



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

MISC. CIVIL APPLICATION NO.1082 OF 2023

IN
WRIT PETITION NO.8315 OF 2018 (D)

Prabhakar Krushnarao Burghate

Vs.

State of Maharashtra, through Principal Secretary, Department of Water Supply and Sanitation, Mantralaya, Mumbai and others

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. P. D. Meghe, Advocate for applicant/petitioner.
Mrs. Kalyani Deshpande AGP for respondent No.1/State.
Mr. M. G. Rathi, Advocate for respondent No.5.

**CORAM : AVINASH G. GHAROTE AND
URMILA JOSHI-PHALKE, JJ.**

DATED : 07/11/2023

1. Heard.
2. The present application has been filed by the applicant in Writ Petition No.8315/2018 for review of judgment and order passed by this Court on 12.09.2023.
3. The present application for review is filed on the ground that the petitioner has claimed various benefits including Gratuity, Pension, Commutation, Dearness Allowance along with 12% interest. In view of subsequent developments, petitioner also prayed for directions to respondent No.5 for pay fixation as per the 7th Pay Commission and to pay arrears of salary for the

period 01.01.2016 to 31.10.2016. The petitioner also prayed for directions to respondent No.2 to pay leave encashment as per the pay fixed under the provisions of 7th Pay Commission to the petitioner along with interest @12% per annum till realization.

4. Heard learned Counsel Mr. P. D. Meghe for the applicant. As far as contention for pay fixation as per the 7th Pay Commission and to pay arrears of salary for the period 01.01.2016 to 31.10.2016 was never argued during the hearing of the writ petition. The further submission of the petitioner that directions to the respondent No.2 to pay leave encashment as per the pay fixed under the provisions of 7th Pay Commission to the petitioner along with interest @12% per annum till realization was also not argued by the learned Counsel for the petitioner. While allowing the writ petition, this Court has considered the prayer of the petitioner and declared that petitioner is entitled to receive the pension by considering his last drawn pay and impugned communication dated 05.05.2017 was quashed and set aside.

5. This Court further declared that the petitioner is entitled to receive the balance amount of his Group Saving Link Insurance along with the interest at 12% per annum. As far as the contention of the present applicant and the grounds raised in the review petition

that he is entitled for the pay fixation and the other pensionary benefits as per the 7th Pay Commission was never argued before this Court. It is well settled that, the review application would lie *inter alia* when the order suffers from an error apparent on the face of the record and permitting the same to continue would lead to failure of justice. The power of review can also be exercised by the Court on the discovery of new and important matter of evidence which, after the exercise of due diligence which was not within the knowledge of the person seeking the review or could not be produced by him at the time when the order was made. To appreciate the scope of review, it would be proper for this Court to discuss the object and ambit of Section 114 of the Code of Civil Procedure (CPC) as the same is a substantive provision for review when a person considering himself aggrieved either by a decree or by an order of Court from which appeal is allowed but no appeal is preferred or where there is no provision for appeal against an order and decree, may apply for review of the decree or order as the case may be in the Court, which may order or pass the decree. From the bare reading of Section 114 CPC, it appears that the said substantive power of review under Section 114 CPC has not laid down any condition as the condition precedent in exercise of power of review nor the said Section imposed any prohibition on the Court for exercising its power to review its decision. However,

an order can be reviewed by a Court only on the prescribed grounds mentioned in Order 47 Rule 1 CPC.

6. Keeping in mind the aforesaid principles, if the application of the applicant is considered on the ground raised in the application, were never argued by the petitioner. As far as the entitlement of the present petitioner as regards to the consequential benefits is concerned, the order passed by this Court to be reviewed by observing that the petitioner is entitled for other consequential benefits.

7. In view of that, Misc. Civil Application deserves to be partly allowed and review the operative portion of the judgment by observing that the petitioner is entitled for all other consequential benefits.

8. The application is disposed of.

(URMILA JOSHI-PHALKE, J.)

(AVINASH G. GHAROTE, J.)