

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

**REVIEW APPLICATION NO.06/2017
IN
ORIGINAL APPLICATION NO.110/2017
WITH
REVIEW APPLICATION NO.07/2017
IN
ORIGINAL APPLICATION NO.111/2017**

DISTRICT: AURANGABAD

**REVIEW APPLICATION NO.06/2017
IN
ORIGINAL APPLICATION NO.110/2017**

Dinesh s/o. Ramchandra Kurekar,
Age : 65 years, Occu. : Nil (Pensioner),
R/o. Plot No.242, Near Ganesh Mandir,
CIDCO, N-3, Aurangabad – 03.

...APPLICANT

V E R S U S

- 1) The State of Maharashtra,
Through its Secretary,
Higher & Technical Education
Department, M.S., Mantralaya,
Mumbai – 32.
- 2) The Director of Art,
M.S., Mumbai.
- 3) The Dean,
Government College of Art &
Design, Kille-Ark, Aurangabad.

...RESPONDENT

**REVIEW APPLICATION NO.07/2017
IN
ORIGINAL APPLICATION NO.111/2017**

Ramesh s/o. Ukhaji Baviskar
Since died through his LRs

- 1-A) Smt. Veena wd/o Ramesh Baviskar,
Age : 55 years, Occ : Household,

R/o. Flat No.1, Heera Moti Apts.,
43/46, Builders' Housing Society,
Nandanvan Colony Road, Aurangabad.

1-B) Madhumita d/o Ramesh Baviskar,
Age : 32 years, Occ : Education,
R/o. Flat No.1, Heera Moti Apts.,
43/46, Builders' Housing Society,
Nandanvan Colony Road, Aurangabad.

1-C) Neeraj s/o Ramesh Baviskar,
Age : 28 years, Occ : Private Service,
R/o. Flat No.1, Heera Moti Apts.,
43/46, Builders' Housing Society,
Nandanvan Colony Road, Aurangabad. ...APPLICANT

V E R S U S

1) The State of Maharashtra,
Through its Secretary,
Higher & Technical Education
Department, M.S., Mantralaya,
Mumbai - 32.

2) The Director of Art,
M.S., Mumbai.

3) The Dean,
Government College of Art &
Design, Kille-Ark, Aurangabad. ...RESPONDENT

APPEARANCE :Shri A.S.Deshmukh, Advocate for the
Applicants in both cases.

:Shri N.U.Yadav & Smt. Sanjivani
Deshmukh-Ghate Presenting Officers for
the respondents in respective cases.

CORAM : B. P. Patil, Vice Chairman

Reserved on : 18-07-2019

Pronounced on : 26-07-2019

COMMON ORDER

1. Facts and issues involved in both the matters are similar and identical hence I am going to decide the same by the common order.

2. Applicants have prayed to review and recall order passed by this Tribunal on merit in O.A.No.110/2017 and O.A.No.111/2017 on 06-04-2017 and decide the O.As. on merit.

3. Applicants had filed O.A.No.110/2017 and 111/2017 against the order passed by the respondent no.2 rejecting their claim for grant of 3 tier pay scale with consequential financial benefits by communication dated 27-12-2016 and also claimed arrears of pay and pension. It is their contention that the Government issued G.R. dated 06-06-2015 and corrigendum thereto dated 30-06-2016 by which one Shri Subhash Eknath Pawar was extended benefits of

2/3 tier pay scales as granted by Principal Seat of the Tribunal at Mumbai in O.A.No.315/2014. After registration of O.A.No.110/2017 and 111/2017 the Tribunal issued notice before admission to the respondents and the notices were made returnable on 06-04-2017.

4. On the very first date of appearance i.e. on 06-04-2017, respondent nos.1 to 3 filed their affidavit without filing detailed affidavit in reply to the contentions raised by the applicants. In fact, it is a short affidavit filed by the respondent nos.1 to 3. In their affidavit, they have contended that the respondent no.1 issued G.R. dated 27-02-2017 after filing the said O.As. and made applicable 2/3 tier pay scales to the Art Teachers/Lecturers in Art Institutions. They have contended that consequent to the said policy decision, finalization of the pension according to the G.R. dated 27-02-2017 will be undertaken shortly. On the above said background on 06-04-2017, respondents through the learned P.O. has placed on record an affidavit dated 05-04-2017 and served copy of the same to the applicants' Counsel. The applicants had learnt about the issuance of G.R. dated 27-02-2017 prior to 06-04-2017 but they had not actually read the said G.R. entirely. When

