

REPORTABLE**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION****CIVIL APPEAL NO.1759 OF 2020
(arising out of SLP (C) No. 25048 of 2018)****SHRI MARUTI TUKARAM
BAGAWE & ORS.****...APPELLANT(S)****VERSUS****THE STATE OF MAHARASHTRA
AND ANR.****...RESPONDENT(S)****J U D G M E N T****ASHOK BHUSHAN, J.**

1. This appeal has been filed against the judgment of High Court of Bombay dated 18.06.2018 by which writ petition filed by the appellant challenging the order dated 04.12.2014 of Maharashtra Administrative Tribunal has been partly allowed.

2. Brief facts of the case to be noticed for deciding this appeal are: -

- 2.1. The Government of Maharashtra, Finance Department by resolution dated 01.02.1965 decided to constitute Maharashtra Finance and Accounts Service under the administrative control of the Finance Department. The service included different categories of posts including Class-3 posts. In the District Treasury, there were posts of Senior Clerk as well as Junior Clerk. By resolution dated 28.12.1970 Procedure for recruitment to the post of Senior Clerk was provided for, which also contained one of the modes of appointment on the post of Senior Clerk by promotion of clerks, borne on the establishment of District Treasury.
- 2.2. By Government resolution dated 08.06.1995, it was provided that employees holding posts in group C and D (previously Class-III and Class-IV) shall be given the pay scale of next promotional post in the promotional hierarchy after completing 12 years of continuous service.

2.3. By Government resolution dated 20.07.2001, the State Government decided to implement under Service Career Development Scheme to State Government Employees. By a subsequent resolution dated 26.10.2004 issued by the Government of Maharashtra, Sanction was accorded to grant the pay scale of Deputy Accountant instead of Senior Clerk to the Treasury/Sub-Treasury Clerks under the control of Directorate of Accounts and Treasuries, who had passed Maharashtra Account Clerk examination and completed 12 years of continuous service.

2.4. In pursuance of the aforesaid resolution, the respondents herein were granted the pay scale of Deputy Accountant from different date beginning from 01.10.1994. All the respondents herein were working as a Junior Clerk in District Treasury at District level who received benefits under Government resolution dated 26.10.2004.

2.5. An Original Application No. 936 of 2005 was filed in the Maharashtra State Administrative Tribunal, Shri Vijay A. Dangat & Others Versus The State of Maharashtra and others. The applicants were working as Senior Clerks/Deputy Accountant, who were directly appointed on the post of Senior Clerk through Staff Selection Board and on passing the prescribed Departmental Accountant examination, they were confirmed as Senior Clerk. The case of Senior Clerk was that the scale of pay now granted to Junior Clerk for the post of Deputy Accountant is not the promotional post for Junior Clerk but is the promotional post for the Senior Clerk as per Rule. They claimed that they should also be granted the higher pay so that the anomaly be set right.

2.6. The Tribunal vide its judgment and order dated 17.11.2006 struck down the Government resolution dated 26.10.2004. Against the judgment of the Tribunal dated 17.11.2006,

the writ petition No.946 of 2007 was filed in the High Court. The High Court passed an interim order for staying the order of Tribunal. During the pendency of writ petition, the Government of Maharashtra vide its resolution dated 11.09.2008 withdrew the resolution dated 26.10.2004. The Government thereafter issued a letter dated 06.10.2009 in continuation of resolution dated 11.09.2008 stating that there is no objection to give benefit in connection with service to all related employees and retired employees which benefit shall be given subject to final judgment of the High Court by taking undertaking from the employees that in event the High Court approved the resolution dated 11.09.2008, the employees shall have no objection in recovery of financial benefits payable to the employees from his retirement salary. After the aforesaid order dated 06.10.2009, an undertaking was taken from the respondent

and they were continued the benefit which was received by them under Government resolution dated 06.10.2014.

