



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD.

REVIEW APPLICATION NO.148 OF 2026
IN
WRIT PETITION NO.2030 OF 2025

The State of Maharashtra
Through Additional Chief Secretary,
Public Health Department, M.S.
Mantralaya, Mumbai-32

...Review Applicant
(Orig. Respondent No. 1 in W.P.)

Versus

1. Dr. Sujata Shriram Rathod,
Age: 40 Years, Occu: Service,
As Medical Officer, Group-A,
S.G.G.S. Civil Hospital, Nanded,
R/o: Flat No.1, Aryavihar Apartment,
Vidyutnagar Stop, Near Konale Classes,
Vidyutnagar, Nanded. ... (Orig. Petitioner in W.P.)
2. The Maharashtra Public Service Commission,
Through its Secretary,
Trishul Gold Field, Plot No.34, Sector-11,
Opp. Sarovar Vihar, Belapur CBD,
Navi Mumbai - 400 614.
3. The Medical Council of India, Phase-1,
Dadadev Mandir Road, Block-P Sector-8,
Dwarka, New Delhi - 110077. ... Respondents
(Orig. Resp. Nos. 2 and 3 in W.P.)

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Mrs. S. S. Joshi, AGP for State
Mr. Avinash S. Deshmukh, Advocate for Respondent No. 1
Mr. S. K. Kadam, Advocate for Respondent No. 3

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AND

REVIEW APPLICATION NO.149 OF 2026
IN
WRIT PETITION NO.2029 OF 2025

The State of Maharashtra
Through Additional Chief Secretary,
Public Health Department,
M.S. Mantralaya, Mumbai-32

...Review Applicant
(Orig. Respondent No.1 in W.P)

Versus

1. Dr. Vijaykumar Shankarrao Pawar,
Age: 43 Years, Occu: Service,
As Medical Officer, Group-A, S.G.G.S.
Civil Hospital, Nanded, R/o: Flat No.1,
Aryavihar Apartment, Vidyutnagar Stop,
Near Konale Classes, Vidyutnagar,
Nanded. ..(Orig. Petitioner in W.P)
2. The Maharashtra Public Service Commission,
Through its Secretary, Trishul Gold Field,
Plot No.34, Sector-11, Opp. Sarovar Vihar,
Belapur CBD, Navi Mumbai - 400 614.
3. The Medical Council of India, Phase-1,
Dadadev Mandir Road, Block-P Sector-8,
Dwarka, New Delhi - 110077. ...Respondents
(Orig. Resp. Nos. 2 and 3 in W.P)

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Mr. R. S. Wani, AGP for State
Mr. Avinash S. Deshmukh, Advocate for Respondent No. 1
Mr. S. K. Kadam, Advocate for Respondent No. 3

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CORAM : KISHORE C. SANT,
AND
ABASAHEB D. SHINDE, JJ.

Reserved on : 21.08.2026

Pronounced on : 01.10.2026

JUDGMENT (PER: ABASAHEB D. SHINDE, J.) :-

. Since both these Review Applications arise out of common order
and involve common question of law and facts, they are being heard and

decided by this common judgment. The Review Applicants who were Original Respondents No.1 in the Writ Petitions, seek review of the common order dated 13.11.2025 passed by this Court in Writ Petition Nos.2029 of 2025 and 2030 of 2025, by which this Court allowed the Writ Petitions filed by the Respondents No.1 herein. For the sake of convenience, the parties shall be referred to by their original status in the Writ Petitions.

FACTUAL MATRIX :

2. In response to the advertisement dated 17.01.2025 issued by the Respondent No.2, Maharashtra State Public Service Commission (hereinafter called as the 'MPSC'), the Petitioners applied for the post of Civil Surgeon. The Petitioners were held ineligible on the ground that they don't possess the requisite educational qualification in terms of clause 9.1 of the advertisement, as such the MPSC refused to accept their applications. The Petitioners, therefore, approached the Maharashtra Administrative Tribunal Mumbai, Bench at Aurangabad (hereinafter called as 'the Tribunal'). The Tribunal after hearing the parties dismissed their Original Applications by common order dated 07.02.2025. The Petitioners, therefore, approached this Court.