they learnt that 2/3 tier pay scale was made applicable to the Teaching staff by the Directorate of Art, they had *bona fide* belief that their claims in the O.As. were satisfied in totality in view of the said G.R. There was miscommunication between the applicants and their Counsel in that regard and because of the miscommunication, the Counsel appearing for the applicants had made submissions before the Tribunal on 06-04-2017 that the applicants' cases were covered by the G.R. dated 27-02-2017, and therefore, he had prayed to dispose of the O.As. On the basis of submissions made by the learned Advocate for the applicants and in pursuance of the G.R. dated 27-02-2017, this Tribunal passed order on 06-04-2017 and disposed of the O.As. with direction to the respondents to consider the cases of the applicants and extend benefits of G.R. dated 27-02-2017, if applicable, within a period of 3 months from the date of receipt of the order.

5. It is contention of the applicants that after passing the above said order by this Tribunal in O.A.No.110/2017 & 111/2017, they noticed that the G.R. dated 27-02-2017 was practically and in verbatim the same to a certain

extent to the G.R. dated 06-06-2015 issued in respect of Shri Subhash Eknath Pawar. However, in the G.R. dated 27-02-2017, specific prescription in paragraph no.3 states that though 2/3 tier pay scale is made applicable w.e.f. 01-01-1986 but actual benefits flowing therefrom would be extended from the date of said G.R. and no arrears would be payable with retrospective effect from 01-01-1986. The pay fixation would be done notionally by taking into consideration the 2/3 tier pay scale. It is their contention that the said prescription was conspicuously absent in the G.R. dated 06-06-2015. It is their contention that the order passed by the Principal Bench of the Tribunal at Mumbai on 24-02-2015 in O.A.No.315/2014 in case of Shri Pawar was practically an order *in rem* and not an order *in personam* but the Government has not considered the said aspect while issuing G.R. dated 27-02-2017 and denied arrears to the Arts Teachers unlike case of Shri Pawar who was granted all the arrears. By G.R. dated 27-02-2017 partial relief was granted to the applicants so far as their claim to extend benefits of 2/3 tier pay scale is concerned. However, the arrears flowing from the G.R. were denied to the applicants. It is their contention that because of the misconception of facts on

the part of the applicants or their Counsel wrong submission was made before the Tribunal and consequently the order dated 06-04-2017 disposing the O.As. was passed by the Tribunal. It is contended by them that considering these facts, it is just to review the order dated 06-04-2017 passed in O.A.No.110/2017 and 111/2017 and decide the O.As. on merit afresh. Therefore, they have prayed to allow the review applications and hear the O.As. afresh.

6. I have heard Shri A.S.Deshmukh, Advocate for the Applicants in both cases, Shri N.U.Yadav & Smt. Sanjivani Deshmukh-Ghate Presenting Officers for the respondents in respective cases. I have perused the documents placed on record by the parties.

7. Admittedly the applicants have filed Review Application Nos.06/2017 and 07/2017 and prayed to grant 3 tier pay scale to them and consequential benefits and also challenged the communication dated 27-12-2016 issued by the respondent no.2 rejecting their claim in that regard. Notice before admission had been issued in both the cases on 08-02-2017 and notices were made returnable on 06-04-2017. Admittedly, on 06-04-2017 respondent nos.1

to 3 filed their affidavit in reply and contended that the Government has issued G.R. dated 27-02-2017 and extended benefits of 2/3 tier pay scale to the Teaching staff working under the Directorate of Art. A copy of the reply and the G.R. was supplied to the learned Advocate for the applicants. On the basis of the affidavit in reply, G. R. and submissions made by learned P.O., learned Advocate for the applicant had made submission that cases of the applicants were covered by the G.R. and the benefits of 3 tier pay scale will be extended to them as per the G.R. Therefore, the learned Advocate for the applicants had prayed to dispose of the O.As. with direction to the respondents to extend benefits of 3 tier pay scale to the applicants as per G.R. within a reasonable time.