2.7. The respondents herein thereafter filed Original Application in Maharashtra Administrative Tribunal questioning the Government Resolution dated 11.09.2008. W.P. No. 946 of 2007 came for consideration on 05.12.2009. The High Court disposed of the writ petition directing that if any benefits are already given to the petitioners (respondents herein), pursuant to the decision contained in letter dated 06.10.2009, they shall not be withdrawn till the Original Application filed by the petitioners (respondents herein) is decided by the Maharashtra Administrative Tribunal.

2.8. The Original Application No.161 of 2009 and other connected Original Applications questioning the subsequent Government resolution dated 11.09.2008 came to be dismissed by Maharashtra Administrative

Tribunal by order dated 04.12.2014. Aggrieved by the order dated 04.12.2014, writ petition No.1765 of 2015 was filed by respondent in the High Court. The writ petition came to be decided by the judgment dated 18.06.2018. The writ petition was partly allowed by the High Court in following manner: -

"16. For all the aforesaid reasons, we partly allow this petition and dispose it of with the following order:

- (A) The impugned judgment and order to the extent it upholds the GR dated 11th September 2008 is upheld:
- (B) However, the direction in the impugned judgment and order for recovery of the excess payments is modified. The Respondents shall accordingly be at liberty to recover excess payments made to the petitioners after 11th September 2008, by way of monthly instalments but the respondents are restrained from effecting recovery or

- benefits secured by the petitioners prior to 11th September 2008;
- (C) Rule is made partly absolute in the aforesaid terms.
 - (D) There shall be no order as to costs.
 - (E) All concerned to act on basis of authenticated copy 666666666 of this order."

2.9. This appeal has been filed challenging the judgment of the High Court.

3. Shri Sudhanshu S. Choudhari, learned counsel for the appellant submits that the appellants were correctly granted the benefits of pay scale of Deputy Accountant under Resolution dated 24.10.2004 which ought not to have been withdrawn by subsequent Government Resolution dated 11.09.2008. Referring to the Government Resolution dated 01.02.1965 and 08.06.1995, learned counsel contends that the appellants were entitled for scale of Deputy Accountant after completion of 12 years of continuous service. He

submits that even if Resolution dated 24.10.2004 is withdrawn by the State Government, their right to receive the salary of Deputy Accountant after completion of 12 years of service cannot be affected which flows from Resolution dated 08.06.1995.

4. It is submitted that in any view of the above, no recovery can be made from the appellant for any period earlier to 04.12.2014 when the Tribunal rejected the Original Application filed by the appellant. It is submitted that under the judgment of the High Court dated 05.12.2009, the benefits which were given to the appellants under Resolution dated 24.10.2004 were not to be withdrawn till the Original Application was decided by the Tribunal. The effect of the judgment would be that no recovery can be made for any amount received by the appellant for the period prior to 04.12.2014.

5. Shri Kunal Cheema, learned counsel appearing for the respondent, refuting the submissions of the appellant contends that the benefits which

were granted to appellants in pursuance of Government Resolution dated 24.10.2004 having been withdrawn by the Government Resolution dated 11.09.2008. The appellants were not entitled to any benefits and benefits received thereafter were on the basis of undertaking given by the appellant that they shall refund the amount in case the Government Resolution dated 11.09.2008 is approved by the High Court.

6. It is submitted that any benefit taken subject to an express undertaking is entitled to be recovered as per undertaking given by the appellant. It is submitted that Resolution dated 08.06.1995 did not provide an avenue for Junior Clerk to get pay scale of Deputy Accountant after completion of 12 years of continuous service. The appellants having given undertaking are bound by the undertaking and cannot object to the recovery of the amount which was received by them consequent to undertaking.

7. It is submitted that High Court had already protected the appellants by directing recovery of excess amount only w.e.f. 11.09.2008. The legal benefits which some of the appellants received from 24.10.1994 have been allowed to be retained by them till 11.09.2008. Thus, substantial justice has been done and the judgment of the High Court need no interference by this Court.

8. Learned counsel for the parties have placed reliance on several judgments of this Court which shall be referred to and considered hereinafter.

