain further material was to be appreciated, before the entitlement of the petitioner could be decided, such material could have been called for, analyzed, commented upon and the appeal could have been decided on merits. Instead, the Appellate Authority erroneously remanded the matter to the Controlling Authority.

9. The learned counsel appearing for the petitioner placed reliance on the **judgment of a learned Single Judge (Avinash G. Gharote, J.)** in the case of **Shaikh Abdul Razak Yaseen Patel and others Vs. Sayyad Murad Syed Irfan Ali (deceased) through L.Rs. and another** reported in **AIR Online 2019 BOM 1060**. It was submitted that the said judgment was in the context of a similarly worded provision, wherein this Court

found that when the concerned authority or Court had the jurisdiction only to confirm, modify or revoke an order, which was subject matter of challenge, the power of remand could not be read into the same. On this basis, it was submitted that since the aforesaid emphatic view of this Court is available, it becomes clear that the impugned order passed by the Appellate Authority is erroneous and it deserves to be set aside.

10. On the other hand, Mr. Puranik, learned counsel appearing for the respondent submitted that a perusal of the relevant provision i.e. Section 7(8) of the aforesaid Act would show that the word “may” is used therein with reference to the power to be exercised by the Appellate Authority in the context of a decision of the Controlling Authority. It is submitted that no specific conditions have been laid down in the said provision and hence, a wider ambit ought to be read into the said provision, to include power of remand in the Appellate Authority. The learned counsel also referred to Section 7(5) of the said Act to emphasize that an enquiry into the facts could be conducted in the manner provided therein, only by the Controlling Authority and if a situation arose, as in the present case, that an enquiry was warranted due to suppression of facts on the part of the petitioner, there was no other alternative but to remand the matter to the Controlling Authority for fresh consideration. It was submitted that the course adopted by the

Appellate Authority was in the interest of justice and also in the interest of both the parties, because after such a fact finding enquiry upon remand, avenue of appeal would be available to the aggrieved party.

11. Reliance was placed on the judgments of the Hon'ble Supreme Court in the cases of **The Official Liquidator Vs. Dharti Dhan (P) Ltd.** reported in (1977) 2 SCC 166; **Babulal Nagar and others Vs. Shree Synthetics Ltd. and others** reported in 1984 (Supp) SCC 128 and the judgment and order dated 05/05/2022, passed by this Court in Writ Petition No. 6582 of 2019 (**Rashtrasant Tukdoji Maharaj Technical and Educational Society and another Vs. Chandan Bapural Karwade and others**).

12. Heard learned counsel for the rival parties and perused the material on record. As noted above, the question for consideration is regarding the availability of power of remand with the appellate authority under Section 7(8) of the aforesaid Act.

13. In order to appreciate the rival contentions, it would be necessary to refer to the relevant portion of Section 7 of the said Act, which reads as follows :

7. Determination of the amount of Gratuity -

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7(5) For the purpose of conducting an inquiry under sub-section (4), the controlling authority shall have the same powers as are vested in a court, while trying a suit, under the Code of Civil Procedure, 1908 (5 of 1908), in respect of the following matters, namely:—

(a) enforcing the attendance of any person or examining him on oath;

(b) requiring the discovery and production of documents;

(c) receiving evidence on affidavits;

(d) issuing commissions for the examination of witnesses.

xxxx

7(8) The appropriate Government or the appellate authority, as the case may be, may, after giving the parties to the appeal a reasonable opportunity of being heard, confirm, modify, or reverse the decision of the controlling authority.”

14. It is significant that in Section 7(8) of the said Act, which is quoted hereinabove, the Appellate Authority has the power to “confirm”, “modify” or “reverse” the decision of the Controlling Authority, upon granting reasonable opportunity of hearing to the parties. Since specific expressions as regards the ambit of jurisdiction of the Appellate Authority are used in the said provision, it becomes necessary to consider the true purport of the three expressions “confirm”, “modify” and “reverse”.