8. On the basis of submissions of learned Advocate for the applicants as well as the learned P.Os., the matter came to be disposed of on 06-04-2017 with direction to the respondents to extend the benefits of G.R. dated 27-02-2017.

9. Learned Advocate for the applicants has submitted that he had made submissions before the Hon'ble Tribunal on the basis of instructions received from the applicants.

The applicants though were aware about the G.R. not gone through the entire G.R. and they were under *bona fide* belief that the benefits of 2/3 tier pay scale will be made applicable to them and as like the case of Shri Subhash Pawar wherein the Government decided to give him arrears w.e.f. 01-01-1986. He has submitted that the applicants had not noticed the facts mentioned in the G.R. that benefits will be given to the Teaching staff from the date of G.R. He has submitted that there was miscommunication between the applicants and their Advocate. Therefore, the learned Advocate for the applicants had made submission before this Tribunal to dispose of the O.As. as cases of the applicants are covered under the G.R. He has submitted that the claim of the applicants has been satisfied partly due to issuance of G.R. dated 27-02-2017 but remaining part of the O.A. i.e. regarding claim of the applicants regarding consequential benefits at par with the case of Shri Subhash Pawar had not been satisfied. Mistakenly the applicants and their Advocate made submission before the Tribunal that reliefs claimed by the applicants have been satisfied, and therefore, he had prayed to dispose of the O.As. He has submitted that it is a case of misconception of the fact and therefore considering the said fact, it is just

and proper to review the order dated 06-04-2017 and to recall the same and to decide the O.A.Nos.110/2017 & 111/2017 afresh on merit.

10. Learned Advocate for the applicant has placed reliance on the judgment of the Hon'ble Supreme Court in case of **Board of Control for Cricket, India V/s. Netaji Cricket Club** reported in **[2005 AIR (SC) 592]**, wherein it is observed as follows:

“89. Order 47, Rule 1 of the Code provides for filing an application for review. Such an application for review would be maintainable not only upon discovery of a new and important piece of evidence or when there exists an error apparent on the face of the record but also if the same is necessitated on account of some mistake or for any other sufficient reason.

90. Thus, a mistake on the part of the court which would include a mistake in the nature of the undertaking may also call for a review of the order. An application for review would also be maintainable if there exists sufficient reason therefor. What would constitute sufficient reason would depend on the facts and circumstances of the case. The words 'sufficient reason' in Order 47, Rule 1 of the Code is wide enough to include a misconception of fact or law by a court or even an

Advocate. An application for review may be necessitated by way of invoking the doctrine "actus curiae neminem gravabit".

91. *It is true that in Moran Mar Basselios Catholicos and Another V. The Most Rev. Mar Poulouse Athanasius and Others [(1955) 1 SCR 520], this Court made observations as regard limitations in the application of review of its order stating :*

"Before going into the merits of the case it is as well to bear in mind the scope of the application for review which has given rise to the present appeal. It is needless to emphasise that the scope of an application for review is much more restricted than that of an appeal. Under the provisions in the Travancore Code of Civil Procedure which is similar in terms to Order XLVII, rule 1 of our Code of Civil Procedure, 1908, the Court of review has only a limited jurisdiction circumscribed by the definitive limits fixed by the language used therein. It may allow a review on three specified grounds, namely (i) discovery of new and important matter or evidence which, after the exercise of due diligence, was not within the applicant's knowledge or could not be produced by him at the time when the decree was passed, (ii) mistake or error apparent on the face of the record and (iii) for any other sufficient reason. It has been held by the Judicial

Committee that the words "any other sufficient reason" must mean "a reason sufficient on grounds, at least analogous to those specified in the rule.", but the said rule is not universal."

11. Learned Advocate for the applicants has submitted that review of the order can be made on the ground of disclosure of new and important piece of evidence and if there exists error apparent on the face of record. Review can also be made on the count of some mistake on the part of the applicants or his Advocate and/or for any other sufficient reason. He has submitted that since there is misconception of facts on the part of the applicants and their Advocate, it is just to review the order dated 06-04-2017 and to rehear the O.As. and decide the same on merit. Therefore, he has prayed to allow the Review Applications and hear the O.As. afresh.

