IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

REVIEW PETITION NO.105 OF 2023
(The State of Maharashtra and Others Versus Vd.Shridhar Jakhuji Darekar and others)
IN
WRIT PETITION NO.5400 OF 2018

Mr.S.G.Karlekar, AGP for the Petitioner/State.
Mr.S.T.Shelke, Advocate for the Respondent/Petitioner in Writ Petition.
Mr.V.S.Bedre, Advocate for Respondent No.4.

(CORAM : RAVINDRA V. GHUGE AND S.G.MEHARE, JJ.)

DATE : MARCH 30, 2023

PER COURT :

1. This is a review petition filed by the State of Maharashtra, the Director, Directorate of AYUSH and the Assistant Director of Ayurveda, Pune. The grievance of the review applicants is restricted to the directions issued by this Court in paragraph Nos. 9 and 10, which read as under :-

"9. We accordingly direct the respondent Nos. 4 and 5 to submit such salary bills of petitioner within two weeks from today for payment to the respondent Nos. 1 to 3 without fail, which copy of the proposal to be furnished to the petitioner.

10. Upon receipt of the salary bills of petitioner, respondents No.1 to 3 *shall clear the salary bills and shall pay the same to the petitioner within two weeks thereafter."*

2. The learned AGP submits that a litigant can not take advantage of his own wrong. Respondent Nos. 4 is the Institution operating Respondent no.5 College of Ayurved. Without seeking prior permission of Respondent Nos. 2 and 3, the Institution suspended the original Petitioner on 17.04.2015. Prior thereto, they admit, that they directed the Petitioner to proceed on leave from 22.01.2015 and adjusted his available leave as against the same. The original Petitioner superannuated on 31.05.2015. Neither any charge sheet was served upon him, nor a departmental enquiry was conducted. An order of suspension was issued without prior permission and without citing any provision, on the ground that the Petitioner has defamed the Institution by making allegations in local newspapers. The learned AGP submits that neither the prior permission of the Authorities was taken, nor any specific provision was referred to for suspending the Petitioner.

3. The learned AGP draws our attention to the circular issued by the Directorate of Ayurveda, Government of Maharashtra, dated 03.06.1988, wherein all the Ayurveda Colleges were informed through

their Principals that the Government had noticed that several institutions were highhandedly suspending employees and, even at times, terminated their services. Subsequently, if these employees succeeded in Court, the burden of back wages / suspension allowance was foisted on the State Exchequer and the amounts were to be paid by the Government instead of the Management which had indulged in such high- handed illegal action. It was, therefore, specifically set out by way of a caution to all the Colleges that, henceforth, without the prior permission of the Authorities, no employee should be suspended or terminated from service and if this is so done, the financial implications would rest on the Management and the Government of Maharashtra would not be liable to shoulder such financial burden.

4. The learned AGP submits that this particular circular was referred to in the affidavit in reply at page No.40, in the writ petition, at paragraph No.2 of internal page No.2 of the affidavit in reply dated 07.07.2019.

5. The issue before us in this review petition is as to whether we had committed any error in directing the Government to pay the

salary of the Petitioner for the period he was placed under suspension by the Management, without any prior permission of the Authorities.

6. The learned Advocate for the original Petitioner submits that he is little concerned as to who should make the payment to the Petitioner. He is concerned with the fact that 50% of the suspension allowance has been paid by the Management, since it had not taken prior permission, for the period of suspension which concluded on the date of his superannuation. Since no enquiry was conducted and as there was no conclusion as regards the charges levelled upon the Petitioner, he retired from service without any stigma. The Management decided not to proceed with the departmental enquiry. Legally, he is liable to earn entire wages for that period. The learned Advocate for the Management submits that this review should be dismissed for the reason that no error apparent on the face of the order, has been pointed out by the Review Applicant. The Management has already paid 50% suspension amount. Remainder 50% can be shouldered by the Government. Had the Petitioner been in employment during this period of suspension and as the College is 100% Grant in Aid, the Government can very well spend the said amount from the

State Exchequer.

7. The learned AGP submits in rebuttal that it is not a matter of the Government having funds to spend or that the Government has extended salary grants to the College. The salary grants are not to be distributed as a bounty. A judicious distribution of the grants and appropriation is expected from a responsible Management.