15. The judgment of this Court in the case of **Shaikh Abdul Vs. Sayyad Murad** (supra), at once becomes relevant in this context for the reason that in the said case also, this Court was called upon to consider

the true purport of the expressions, “confirm”, “revoke” or “modify”. This was also in the context of a controversy raised in the said case, as to whether the Court exercising power under Section 72 of the said Act, had the power to remand the matter, or due to use of the said three specific expressions, it could only confirm, modify or revoke and not “remand” the matter for consideration afresh.

16. The relevant portion of the said judgment reads as follows :

“9. Since the language of Sections 72(2) and its effect and import arises for consideration, it would be material to quote it alongwith Sections 72(1) as under :

72(1) Any person aggrieved by the decision of the Charity Commissioner under section 40, 41 (41C and 43 (2) (a) and (c) (50A) (70 or 70 A) or on the questions (whether a trust exists and whether such trust is a public a trust) or whether any property is the property of such trust may, within sixty days from the date of the decision , apply to the court to set aside the said decision.

72(2) The court after taking (evidence if any) may confirm, revoke or modify the decision or remit the amount of the surcharge and make such orders as to costs as it thinks proper in the circumstances.

10. It is a settled position of law, that jurisdiction is the power or authority of the Court, to entertain and decide a case/lis. Jurisdiction has to be necessarily conferred upon the Court, unless it is inherent by the very nature of its establishment. The nature, parameters, ambit and scope of jurisdiction of the Court, would be determined by the language used in the provision conferring such jurisdiction. To cite an example, Section 96 of the Code of Civil Procedure confers right of appeal, which is unfettered by any restrictions as against which the right of second appeal as conferred by Section 100 CP.C.

is restricted by the statute, to be exercised only in case where the Court finds a substantial question of law arises. This is plain from the language of Section 96 and Section 100 of C.P.C. Similar is the position, in all statutes, in respect of the provision therein contained, conferring jurisdiction and the wordings of the Section in that regard, control, restrict and govern the power of the Court to entertain and try a lis. This being the position, the language used in the Section conferring the jurisdiction assumes immense importance, in the matter of determining the nature, scope, ambit and parameters of the jurisdiction conferred. This is so reflected from the decision in the case of C.I.T. Vs. Pearl Mech. Engg. and Foundry Works (P) Ltd., (2004) 4 SCC 597, where it is explained in para 6 in the following words :

"The word "jurisdiction" implies the court or tribunal with judicial power to hear and determine a cause, and such tribunal cannot exist except by authority of law. Jurisdiction always emanates directly and immediately from the law; it is a power which nobody on whom the law has not conferred it can exercise. In other words, "jurisdiction" has reference to the power of the court or tribunal over the subject-matter, over the res or property in contest, and to the authority of the court to render the judgment or decree it assumes to make".

And in the case of Harpal Singh Vs. State of Punjab, 2007 (13) SCC 387 in para 10 in the following words :

"10. At this stage it will be useful to refer to the dictionary meaning of the word "jurisdiction":

Black's Law Dictionary:

"A court's power to decide a case or issue a decree." Words and Phrases -- Legally defined, Third Edition (p. 497):

"By 'jurisdiction' is meant the authority which a court has to decide matters that are litigated before it or to take cognizance of matters presented in a formal way for its decision. The limits of this authority are imposed by the statute, charter, or commission under which the court is constituted, and may be extended or restricted by similar means. If no restriction or limit is imposed the jurisdiction is

said to be unlimited. A limitation may be either as to the kind and nature of the actions and matters of which the particular court has cognizance, or as to the area over which the jurisdiction extends."

Law Lexicon by P. Ramanatha Aiyar, 2nd Edn., Reprint 2000:

"An authority or power, which a man hath to do justice in causes of complaint brought before him. (Tomlin's Law Dictionary) The power to hear and determine the particular case involved; the power of a court or a Judge to entertain an action, petition, or other proceeding; the legal power of hearing and determining controversies. As applied to a particular claim or controversy, jurisdiction is the power to hear and determine that controversy." Jurisdiction, therefore, means the authority or power to entertain, hear and decide a case and to do justice in the case and determine the controversy. In absence of jurisdiction the court has no power to hear and decide the matter and the order passed by it would be a nullity".

