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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**CIVIL APPLICATION NO. 1256 OF 2019
IN
REVIEW PETITION (ST) NO.28478 OF 2016
IN
SECOND APPEAL NO. 711 OF 2011
ALONGWITH
REVIEW PETITION (ST) NO.28478 OF 2016**

Rajendra Ashok Mudholkar

...Applicant

Versus

Kolhapur Municipal Corporation
through its Commissioner & Ors.

...Respondents

Mr. Rahul P. Walvekar, for the Applicant.

Mr. Abhijit M. Adagule, for Respondent No.1.

CORAM : MADHAV J. JAMDAR, J.

DATED : 26th JULY 2023

P.C. :

CIVIL APPLICATION NO. 1256 OF 2019

1. The Civil Application is taken out for condonation of delay of about 3 years and 196 days in filing the Review Petition. In the Review Petition, order dated 27th February 2013 passed by a learned Single

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Judge in Second Appeal No.711 of 2011 is sought to be reviewed. In the said order, a learned Single Judge has observed that Second Appeal does not survive and dismissed the same in view of the subsequent developments. The said order reads as under:-

“1. Learned advocate Mr. Patwardhan has placed on record copy of **Resolution dated 5th October, 2011** passed by Kolhapur Municipal Corporation **by which the present appellant is reinstated in service and a minor punishment has been imposed upon him.** By the said suit covered by the present appeal, the **appellant had challenged the order of termination.** Said suit was dismissed. The appeal against the said judgment and decree was also dismissed and hence, this Second Appeal was filed.

2. **Since the appellant is reinstated in service, the order of termination is set aside on the account of the Resolution as mentioned aforesaid.**

3. **The Second Appeal does not survive. Same is dismissed in the wake of the aforesaid development.** There shall be no order as to costs.”

(Emphasis added)

2. It is significant to note that Mr. Patwardhan, learned counsel appearing for the Respondent i.e. Kolhapur Municipal Corporation

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placed on record copy of resolution dated 5th October 2012 passed by the Kolhapur Municipal Corporation by which it is represented to this Court that the Appellant has been reinstated in service by imposing minor punishment on him.

3. In the Civil Application No.1256 of 2019 which has been filed on 29th September 2016, it has been pointed out by the Applicant i.e. the original Appellant that in fact, a misleading statement was made before this Court and on the basis of said misleading statement, order was passed by a learned Single Judge observing that Second Appeal does not survive.

4. To the Affidavit in reply dated 9th January 2023 of Prashant Ramesh Pandat, who has been working as O & M officer in Kolhapur Municipal Corporation letter/representation dated 27th May 2016 of Commissioner, Kolhapur Municipal Corporation addressed to Government of Maharashtra is annexed. The last two paragraphs of said letter dated 27th May 2016 of the Commissioner, Kolhapur Municipal Corporation reads as under:-

“ मा. स्थायी समिती ठराव क्र. ३१२, दि.
५/१०/२०१२ या सदस्य ठरावाप्रमाणे त्यांना सेवेत पुर्नस्थापित

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करणे योग्य होणार नाही. सदरची कृती ही यापूर्वी राज्य मानवी हक्क आयोग यांचेकडे सादर केलेला अहवाल आणि वेळोवेळी मा. न्यायालयामध्ये दिलेले खात्याचे म्हणणे आणि त्यावर मा. न्यायालयाने दिलेल्या आदेशाविरूद्ध होणार आहे म्हणून या प्रकरणी मा. स्थायी समिती ठराव क्र.३१२ दि.०५/१०/२०१२ बाबत पुर्नविचार करणेसाठी प्रकरण मा. स्थायी समितीकडे सादर केले असता मा. स्थायी समितीने ठराव क्र.१९६ दि.०७/६/२०१३ ने मा. उच्चन्यायालयाच्या आदेशाचा अवमान होईल का, यासंबंधी अॅड. पटवर्धन यांचे अभिप्राय घेवून प्रशासकीय कार्यवाही ठेवणेत यावी अशी मंजूरी झालेली आहे.

दरम्यान मा. स्थायी समिती ठराव क्र.३१२ दि.०५/१०/२०१२ चा ठराव विखंडित करणे बाबत राज्य शासनाकडे दि. २/७/२०१३ रोजी प्रस्ताव पाठविणेत आलेला आहे. व राज्य शासनाकडील नगरविकास विभागाने एमयुपी.२०१५/सं.क्र.१२५८/नवि.१९ दि.१५/१०/२०१५ चे पत्राने कोल्हापूर महानगरपालिकेचा अहवाल अभिप्रायासह पाठविणे बाबत कळविले आहे.

