

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

**REVIEW APPLICATION NO.14 OF 2015
IN
ORIGINAL APPLICATION NO.805 OF 2011**

DISTRICT : MUMBAI

Shri Laxman A. Magdum & 1 Anr.)...**Applicants**

Versus

1. The State of Maharashtra & 2 Ors.)...**Respondents**

Shri A.V. Bandiwadekar, Advocate for Applicants.

Shri N.K. Rajpurohit, Chief Presenting Officer for Respondents.

**CORAM : RAJIV AGARWAL (VICE-CHAIRMAN)
R.B. MALIK (MEMBER-JUDICIAL)**

DATE : 12.08.2016

PER : R.B. MALIK (MEMBER-JUDICIAL)



ORDER

1. The Applicants of the Original Application No.805/2011 which came to be decided by this very Bench on 3rd March, 2015 hereby seek the review thereof aimed at the grant of the relief in terms of prayers such as they were in the said OA effectively for seeking parity of pay scale, etc. The essence of the matter is the scope of review jurisdiction and on facts, the fate hereof in this regard.

2. We have perused the record and proceedings and heard Shri A.V. Bandiwadekar, the learned Advocate for the Applicant and Shri N.K. Rajpurohit, the learned Chief Presenting Officer for the Respondents.

3. The Applicants hold the post of Foreman (Leather Technology (LT)). By way of the OA, they sought parity with the post of Foreman (Polytechnic) in view of the criteria of qualifications, nature of duties and responsibilities of both the posts. They also invoked the principle of 'equal pay for equal work'. It was further prayed that the Schedule 10.2 (91) (Vide Rule 3 (ii) of Maharashtra Civil Services (Revised Pay), Rules 2009 dated 22.4.2009 be quashed for that accordingly to the Applicants was the source of the alleged disparity. Vide

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prayer clause (c), revision / amendment of the Recruitment Rules being, "The Bombay Civil Services (Classification and Recruitment) Rules for the post of Foreman (LT) was sought. That was because of the duration of the diploma having been enhanced from 2 years to 3 years, and further, the equivalence as already hinted above was also sought. The opinion of the Government based on which they took the decision was challenged whereby the Government held that the post of Foreman (LT) was lower than that of Foreman Polytechnic. That was the reason why pay parity, etc. was not given.

4. Both the Applicants belong to Scheduled Caste category. They came to be appointed as Foreman (LT) Class-III on 20.8.1986 and 24.3.1994 respectively. In Paras 4 & 5 of the OA, a short history was given. According thereto, the Government Tanning Institute came to be established in 1937 at Kherwadi, Bandra (E). The nomenclature was changed in 1960 as Government Institute of Leather Technology (GILT). It functioned under Directorate of technical education which in turn was under Higher and Technical Education. The posts for this institute came to be created way back in 1938 under the Directorate of Industries. Diploma in Leather Technology (a two year course) and Certificate in Tanning (one year



course) was being conducted at GILT. According to the Applicants, the following posts came to be created viz. one Post of Tanning Expert and Superintendent, one Assistant Superintendent, two Foreman, one Senior Chemist, one Chemical Assistant, one Assistant Chemist and six Skilled Workers. Generally, these posts were created, "to teach the above courses". It was the case of the Applicants that initially theory portion was lesser and the Superintendent and Assistant would deliver lectures, if one might say so. Likewise practically, the portion was more for which Foremen were charged with the responsibility. It was the case of the Applicants that at that point in time, the diploma holders were not easily available, and therefore, the qualification for the post of Foremen was not that of diploma holder. For Superintendent and Assistant Superintendent, the prescribed qualification was degree and/or diploma with some experience. Further, according to the classification rules above detailed for the post of Foreman, experience of at least 5 years in commercial tannery and knowledge of English was required.

5. In 1960, for the first time, the GILT was brought under the Directorate of Technical Education. Thereafter, the period of diploma in LT came to be enhanced from two years to three years and the Board of Technical Education



started conducting examinations thereof. That resulted in the theory and practical periods getting increased. However, even as the Recruitment Rules for other posts were revised in keeping with the revision and syllabus, the same for LT remained unrevised. According to the Applicants, this resulted in adding to the burden of the Foreman (LT) and although they were performing the same duty as Foreman Polytechnic, but their pay structure was actually lowered. The Government took a decision which was apparently challenged by way of the OA that the duties and responsibilities of the Foreman (LT) were lower in comparison with Foreman Polytechnic and hence, a request for pay parity could not be considered. The Applicants called this stand of the Government as unjust and hoped that at least post 6th Pay Commission, justice would be meted out to them, but that also according to them did not happen. Post 6th Pay Commission, Pay Anomaly Committee and Pay Disparity Committee came to be made non-functional, and therefore, the matter of the Applicants continued to remain unsolved and the disparity continued.

