

In

Shri. Bhavanrao S/o Prataprao Thorat .. Applicant

Versus

The State of Maharashtra & Others. **..Respondents**

Mr. A. V. Deshmukh a/w Mr. R.M. Deshmukh, Advocates for the applicant.

Mr. M. N. Navandar, Advocate for respondent Nos. 2 and 3.

Mr. S. S. Dande, AGP for respondent No. 1.

**CORAM : S. G. MEHARE AND
SHAILESH P. BRAHME, JJ.**

RESERVED ON : 9th JANUARY, 2025

PRONOUNCED ON : 23rd JANUARY, 2025

O R D E R [Per Shailesh P. Brahme, J.] :-

. Heard both sides finally.

2. The applicant is soliciting review of the judgment and order dated 15.06.2018 passed in Writ Petition No. 4236 of 2004. He is more specifically aggrieved by the findings recorded in paragraph No. 25 which is reproduced as under:

“25. When he has not actually worked as Associate Professor from 23.11.1983 and as Professor from 20.10.2000, he is not entitled to arrears of

*salary of the said post. However, salary of the said posts can be considered for the pensionary benefits to the petitioner, in view of the law laid down by the Apex Court in the case of **State of Haryana (Supra)** and the decision of this Court in the case of **Shri Jaysing Rangrao Raut** (supra) relied upon by the learned Advocate appearing for respondent No.2.”*

3. Due to above findings, the applicant was issued only deemed date of promotion, without there being any conferment of monetary benefits, which is cause for him to solicit review.

4. Learned counsel, Mr. A.V. Deshmukh, for the applicant submits that the above findings and the consequences thereof are exactly contrary to the relief granted to the applicant in Writ Petition No. 2714 of 1990, vide judgment and order dated 16.01.2002. It is submitted that in Writ Petition No. 2714 of 1990, the applicant was held to be entitled for all consequential benefits of promotion in all the higher cadres from the dates on which his juniors were promoted, and he was held to be entitled to the deemed date of promotion in higher post. Therefore, to deprive the applicant from arrears of salary while granting deemed dates of promotion is a mistake apparent on the face of record. He would further submit that the judgment sought to be reviewed cannot curtail the relief which was already granted by the co-ordinate bench in Writ Petition No. 2714 of 1990.

5. Learned counsel for the applicant submits that the consequential relief granted to the applicant vide judgment dated 16.01.2002 in Writ

Petition No. 2714 of 1990 would cover arrears of salary, continuity and further allied benefits. He would strenuously submit that once the relief had been granted by earlier Division Bench in Writ Petition 2714 of 1990, which was final and binding on the parties, those were required to be obeyed and implemented without any reservation. It is further submitted that the applicant had actually rendered work of 'Associate Professor' till his retirement. Therefore, it is perverse to record that he did not work on the post in question.

6. He relies on the following judgments:

- (a) Commissioner, Karnataka Housing Board Vs. C. Muddaiah reported in 2008(1) Mh.L.J., 546
- (b) Jacob Thudipara (Dr.) Vs. State of Madhya Pradesh & Others reported in 2022 (7) SCC 764
- (c) North Delhi Municipal Corporation Vs. Ram Naresh Sharma and Others (Dr.), reported in 2021 (17) SCC 642
- (d) The State of Maharashtra and ors. Vs. Smt. Manda V. Deshmukh in Writ Petition No. 6794 of 2018
- (e) Shobha Ram Raturi Vs. Haryana Vidyut Prasaran Nigma Limited and others reported in 2016 (16) SCC 663
- (e) Ramesh Kumar Vs. Union of India and Others reported in 2015 (14) SCC 335
- (f) State of Kerala and Ors. vs. E.K. Bhaskaran Pillai, reported in (2007) 6 SCC 524
- (g) Budhia Swain Vs. Gopinath Deb reported in 1999 (4) SCC 396.

7. Per contra, learned counsel, Mr. M. N. Navandar for the Respondent Nos. 2 & 3 opposes the submissions of the petitioner. He would submit that the submissions of the petitioner are beyond the scope of review jurisdiction. It is not permissible to re-appreciate the material or to take any contrary view, just because such view is possible. He would submit that in Writ Petition No. 2714 of 1990, the applicant was not given monetary benefits in express terms. By the judgment under review, reasons are assigned and relying on two judgments cited across the bar, the relief was refused to the applicant. It is a conscious decision and cannot fall within the category of a mistake apparent on the face of record.