3. This Court by common order dated 13.11.2025 allowed the Writ Petitions by setting aside the order passed by the Tribunal, holding that, if the relevant clause of the advertisement is given liberal construction,

the Petitioners are duly qualified to apply for the said post and directed MPSC to consider the Petitioners applications for the post of Civil Surgeon and if they are otherwise found eligible, allow them to participate in the further recruitment process.

SUBMISSIONS :

4. Learned AGPs appearing in respective Review Applications for the State submit that, clause 9.1 of the advertisement in clear terms requires a candidate to possess MBBS degree as well as a post graduate degree of a statutory university, though the Petitioners are possessing the MBBS degree, they do not possess post graduate degree in the subjects of Child Health Care (DCH) and Gynecology and Obstetrics (DGO), respectively, on the contrary they hold only diploma in the said subjects. They further submit that, had the literal interpretation being given to the said clause of the advertisement, the Writ Petitions would have been dismissed.

5. It is further submitted by the learned AGPs that, the whole anxiety in seeking review of the common order passed by this Court is to ensure that, unqualified candidates are not appointed on the post like Civil Surgeon. If it is allowed to be done, the same would amount to miscarriage of justice to the public at large.

6. Learned AGPs would further submit that, in peculiar facts and circumstances, the review may not always be filed on the ground of

error apparent on the face of record, but under expression 'for any other sufficient reason' if it is expedient to prevent miscarriage of justice being done by a Court. In support of said submissions, the reliance is placed on the observations of the Hon'ble Apex Court in the case of ***S. Nagaraj and others Vs. State of Karnataka and another; 1993 Supp (4) SCC 595***, which read thus:

"19. Review literally and even judicially means re-examination or re-consideration. Basic philosophy inherent in it is the universal acceptance of human fallibility. Yet in the realm of law the courts and even the statutes lean strongly in favour of finality of decision legally and properly made. Exceptions both statutorily and judicially have been carved out to correct accidental mistakes or miscarriage of justice. Even when there was no statutory provision and no Rules were framed by the highest court indicating the circumstances in which it could rectify its order the courts culled out such power to avoid abuse of process or miscarriage of justice. In Raja Prithvi Chand Lal Choudhury v. Sukhraj Rai and Ors.; AIR (1941) Federal Court 1, the Court observed that even though no Rules had been framed permitting the highest court to review its order yet it was available on the limited and narrow ground developed by the Privy Council and the House of Lords. The Court approved the principle laid down by the Privy Council in Rajunder Narain Rae v. Bijai Govind Singh; 1 Moo PC 117 that an order made by the Court was final and could not be altered:

"...nevertheless, if by misprision in embodying the judgments, by errors have been introduced, these Courts possess, by common law, the same power which the Courts of record and statute have of rectifying mistakes which have crept in The House of Lords exercises a similar power of rectifying mistakes made in drawing up its own judgments, and this Court must possess the same authority. The Lords have how-ever gone a step further, and have corrected mistakes introduced through inadvertence in the details of judgments; or have supplied manifest

defects in order to enable the decrees to be enforced, or have added explanatory matter, or have reconciled inconsistencies."

Basis for exercise of the power was stated in the same decision as under:

"It is impossible to doubt that the indulgence extended in such cases is mainly owing to the natural desire prevailing to prevent irremediable injustice being done by a Court of last resort, where by some accident, without any blame, the party has not been heard and an order has been inadvertently made as if the party had been heard."

Rectification of an order thus stems from the fundamental principle that justice is above all. It is exercised to remove the error and not for disturbing finality. When the Constitution was framed the substantive power to rectify or recall the order passed by this Court was specifically provided by Article 137 of the Constitution. Our Constitution-makers who had the practical wisdom to visualise the efficacy of such provision expressly conferred the substantive power to review any judgment or order by Article 137 of the Constitution. And Clause (c) of Article 145 permitted this Court to frame Rules as to the conditions subject to which any judgment or order may be reviewed. In exercise of this power Order XL had been framed empowering this Court to review an order in civil proceedings on grounds analogous to Order XLVII Rule 1 of the Code of Civil Procedure. The expression, 'for any other sufficient reason' in the Clause has been given an expanded meaning and a decree or order passed under misapprehension of true state of circumstances has been held to be sufficient ground to exercise the power. Apart from Order XL Rule 1 of the Supreme Court Rules this Court has the inherent power to make such orders as may be necessary in the interest of justice or to prevent the abuse of process of court. The Court is thus not precluded from recalling or reviewing its own order if it is satisfied that it is necessary to do so for sake of justice."