6. It is the case of the Applicants that the Respondents have been insisting on the qualification of Diploma in Leather Technology which was contrary to the

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Recruitment Rules. In order to make their stand look consistent, the pay scales came to be revised and somehow or the other, this itself was cited as the justification for the disparity. The Applicants claimed in the OA that they were directly reporting to the Principal and in so far as the duties were concerned, they included taking theory periods and preparing teaching periods. Further, the duties included taking practicals, paper setting, invigilating and supervising the examination and assessment of answer-sheets. It was thus claimed by them that their duties were more or less teaching.

7. Very pertinently, the copy of the Recruitment Rules, which was at Exh. 'B' (Page 36 of the paper-book in the OA) in Rule 125-C provided that the appointment to the post of Foreman would be made by selection or promotion from the candidates possessing five years experience in Modern Commercial Tannery and working knowledge of English and ability to read and write one of the regional languages.

8. The Affidavit-in-sur-rejoinder came to be filed by Mr. Suresh T. Pujare, an Administrative Officer in the Office of the Joint Director, Technical Education. It was pleaded inter-alia that the duties and functions of the



Foreman (LT) and Polytechnic were not similar. There was a reference to an earlier order of this Tribunal in OA 739/2001 whereby the State was directed to do the needful and upon verification, the decision was conveyed and the decision in effect was the subject matter of the OA from which this RA arises. It was further pleaded that the Advanced Diploma in Leather Goods and Footwear was not within the purview of AICTE and was in the process of being closed. Out of the two posts of Foreman available in the Institute, they were got merged. One was declared surplus on which post the Applicant No.2 was working and if the other one was not so declared surplus, it was because the course of Advanced Diploma in Leather Goods and Footwear were not totally closed as it were. It was, therefore, pleaded that only the 1st Applicant was in fact accommodated on equivalent post of Technical Lab Assistant in Government Polytechnic, Mumbai. Only the 2nd Applicant was working on the post of Foreman (LT). But even that post would be declared surplus and he would be accordingly accommodated on an equivalent post. What is most pertinent to note is that the claim of the Applicants came to be denied in *toto*.

9. On the above pleadings, the submissions were heard in the OA and the same came to be decided by the

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order dated 3rd March, 2015. The Bench spoke through one of us (Shri Rajiv Agarwal, Vice-Chairman). After summarizing the rival cases, it was observed in Para 5 that the Applicants had admitted that the educational qualification for the post of Foreman (LT) was lower than that required for the post of Foreman Polytechnic. It was further mentioned that according to the Applicants, in actual practice, the same qualification was required. It was noted that the Applicants did not produce advertisement pursuant to which they came to be appointed, and therefore, they could not be allowed to take advantage of an Advertisement which had nothing to do with their selection. It was found that the prescribed educational qualification for the post of Foreman Polytechnic was higher and the fact that the Applicant held the diploma of Leather Technology was only incidental. The earlier orders of this Tribunal came to be discussed and ultimately, the OA was dismissed.

10. It is in the above background that the present RA was moved under the provisions of Section 22(3)(f) of the Administrative Tribunals Act, 1985 read with Section 114 read with order 47 of the Code of Civil Procedure (CPC). It will be most pertinent to note that the principles with regard to the law of review as enshrined in the above



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provisions will have to be made applicable to the applications for review made before this Tribunal. Section 114 of the CPC reads as follows :

“114. Review – Subject as aforesaid, any person considering himself aggrieved –

(a) by a decree or order from which an appeal is allowed by this Code, but from which no appeal has been preferred,

(b) by a decree or order from which no appeal is allowed by this Code, or

(c) by a decision on a reference from a Court of Small Causes, may apply for a review of judgment to the Court which passed the decree or made the order, and the Court may make such order thereon as it thinks fit.”

11. Order 47, Rule 1 of the CPC also needs to be reproduced.

1. Application for review of judgment – (1) Any person considering himself aggrieved, -

(a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred,

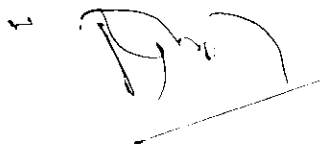
(b) by a decree or order from which no appeal is allowed, or

(c) by a decision on a reference from a Court of Small Causes, and who, from the discovery of

new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time which the decree was passed or order made, or on account of some mistake or error apparent of the face of the record, or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgment to the Court which passed the decree or made the order.


(2) A party who is not appealing from a decree or order may apply for a review of judgment notwithstanding the pendency of an appeal by some other party except where the ground of such appeal is common to the applicant and the appellant, or when being respondent, he can present to the Appellate Court the case on which he applied for the review.

[Explanation – The fact that the decision on a question of law on which the judgment of the Court is based has been reversed or modified by the subsequent decision of a Supreme Court in any other case, shall not be a ground for the review of such judgment.]”