8. It is further submitted by Mr. M. N. Navandar that respondent/University implemented the judgment and order, and awarded benefits to the applicant. He relies on the following judgments ::

- (i) *Lily Thomas Vs. Union of India and others* reported in *AIR 2000 SC 1650*
- (ii) *State of Haryana and others Vs. O. P. Gupta* reported in *AIR 1996 SC 2936*
- (iii) *Shri Jaysing Rangrao Raut Vs. Maharashtra State Electricity Board* reported in *(2004) 6 BCR 641.*

9. We have considered rival submissions of the parties. We have also gone through the judgment and order dated 16.01.2002 passed by Division Bench in Writ Petition No. 2714 of 1990 as well as the

judgment under review.

10. The applicant was required to file Writ Petition No. 2714 of 1990 because though he was due for promotion to the post of 'Associate Professor' on 23.11.1983, he was superseded by one Mr. D.P. Koratkar, a junior. After considering the merits, Writ Petition was allowed and following operative order was passed.

“26. In the result, we quash and set aside letters dated 10.11.2003 and 11.11.2003 issued by respondent No.2 to the petitioner annexed at Exh. “S”. We direct respondent Nos.2 and 3 to assign the deemed date 23.11.1983 for the post of Associate Professor and deemed date 20.10.2000 for the post of Professor to the petitioner, only for the purpose of continuity of service and for calculating pensionary benefits.”

11. Above order was not implemented by the respondent/University and on the contrary Dr. D.P. Koratkar was given promotion to the post of 'Professor' on 20.10.2000. The applicant was continuously pursuing the respondent authorities to award the legitimate benefits conferred by order of the High Court. In flagrant defiance of the earlier order, he was given deemed date of promotion on 10.08.1987 vide letter dated 10.11.2003. In the seniority list also the applicant was placed at a position contrary to his entitlement. He was constrained to file Writ Petition No. 4236 of 2004 challenging the letters dated 10.11.2003 and 11.11.2003.

12. The parties are unanimous that the applicant is entitled to deemed date of promotion from 23.11.1983 to the post of ‘Associate Professor’ and 20.10.2000 for the post of ‘Professor’. It is further admitted that the judgment and order dated 16.01.2002 passed in Writ Petition No. 2714 of 1990 holding the applicant entitled to promotional benefits, was not challenged and it was final. The controversy is as to whether the applicant is entitled to arrears of salary and other monetary benefits from 23.11.1983, admissible to the post of ‘Associate Professor’, and from 20.10.2000, admissible to the post of ‘Professor’.

13. We cannot be oblivious of the fact that we are exercising review jurisdiction having limited scope. We are unable to appreciate the material on record again, and cannot arrive at a conclusion which is possible. Our jurisdiction is confined to the parameters analogous to Section 114 r/w Order 47 of Civil Procedure Code. Mere incorrect finding of fact cannot be corrected in review jurisdiction. Review is not an appeal in disguise.

14. The predominant submission of learned counsel for the petitioner is that the findings in paragraph 25 which we have quoted in earlier paragraph is a mistake apparent on the face of record.

15. We have gone through findings in paragraph 25 of the judgment which is under review. In paragraph 9 of the selfsame judgment, the applicant relied on three judgments which were held to be inapplicable to the case, whereas the judgments relied by the

respondent/University referred in paragraph 10 of the judgment are held to be applicable.

16. We find that the Division Bench recorded reasons and relied on judgments in the matters of ***State of Haryana*** (supra) and that of ***Shri Jaysing Rangrao Raut*** (supra), to deprive the applicant from arrears of salary. It is a conscious decision, arrived at considering that the applicant did not work on the post in question. The applicant was given only deemed date of promotion for the purpose of continuity of service and for calculating retiral benefits. The finding is based on reasons supported by judgments of the Supreme Court and the High Court.

17. It was open for the applicant to challenge the finding by preferring an appeal to the Supreme Court. It would be within the realm of appellate Court to examine the correctness of the finding. When the finding is based on ratio laid down by earlier judgments, the same cannot be castigated to be mistake apparent on the face of record. We cannot countenance the submission of the applicant in this regard.