7. It is further submitted that, the review can be maintained even where there is misconception of fact or law either by a Court or by an Advocate. To buttress this submission, the support is drawn from the

Judgment of the Hon'ble Apex Court in the case of ***Board of Control for Cricket in India and Another Vs. Netaji Cricket Club and Others; (2005)***

4 SCC 741 wherein the Hon'ble Apex Court held thus:

“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 therefore. 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 are 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"

It is therefore urged that, the order dated 13.11.2025 deserves to be reviewed.

8. Per contra, learned Counsel appearing for the Petitioners as well as the Respondent No.3 – Medical Council of India would submit that, merely because different interpretation with regard to clause 9.1 of the advertisement is possible, the order under review cannot be interfered with. They therefore urge for dismissal of the Review Applications.

CONSIDERATION :

9. We have heard learned AGPs, learned Counsel for the Petitioners

and learned Counsel appearing for Respondent No.3. We have also perused the grounds of review.

10. Before advertizing to the rival submissions advanced by both the sides, it would be apt to reproduce Clause No.9.1 of the advertisement dated 17.01.2025 in verbatim, which reads thus:

"९.१ शैक्षणिक अर्हता :- (१) Possess M.B.B.S. degree of a statutory University or any other qualification specified in the First Schedule or Second Schedule to the Indian Medical Council Act 1956;

(2) Possess a post graduate degree of a statutory University in any clinical subject or the qualification specified in the First or Second Schedule to the Indian Medical Council Act, 1956, or any other qualification recognized as equivalent thereto by the Medical Council of India.

(3) शासनपत्र, सार्वजनिक आरोग्य विभाग क्रमांक - नामनि - 1423 / प्र. क.451 / सेवा - 2, दिनांक 13 डिसेंबर, 2024 रोजीच्या पत्रान्वये खालीलप्रमाणे अभिप्राय प्राप्त झाले आहेत.

अ) खालील क्लिनिकल विषयातील पदव्युत्तर पदवी आवश्यक आहे :

मेडिकल कौन्सील ऑफ इंडीया यांचे जुलै, 2018 च्या अमेंडमेंट मध्ये खालीलप्रमाणे क्लिनिकल विषय नमूद आहेत :

(1) Anesthesiology (2) Dermatology (3) Venereology and Leprosy (4) General medicine (5) Pediatrics (6) Psychiatry (7) Radio Diagnosis (8) Radiation (9) Oncology (10) Respiratory Medicine (11) Oto-rhino-Laryngology (12) General Surgery (13) Ophthalmology (14) Orthopedics (15) Obstetrics and Gynecology.

ब) Pre-clinical & Para-Clinical विषयातील M.D.Pathology या विषयातील पदव्युत्तर पदवी ही शैक्षणिक अर्हता धारण करणा-या वैद्यकीय अधिकारी यांना मवैआसे गट-अ (एस-२३) मध्ये

विशेषज्ञ संवर्गातील शरीरविकृती शास्त्रज्ञ या पदावर पदोन्नती देण्यात येत असल्याने सदर शैक्षणिक अर्हता ही जिल्हा शल्य चिकित्सक संवर्गातील पदोन्नतीसाठी ग्राह्य धरण्यात येत आहे. यास्तव, M.D. Pathology ही शैक्षणिक अर्हता धारण करणारे वैद्यकीय अधिकारी यांना जिल्हा शल्य चिकित्सक संवर्गातील सरळसेवेसाठी ग्राह्य धरण्यात येईल.

क) त्याचप्रमाणे Para-clinical विषयातील M.D. Forensic Medicine ही शैक्षणिक अर्हता धारण करणारे वैद्यकीय अधिकारी यांना मवैआसे गट अ (एस-२३) मध्ये पोलीस शल्य चिकित्सक संवर्गात पदोन्नती देण्यात येत असल्याने सदर शैक्षणिक अर्हता ही जिल्हा शल्य चिकित्सक संवर्गातील पदोन्नतीसाठी ग्राह्य धरण्यात येत आहे. यास्तव, M.D. Forensic Medicine ही शैक्षणिक अर्हता धारण करणारे वैद्यकीय अधिकारी यांना जिल्हा शल्य चिकित्सक संवर्गातील सरळसेवेसाठी ग्राह्य धरण्यात येईल.