9. From the submissions made by the learned counsel for the parties and material on record, following points arise for consideration in this appeal:-

- (i) Whether Maharashtra Administrative Tribunal erred in upholding the Government Resolution dated 11.09.2008 by which earlier Government Resolution dated 24.10.2004 was withdrawn?

(ii) Whether despite withdrawal of the Government Resolution dated 24.10.2004, the appellants were entitled to the pay-scale of Deputy Accountant by virtue of Government Resolution dated 08.06.1995?

(iii) Whether the appellants are right in their submission that amounts received by them till 04.12.2014, i.e., the date when Maharashtra Administrative Tribunal rejected the claim of the appellant could not have been recovered and the recoveries, if any, can be made for the period subsequent thereto?

Point No.1

10. The Resolution of the Government dated 24.10.2004 providing for scale of Deputy Accountant to Junior Clerks, who have passed the prescribed departmental examination was withdrawn by subsequent Government Resolution dated

11.09.2008. The Tribunal is right in its view that the Government Resolution dated 26.10.2004 and 11.09.2008 were issued by the State Government in exercise of its executive powers. Both the above Resolutions do not seek to alter the service conditions of the appellants provided by Government Resolution dated 08.06.1995. Government Resolution dated 26.10.2004 extended certain additional benefits to Finance Department. The State Government letter realise that such an action will create an anomalous situation and which actually created anomalous situation. Junior Clerks, who were lower to the Senior Clerks were able to march in the next higher scale of the Senior Clerks without being coming in the scale of Senior Clerks and had started drawing salary higher to the various Senior Clerks due to which Senior Clerks had filed Original Application in the Maharashtra Administrative Tribunal, which was allowed setting aside the order dated 26.10.2004, which was subsequently set aside by the High Court.

The State Government reconsidered its earlier decision and a Government Resolution was passed on 11.10.2008 recalling its earlier decision. The service condition of the employees working in various departments is in the domain of the State Government. The recruitment and promotion of the Junior Clerks, Senior Clerks, in District Treasury were governed by the executive instructions, which can be modified, altered in the same manner in which it was provided by the State Government. The Maharashtra Administrative Tribunal did not commit any error in upholding the Government Resolution dated 11.09.2008. The benefit, which was available to Junior Clerks of next higher grade after completion of 12 year's continues service is still admissible, which could be very well be availed by them.

11. We, thus, hold that Tribunal did not commit any error in upholding the Government Resolution dated 11.09.2008.

Point No.2

12. The submission, which has been pressed by the learned counsel for the appellant is that despite withdrawal of the Resolution dated 26.10.2004, the appellants were still entitled to receive the salary of Deputy Accountant by virtue of Government Resolution dated 08.06.1995. The Government Resolution dated 08.06.1995 has been brought on record as Annexure P-3. The scheme for promotion as contained in paragraph 2 is as follows:-

“2. The detailed scheme for promotion is as under:

Employees holding posts in Group “C & D” (previously Class-III & Class IV) shall be given the pay scale of the next promotional post in the promotional hierarchy after completing 12 years of continuous service. For those employees, where there is not post for promotion in the promotional hierarchy higher pay scale shall be given as per annexure appended to this resolution. The other main features and procedure for implementation of this scheme are as under:

XXXXXXXXXXXXXXXXXX”

13. The procedure for recruitment to the post of Senior Clerks is provided by Resolution of the

Finance Department dated 28.12.1970. Paragraph 1 of the Resolution is as follows:-

"RECRUITMENT RULES FOR THE POST OF SENIOR CLERKS IN DISTRICT TREASURIES

1. Appointment to the post of Senior Clerk shall be made either:

(a) by promotion of clerks borne on the Establishment of the District Treasury who has passed or exempted from passing the Post Recruitment (Ministerial) Examination in order of his Seniority in the District list, or

(b) by nomination of candidates who (i) unless already in the service of Government of Maharashtra are not more than 25 years of age (ii) possess a Degree in Art, Science, Commerce or Law of any recognized University."

