
(2023) 01 BOM CK 0028

In the Bombay High Court

Case No : Writ Petition No. 224, 226 Of 2023

Nitin Pandurang Shejwal AVs State Of Maharashtra And Others

Date of Decision : 05-01-2023

Acts Referred:

Code Of Civil Procedure, 1908 — Order 1 Rule 8

Citation : (2023) 01 BOM CK 0028

Hon'ble Judges : Dhiraj Singh Thakur, J;Valmiki Sa Menezes, J

Bench : Division Bench

Advocate : Sandeep Dere, L.S. Deshmukh, Pooja Mankoji, Pranav Avhad, Darshana Naval, Purna S. Pradhan, Dinesh B. Khaire, M.M. Pabale, B.V. Samant

Final Decision : Disposed Of

Judgement

Sandeep V. Marne, J

1. Rule. Rule made returnable forthwith. With the consent of parties taken up for final hearing.

2. By these petitions, petitioners challenge the Order dated 20 th December, 2022 passed by the Maharashtra Administrative Tribunal, Mumbai (Tribunal) in Original Application Nos.775 of 2022, 776 of 2022, 777 of 2022, 778 of 2022, 779 of 2022, 793 of 2022, 796 of 2022 & 830 of 2022 by which the Tribunal has proceeded to recall its earlier Judgment and Order dated 11th April, 2022 passed in Original Application Nos. 144 of 2022, 145 of 2022, 146 of 2022, 167 of 2022, 203 of 2022, 300 of 2022, 301 of 2022, 321 of 2022. The petitioners also challenge common Order dated 22nd December, 2022 passed in both sets of Original Applications (OA No.775/2022 & other connected OAs and OA No.144 of 2022 & other connected OAs) to a larger Bench.

3. Brief facts of the case are that the recruitment process for the post of Police Constable (Driver) was initiated by the Additional Director General of Police, (M.S), Mumbai vide Advertisement dated 30th November, 2019. The recruitment process was apparently to be conducted in respect of the separate Units / Districts. The Applicants in Original Application No.144 of 2022 & other

connected OAs filled up forms in respect of multiple Units / Districts and also appeared for multiple examinations. Though their names were included in the merit list, the same were subsequently deleted from the revised merit list for the reason of their participation in selection process in more than one Unit/District. Challenging deletion of their names from the revised merit list, Original Application Nos.144 of 2022, 145 of 2022, 146 of 2022, 167 of 2022, 203 of 2022, 300 of 2022, 301 of 2022, 321 of 2022 were instituted by such candidates before the Tribunal. In those Original Applications, though relief was sought for inclusion of their names in the merit list and consequential appointment to the post of Police Constable (Driver), the candidates that were likely to be affected by grant of such reliefs were not impleaded as parties to those Original Applications.

4. The Tribunal proceeded to allow Original Application No.144 of 2022 & ors, by common judgment and order dated 1st April, 2022 directing consideration of candidature of applicants therein in further process of selection by setting aside deletion of their names from the merit list.

5. The State Government proceeded to implement the Tribunal's judgment and order dated 11th April, 2022 and it appears that, names of some of the candidates got deleted from the merit list and orders terminating them from service came to be issued. This led to filing of Original Application Nos. 775 of 2022, 776 of 2022, 777 of 2022, 778 of 2022, 779 of 2022, 793 of 2022, 796 of 2022 & 830 of 2022. During the course of hearing of those OAs, the Tribunal noticed that implementation of its Judgment and order dated 11th April, 2022 passed in OA No.144 of 2022 & ors, was the reason for termination of services of the applicants in OA No.775 of 2022 & ors. The Tribunal therefore proceeded to pass Order dated 20th December, 2022 recalling its Judgment and order dated 11th April, 2022 passed in OA No.144 of 2022 & ors and restored all those Original Applications on its file.

6. The Tribunal thereafter took up both sets of Original Applications (OA Nos.144 of 2022 & ors and OA Nos. 775 of 2022 & ors) for hearing on 22nd December, 2022 and proceeded to refer all Original Applications for decision to a larger Bench of three learned Members.