12. Learned P.Os. have submitted that there was no mistake or misconception of facts on the part of the applicants or his Advocate while making submission before this Tribunal in O.A.Nos.110/2017 & 111/2017 on the basis of G.R. dated 27-02-2017. They have submitted that the applicants were aware of the G.R. and contents therein before filing the affidavit in reply by the respondents in

those O.As. on 06-04-2017. They have submitted that applicants had gone through the G.R. and after giving the contents therein they made submissions before this Tribunal. Their Advocate has prayed to dispose of the O.As. on the ground that their cases are covered under the said G.R. On the basis of submissions of learned Advocate for the applicants, this Tribunal had passed order dated 06-04-2017 and disposed of the O.As. They have submitted that the applicants were aware about the entire contents of the G.R. and therefore no question of misconception of facts arises. They have submitted that there is no just ground to review order dated 06-04-2017 passed in O.A.No.110/2017 and 111/2017. Therefore, they have prayed to reject the Review Applications filed by the applicants.

13. On going through the record, it reveals that the applicants had filed O.A.No.110/2017 and 111/2017 and challenged the communication dated 27-12-2016 issued by the respondent no.2 rejecting their requests to grant 3 tier pay scale and also prayed to direct the respondents to grant benefit of 3 tier pay scale to them on the line of directions given by the Principal Seat of the Tribunal at Mumbai in case of Shri Subhash Pawar in

O.A.No.315/2014 and also prayed to extend the consequential benefits. On 08-02-2017 this Tribunal had issued notice before admission to the respondents and returnable date was fixed on 06-04-2017. On 06-04-2017, respondent no.1 to 3 filed their affidavit in reply, which was taken on record. It is contended therein that the Government has issued G.R. dated 27-02-2017 and granted 2/3 tier pay scale to the Teaching staff in the Directorate of Art and submitted that the applicants' cases were covered under the said G.R. and the benefit of 3 tier pay scale will be extended to them accordingly. Thereafter, learned Advocate for the applicants has submitted that the cases of the applicants were covered by the aforesaid G.R. dated 27-02-2017. Therefore, they had prayed to dispose of the O.As. with direction to the respondents to extend benefits of 3 tier pay scale in view of the aforesaid G.R. to the applicants.

14. On the basis of submissions advanced by the learned Advocate for the applicants as well as the learned P.Os. this Tribunal had passed following order dated 06-04-2017 and disposed of the O.As. Relevant portion of the order is as under:

“5. In view of the aforesaid submissions made by both the parties and in view of the fact that the case of the applicant is covered under the Government Resolution dated 27th February, 2017, the present Original Application is disposed of with a direction to the respondents to consider the case of the applicant accordingly and to extend the benefit if applicable to the applicant in view of the Government Resolution dated 27th February, 2017 within a period of three months from the date of receipt of copy of this order.”

15. At the time of passing the order, G.R. dated 27-02-2017 was placed on record. The applicants were aware about the G.R. and contents therein which was issued before returnable date in the O.A. i.e. before 06-04-2017. On 06-04-2017, the applicants through their Advocate made statement that their cases are covered under the G.R. and prayed to dispose of the O.As. Accordingly, the O.As. came to be disposed of with direction to the respondents.

16. No doubt the applicants had sought relief to direct the respondents to extend the benefits of 2/3 tier pay scale as per the G.R. to them and claimed consequential benefits. The claim of the applicants has been satisfied in view of the

G.R. dated 27-02-2017. Therefore, they had prayed to dispose of the O.As. and consequently the O.As. had been disposed of. This fact shows that there is no misconception of facts on the part of the applicants and their Advocate in making the said submissions. Therefore, on that ground they cannot claim the review of order dated 06-04-2017 passed in O.A.No.110/2017 and 111/2017.

17. So far as submissions advanced on behalf of the applicants regarding application of the G.R. dated 27-02-2017 w.e.f. 01-01-1986 as made applicable to Shri Pawar in view of the G.R. dated 06-06-2015, it is material to note here that G.R. dated 06-06-2015 has been issued by the Government in compliance with the decision given by Principal Seat of this Tribunal at Mumbai on 24-02-2015 in O.A.No.315/2014. It was not made applicable to other employees, therefore, it cannot be said that the G.R. dated 27-02-2017 had been issued in view of the said G.R. but benefits given in the G.R. dated 06-06-2015 have not been extended from 01-01-1986 as granted to Shri Pawar. On the contrary, on going through the G.R. dated 27-02-2017, it reveals that the Government took policy decision to extend benefits of 2/3 tier pay scale to the Teaching

staff working under the Directorate of Art. The Government took decision that it should be made applicable w.e.f. 01-01-1986 and pay of the concerned employees should be notionally fixed from that date. It was also made clear that financial benefits will be given to the employees from the date of the G.R. and they will not get arrears from 01-01-1986. The Government has specifically mentioned the said decision in paragraph 3 of the G.R., which reads as follows:

