

FARAD CONTINUATION SHEET No.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

M.C.A. NO.1417/2014 IN WRIT PETITION NO. 4715/2013 (D)

(DR.NITIN EKNATHRAO UPADHYE VERSUS THE STATE OF MAHARASHTRA & OTHERS)

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

Court's or Judge's orders

Shri U.N. Vyas, counsel for the applicant.
 Shri N.R. Patil, A.G.P. for the R-1 to 4.

CORAM : SMT. VASANTI A. NAIK AND
A.S. CHANDURKAR, JJ.

DATE : JULY 3, 2015.

Heard.

By this review application, the applicant has sought the review of the order dated 30.04.2014 in Writ Petition No.4715 of 2013.

It appears that a statement was made by the learned counsel for the applicant/petitioner before the Hon'ble Supreme Court that though the ground in regard to the post in question being the solitary post was raised in the writ petition, it could not be argued due to inadvertence. In view of the statement made by the learned counsel for the petitioner before the Hon'ble Supreme Court, the special leave petition was disposed of with leave to the applicant-petitioner to file a review application.

We find that the statement made by the learned counsel for the applicant-petitioner before the Hon'ble Supreme Court on 08.10.2014, as is mentioned in the order of the Hon'ble Supreme Court, is not factually correct. It is not correct to state that though the ground was raised in the writ petition, due to inadvertence, the same could not be argued. On a reading of the order dated 30.04.2014, of which the review is sought, it appears that the petitioner had, in the previous petition filed by

him bearing Writ Petition No.5981 of 2006, sought approval to his appointment on the ground that the post on which the petitioner was appointed is a single isolated post to which the reservation policy would not apply. In the submissions made on behalf of the applicant-petitioner, as recorded in the order dated 30.04.2014, we find that the applicant-petitioner had sought the approval by assuming that the reservation policy applies to the Ophthalmic Technicians. Also, we have observed on Page 7 of the judgment that though in the previous petition, the petitioner had sought the approval on the ground that the reservation policy would not apply, in the present petition the petitioner had sought the approval by relying on the provisions of Rule 9(9)(a) of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981. It is further observed that it was held by the High court in a bunch of writ petitions bearing Writ Petition Nos.1620 of 2004 that the posts were not the solitary posts to which the reservation policy would not apply. It is further observed that in view of the judgment in the bunch of writ petitions bearing Writ Petition No.1620 of 2004 & Others, the counsel for the applicant-petitioner had not argued the ground that the post was a solitary post in the petition in which the order, that is sought to be reviewed, was passed. It is, thus, clear that a reference was made to the earlier writ petitions in which the same issue was decided against the petitioner therein. It is further recorded that the applicant-petitioner had not made the submissions in regard to the post being the solitary post as that issue stands answered against the petitioner by the judgment in a bunch of writ petitions bearing Writ Petition Nos.1620 of 2004 and others. We find from a perusal of our order of which the review is sought that a reference is made to the decision of this Court in a bunch of writ petitions where the

issue was already decided. It appears that the statement made by the counsel for the applicant-petitioner before the Hon'ble Supreme Court that the issue was not argued due to inadvertence, appears to be incorrect. Also, the order dated 30.04.2014 was rendered in the open Court and in the presence of the counsel for the applicant-petitioner. The aforesaid factual position was, thus, noted in the order in the presence of the counsel for the applicant-petitioner. We, therefore, find no reason whatsoever for reviewing the order dated 30.04.2014.

The review application is dismissed with costs.

JUDGE

JUDGE

APTE