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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**923 CIVIL APPLICATION NO. 6531 OF 2024
IN WP/3228/2017**

**MRS. URMILA VIJAY BHALAVI
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS**

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Ms P. S. Talekar, Advocate for Talekar & Associates for
Applicant;
Mr R. S. Wani, A.G.P. for Respondents/State

**CORAM : RAVINDRA V. GHUGE
AND
Y. G. KHOBRADE, JJ.**

DATE : 16th August, 2024

PER COURT:

1. By this Civil Application, the Applicant/Petitioner desires that the order of this Court dated 23/03/2017, passed in Writ Petition No.3228/2017, should be placed before the Court for speaking to the minutes. Though the Application is registered as a Civil Application, it could be treated as a praecipe under Rule 2 of Chapter XI of the Bombay High Court Appellate Side Rules, 1960 (for short 'the 1960 Rules').

(2)

2. We have heard the learned Advocate for the Applicant/Petitioner and the learned A.G.P. The order placed before us, is dated 23/03/2017. The Civil Application taken out by the Applicant/Petitioner is dated, 09/06/2024. A host of reasons are cited in a lengthy Civil Application taken out for the said purpose. The issue, however, falls in a narrow compass, as to whether the words '***not entitled to continuity in service***' has been wrongly typed in the concluding paragraph of the order dated 23/03/2017. Another issue would be, as to whether there is any limitation for placing a praecipe before this Court for speaking to the minutes of the judgment.

3. Rule 2 under Chapter XI of the 1960 Rules, reads as under :-

“2. Procedure when Advocate wishes to keep judgment before the Court for speaking to minutes. - Whenever an Advocate wants a judgment to be kept before the Court for speaking to the minutes, he shall file a note in the Office showing the points on which he wants to speak to the minutes and he shall also serve a copy thereof on the Advocate for the other side.”

4. The opening word is '*Whenever*' in Rule 2 of the 1960 Rules (supra) indicating that, when an Advocate notices that, a

(3)

motion for speaking to the minutes of the order or judgment is required to be filed, he has to file a note stating the points, on which he wants 'speaking to the minutes'. There is neither any provision nor any judgment cited before this Court, which would indicate that the law of limitation is applicable to an Application for speaking to the minutes of the order under Rule 2 of Chapter XI of the 1960 Rules. Moreover, the word 'Whenever' is indicative of a situation when an Advocate finds that the judgment is required to be kept before the Court for speaking to the minutes.

5. The learned Advocate for the Applicant/Petitioner has drawn our attention to the order dated 23/03/2017. After a hearing in the matter, a speaking order has been passed and considering that the conduct of the Petitioner is indicative of bona fide intentions and by applying the law laid down by the Full Bench of this Court in **Arun Vishwanath Sonone Vs. State of Maharashtra and others, [2015 (1) Mh.L.J. 457]**, this Court concluded in paragraph No.8 in the said order, as under :-

“8. *However, the petitioner would not be entitled for the backwages from the date of her termination till*

(4)

reinstatement. The said period shall be counted for the purpose of continuity in service”

6. It is quite obvious that, this Court concluded that the Petitioner would not be entitled for back wages from the date of her termination i.e. on 11/10/2002, till reinstatement on 01/04/2017 and the said period would be reckoned with for the purpose of continuity in service.

7. In the above backdrop, this Court ordered below paragraph No.10 as under :-

“10. The impugned order passed by the Tribunal is quashed and set aside. The respondents shall reinstate the petitioner at her original post. The petitioner shall not be entitled for the benefit of reservation. The entry of this order shall be taken in the service book of the petitioner. The petitioner shall not be entitled for backwages from the date of termination till the date of reinstatement. The petitioner shall be reinstated on or before 01.04.2017, however, shall not be entitled for continuity in service. The writ petition accordingly is allowed in above terms. No costs.”

8. It is, thus, apparent that, this Court has reiterated that the Petitioner shall not be entitled for back wages from the date of

(5)

termination, till the date of reinstatement. The Petitioner was ordered to be reinstated on 01/04/2017. However, one part in the second last sentence of paragraph 10 of the order, runs counter to the conclusion drawn by this Court in paragraph No.8, which is reproduced above.

9. It is, therefore, obvious that, this Court deprived the Petitioner of the backwages, though she was granted reinstatement in service with continuity. While advertng to the period of unemployment, for which backwages were declined in paragraph No.8 of the order, this Court has drawn a clear and unequivocal conclusion that "*The said period (meaning duration of termination) shall be counted for the purpose of continuity in service*". With this reasoned and firm conclusion, it is obvious that the words '*shall not be entitled for continuity in service*', have been inadvertently typed and should have meant "*shall not entitled for backwages*", which was the conclusion drawn in paragraph No.8. However, what has been typed is that "*The Petitioner shall be reinstated on or before 01.04.2017, however, shall not be entitled for continuity in service*".

(6)

10. Taking into account the entire order dated 23/03/2017 and the conclusion in paragraph No.8, we are of the view that the words “*continuity in service*” should have been replaced by the word '*backwages*'. Looking at the entire judgment of the Court and especially paragraph No.8 thereof, it appears to us that, there has been an inadvertent mistake in typing the words “*shall not be entitled for continuity*”.

11. The learned A.G.P. confirms that this Court had concluded in paragraph No.8 that the Petitioner would be entitled for continuity in service, but would not be entitled for backwages.

12. In view of the above, the conclusion drawn in paragraph No.8, would be reflected properly in paragraph No.10, if the sentence in the concluding paragraph No.10 of the order dated 23/03/2017, would read as under :-

"The Petitioner shall be reinstated on or before 01.04.2017, however, shall not be entitled for backwages".

(7)

13. Considering the above conclusion, **this Civil Application is allowed**, in terms of paragraph 12 hereinabove.

(Y. G. KHOBRADE, J.)

(RAVINDRA V. GHUGE, J.)

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