“३. द्विस्तरीय/त्रिस्तरीय वेतनश्रेणी दि. १.१.१९८६ पासून लागू करण्यात येईल. तथापि द्विस्तरीय/त्रिस्तरीय वेतनश्रेणीचे प्रत्यक्ष लाभ या शासन निर्णयाच्या दिनांकाच्या महिन्यापासून देण्यात येतील. सदर द्विस्तरीय/त्रिस्तरीय वेतनश्रेणी दि. १.१.१९८६ पासून लागू करतांना त्या बाबतची कोणतीही थकबाकी न देता वेतनश्रेण्या काल्पनिकरित्या लागू करण्यात येउन वेतन निश्चिती करण्यात येईल.

जे कर्मचारी दि. ०१ जानेवारी, १९८६ ते दि. २७ फेब्रुवारी, २०१७ पर्यंतच्या कालावधीत सेवानिवृत्त झाले असतील त्या कर्मचा-यांची दि. ०१.०१.१९८६, दि. ०१.०१.१९९६ व दि. ०१.०१.२००६ पासून सुधारित वेतनश्रेणीत वेतननिश्चिती करण्यात येईल. दि. ०१.०१.१९८६ ते संबंधित कर्मचा-यांच्या सेवानिवृत्तीच्या दिनांकापर्यंत अनुज्ञेय वेतनवाढी विचारात घेउन निवृत्तीवेतन सुधारित करण्यात येईल. सुधारित निवृत्तीवेतनाचे प्रत्यक्ष लाभ दि. २७ फेब्रुवारी, २०१७ पासून देण्यात येतील. त्यापूर्वीची थकबाकी अनुज्ञेय असणार नाही. सेवानिवृत्तीवेतन सुधारित केले तरी त्या अनुषंगाने सेवानिवृत्तीवेतन विषयक इतर लाभ सुधारित करण्यात येणार नाहीत.”

18. There is no ambiguity or vagueness in the recital of the said provision in the G.R. Therefore, it cannot be said

that the applicants and/or their Advocate by misconception made submissions before this Tribunal on 06-04-2017 that cases of the applicants were covered under the G.R. On the contrary, after knowing fully well about the provisions in the G.R. they made statement before this Tribunal and accordingly O.A.No.110/2017 and 111/2017 were disposed of. Therefore, I do not find substance in the submissions advanced by the learned Advocate for the applicants that there was mistake or misconception regarding the said provisions in the G.R.

19. I have gone through the decision rendered by the Hon'ble Supreme Court relied upon by the learned Advocate for the applicants in case of **Board of Control for Cricket, India V/s. Netaji Cricket Club** reported in **[2005 AIR (SC) 592]**. I have no dispute regarding the settled legal principle laid down therein. In the instant case, the applicants have mainly relied on the mistake or misconception of facts by them and/or their Advocate. But as discussed hereinabove, there are no sufficient reasons to conclude that the statement made on behalf of the applicants on 06-04-2017 for disposal of the O.As. was due to mistake of facts or misconception of facts. Therefore, in the

absence of existence of sufficient reason, the impugned order dated 06-04-2017 passed in O.A.No.110/2017 and 11/2017 cannot be reviewed or revoked. If the applicants have any grievance regarding the date of enforcement of the G.R. for extending the benefits, the applicants have got remedy to approach the competent forum. Therefore, on that ground also the impugned order cannot be reviewed, revoked or recalled. There is no merit in the Review Applications. Consequently, the Review Applications deserve to be dismissed.

20. In view of the discussion in the foregoing paragraphs, Review Application No.06/2017 and 07/2017 are dismissed. There shall be no order as to costs.

(B. P. PATIL)
VICE CHAIRMAN

Place : Aurangabad
Date : 26-07-2019.