ड) Pre-clinical & Para-clinical विषयातील Anatomy, Physiology, Biochemistry and Microbiology मधील सदरहू शैक्षणिक अर्हता धारण करणारे वैद्यकीय अधिकारी यांचे करिता मवैआसे गट अ (एस-२३) मध्ये पदोन्नतीसाठी व सरळ सेवेसाठी विशेषज्ञ संवर्ग उपलब्ध नसल्याने सदर शैक्षणिक अर्हता जिल्हा शल्य चिकित्सक संवर्गातील सरळ सेवेसाठी ग्राह्य धरण्यात येवू नये.

इ) Para-clinical & Pre-clinical विषयातील Community Medicine / M.D.P.S.M. ही शैक्षणिक अर्हता धारण करणा-या वैद्यकीय अधिकारी यांना सदर सेवाप्रवेश नियमानुसार जिल्हा आरोग्य अधिकारी संवर्गातील पदोन्नती सरळ सेवेसाठी ग्राह्य धरण्यात येत असल्याने सदर शैक्षणिक अर्हता ही जिल्हा शल्य चिकित्सक संवर्गासाठी ग्राह्य धरण्यात येवू नये."

11. Bare perusal of clause – (1) of Clause No.9.1 of the advertisement contemplates a candidate to hold MBBS degree, whereas clause (2) requires a candidate to possess a post graduate degree of a statutory university in any clinical subject. The word 'or' appearing in clause (2) after this qualification unequivocally speaks about the qualification specified in Schedule I or II to the the Indian Medical Council Act, 1956 (hereinafter called as 'Act of 1956'). This Court after interpreting these

clauses held that, since the DCH and DGO are recognized medical qualifications as contemplated in Schedule-I to the Act of 1956, the Petitioners are qualified to apply for the post of Civil Surgeon.

12. We thus find that, the submissions advanced by the learned AGPs in these Review Applications are more or less repetitions of the submissions which have been extensively heard and considered by this Court while allowing the Writ Petitions. This Court has already interpreted these clauses while deciding the writ petitions in favour of the Petitioners as discussed in aforesaid paragraphs. We are afraid, that merely because another view is possible after interpreting these clauses, the same itself could not be a ground for reviewing the order passed by this Court.

13. The scope of review has been underscored by the Hon'ble Apex Court in the case of ***Arun Dev Upadhyaya Vs. Integrated Sales Service Limited and Another; (2023) 8 SCC 11*** and more particularly in paragraphs 30 to 35, which read thus:

“30. After discussing the relevant material on record, the conclusion is stated in para 17 of the report. The view was that where an error which has to be established by a long-drawn process of reasoning on points where there may conceivably be two opinions, can hardly be said to be an error apparent on the face of the record. The view that long-drawn process of arguments to canvass a point attacking the order in a review jurisdiction, cannot be said to be an error

apparent on the face of record. Relevant extract from para 17 of the Report is reproduced hereunder : (Satyanarayan Laxminarayan Hegde case [Satyanarayan Laxminarayan Hegde v. Millikarjun Bhavanappa Tirumale, 1959 SCC OnLine SC 10: AIR 1960 SC 137], AIR pp. 141-42)

"17. ... Is the conclusion wrong and if so, is such error apparent on the face of the record? If it is clear that the error if any is not apparent on the face of the record, it is not necessary for us to decide whether the conclusion of the Bombay High Court on the question of notice is correct or not. An error which has to be established by a long drawn process of reasoning on points where there may conceivably be two opinions can hardly be said to be an error apparent on the face of the record. As the above discussion of the rival contentions show the alleged error in the present case is far from self-evident and if it can be established, it has to be established, by lengthy and complicated arguments. We do not think such an error can be cured by a writ of certiorari according to the rule governing the powers of the superior court to issue such a writ. In our opinion the High Court was wrong in thinking that the alleged error in the judgment of the Bombay Revenue Tribunal viz. that an order for possession should not be made unless a previous notice had been given was an error apparent on the face of the record so as to be capable of being corrected by a writ of certiorari."