14. The post of Junior Clerks is borne in the District Cadre and they are also called Treasury Clerks. The post of Senior Clerks is filled up by promotion and nomination in the ratio of 3:1. Junior Clerks, who have passed the examination are eligible for promotion. The Government Resolution dated 08.06.1995 provides for grant of pay-scale of the next promotional post in the

promotional hierarchy after completion of 12 years of continuous service. Vide Resolution dated 08.06.1995, Junior Clerks were only entitled for the next promotional post, i.e., promotional post of Senior Clerks and under Resolution dated 08.06.1995, they were not entitled to receive a higher promotional post, i.e., post of Deputy Accountants, which is filled up by promotion of Senior Clerks.

15. We, thus, do not find any substance in the submission of the appellant that appellants were entitled for grant of pay-scale of Deputy Accountant despite withdrawal of the Resolution dated 26.10.2004. The appellant themselves have filed Annexure P-2 as the statement showing service particulars of appellants, which indicate that the pay-scale of Deputy Accountant was granted to the appellants on the basis of Government Resolution dated 26.10.2004. The appellants, thus, were not granted scale of Deputy Accountant by virtue of Resolution dated 08.06.1995, hence the submission of the

appellants that they are entitled for pay-scale of Deputy Accountant despite withdrawal of Resolution dated 26.10.2004 cannot be accepted.

Point No.3

16. The High Court by the impugned judgment by directions issued in paragraph 16(B) permitted the respondents to recover excess payments made to the petitioners after 11.09.2008 by way of monthly instalments and the respondents were restrained from effecting recovery or benefits secured by the petitioners prior to 11.09.2008. The appellants' submission is that they were entitled to retain the higher pay-scale and excess payments made to them till the Maharashtra Administrative Tribunal rejected their application on 04.12.2014 whereas the learned counsel for the respondents submits that the appellants being bound by their undertaking to refund the excess amount, which were given to them in pursuance of the Government Resolution

dated 06.10.2009, they cannot be allowed to retain excess amount received by them after having given undertaking to refund the amount. As noted above, the Resolution dated 26.10.2004 was set aside by the Maharashtra Administrative Tribunal in O.A. No.936 of 2005 by judgment dated 17.11.2006. A Writ Petition No.946 of 2007 was filed by the appellants challenging the order of the Tribunal. During pendency of the Writ Petition No.946 of 2007, the Government Resolution dated 11.09.2008 was passed. The order of the Tribunal dated 17.11.2006 was stayed by the High court by interim order dated 13.02.2007, hence when the Resolution dated 11.09.2008 was passed, a Government Resolution dated 06.10.2009 provided for following:-

“For the decision of the Tribunal on dated 17.11.2006, Hon. High Court has stayed interim at the hearing on the first dated 13.02.2007 and as the said stay is permanent, the implementation of Government Resolution of Finance Department on dated 11.09.2008, subject of final judgment of Hon. High Court, there is no objection to give benefit in connection with services to all related employees and retired employees. However, showing to all

related employees to have given the benefits subject to final judgment of Hon. High Court, "if Hon. High Court is agreed the Government Resolution of Finance Department on dated 11.09.2008, pursuant to this, I have no objection to recover arising complete amount from financial benefits payable to me or from my retirement salary. Such undertaking shall be taken from all related employees also retired employees.

Sd/-
Joint Director (Administration)
Accounts & Treasuries,
Maharashtra, Mumbai.

17. The above Resolution contemplated that benefit in connection with services to all related employees and retired employees be given subject to final judgment of the High Court and if the High Court is agreed with the Government Resolution dated 11.09.2008, the employee undertakes to return the benefits. In pursuance of the above Resolution dated 06.10.2009, appellants and similarly situated employees had submitted their undertakings. The undertaking given by the employees, thus, was subsequent to the above Resolution. One of the undertakings given by one of the appellants - J.C. Jaulkar

(appellant No.3) has been placed before us by learned counsel for the respondents, which is to the following effect:-

"UNDERTAKING

I solemnly affirm that benefits to awarded under Career Assured Progression Scheme vide G.R. dated 26.10.2004 are withdrawn vide G.R. dated 11.09.2008. Therefore, Shri M.T. Bagwe and Others have filed appeal No.946 of 2007 in Hon'ble High Court, Mumbai. Hon'ble High Court, Mumbai had given "Ad-interim" stay vide order dated 13.02.2007 which is still in operation. If Hon'ble High Court upheld the G.R. dated 11.09.2008, I shall refund the entire amount payable to the Government from monetary benefits payable to me or through my salary.