17. Thereafter, the Court referred to the ordinary grammatical meaning of the three aforesaid expressions, referring to their dictionary meaning. Thereafter, it was held as follows :

"13. In so far as the words 'confirm' and 'revoke' are concerned as used in Section (2) of the B.P.T. Act, their plain meaning would not include the remand of a matter, which leaves us with the word "modify".

14. The word modify indicates a power to change, or vary, to qualify or reduce, to alter without radical transformation, to limit, restrain, to assuage to make less severe. The constitution Bench of the Hon'ble Apex Court in the case of M/s Burrakar Coal Co. Ltd. Vs Union of India, 1962 (1) SCR 44, had an occasion to consider the word 'modify', which has been held in para 22 thereof to mean as under :

"The meaning of the word "modify" fell to be considered,

In re the Delhi Laws Act, 1912 [(1951) SCR 793-4] . As pointed out in the opinion of Kania, C.J., the word "modify" means, according to Oxford Dictionary, "to limit, restrain, to assuage, to make less severe, rigorous, or decisive; to tone down". It also means "to make partial changes in; to alter without radical transformation". In Rowland Burrows' Words and Phrases, the word "modify" has, however, been defined as meaning "vary, extend or enlarge, limit or restrict". According to the learned Chief Justice "It has been held that modification implies an alteration. It may narrow or enlarge the provisions of the former Act".

15. Thus considering its plain grammatical meaning the word 'modify', would indicate the narrowing down or enlarging the power, vis-a-vis the authority to deal with the order impugned under Section 76 (1) of the B.P.T. Act. This, however, would not include a power to remand and redirect the lower Court, to rehear and determine the matter. This being the case in my humble opinion, since the language of Section 72 (2) of the B.P.T. Act does not confer the power to remand a matter back to the lower Court upon the District Court, such a course of action would be impermissible to him within the scope, ambit and parameter of Section 72 (2) of the Bombay Public Trust Act. The District Court in an application under Section 72 (1) while exercising jurisdiction, does so within the parameters as defined in Section 72 (2), as that is the only provision conferring jurisdiction upon District Court, to entertain and decide an application filed under Section 72 (1). Since the expressions "confirm, revoke, modify" as used in Section 72 (2) of the B.P.T. Act, do not include the remand of a matter, the same cannot be done by the District Court in exercise of the jurisdiction under Section 72 (2)."

18. Thus, it becomes clear that even in the context of Section 7(8) of the aforesaid Act in the present case, the power of remand could

certainly not be read in the expressions, “confirm” and “modify”, which leaves only the expression “reverse” to be considered as to whether the power of remand can actually be read into the same. Since, this Court in the case of **Shaikh Abdul Vs. Sayyad Murad** (supra), was concerned with the expression “revoke” and its dictionary meanings were considered, it would be appropriate that the dictionary meaning of “reverse” is taken into consideration in the present case.

19. The Black’s Law Dictionary defines “reversal” as “an Appellate Court overturning a lower Court’s decision” and “to overturn on appeal”. The Concise Oxford English Dictionary (Indian Edition) defines “reverse” as “to move backward”, “work in a contrary direction”, “make the opposite of what it was”, “revoke or annul”.

20. The aforesaid dictionary meanings would indicate that the expressions “revoke” and “reverse” appear to be inter-changeable and this is further evident from the dictionary meaning of “revoke” noted in the said judgment of this Court in the case of **Shaikh Abdul Vs. Sayyad Murad** (supra), wherein it was found that the expression “revoke” was also defined in the Black’s Law Dictionary as “an annulment”, “reversal” or “cancellation”.

