

IN THE HIGH COURT OF BOMBAY AT GOA
CIVIL APPLICATION (REVIEW) NO. 22 OF 2014
IN
WRIT PETITION NO. 505 OF 2013

SHRI HARISH DEMU KANKONKAR,
son of Shri Demu Kankonkar,
aged 29 years, Indian
National, resident of House
No. 125. Chimbhel, Gawwant,
Ribandar, Tiswadi – Goa.

... Applicant

Versus

1. STATE OF GOA, through its
Chief Secretary, having
Office at Secretariat,
Alto Porvorim- Goa.
2. THE DIRECTOR OF PUBLIC
ASSISTANCE (PROVEDORIA),
Government of Goa, having
Office at Mala, Panaji – Goa.

... Respondents

Shri D.J. Pangam, Advocate for the petitioner.

Shri P. Dangui, Additional Government Advocate for the
respondents.

Coram:- F. M. REIS &
NUTAN D. SARDESSAI, JJ.

Date :- 5th July, 2016

ORAL JUDGMENT:(Per F. M. REIS,J]

Heard Shri D.J. Pangam, learned Counsel appearing on behalf
of the petitioner and Shri P. Dangui, learned Additional Government
Advocate appearing on behalf of the respondents.

2. This is an application to review the judgment passed by the Division Bench of this Court dated 25/03/2014 whereby the Writ Petitions filed by the petitioner came to be rejected. Shri Pangam, learned Counsel appearing for the petitioner has pointed out that while discussing the merit of the issues raised by the petitioner, this Court has accepted the case of the petitioner that the letter of offer received by the petitioner had to be accepted. It is further pointed out that similarly placed other petitioners in the other writ petitions which were disposed off by a common judgment were directed to be given a letter of appointment based on the letter of appointment dated 06/12/2011 though for different posts. The learned Counsel further points out that merely because the petitioner had applied for another post thereafter the relief was erroneously refused to the petitioner. The learned Counsel has thereafter taken us through the operative part of the said judgment to point out that the petition came to be rejected on an erroneous ground. The learned Counsel further submits that the records, itself reveal that there is an error apparent on the face of records which calls for the review of the said judgment.

3. On the other hand, Shri P. Dangui, learned Additional Government Advocate has vehemently opposed the above review petition. The learned Additional Government Advocate has pointed

out that rightly or wrongly this Court has taken a view while passing the judgment and dismissing the writ petition filed by the petitioner, and as such, the question of reviewing the judgment by filing the present review petition is totally misconceive. It is further submitted that a review cannot be an appeal in disguise and as such according to him, if the petitioner is aggrieved by the judgment passed by this Court, his remedy, if any, is to challenge such judgment in the Apex Court. The learned Counsel further points out that though Shri Pangam, learned Counsel may be justified to contend that the findings in the judgment are in favour of the petitioner nevertheless taking note of the operative part of the judgment, it clearly shows that this Court has applied its mind to the facts of the case and dismissed the Writ Petitions. The learned Additional Government Advocate in support of his case relied upon the judgment of the Apex Court reported in **Lily Thomas Etc. Etc. Vs. Union of India and others [(2000) 6 SCC 224]** and **Parsion Devi V/s. Sumitri Devi [(1997) 8 SCC 715]**. The learned Additional Government Advocate as such submitted that the petition be rejected.

4. We have given our thoughtful consideration to the rival contentions and with the assistance of the learned Counsels we have also gone through the records. It cannot be disputed that the

jurisdiction of review of the judgment is circumscribed by distinctive situation as specified in order 47 Rule 1 Civil Procedure Code. On perusal of the said provision of the Civil Procedure Code, clearly provides that the Court can review its judgment in case there is an error apparent on the face of record, which can be noted on bare perusal of the judgment. In the present case, it is undisputed that the findings in the judgment passed by this Court are in favour of the petitioner. In fact para 23 of the judgment reads as follows:

"23. For the petitioners in Writ Petition No.505/2013, the selection process must be viewed upon the premise that 3 Lower Division Clerks (LDCs) were to be appointed. These clerks would require essentially to work on computers for data entry, etc.. The Computer test was taken. The candidates were shortlisted. Thereafter, interviews were conducted. The argument on behalf of the Government is that the computer test is only to see the computer proficiency without more and hence must be rejected, as written examination was not held. LDCs may not be required to show their proficiency either in language, general knowledge or any technical expertise and hence the computer test for them would be the written test. That having been taken, it cannot be said that they were appointed only by oral interview, which led to arbitrariness and favouritism. The process for their appointment commenced from 4th October, 2011 when

the Code of Conduct was no where in sight. The computer test held on 18th November, 2011 was followed by an interview on 15th December, 2011. Four weeks' gap would show consideration of the computer test result, without any haste. The interviews in this case are not alleged to have been conducted by a wholly illegal process. The offers of appointment have also been made prior to the code of conduct coming into force. The petitioners have accepted their appointments after the code came into force. The petitioners were ordinary citizens and were not aware of the implications of the code. It appears that the petitioners' medical certification and the certification of character is not shown to have been done prior to the order of appointment as required under the rules. New selection process has commenced. The petitioners have applied pursuant to the new advertisement and have followed the selection process."