Date : 28.10.2009

Place : Gondia

Sd/-
(J.C.Jaulkar)
Senior Clerk
District Treasury Office,
Gondia"

18. The Writ Petition No. 946 of 2007 was decided by the High Court by its judgment dated 05.12.2009. Paragraph 3 of the judgment of the High Court is as follows:-

"3. Now taking overall view of the matter, it is clear that as the

Government Resolution dated 26.10.2004 itself has been withdrawn by the Government, the Original application no.936 of 2005 filed by the petitioners itself become infructuous. Consequently, the order passed by the Maharashtra Administrative Tribunal in that Original application is set aside. However, the Maharashtra Administrative Tribunal shall be at liberty to consider the fresh Original Application filed by the petitioners in accordance with law and make orders thereon in accordance with law. However, considering that certain benefits have been extended to the petitioners because of the decision contained in letter dated 6.10.2009, it is directed if any benefits are already given to the petitioners pursuant to the decision contained in letter dated 6.10.2009, they shall not be withdrawn till the Original application filed by the petitioners is decided by the Maharashtra Administrative Tribunal. The petition is disposed of. No order as to costs.

(D.K. DESHMUKH, J.)
(K.K. TATED, J.)"

19. The final order passed by the High Court in the writ petition No.946 of 2007 provided that benefit, which have been given to the petitioner shall not be withdrawn till the original application filed by the petitioner is decided by the Maharashtra Administrative Tribunal. The

High Court in its judgment dated 05.12.2009 did not pronounce on the validity of the Government Resolution dated 11.09.2008. The undertaking which was given by the appellants and other employees was to the effect that if the High Court upheld the Government Resolution dated 11.09.2008, they shall refund the amount received. The High Court vide its judgment dated 05.12.2009 in fact permitted the appellants to retain the benefits till the original application filed by the appellant is decided. Original Application filed by the appellant was ultimately decided on 04.12.2014 by which it was rejected. By order dated 04.12.2014 the Maharashtra Administrative Tribunal upheld the Resolution dated 11.09.2008, thus, the correctness of Resolution dated 11.09.2008 was upheld only on 04.12.2014. Thus, the benefits, which were received by the appellants till 04.12.2014 were under the order of the High Court dated 05.12.2009. We, thus, find substance in the submission of the learned counsel for the

appellant that the benefit received by them till 04.12.2014 be not withdrawn when it pronounced that the Resolution dated 11.09.2008 was valid, the benefit received by the appellants thereafter can only be withdrawn. We, thus, are of the view that in the facts of the present case ends of justice be served in modifying the directions of the High Court in paragraph 16(B) only to the extent that in place of date 11.09.2008, the date 04.12.2014 be substituted. The direction No.(B) as contained in paragraph 16 of the judgment of the High Court, thus, stand modified to the following extent:-

(B) However, the direction in the impugned judgment and order for recovery of the excess payments is modified. The Respondents shall accordingly be at liberty to recover excess payments made to the petitioners after 04th December, 2014, by way of monthly instalments but the respondents are restrained from effecting recovery or benefits secured by the petitioners prior to 04th December, 2014.

20. The rest of the judgment of the High Court is upheld. We, thus, partly allow the appeal of the

appellants by modifying the direction (B) to the above effect. Parties shall bear their own costs.

.....J.
(ASHOK BHUSHAN)

.....J.
(MOHAN M. SHANTANAGOUDAR)

New Delhi,
February 27, 2020.