21. This Court is of the opinion that the power of remand in view of

the above cannot be read in any of the three expressions i.e. “confirm”, “modify” or “reverse” found in Section 7(8) of the aforesaid Act. The Appellate Authority is a creature of the statute and it can exercise only such powers as are specifically provided under the statute. Similarly, the Controlling Authority is also bound to exercise power and jurisdiction limited to the extent provided under the said Act. Section 7(5) of the aforesaid Act provides for the limited nature of the powers available to a Court under the Code of Civil Procedure, 1908 (CPC), while conducting an enquiry contemplated under Section 7(4) of the aforesaid Act. This Court is not in agreement with the learned counsel appearing for the respondent that since the provisions of the CPC are referred to in Section 7(5) of the said Act, the law which is applicable to the Courts under the CPC, ought to be read into the powers available to the appellate Authority under Section 7(8) of the said Act.

22. Insofar as the judgment on which the learned counsel for the respondent has placed reliance, while emphasizing on the word “may” in Section 7(8) of the said Act i.e. **The Official Liquidator Vs. Dharti Dhan (P) Ltd.** (supra), the same is misplaced, for the reason that in the said case the Court was not concerned with the question that squarely arises in the present writ petition and even if the law laid down therein, specifically in paragraph No. 10 thereof, is to be considered, it cannot

lead to an interpretation of Section 7(8) of the said Act to mean that the Appellate Authority has the power of remand. The use of the expression “may” leaves a discretion with the Appellate Authority only to “confirm”, “modify” or “reverse” the decision of the Controlling Authority. Mere use of the word “may” cannot lead to reading jurisdiction and power in the Appellate Authority beyond what is specified in Section 7(8) of the said Act.

23. Insofar as judgment in the case of **Babulal Nagar and others Vs. Shree Synthetics Ltd.** (supra) is concerned, the Hon’ble Supreme Court was considering Section 66 of the M.P. Industrial Relations Act, 1960, pertaining to revisional power available with the Industrial Court. It was found that in the said case an order passed by the Industrial Court remanding the matter to the Labour Court for fresh decision was just and proper by interpreting the aforesaid provision. It is significant that Section 66 of the M.P. Industrial Relations Act uses the words “may pass order in reference thereto as it thinks fit”. Emphasizing upon the words “as it thinks fit”, the Hon’ble Supreme Court read a power of wide amplitude available to the Industrial Court, including the power of remand. Such is not the statutory provision in the present matter. Section 7(8) of the aforesaid Act does not use words of such wide amplitude and, therefore, the aforesaid judgment can be of no assistance

to the respondent.

24. Insofar as judgment of this Court in the case of **Rashtrasant Tukdoji Maharaj Technical and Educational Society and another Vs. Chandan Bapural Karwade** (supra) is concerned, it is found that the said judgment assists the petitioner to support the contention that the Appellate Authority does not have power of remand. In the said judgment, this Court specifically held that under Section 44 of The Maharashtra Recognition Of Trade Unions And Prevention of Unfair Labour Practices Act, 1971 (MRTU & PULP Act), the Industrial Court in revisional jurisdiction did not have the power to even permit an amendment of the memo of the revision petition. It was only held that if at all a party desired to place on record relevant facts, including subsequent events, affidavits could be filed before the Industrial court, but, amendment of petition could not be permitted. In other words, the scope and ambit of jurisdiction of the revisional Court under Section 44 of the MRTU and PULP Act, 1971, was read in a strict manner.

25. This Court is of the opinion that, considering the said position of law, which indicates that power and jurisdiction of an authority which is a creature of the statute, has to be strictly read in terms of the words of

the statute, Section 7(8) of the aforesaid Act does not provide for any scope of a power of wide amplitude being read into the jurisdiction of the Appellate Authority. As noted above, the expressions “confirm”, “modify” and “reverse” cannot include the power of remand.