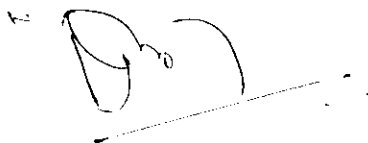
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12. At this stage itself, it needs to be noted that in considering the applications for review, the judicial forum has always to bear in mind that there is a doctrine known as functus officio whereby, once an order is finally signed and as far as that particular forum is concerned it is, as they say end of the road and if the review of that order is sought, then obviously justification must be had from the statute governing the review aspect of the matter and not outside it. In the name of review of its own order, the forum cannot convert itself into a defacto forum of appeal which it can never be countenanced. The statute mandates that in so far as the law of appeal, revision and review is concerned, it is strictly regulated by the statute and it is not like the proceedings before the Court of first instance which is the forum of natural jurisdiction. There, actions can be brought unless they are proscribed while the appellate, revisional and review proceedings cannot be adopted unless they are prescribed.

13. At this stage, we may as well mention the salient features of our order which is being sought to be revised. We may as well mention that some of the factual features which have already been covered hereinabove will not be necessary to be repeated again. In Para 3 of our final order, we recorded the fact that the matter had been

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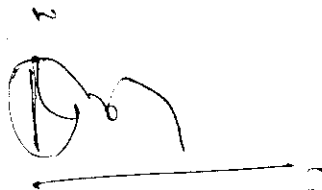
considered by various Anomaly Committees under successive Pay Commissions, but no decision had been taken. It was also recorded that the principle of, "equal pay for equal work" was invoked by the Applicants. The learned P.O. had told us which we recorded as to how according to him the post of Foreman (LT) was lower than the post of Foreman. In Para 5 of our final order, we mentioned the fact that the Applicants had admitted that the educational qualification for the post of Foreman (LT) was lower than the qualifications required for the post of Foreman Polytechnic. We found ultimately that incidentally, however, the Applicants also held the diploma. We noted that the Applicants had not produced the Advertisement pursuant to which they were appointed, and therefore, they would not be permitted to take advantage of advertisement which had nothing to do with their selection. We noted that even post merger of the institutions, the courses offered in Leather Technology were certificate-type and not recognized as diploma course, and therefore, we did not accept that the duties of the two posts were similar. It was found that both, on the basis of qualifications and nature of work, it could not be accepted that the post of Foreman (LT) was equivalent to the post of Foreman Polytechnic. We noted that this issue had been examined from the 4th Pay Commission onwards and none

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of the Pay Anomaly Committees had accepted the contention of the Applicants in that regard. We noted the principles laid down by the Hon'ble Supreme Court that in the matters where the executive expertise are necessary, the Courts may not readily interfere. We discussed the earlier Judgment of this Tribunal cited at the Bar and ultimately proceeded to dismiss the OA.

14. Now, turning to the RA again, we find that according to the Applicants apart from the mistake that we may have committed, some new documents have come to the fore. One of that is annexed at Exh. 'B' (Page 25 of the P.B.) of the RA which is a G.R. of 27th December, 1989. This document has been commended to us for the proposition that the course which the Applicant completed was equivalent to the diploma course, and therefore, the basis of our finding in the OA would be greatly disturbed.

15. Now, in our opinion, in the first place, it is not just for the asking that the judicial forum would accept that post decision of the main proceeding, the documents came to the fore. The theory of due diligence will have to be invoked. Further, the RA may not necessarily succeed because certain documents which could have been but were not made available at the time, the OA was being

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heard. The benefit of hindsight, therefore, cannot be given to the party concerned for which the principles have already been discussed hereinabove.

16. However, with all that has been mentioned above, in our opinion, the order on the OA will have to be read as a whole and not what can be described as piece-meal.

17. In Para 8 of the RA, it is pleaded inter-alia that the Rules for the post of Foreman are very old Rules of 1938 and of 1972 framed by the State Government. Those Recruitment Rules, "should have undergone corresponding change as per the study course syllabus". It is further pleaded that it was the duty of the State Government to effect the appropriate change with the help of the Expert Committee which according to the Applicants was not deliberately done. It is further pleaded that in actual fact after 1960, all those working as Foreman were diploma holders, and therefore, there was no difficulty in the matter of teaching the students and again it is mentioned that the Rules ought to have been but have not been amended.

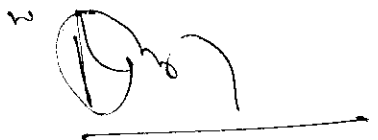
18. Now, in our opinion, on the submissions of the Applicants summarized in the preceding Paragraph itself,

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we can safely hold that no case is made out for revising our order on the OA. The Applicants themselves concede that there was need to amend the age-old Rules. May be it was so or maybe it was not. But that is not for us to give any directions about. We have to decide the facts at issue on the basis of the Rule position such as it was, when we decided the OA. It is not within our province in fact even to suggest to the Rule makers to make Rules. We do not have any advisory jurisdiction in that sense. That being the state of affairs, we are very clearly of the opinion that restricting ourselves to the issue of whether a case for revising our order on the OA is constituted, it quite clearly has not been. A Review Application cannot succeed on the basis of what the Rule ought to have been so much as it can be considered on the basis of what the Rule is (was).