7. The petitioners in the present petitions are aggrieved by Orders dated 20th December, 2022 and 22nd December, 2022 passed by the Tribunal.

8. Appearing for the petitioners, Mr. Dere and Mr. Deshmukh, the learned counsels would submit that while hearing OA No.775 of 2022 & ors, the Tribunal had no occasion to decide the issue of validity of its Judgment and order dated 11th April, 2022 passed in OA No.144 of 2022 & ors. It is further submitted that while passing order of recall dated 20th December, 2022, the applicants in OA No.144 of 2022 & ors, were not heard and the Order passed in their favour has been recalled behind their back. It is further submitted that no case is made out by the Applicants in OA No.775 of 2022 & ors, though they came to be affected

only on account of passing of the Judgment & order dated 11th April, 2022 in OA No.144 of 2022 & ors. They would also contend that if the Tribunal was of the view that reference to larger Bench was warranted, it ought to have first distinguished its earlier decision dated 11th April 2022 by recording reasons and then made an order of reference. That no specific question is formulated by the Tribunal while making order of reference. Lastly, it is submitted that the Applicants in OA No.144 of 2022 & ors, have already been appointed in pursuance of the Judgment and Order dated 11th April, 2022 and effect of recalling of the said order would entail termination of their services.

9. Per contra, Mr. Pranav Avhad and Ms. Purva Pradhan, the learned counsels appearing for Applicants in OA Nos.775 of 2022 & ors would oppose the Petitions and support the Order passed by the Tribunal. They would submit that the Judgment and Order dated 11th April, 2022 was erroneously passed by the Tribunal in OA No.144 of 2022 & ors, without hearing the candidates who were already selected and appointed and that the Tribunal has merely corrected the error by recalling its order dated 11th April 2022 for the purpose of affording an opportunity of hearing the affected candidates. It is further submitted that reference of the issue to the Larger Bench would enable the Tribunal to effectively decide the lis between the competing parties.

10. We have also heard, learned AGP appearing on behalf of the State Government.

11. There are competing claims of candidates participating in selection in multiple Units/Districts and those participating only in one Unit/District. When OA No.144 of 2022 & ors, were instituted by the candidates appearing for examination in multiple Units/Districts, the merit lists were already declared. Names of selected candidates were already known. Therefore, while challenging such merit lists and seeking inclusion of their names therein, it was incumbent on such candidates to include atleast some of the selected candidates in representative capacity for affording them an opportunity of defending those OAs. However, without impleading any of the selected candidates, OA No.144 of 2022 & ors came to be instituted. The Tribunal proceeded to allow those OAs by its Judgment and order dated 11th April, 2022 setting aside deletion of names of applicants from the merit list and directing consideration of their candidature in further selection process.

12. We feel that the course of action adopted by the Tribunal in entertaining OA Nos, 144 of 2022 & Ors without impleadment of affected selected candidates was against the well settled principles enunciated in various judgments of the Apex Court. A reference in this regard can be made to the Judgment in *Ranjan Kumar v. State of Bihar* (2014) 16 SCC 187 , in which the Apex Court has held as under:

7. In *Rashmi Mishra v. M.P. Public Service Commission* [*Rashmi Mishra v. M.P. Public Service Commission*, (2006) 12 SCC 724 : (2007) 2 SCC (L&S) 345] , after referring to *Prabodh Verma* [*Pra-bodh Verma v. State of U.P.*, (1984) 4 SCC

251 : 1984 SCC (L&S) 704] and Indu Shekhar Singh [Indu Shekhar Singh v. State of U.P., (2006) 8 SCC 129 : 2006 SCC (L&S) 1916] , the Court took note of the fact that when no steps had been taken in terms of Order 1 Rule 8 of the Code of Civil Procedure or the principles analogous thereto all the seventeen selected candidates were necessary parties in the writ petition. It was further observed that the number of selected candidates was not many and there was no difficulty for the appellant to implead them as parties in the proceeding. Ultimately, the Court held that when all the selected candidates were not impleaded as parties to the writ petition, no relief could be granted to the appellant therein.