8. We find from the conclusions drawn by us in the judgment dated 21.03.2022, that the Management has been found to have highhandedly suspended the petitioner when he had only 44 days left for retirement. Initially, the Management forced the Petitioner to proceed on leave from 22.01.2015 and adjusted his accumulated balance leave. From 17.04.2015, the Management suspended him without taking any permission from the Government. This suspension continued till the superannuation of the Petitioner on 31.05.2015. The circular dated 03.06.1988 issued by Respondent No.2 (Review Applicant No.2 herein), mandated that if any employer resorts to a highhanded action against the employee and the employee succeeds in the Court, the entire financial burden shall be borne by the

Management which has acted highhandedly.

9. The question is as to why should the State Government spend from the tax payers' money, in a squabble between the Management and the employee, which is a result of the antipathy or animosity of the Management towards him. The circular clearly indicated to the Management that if they take the permission of the appropriate authorities for suspending an employee, the financial burden emerging from litigation would not be borne by the Management. Per contra, if the Management resorts to a highhanded sudden action, keeping the authorities in the dark, it alone will have to face the consequences since the State Government has not played any role in such an action, which has been disproved by the Court in proceedings initiated by the employee.

10. We, therefore, realize that our direction set out in paragraph No.9 calling upon the Management to submit the salary bills to the Government and the Government to clear the remainder salary bills (amounts towards the suspension period), would not be a sustainable direction and would set a wrong prcedent. Having realized

our error, we deem it appropriate to recall the same to the extent of directing payment by the original Respondent Nos. 1 to 3 i.e. the present Applicants/State Authorities from the funds of the government.

11. In **S.Nagraj and others Vs. State of Karnataka [1993 Supp (4) SCC 595],** the Hon'ble Supreme Court has held in paragraph Nos. 18 and 19 as under :-

"18. Justice is a virtue which transcends all barriers. Neither the rules of procedure nor technicalities of law can stand in its way. The order of the Court should not be prejudicial to anyone. Rule of stare decisis is adhered for consistency but it is not as inflexible in Administrative Law as in Public Law. Even the law bends before justice. Entire concept of writ jurisdiction exercised by the higher courts is founded on equity and fairness. If the Court finds that the order was passed under a mistake and it would not have exercised the jurisdiction but for the erroneous assumption which in fact did not exist and its perpetration shall result in miscarriage of justice then it cannot on any principle be precluded from rectifying the error. Mistake is accepted as valid reason to recall an order. Difference lies in the nature of mistake and scope of rectification, depending on if it is of fact or law. But the root from which the power flows is the anxiety to avoid injustice. It is either statutory or inherent. The latter is available where the mistake is of the Court. In Administrative Law the scope is still wider. Technicalities apart if the Court is satisfied of the injustice then it is its constitutional

and legal obligation to set it right by recalling its order. Here as explained, the Bench of which are of us (R.M. Sahai, J.) was a member did commit an error in placing all the Stipendiary Graduates in the scale of First Division Assistants due to State's failure to bring correct facts on record. But that obviously cannot stand in the way of the Court correcting its mistake. Such inequitable consequences as have surfaced now due to vague affidavit filed by the State cannot be permitted to continue.

19. Review literally and even judicially means re-examination or re-consideration. Basic philosophy inherent in it is the universal acceptance of human fallibility. Yet in the realm of law the courts and even the statutes lean strongly in favour of finality of decision legally and properly made. Exceptions both statutorily and judicially have been carved out to correct accidental mistakes or miscarriage of justice. Even when there was no statutory provision and no rules were framed by the highest court indicating the circumstances in which it could rectify its order the courts culled out such power to avoid abuse of process or miscarriage of justice."

12. In view of the above, this review petition is partly allowed by re-calling our order to the extent of our directions in paragraph Nos. 9 and 10, which stand replaced with the following directions :-

Paragraph No.9 - Respondent Nos. 4 and 5 shall calculate the unpaid suspension allowance to the extent of the remainder 50%, on or before

15.04.2023.

Paragraph No.10 - Upon calculating the aforesaid amount, the original Respondent Nos. 4 and 5, which is the Management and the Institution / College, shall make the payment of the said amount to the original Petitioner, on or before 30.04.2023. If the amount is not paid to the Petitioner until 30.04.2023, it would carry interest @ 5% p.a. from the date of his superannuation.

(S.G.MEHARE, J.) **(RAVINDRA V. GHUGE, J.)**