5. Reading the findings in the judgment of paragraph 23 and looking into the relief granted by this Court in dismissing the Writ Petition it clearly shows that there is an error apparent on the face of records which would call for review of the judgment. Reading the judgment as a whole and the reliefs granted to similarly placed petitioners in the common judgment passed by the Court, it clearly transpires that there is an error apparent on the face of record as the operative part in the judgment in the present Writ Petition is not in consonance with the findings rendered in the judgment. In

such circumstances, the judgments of the Apex Court relied by the learned Additional Government Advocate in the **Lily Thomas** (Supra) and **Parsion Devi** (Supra) are not applicable to the facts of the present case. In such circumstances, the petitioner is entitled for reliefs as granted to the similarly placed petitioners in the said common judgment passed by this Court in the above Writ Petitions. It is also to be noted that merely because the petition was pending before this Court, and the petitioner had applied for another job by itself cannot be a ground to refuse a relief to the petitioner when it is not disputed that the matter was already under consideration of this Court. Besides that there can be no estoppel against law. There is nothing on record to suggest that in the meanwhile the petitioner had already been absorbed in government service for any other post.

6. We will also take note of the observations of the Apex Court in the judgment reported in **(2015) 1 SCC 347** in the case of **State of Uttar Pradesh and others V/s Arvind Kumar Srivastava and others**, wherein it has been observed at para 22 thus :

22. The legal principles which emerge from the reading of the aforesaid judgments, cited both by the appellants as

well as the respondents, can be summed up as under:

22.1. The normal rule is that when a particular set of employees is given relief by the Court, all other identically situated persons need to be treated alike by extending that benefit. Not doing so would amount to discrimination and would be violative of Article 14 of the Constitution of India. This principle needs to be applied in service matters more emphatically as the service jurisprudence evolved by this Court from time to time postulates that all similarly situated persons should be treated similarly. Therefore, the normal rule would be that merely because other similarly situated persons did not approach the Court earlier, they are not to be treated differently.

22.2 However, this principle is subject to well recognized exceptions in the form of laches and delays as well as acquiescence. Those persons who did not challenge the wrongful action in their cases and acquiesced into the same and woke up after long delay only because of the reason that their counterparts who had approached the Court earlier in time succeeded in their efforts, then such

employees cannot claim that the benefit of the judgment rendered in the case of similarly situated persons be extended to them. They would be treated as fence-sitters and laches and delays, and/or the acquiescence, would be a valid ground to dismiss their claim.

22.3. However, this exception may not apply in those cases where the judgment pronounced by the Court was judgment in rem with intention to give benefit to all similarly situated persons, whether they approached the Court or not. With such a pronouncement the obligation is cast upon the authorities to itself extend the benefit thereof to all similarly situated person. Such a situation can occur when the subject matter of the decision touches upon the policy matters, like scheme of regularisation and the like (see K.C. Sharma & Ors. v. Union of India (supra). On the other hand, if the judgment of the Court was in personam holding that benefit of the said judgment shall accrue to the parties before the Court and such an intention is stated expressly in the judgment or it can be impliedly found out from the tenor and language of the judgment, those who want to get the benefit of the said judgment extended to

them shall have to satisfy that their petition does not suffer from either laches and delays or acquiescence.”

7. For the aforesaid reasons and taking note of the observations of the Apex Court in the said judgment, we find that the applicant is entitled for the reliefs identical to those granted to similarly placed candidates and as such, we pass the following.

ORDER

1. The application for review is allowed.
2. The operative part of the judgment as observations made in paragraph nos.25 and 26 stands accordingly corrected and consequently respondents are directed.
3. Based on the offer of appointment the appointment of the petitioner in the above petition dated ~~06/12/2011~~ ^{22/12/2011} is held to be correctly made and must be given effect to.
4. Rule made in the above petition is made absolute in the above terms.
5. Application stands disposed off.

Correction carried
out as per order
dated 06/02/2017

NUTAN D. SARDESSAI, J.

F. M. REIS, J.