8. In Tridip Kumar Dingal v. State of W.B. [Tridip Kumar Dingal v. State of W.B., (2009) 1 SCC 768 : (2009) 2 SCC (L&S) 119] , this Court approved the view expressed by the tribunal which had opined that for absence of selected and appointed candidates and without affording an opportunity of hearing to them, the selection could not be set aside.

13. In view of the aforesaid enunciation of law, we are disposed to think that in such a case when all the appointees were not impleaded, the writ petition was defective and hence, no relief could have been granted to the writ petitioners.

(emphasis supplied)

13. It may well be contended that it is not possible to implead each and every selected candidate, however atleast some of them in representative capacity ought to have been impleaded. This aspect has been expounded by the Apex Court in its recent judgment in Ajay Kumar Shukla and Others Vs. Arvind Rai and Others 2021 SCC OnLine SC 1195 in which it is held as under:

46. In the recent case of Mukul Kumar Tyagi and Ors. vs. The State of Uttar Pradesh and Ors.,¹⁴ Ashok Bhushan, J., laid emphasis that when there is a long list of candidates against whom the case is proceeded, then it becomes unnecessary and irrelevant to implead each and every candidate. If some of the candidates are impleaded then they will be said to be representing the interest of rest of the candidates as well. The relevant portion of paragraph 75 from the judgment is reproduced below:

"75..... We may further notice that Division Bench also noticed the above argument of non-impleadment of all the selected candidates in the writ petition but Division Bench has not based its judgment on the above argument. When the inclusion in the select list of large number of candidates is on the basis of an arbitrary or illegal process, the aggrieved parties can complain and in such cases necessity of impleadment of each and every person cannot be insisted. Furthermore, when select list contained names of 2211 candidates, it becomes unnecessary to implead every candidate in view of the nature of the challenge, which was levelled in the writ petition. Moreover, few selected candidates were also impleaded in the writ petitions in representative capacity."

47. The present case is a case of preparation of seniority list and that too in a situation where the appellants (original writ petition-ers) did not even know the marks obtained by them or their proficiency in the examination conducted by the Commission. The challenge was on the ground that the Rules on the preparation of seniority list had not been followed. There were 18 private respondents arrayed to the writ petition. The original petitioners could not have known who all would be affected. They had thus broadly impleaded 18 of such Junior Engineers who could be adversely affected. In matters relating to service jurisprudence, time and again it has been held that it is not essential to implead each and every one who could be affected but if a section of such affected employees is impleaded then the interest of all is represented and protected. In view of the above, it is well settled that impleadment of a few of the affected employees would be sufficient compliance of the principle of joinder of parties and they could defend the interest of all affected persons in their representative capacity. Non-joining of all the parties cannot be held to be fatal."

14. When the Tribunal proceeded to pass the Judgment and order dated 11th April, 2022, the same resulted in deletion of names of some of the candidates from the merit list and many of them were required to be terminated from service. This led to filing of OA No.775 of 2022 & ors. by such candidates. This situation could have been avoided, if such candidates were impleaded to OA No.144 of 2022 & ors.

15. The Tribunal was thus faced with a situation where it had already allowed OA Nos.144 of 2022 & ors. by its Judgment and order dated 11th April, 2022 without hearing candidates who got adversely affected by it. Such affected candidates were required to institute OA Nos.775 of 2022 & ors. If the Tribunal was to allow OA Nos.775 of 2022 & ors, the same would have resulted in conflicting judgments in respect of same selection. The course of action to be adopted in a situation like this is stated by the Apex Court in its Judgment in the case of K. Ajit Babu and Others V. Union of India and Others (1997) 6 SCC 473. In Paragraph 6 of the Judgment, the Apex Court has held as under;

"4. Often in service matters the judgments rendered either by the Tribunal or by the Court also affect other persons, who are not parties to the cases. It may help one class of employees and at the same time adversely affect another class of employees. In such circumstances the judgments of the courts or the tribunals may not be strictly judgments in personam affecting only the parties to the cases, they would be judgments in rem. In such a situation, the question arises: What remedy is available to such affected persons who are not parties to a case, yet the decision in such a case adversely affects their rights in the matter of their seniority.....

