

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR

CIVIL APPLICATION (CAO) NO.1462 OF 2013

IN

MCA ST.NO.13174 OF 2013 (FOR REVIEW)

IN

WRIT PETITION NO.958 OF 2009 (D)

Ku. Archana Dadarao Pethkar

..vs..

**Joint Commissioner & Vice-Chairman Scheduled Tribe Certificate Scrutiny Committee,
Amravati and ors**

.....
Office Notes, Office Memoranda of Coram,
appearances, Court orders or directions
and Registrar's orders
.....

Court's or Judge's Order

Shri S.R. Narnaware, Counsel for the Applicant.
Shri S.A. Chaudhari, Adv. H/f Shri Anand Parchure, Counsel for N.A.
No.2/Resp.

**CORAM : B.P. DHARMADHIKARI &
P.N. DESHMUKH, JJ.**

DATED : OCTOBER 19, 2015.

Heard.

Heard Shri S.R. Narnaware, learned counsel for the applicant/petitioner, Shri S.A. Chaudhari, Adv. h/f Shri Anand Parchure, learned counsel for non-applicant No.2/respondent, and learned Assistant Government Pleader for non-applicant No.1/respondent.

Shri Narnaware, learned counsel for the applicant/petitioner, submits that view taken by this Court on 5.4.2013 while disposing of Writ Petition No.958 of 2009 filed by the present applicant/petitioner and other two petitions, is obviously incorrect in the light of

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pronouncement by the Full Bench in the case of **Arun Vishwanath Sonone ..vs.. State of Maharashtra and others** reported at **2015(I) Mh.L.J. 457**. Learned counsel further submits that the Full Bench has also permitted aggrieved persons to approach this Court for protection. He points out that because of loss of employment and domestic circumstances, the applicant/petitioner was in different state of mind and disturbed. Hence, there is delay of 81 days.

Shri S.A. Chaudhari, Adv. h/f Shri Anand Parchure, learned counsel for non-applicant No.2/respondent, relies upon the reply-affidavit. He points out that after invalidation of caste claim and termination of services of the applicant/petitioner in the year 2009, after following fresh procedure as per law new recruitment has been done. According to him, the applicant/petitioner has also secured alternate employment and hence there is no just and sufficient ground to condone the delay.

Learned Assistant Government Pleader supports the argument of Shri S.A. Chaudhari, learned counsel. In reply, Shri Narnaware, learned counsel for the applicant/petitioner, points out that the statement about other employment is not supported by any material or proper affidavit. He further contends that the applicant/petitioner is below 40 years of her age even today

and as such if the protection is extended, she can be reinstated in service. He relies upon the certain judgments whereby, after the Full Bench judgment, the protection has been extended to similar employees.

The question whether situation has become irreversible so as to refuse prayer for condonation of delay need not be gone into at this stage. We find that the applicant/petitioner has yet not reached the age of superannuation. However, Writ Petition No.958 of 2009 was pressed only for the purposes of protection and applying law then prevailing more particularly the Full Bench judgment of this Court in the case of **Ganesh Rambhau Khalale ..vs.. State of Maharashtra and ors.** reported at **AIR 2009 Bombay 122** this Court rejected the prayer.

In similar matters, the Full Bench came to be constituted later on and the Full Bench in the case of **Arun Vishwanath Sonone** cited *supra* has found that the earlier Full Bench in the case of **Ganesh Rambhau Khalale** cited *supra* is not laying down correct law.

It is settled position that the subsequent judgment to the contrary cannot be a ground for review. Hence, without observing anything more on merits of the controversy and with liberty to the applicant/petitioner to take such other steps as are available in law, we dispose of

Civil Application (CAO) No.1462 of 2013 so also MCA
St.No.13174 of 2013. No costs.

JUDGE

JUDGE

!! BRW !!