18. We have also gone through judgment of the Supreme Court in the matter of ***State of Haryana*** (supra) its paragraph No. 6 is relevant, which is as follows:

“6. This Court in Paluru Ramakrishnaiah v. Union of India, (1989) 2 SCR 92 at page 109 : (AIR 1990 SC 166 at p. 195), considered the direction

issued by the High Court and upheld that there has to be “no pay for no work”, i.e., a person will not be entitled to any pay and allowance during the period for which he did not perform the duties of higher post although after due consideration, he was given a proper place in the gradation list having been deemed to be promoted to the higher post with effect from the date his junior was promoted. He will be entitled only to step up the scale of pay retrospectively from the deemed date but is not entitled to the payment of arrears of the salary. The same ratio was reiterated in Virender Kumar v. Avinash Chandra Chand, (1990) 3 SCC 472 : (AIR 1991 SC 958), in paragraph 16.”

19. We have also gone through the judgment in the matter of **Shri Jaysing Rangrao Raut** (supra) of which paragraph No. 6 is as follows:

“We have considered the submissions of the parties. We are of the view that in the light of the judgment of the Hon’ble Supreme Court of India in the case of State of Haryana and ors., etc. v. O.P. Gupta, etc. (supra) in which the Supreme Court has in terms held that a person is not entitled to arrears of pay and salary on the basis of the deemed date which has been granted to the party unless he has actually functioned or worked on the said higher post. In the light of the ratio of the judgment of the Hon’ble Supreme Court of India, we are further of the view that the judgment of the Division Bench dated 17th March 1988 in Writ Petition No. 1745 of 1985, H.S. Chinchole and Ors. v. The Superintending Engineer, M.S.E.B. Sangli Circle and Ors., decided by Pendse &

Sugla, JJ. is no longer a good law and is impliedly overruled. Thus, we hold that the Division Bench judgment being not a good law, cannot be made applicable to the case of the petitioner and in the light of the judgment of the Hon'ble Supreme Court of India, the petitioner is not entitled to any benefits of arrears of salary and back wages on the basis of a deemed date promotion since he has admittedly not performed and/or worked on a higher post.”

20. We do not see perversity in applying the above ratio to the facts of our case. A possible view has been taken, which cannot be faulted in review jurisdiction. Pertinently, while granting relief to the applicant in Writ Petition No. 2714 of 1990, what was awarded was consequential benefit of promotion to the applicant in all higher cadres. This conclusion is vulnerable and liable for more than one interpretations. The interpretation or the inference drawn by the Division Bench in a judgment under review cannot be ruled out. We, therefore, disagree with the submission of the applicant.

21. Learned counsel relied on the judgment in the case of **Commissioner, Karnataka Housing Board** (supra). In that case, respondent/Employee was denied seniority and he had filed writ petition before learned Single Judge of the Karnataka High Court. His petition was allowed by directing the Board to re-assign seniority to him and to grant other consequential benefits. Against that order, writ appeal was filed before the Division Bench. It was dismissed. Being aggrieved, Special Leave Petition was filed by the Board and it was

also dismissed. The respondent/Employee was not awarded the consequential benefits. Hence, a writ petition was filed again before the learned Single Judge, but it was dismissed. Being aggrieved, an intra-court appeal was filed before the Division Bench, which was allowed. Thereafter, the Board filed Special Leave Petition before the Supreme Court. In this context, observations in paragraphs Nos. 30 and 31 need to be appreciated. The entitlement of an employee to the consequential benefits in that case was confirmed upto the Supreme Court in the earlier round of litigation. The consequential benefits included arrears of pay and allowances for the period from 27.10.1997 to 28.02.1998. He was further held entitled to revised retiral benefits.

22. The applicant relied on judgment of *Jacob Thudipara (Dr.)* (supra). In that case, the appellant/teacher was held entitled to get the benefit of extended age of superannuation. It was not a case where review jurisdiction was invoked *North Delhi Municipal Corporation* (supra). The facts are distinguishable. Therefore, ratio laid down in paragraph No.4 of that judgment is not applicable. In the matter of *North Delhi Municipal Corporation* (supra), it was a case of enhanced superannuation age and payment of arrears of salary. The benefit of arrears was not granted in review jurisdiction. The principle of “no work no pay” was held to be not applicable in a different context. This judgment would also be of no assistance to the applicant.