5. The Tribunal rejected the application of the appellant merely on the ground that the appellant was seeking setting aside of the judgment rendered by the Central Administrative Tribunal, Ahmedabad in the case of P.S. John (supra) in TA No. 263 of 1986. It is here that the Tribunal apparently fell in error. No doubt the

decision of the Tribunal in the case P.S. John was against the appellant but the application filed by the appellant under Section 19 of the Act has to be dealt with in accordance with law.

6. Consistency, certainty and uniformity in the field of judicial decisions are considered to be the benefits arising out of the "Doctrine of Precedent". The precedent sets a pattern upon which a future conduct may be based. One of the basic principles of administration of justice is, that the cases should be decided alike. Thus the doctrine of precedent is applicable to the Central Administrative Tribunal also. Whenever an application under Section 19 of the Act is filed and the question involved in the said application stands concluded by some earlier decision of the Tribunal, the Tribunal necessarily has to take into account the judgment rendered in the earlier case, as a precedent and decide the application accordingly. The Tribunal may either agree with the view taken in the earlier judgment or it may dissent. If it dissents, then the matter can be referred to a larger Bench/Full Bench and place the matter before the Chairman for constituting a larger Bench so that there may be no conflict upon the two Benches. The larger Bench, then, has to consider the correctness of the earlier decision in disposing of the later application. The larger Bench can overrule the view taken in the earlier judgment and declare the law, which would be binding on all the benches (see John Lucas¹). In the present case, what we find is that the Tribunal rejected the application of the appellants thinking that the appellants are seeking setting aside of the decision of the Tribunal in Transfer Application No.263 of 1986. This view taken by the Tribunal was not correct. The application of the appellant was required to be decided in accordance with law."

16. Similar proposition is laid down by the Apex Court in its judgment in *Gopabandhu Biswal v. Krishna Chandra Mohanty* (1998) 4 SCC 447, in which it is held in Para 11 as under:

11. According to the applicants certain documents though produced before the Tribunal were not noticed by the Tribunal in deciding the main matter. Even so, once a judgment of a Tribunal has attained finality, it cannot be reopened after the special leave petition against that judgment has been dismissed. The only remedy for a person who wants to challenge that judgment is to file a separate application before the Tribunal in his own case and persuade the Tribunal either to refer the question to a larger Bench or, if the Tribunal prefers to follow its earlier decision, to file an appeal from the Tribunal's judgment and have the Tribunal's judgment set aside in appeal. A review is not an available remedy.

(emphasis supplied)

17. Thus, following the Judgment in *K. Ajit Babu and Gopabandhu Biswal* (supra), the candidates who were adversely affected by the Judgment and Order dated 11th April, 2022 rightly instituted fresh Original Applications (OA Nos.775 of 2022 & ors). However what is not done by the Tribunal was to follow mandate of the Judgments of the Apex Court in *K. Ajit Babu and Gopabandhu Biswal*. It

ought to have proceeded to decide OA Nos.775 of 2022 & ors by directing impleadment of all Applicants of OA Nos. 144/2022 & Ors. thereto. If after hearing all the parties, the Tribunal was to arrive at a conclusion that the view taken by it in its earlier order dated 11th April 2022 was correct, OA Nos.775 of 2022 & ors could be dismissed. On the other hand, if the Tribunal was to disagree with the view taken in its order dated 11th April 2022, OA Nos.775 of 2022 & ors would then be referred to larger Bench of three learned Members. This is the mandate of judgments in K. Ajit Babu and Gopabandhu Biswal.