19. Further, in Para 9, the details of the manner in which the Applicants were appointed has been set out. That aspect of the matter obtained eve, when we decided the OA and we see no reason why on that basis, the findings on the OA should be turned on its head as sought by the Applicants.

20. We have mentioned in our order on the OA and we may repeat that as per the law laid down by the Hon'ble



Supreme Court and one of the Judgment in which connection was cited by the learned CPO in the matter of **State of Haryana and others Vs. Haryana Civil Secretariate, Appeal (Civil) 3518/97, dated 10th July, 2002 (S.C)**. The Hon'ble Supreme Court was pleased to make observations of great educative value in this behalf and a passage can as well be quoted.

“This Court in the case of Secretary, Finance Department v. West Bengal Registration Service Association and Ors. (1993) Supp I SCC 153, dealing with the question of equation of posts and equation of salaries of government employees, made the following observations:

“We do not consider it necessary to traverse the case law on which reliance has been placed by counsel for the appellants as it is well settled that equation of posts and determination of pay scales is the primary function of the executive and not the judiciary and, therefore, ordinarily courts will not enter upon the ask of job equation which is generally left to expert bodies like the Pay Commissions, etc. But that is not to say that the Court has no jurisdiction and the aggrieved employees have no remedy if they are unjustly treated by arbitrary State action or inaction. Courts must, however, realize that job evaluation is both a difficult and time consuming task which even expert bodies having the assistance of staff with requisite expertise have found difficult to undertake sometimes on account of want of

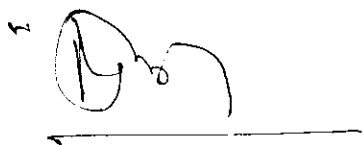


relevant data and scales for evaluating performances of different groups of employees. This would call for a constant study of the external comparisons and internal relativities on account of the changing, nature of job requirements. The factors which may have to be kept in view for job evaluation may included (i) the work programme of his department.”

21. It is, therefore, very clear that as per the discussion herein till now, no case is made out for revising our order on the OA.

22. The only aspect which now needs to be considered was apparently a very strong point of the Applicants or so it appeared to them it was. An Administrative Officer on behalf of Respondents 1 and 3 Shri Punjhari P. Wani filed an Affidavit-in-reply on behalf of Respondents 1 & 3. Therein, he gave what can be described as admissions in favour of the Applicants. Mr. Bandiwadekar, the learned Advocate for the Applicants has in fact furnished a Chart to indicate as to what all has been admitted by Mr. Wani in his Affidavit-in-Reply.

23. It is not really necessary for us to set down the details of what the Applicants perceived as admissions of Mr. Wani. Let us proceed on the assumption that it is so.



The fact at issue is as to whether the Respondents having contested the OA tooth and nail and even this RA even post Affidavit of Mr. Wani, they can be allowed to turn turtle and concede the case of the Applicants. Nothing prevented them to concede it at the outset in the OA itself and this is not something which is insignificant or pointless nitpicking. It is a matter of great moment in our view that is because when we deal with Review Application, we have to make sure that it falls within the jurisdictional office of the provisions of CPC and Section 23(1)(f) of the Administrative Tribunals Act, and therefore, if it is found that the order on the OA was legally accurate, then as far as we are concerned, subject to the challenge to it by any aggrieved party before the higher Court that must stand. Therefore, in our opinion, a complete somersault, if it was one in the case of the Respondents through the Affidavit of Mr. Wani would cut no ice in the review jurisdiction.

24. Still further, if the Respondents still feel that they can grant some reliefs to the Applicants, then by issuance of the necessary instruments, etc, and if Rules permit, they can still go ahead and do that. But when it comes to making an order on the RA, we shall be bound by the jurisdictional confines of our review jurisdiction and also



the other aspects of the matter to which a detailed reference has been made above.

25. In our opinion, therefore, much as the Applicants might express glee at Mr. Punjahari P. Wani having helped them by his Affidavit-in-reply, in the ultimate analysis, we do not think, it would be of any real practical help to them in so far as this RA is concerned.

26. For the foregoing, the Review Application stands hereby dismissed with no order as to costs.

Sd/-

(R.B. Malik)
Member-J
12.08.2016

Sd/-

(Rajiv Agarwal)
Vice-Chairman
12.08.2016

Mumbai

Date : 12.08.2016

Dictation taken by :

S.K. Wamanse.

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