26. In this situation, it was vehemently submitted on behalf of the respondent that when the Appellate Authority found that there were serious allegations of suppression on the part of the petitioner and material was necessary to be taken into account, even to consider the entitlement of the petitioner towards payment of gratuity, such material ought to be placed before the Controlling Authority for conducting enquiry in terms of Section 7(5) of the said Act. To better appreciate the aforesaid contentions raised on behalf of the respondent, it would be appropriate to reproduce the relevant portion of the impugned order passed by the Appellate Authority, which reads as follows :

“18. However, in the proceedings of Appeal before me, the Appellate has filed on record certain relevant documents which would have bearing on the claim of gratuity to the Applicant. Firstly in the original Application, it can be seen that the last drawn wages mentioned by the Applicant are on the basis of Sixty Pay Commission, but the order of Hon’ble High Court in Writ Petition No. 3309 of 2019 dated 19.06.2019 and further order of Hon’ble Supreme Court in Special Leave to Appeal dated 16.08.2019 clearly reflects that the entitlement of the Applicant for Sixth Pay Commission is still subjudice. This material fact was totally canceled by the Applicant the Learned Controlling Authority. There is even

no whisper regarding such matter being pending between the parties by the Applicant in the entire proceedings before the Controlling Authority. Therefore, I have reason to believe that the Applicant has concealed material fact before the Controlling Authority while claiming gratuity.

It is a matter of fact that the documents filed on record by the Applicant before the Controlling Authority at Exh.U-2, especially his Resignation Letter dated 31.03.2018 was received by the Principal Dr.Bhende, who was throughout pursuing the issue relating to Pay Commission and also Gratuity alongwith the Applicant. The acceptance of resignation of the Applicant is also communicated to Applicant by said Principal Dr.Bhende. The Relieving Letter filed on record dated 30.06.2018 is also under signature of the Principal Dr.Bhende. Further Experience Certificate, Last Pay Certificate is also under the signature of Dr.Bhende. In this respect, serious allegations are made by the Appellant submitting that the Applicant and the Principal were hand in glove and therefore, the said documents filed on record on the basis of which the gratuity amount is allowed to the Applicant. The record also shows that in this respect criminal proceedings are initiated against the Applicant and the Principal Dr.Bhende.

19. Considering the above serious allegations made by the Appellant alongwith supportive documents, I am of the constraint view that such serious allegations cannot be left unheard only on the basis of technicality of Appellant being absent in the proceedings before the Controlling Authority. Such serious allegations, when have come on record needs to be addressed and decided finally on merits.

20. With this nature of legal and factual aspects before me, according to me, it would be appropriate and proper to remand back the matter to the Learned Controlling Authority for final hearing and decision, after allowing the Appellant to participate in the proceedings, leading oral as well as documentary evidence of the parties, if they desire.”

27. This Court is of the opinion that when the Appellate Authority found in the above quoted paragraph No.19 of the impugned order that

since serious allegations had come on record, which were required to be addressed and decided finally on merits, the Appellate Authority ought to have proceeded to decide the matter on merits. If the Appellate Authority found that the very basis of entitlement of the petitioner to payment of gratuity was dependent upon resolution of the issue as to whether he was entitled to recommendations of the 6th Pay Commission and such dispute was still pending before the College Tribunal, the Appellate Authority could have waited for resolution of such a dispute. It could have called upon the parties to file affidavits and relevant documents and it could have taken a view in the matter as regards the very entitlement of the petitioner to the quantum of payment of gratuity under the said Act. But, since power of remand cannot be read into the jurisdiction of Appellate Authority under Section 7(8) of the said Act, the matter could not have been remanded by the Appellate Authority. The distinction sought to be made by the Appellate Authority in the context of the judgment of Madras High Court in the case of **Tiruchengode Agricultural Producers Co-operative Marketing Society Ltd. Vs. Appellate Authority** (supra) is not sustainable and this Court, with respect, is not in agreement with the view of the Andhra Pradesh High Court in the case of **M/s. East India Commercial Company Limited, Lessee of Shri Krishan Jute Mills, Eluru Vs. The**

Appellate Authority (supra). Hence, it is found that the Appellate Authority ought to have decided the appeal filed by the respondent on merits, on the basis of material made available by the parties. It could have called for more material and then taken an appropriate decision in the matter.

28. In view of the above, the writ petition is allowed. The impugned judgment and order passed by the appellate authority is quashed and set aside. The matter is remanded to the Appellate Authority for decision in accordance with law and in the light of the observations made hereinabove. No costs.

29. Rule is made absolute in above terms.

JUDGE

MP Deshpande