18. The Tribunal however adopted procedure unknown to law by recalling its order dated 11th April 2022 passed in OA No.144 of 2022 & ors while hearing OA No.775 of 2022 & ors. it is incomprehensible as to how the Tribunal could have passed any order in OA Nos. 144/2022 & ors while hearing altogether different OAs. To make things worse, the order of recall was passed behind the back of Applicants of OA Nos. 144/2022 & Ors. We find that there was no necessity for the Tribunal to recall Judgment and order dated 11th April, 2022. Instead, the Tribunal ought to have simply directed the Applicants of OA Nos.775 of 2022 & ors, to implead all the applicants of OA No.144 of 2022 & ors, as party-respondents and after hearing them, ought to have decided OA No.775 of 2022 & ors. If it was to agree with the view taken in its Judgment and Order dated 11th April, 2022, it could have dismissed OA No.775 of 2022 & ors. On the other hand, if the Tribunal was to form an opinion that a view taken in OA No.144 of 2022 & ors was erroneous, it could have proceeded to refer OA No.775 of 2022 & ors to larger Bench following the mandate of the Judgments in K. Ajit Babu and Gopabandhu Biswal. The erroneous procedure for making a reference to larger Bench by recalling order in OA 144/2022 & Ors seems to have been adopted by the Tribunal as the Judgments in K. Ajit Babu and Gopabandhu Biswal were possibly not cited before it.

19. We are thus not in agreement with the procedure adopted by the Tribunal in recalling its Judgment and Order dated 11th April, 2022 for the purpose of referring both set of Original Applications to a larger Bench. However, at the same time, though the procedure adopted by the Tribunal does not commend us, we do not find any reason to interfere in the ultimate decision of the Tribunal to refer the Original Applications to a larger Bench. True it is that the Tribunal ought to have first recorded a finding for disagreement with the view taken in its order dated 11th April 2022 and then make an order of reference to a larger Bench. It also ought to have formulated the exact issue for reference. However since much water has flown by now, it would not be appropriate to set aside the impugned orders and to relegate the matter back to the Tribunal for following the correct procedure for making reference as mandated in K. Ajit Babu. Since the reference is already made to larger Bench and since both the sets of parties are already before the Tribunal, ends of justice would meet if the larger Bench of the Tribunal is permitted to decide the controversy before it.

20. It also appears that there is another decision rendered by the bench of the

Tribunal at Nagpur on 31st March 2022. This is yet another reason why the larger Bench of the Tribunal decides the subject matter pending before it. The decision of the larger Bench would prevail over all past decisions rendered by the Division Benches of the Tribunal at various Benches. Therefore, though we are not in agreement with the procedure adopted by the Tribunal while referring the Original Applications to a larger Bench, we are not inclined to interfere in the impugned orders. However, it is made clear that our decision is in view of the peculiar facts and circumstances of the present case and the same shall not be construed to mean that the course of action adopted by the Tribunal in recalling the Judgment and Order dated 11th April, 2022 is approved by us in any manner. Nor this judgment shall be treated as a precedent.

21. The present petitioners claim to have been appointed on the post of Police Constable (Driver) in pursuance of the Judgment and Order dated 11th April, 2022 passed in OA No.144 of 2022 & ors. Since the Judgment and Order dated 11 th April, 2022 is already recalled, the same may affect the appointments of the petitioners. We are informed that the larger Bench of the Tribunal has commenced the hearing of both set of the Original Applications on 5th January, 2023. Since the larger Bench is already seized of the Original Applications, it would be in the fitness of the things if status with regard to the appointments of the petitioners is maintained till the larger Bench of the Tribunal finally takes decision in the Original Applications.

22. We therefore do not find any valid reason to interfere with the orders passed by the Tribunal on 20th December 2022 and 22 nd December 2022 and the present petitions must fail to that extent. The only interference which we propose to make is to protect the status of service of the Petitioners during pendency of proceedings before the larger bench,

23. We accordingly proceed to pass the following order :-

ORDER

(a) Till the matter is decided by the larger Bench, status quo as on today be maintained.

(b) In view of the fact that the matter is referred to the larger Bench, we request to the Tribunal (larger Bench) to hear the matter expeditiously considering the issues involved.

(c) All contentions of respective parties are kept open.

24. The Writ Petitions stand disposed of accordingly. Rule stands discharged.