23. Reliance is placed on the judgment of *The State of Maharashtra and ors.* (supra). It pertains to retrospective promotion and its

consequences. In paragraph No.9 of the judgment, it has been clarified that consequences of retrospective promotion vary from case to case and there are several facets which are to be considered. It was not a judgment rendered in review. Next judgment relied upon is that of ***Shobha Ram Raturi*** (supra). It was not a case of retrospective promotion and the consequential benefits thereof. Hence, the judgment will not apply. Applicant further relied upon judgment of ***Ramesh Kumar*** (supra). The following paragraphs are relevant.

“12. In normal circumstances when retrospective promotions are effected, all benefits flowing therefrom, including monetary benefits, must be extended to an employee who has been denied promotion earlier. So far as monetary benefits with regard to retrospective promotion is concerned that depends upon case to case. In State of Kerala and Ors. vs. E.K. Bhaskaran Pillai, (2007) 6 SCC 524, this Court held that the principle of "no work no pay" cannot be accepted as a rule of thumb and the matter will have to be considered on a case to case basis and in para (4), it was held as under:-

“...Sometimes in the matter when the person is superseded and he has challenged the same before court or tribunal and he succeeds in that and direction is given for reconsideration of his case from the date persons junior to him were appointed, in that case the court may grant sometimes full benefits with retrospective effect and sometimes it may not. Particularly when the administration has wrongly denied his due then in that case he should be given full benefits including monetary benefit subject to

there being any change in law or some other supervening factors. However, it is very difficult to set down any hard-and-fast rule. The principle “no work no pay” cannot be accepted as a rule of thumb. There are exceptions where courts have granted monetary benefits also.”

13. We are conscious that even in the absence of statutory provision, normal rule is no work no pay. In appropriate cases, a court of law may take into account all the facts in their entirety and pass an appropriate order in consonance with law. The principle of “no work no pay” would not be attracted where the respondents were in fault in not considering the case of the appellant for promotion and not allowing the appellant to work on a post of Naib Subedar carrying higher pay scale. In the facts of the present case when the appellant was granted promotion w.e.f. 01.01.2000 with the ante-dated seniority from 01.08.1997 and maintaining his seniority alongwith his batchmates, it would be unjust to deny him higher pay and allowances in the promotional position of Naib Subedar. ”

24. There cannot be a rule of thumb for granting monetary reliefs to the claimant in the retrospective promotion. It depends on the facts and circumstances of each case. The findings recorded in paragraph No.25 of the judgment under review are in consonance with principles laid down by the Supreme Court. By specific findings, the coordinate bench denied the monetary relief. This cannot be rectified in the review jurisdiction.

25. Next judgment referred by the applicant is of State of Kerala. At the cost of repetition we have to hold that the co-ordinate bench, by a speaking order, consciously denied the monetary benefits to the applicant. Reliance is placed on judgment of learned Single Judge of the Kerala High Court, but we are not persuaded by the observations and the ratio therein. Lastly, reliance is placed on judgment on ***Budhia Swain*** (supra). In its paragraph No.8, the contingencies are stipulated for recalling the judgment. None of the contingencies are made out by the applicant. Hence, the ratio cannot be made applicable.

26. Learned counsel for the respondent rightly referred to judgment of ***Lily Thomas*** (supra). The scope is highlighted by following paragraph.

“55. It follows, therefore, that the power of review can be exercised for correction of a mistake and not to substitute a view. Such powers can be exercised within the limits of the statute dealing with the exercise of power. The review cannot be treated an appeal in disguise. The mere possibility of two views on the subject is not a ground for review. Once a review petition is dismissed no further petition of review can be entertained. The rule of law of following the practice of the binding nature of the larger Benches and not taking different views by the Benches of coordinated jurisdiction of equal strength has to be followed and practised. However, this Court in exercise of its powers under Art. 136 or Art. 32 of the Constitution and upon satisfaction that the earlier judgments have resulted in deprivation of fundamental rights of a citizen or rights created under

any other statute, can take a different view notwithstanding the earlier judgment.”

27. In the case at hand, the monetary benefits are denied to the applicant by reasoned order. Even the reliance has been placed on the judgments of ***State of Haryana*** (supra) and ***Shri Jaysing Rangrao Raut*** (supra). This is not inadvertent observation of co-ordinate bench. Our scope is limited in view of principles laid down in paragraph No.55 of judgment of ***Lily Thomas*** (supra). We have no alternative than to reject the application.

28. In the result, we do not find merit in the application. Review application is rejected.

[SHAILESH P. BRAHME]
JUDGE

[S. G. MEHARE]
JUDGE

Komal Kamble/