

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

Writ Petition NO. 395 OF 2024

Subhash Namdeo Sabale And Anr	...Petitioners
Versus	
State Of Maharashtra Thr Secretary Home Dept. And Ors	...Respondents

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Mr. A. Y. Sakhare, Senior Advocate a/w. Dr. Suresh Mane &. Mr. Dinesh Sonawane, Advocate for the Petitioners.

Mr. B. V. Samant, AGP a/w. Smt. D. S. Deshmukh, APP for the Respondent Nos. 1 to 5-State.

Mr. Sandeep Dere a/w. Smt. Aarti Sandeep Dere, Advocate for the Respondent Nos. 6 to 89.

Mr. C. G. Gavnekar a/w. Mr. Sachin Chandan, Advocate for Respondent No.90 onwards.

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**CORAM : A.S. CHANDURKAR &
RAJESH S. PATIL, JJ**

DATE : 21st JUNE 2024.

PC. :

1. The challenge raised in this writ petition is to the order dated 8th November 2023 passed by the Maharashtra Administrative Tribunal in Original Application No.1226 of 2022. In the said Original Application, it was prayed that the order dated 23rd September 2022 as well as the order dated 28th September 2022 while Speaking to Minutes in Original Application Nos.557 of 2021 and 676 of 2021 be recalled/set

aside/modified. A further relief of holding that the respondent nos. 6 to 89 in the said proceedings were not entitled for deemed date of promotion that was granted pursuant to the aforesaid orders was also sought.

2. The Maharashtra Administrative Tribunal while deciding the aforesaid proceedings on 8th November 2023 observed in paragraph nos. 10 and 11 of the impugned order as under :

“10. For more clarity, we reproduce para 12 of the order of this Tribunal dated 19.12.2022 in M.A 711/2022 in O.A 1226/2022:-

"The list given by affidavit dated 14.12.2022 marked Exh. 1 in MA No. 711 of 2022 is to be considered. The implementation of the order dated 23.9.2022 will not come in the way of granting promotions to all the applicants except 46 mentioned in list no. 4 in the affidavit. Here we make it clear that we do not wish to continue the stay for implementation of order further i.e., 28.12.2022 as the stay to the promotions cannot remain for a longer time in view of law and order. The post of P.I are to be filled in at the earliest."

11. Thus, learned counsel for the applicants submit that the grievances of the applicants are redressed and the application can be disposed of."

(Emphasis supplied)

3. In the Writ Petition, the petitioners have raised the following grounds amongst others while challenging the order dated 8 November 2023 :-

“A. No such statement was made by the then counsel of the Petitioners/Applicants before MAT-Mumbai Bench during the final hearing of the O. A. or at the time of passing of the impugned judgment and order and therefore it is somehow

wrongly recorded in a judgment.

B. The Statement on record is also against the interest of Petitioners since O. A, of the Petitioners is rejected by the Hon. MAT-Mumbai Bench and therefore no consent could have been given by the Petitioner's counsel for the same and therefore, it is the case of mistake of fact that has led to a gross injustice.

C. However, it is fact that Petitioners the then Advocate on record in MAT-Mumbai Bench, is failed to rectify the same observations through speaking to minutes or by any other appropriate manner immediately for which the Petitioners tender an unconditional apology.

D. Yet, because of such wrong statement on record, or the unintentional mistake by the then Advocate of Petitioners not to rectify the same immediately, the cause of justice should not be allowed to become a causality and to advance the cause of justice, this Hon. Court, therefore, as an appellate court may be pleased to allow the present Writ Petition, since the recorded statement in the impugned order is wrong appreciation of fact."

4. In the aforesaid factual backdrop, it was put to the learned Senior Advocate for the petitioners Shri. A. Y. Sakhare that in view of the judgment of the Supreme Court in the case of ***State of Maharashtra Vs. Ramdas Shrinivas Nayak & Anr*** reported in ***(1982) 2 SCC 463***, the course prescribed therein of approaching the Maharashtra Administrative Tribunal and pointing out that the statement/concession recorded in paragraph no.11 of the impugned order had been wrongly recorded, could be adopted. It was however not pointed out as to why the course as prescribed aforesaid could not be adopted. It was however submitted that this Court itself could consider the correctness of the merits of the impugned order. In that regard, the reliance was sought to be placed on

the decisions in the case of *Himalayan Coop. Group Housing Society v/s. Balwan Singh & Others* reported in (2015) 7 SCC 373 and *Kirti and another V/s. Oriental Insurance Company Limited* reported in (2021) 2 SCC 166.

5. In our view, this is a fit case where the petitioners ought to first approach the Maharashtra Administrative Tribunal and seek reconsideration of the observations made in paragraph 11 of the impugned order. The reason for the same is clear from the following observations of the Supreme Court in *Ramdas Shrinivas Naik* (supra):

“We are bound to accept the statement of the Judges recorded in their judgment, as to what transpired in court. We cannot allow the statement of the judges to be contradicted by statements at the Bar or by affidavit and other evidence. If the Judges say in their judgment that something was done, said or admitted before them, that has to be the last word on the subject. The principle is well-settled that statements of fact as to what transpired at the hearing, recorded in the judgment of the court, are conclusive of the facts so stated and no one can contradict such statements by affidavit or other evidence. If a party thinks that the happenings in court have been wrongly recorded in a judgment, it is incumbent upon the party, while the matter is still fresh in the minds of the Judges, to call the attention of the very judges who have made the record to the fact that the statement made with regard to his conduct was a statement that had been made in error. That is the only way to have the record corrected. If no such step is taken, the matter must necessarily end there. Of course a party may resile and an appellate court may permit him in rare and appropriate cases to resile from a concession on the

ground that the concession was made on a wrong appreciation of the law and had led to gross injustice; but, he may not call in question the very fact of making the concession as recorded in the judgment.”

In the light of the grounds raised in the writ petition referred to hereinabove, we are of the view that the aforesaid course be followed.

6. In paragraph no.11 of the impugned order, it has been categorically recorded that the learned counsel for the petitioners before the Maharashtra Administrative Tribunal had stated that the grievance of the petitioners were redressed and the Original Application could be disposed of. Assuming that the learned counsel was not instructed to make that statement, even then it would be necessary for the petitioners to approach the Maharashtra Administrative Tribunal and seek adjudication of the proceedings on merits. We are not inclined therefore, to consider the prayers made in the Original Application as a court of first instance since the petitioners' remedy lies before the Maharashtra Administrative Tribunal. Moreover, necessary factual adjudication is also necessary for considering the petitioners entitlement to relief as prayed for.

7.. Thus, following law laid down in ***Ramdas Shrinivas Nayak & Anr*** (supra), we are not inclined to entertain the writ petition on merits. The Petitioners are at liberty to adopt the course as prescribed in the

aforesaid decision before the Tribunal. Keeping all contentions on merits are open, the Writ Petition is disposed of as not entertained. Needless to state that the time spent by the petitioners in this Court while pursuing the writ petition shall be taken into consideration if the petitioners seek re-consideration of the order dated 8 November 2023.

[RAJESH S. PATIL, J.]

[A.S. CHANDURKAR, J.]