



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

REVIEW PETITION NO. 125 OF 2015 IN
WRIT PETITION NO. 1148 OF 2014

Mohd. Salimuddin s/o Azimuddin .. Petitioner

Versus

The State of Maharashtra & others .. Respondents

Mr. P. B. Rakhunde, Advocate for the Petitioner.
Mr. P. K. Lakhotiya, AGP for the State.

**CORAM : RAVINDRA V. GHUGE AND
R. M. JOSHI, JJ.**

DATE : 26th FEBRUARY, 2024.

ORDER : (Per R. M. Joshi, J.)

1. This Petition is filed for seeking review of the judgment dated 16th March, 2015 passed by this Court (Coram : S. V. Gangapurwala and V. L. Achliya, JJ) in Writ Petition No. 1148/2014.

2. The review is sought of the impugned judgment on the count that this Court has committed an error in not considering the pleadings in the petition with regard to the Petitioner being not gainfully employed and this has resulted into denial of backwages to the Petitioner. Reliance is also sought to be placed on the judgment of the Hon'ble Apex Court in case of Deepali Gundu Surwase vs. Kranti Junior Adhyapak Mahavidyalaya (D.Ed.) and others, 2013

AIR SCW 5330. It is further claimed that the Maharashtra Administrative Tribunal, while setting aside the order of termination of the Petitioner, has observed the same to be wrongful termination of services being not sustainable, but, has erroneously refused the backwages and the other benefits while granting reinstatement and while setting aside the said order, backwages ought to have been granted by this Court.

3. The learned Advocate for the Petitioner, by relying upon the contents of the Petition, more particularly Paragraph no. 7 wherein the amendment is carried out incorporating the pleadings with regard to the Petitioner being not gainfully employed from 18th March, 1996 to 10th September, 2010, submits that this pleading is ignored by this Court while passing the impugned judgment. It is his further submission that it is settled law that once the termination is held to be illegal and where the employee pleads about not being gainfully employed and the employer fails to prove gainful employment, the consequential order must be for re-instatement with full backwages and continuity of service with all the benefits.

4. The said contention is opposed by the learned AGP by contending that the backwages were not denied to the Petitioner on

the sole ground of not pleading gainful employment, but, for other reasons also including the fact that the Petitioner had challenged the order of termination after six years and the order of Tribunal, after three years. As such, according to him, the Petitioner would not be entitled to get benefit of his own wrong.

5. Since a specific ground is sought to be raised by the Petitioner that this Court ignored the pleadings in the Petition with regard to the Petitioner not being gainfully employed during the relevant period, we called for the original record of Writ Petition No. 1148/2014 in order to ascertain the said fact. The record indicates that the Petition was affirmed and filed on 26th August, 2013. The office objections were removed on 27th January, 2019 after 5 years and 6 months. The record further indicates that on 27th January, 2014, in Paragraph No. 7 of the Petition, it is incorporated to state that the Petitioner was not gainfully employed during the period from 18th March, 1996 to 10th September, 2010. Though, while going through the record we do not find any order of seeking amendment to the petition nor any counter signature even of Registrar is seen on the amendment, however, owing to the time lapse and other circumstances appearing from the record, we wish to give benefit of doubt to the Petitioner about such amendment being carried out on

27th January, 2014. In such circumstances, it may be canvassed that this Court did not consider the said pleadings in the Petition. Mute question, however, arises as to whether this sole reason would be sufficient for review of the impugned judgment passed by this Court.

6. Perusal of the judgment shows that it was not the only ground on which the backwages were denied to the Petitioner. This Court, while granting other benefits to the Petitioner and denying the backwages, has specifically observed that the Petitioner was not diligent in approaching the Court and he approached the Tribunal only after six years of termination and then approached this Court after a period of three years to challenge the judgment of the Tribunal.

7. Even otherwise, it is trite law that the initial burden is on the employee to plead before the Courts/Tribunal, where exception to termination is taken, about he being not gainfully employed after termination of his services and to prove the same. In this regard, nothing is brought on the record to indicate that any such plea was raised before the Tribunal in the original proceedings nor any such claim is sought to be made by the Petitioner. In our

view, such plea must have been raised in the original proceedings, which would enable the other party meet and contradict the same and to record evidence, if necessary. Since jurisdiction of this Court in the Writ Petition is akin to the power of Revision, it needs to be decided on the basis of available material on record. In such circumstances, even if it is accepted that any such statement was made in the Petition, for want of any specific pleading being raised before the Tribunal, no order of payment of backwages could have been passed by this Court.

8. In view of above discussion, the **Review Petition stands dismissed.**

9. Pending **Civil Application**, if any, would not survive and **stands disposed off.**

(**R. M. JOSHI**)
JUDGE

(**RAVINDRA V. GHUGE**)
JUDGE

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