वरीलप्रमाणे वस्तुस्थिती असून सेकंड अपील क्र.७११/२०११ मध्ये महानगरपालिकेच्या वतीने मा. उच्च न्यायालयात सादर केलेले म्हणणे चुकीच्या माहिती आधारे केले गेले आहे. श्री. मुधोळकर यांना दि. ५/१०/२०१२ च्या ठरावानुसार केव्हाही हजर करून घेतलेले नाही. अशी वस्तुस्थिती आहे. या संबंधाने मा. उच्च न्यायालयात रिक्हीजन अॅप्लीकेशन दाखल करून वस्तुस्थिती सादर करणेची कार्यवाही ठेवणेत येईल. दरम्यान इकडून दि.२/०७/२०१३ रोजी शिफारस केलेप्रमाणे मा. स्थायी समिती ठराव क्र.३१२ दि.०५/१०/२०१२ विखंडित करून मिळावा ही विनंती.

आयुक्त

कोल्हापूर महानगरपालिका”

(Emphasis added)

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5. The said letter/representation inter alia establishes following factors:-

i. The Standing Committee of Kolhapur Municipal Corporation by representation dated 5th October 2012 decided to reinstate the Applicant in service.

ii. The Applicant was never reinstated in the service.

iii. On 27th February 2023, it was represented to the High Court that the Applicant was reinstated in the service on the basis of said Resolution dated 5th October 2012 and therefore, the Second Appeal was dismissed as it has become infructuous.

iv. The said case was again placed before the Standing Committee for reconsideration and by resolution dated 7th June 2013 the Standing Committee directed the Kolhapur Municipal Corporation to take legal advice from the concerned Advocate whether review of said decision dated 5th October 2012 would amount to contempt. The said letter/representation dated 27th May 2016 of the Commissioner of the Kolhapur Municipal Corporation do not show that any legal advice has been taken.

v. On 2nd July 2013, Kolhapur Municipal Corporation submitted

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proposal to the Government of Maharashtra for cancellation of said Standing Committee Resolution dated 5th October 2012.

vi. Government of Maharashtra vide letter dated 15th October 2015 sought certain clarifications/opinion from the Kolhapur Municipal Corporation.

vii. On 27th May 2016, the Commissioner, Kolhapur Municipal Corporation submitted said clarification/opinion.

viii. Although, it is mentioned in said letter dated 27th May 2016 that the above factual position be brought to the notice of the High Court, it is admitted position that no application/proceeding is filed bringing on record above factual position to the notice of this Court.

Thus, it is clear that this Court by order dated 27th February 2013 disposed of the Second Appeal on the ground that the same do not survive as the Applicant was reinstated and in fact, the Applicant was never reinstated. Thereafter, on 2nd July 2013, Corporation submitted proposal to the Government of Maharashtra for cancellation of said resolution dated 5th October 2012. In these circumstances, the Kolhapur Municipal Corporation was duty bound to approach this Court seeking review of order dated 27th February 2013 passed by this

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Court. As the statement made to this Court was totally false and never implemented the Applicant has been prejudiced to great extent. Therefore, Civil Application No.1256 of 2019 is allowed in terms of prayer clause (b).

6. As the Second Appeal was dismissed on the ground that the same does not survive on the ground that the Applicant was reinstated and the same has been done on the basis of incorrect statement made on behalf of the Kolhapur Municipal Corporation which decision they have unilaterally changed without bringing the same to the notice of this Court, in the facts and circumstances of this case, the Kolhapur Municipal Corporation is directed to pay cost of Rs.15,000/- to the Applicant. The said cost be paid within a period of two weeks from today.

7. Accordingly, the Civil Application is disposed of in above terms. Although, the Civil Application is disposed of, the same be listed for compliance of this order on 10th August 2023.

REVIEW PETITION (ST) NO.28478 OF 2016

1. The above detailed order passed in Civil Application No.1256 of 2019 establishes that a learned Single Judge has dismissed the Second

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Appeal as the same does not survive on the ground that the Petitioner has been reinstated and as the said assumption was not correct, the said order dated 27th February 2013 passed in Second Appeal No.711 of 2011 is recalled and set aside and the said Second Appeal is restored to the file of this Court.

[MADHAV J. JAMDAR, J.]