31. Another case which may be briefly dealt with is Parsion Devi v. Sumitri Devi [Parsion Devi v. Sumitri Devi, (1997) 8 SCC 715], where, this Court ruled that under Order 47 Rule 1 CPC, a judgment may be open to review inter alia if there is a mistake or an error apparent on the face of the record. An error which is not self-evident and has to be detected by a process of reasoning, can hardly be said to be an error apparent on the face of the record justifying the court to exercise its power of review. It also observed that a review petition cannot be allowed to be treated as an appeal in disguise.

32. A series of decisions may also be referred to wherein, it has been held that power to review may not be exercised on the ground that decision was erroneous on merits as

the same would be the domain of the court of appeal. Power of review should not be confused with appellate powers as the appellate power can correct all manners of errors committed by the subordinate courts. The following judgments may be referred:

(1) Shivdev Singh v. State of Punjab [Shivdev Singh v. State of Punjab, 1961 SCC OnLine SC 29: AIR 1963 SC 1909]

(2) Aribam Tuleshwar Sharma v. Aribam Pishak Sharma [Aribam Tuleshwar Sharma v. Aribam Pishak Sharma, (1979) 4 SCC 389: AIR 1979 SC 1047]

(3) Meera Bhanja v. Nirmala Kumari Choudhury [Meera Bhanja v. Nirmala Kumari Choudhury, (1995) 1 SCC 170]

(4) Uma Nath Pandey v. State of U.P. [Uma Nath Pandey v. State of U.P., (2009) 12 SCC 40: (2010) 1 SCC (Cri) 501]

33. Recently, this Court in a judgment dated 24-2-2023 passed in S. Murali Sundaram v. Jothibai Kannan [S. Murali Sundaram v. Jothibai Kannan, (2023) 13 SCC 515: 2023 SCC OnLine SC 185], observed that even though a judgment sought to be reviewed is erroneous, the same cannot be a ground to review in exercise of powers under Order 47 Rule 1 CPC. Further, in Perry Kansagra v. Smriti Madan Kansagra [Perry Kansagra v. Smriti Madan Kansagra, (2019) 20 SCC 753], this Court observed that while exercising the review jurisdiction in an application under Order 47 Rule 1 read with Section 114 CPC, the review court does not sit in appeal over its own order.

34 In another case between Shanti Conductors (P) Ltd. v. Assam SEB [Shanti Conductors (P) Ltd. v. Assam SEB, (2020) 2 SCC 677: (2020) 2 SCC (Civ) 788], this Court observed that scope of review under Order 47 Rule 1 read with Section 114 CPC is limited and under the guise of review, the petitioner cannot be permitted to reagitate and reargue questions which have already been addressed and decided. It was further observed that an error which is not self-evident and has to be detected by a process of reasoning, can hardly be said to be an error apparent on the face of record.

35. From the above, it is evident that a power to review

cannot be exercised as an appellate power and has to be strictly confined to the scope and ambit of Order 47 Rule 1 CPC. An error on the face of record must be such an error which, mere looking at the record should strike and it should not require any long-drawn process of reasoning on the points where there may conceivably be two opinions.”

CONCLUSION :

14. So far as Judgments relied upon by the learned AGPs in the cases of ***S. Nagaraj*** (supra) and ***Board of Control for Cricket in India*** (supra) are concerned, with greatest respect, in our opinion, those are not applicable to the facts of the present case, as in the case in hand the Review Applications have been filed on the ground that the clauses referred to hereinabove lead to a different interpretation. In our considered view, the same cannot be termed as an error apparent on the face of the record. In view of the authoritative pronouncement of the Hon'ble Apex Court in the case of ***Arun Dev Upadhyaya*** (supra), under the guise of exercising powers of review, this Court cannot substitute the view taken earlier merely because there is a possibility of taking two views in a matter. The error apparent on the face of record shall be an error which, merely on looking at the record, should strike and should not require a long-drawn process of reasoning on points where there may conceivably be two opinions. It is equally a settled position of law that, while dealing with Review Applications, the Court does not sit in appeal over its own order, nor can a Review Application be allowed to be converted into an appeal in disguise.

15. In view of the above discussion, no case of review is made out by the Applicants. The Review Applications being devoid of any merit, are liable to be rejected. Hence, the Review Applications stand rejected.

(ABASAHEB D. SHINDE, J.)

(KISHORE C. SANT, J.)

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