

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

**CIVIL APPLICTION NO.1668 OF 2017
IN
RAST NO.2513 OF 2017
IN
WRIT PETITION NO.8359 OF 2013**

The State of Maharashtra
and another ... Applicants.

Versus

Sarjerao S/o Manik Phalke
and another. ... Respondents.

...

**WITH
CIVIL APPLICATION NO.1741 OF 2017
IN
RAST NO.2521 OF 2017
IN
WRIT PETITION NO.6243 OF 2014.**

The State of Maharashtra
through its Secretary,
Planning Department,
Mantralaya, Mumbai. ... Applicant.

Versus

Sikndar Nabhubhai Shaikh
and another ... Respondents.

...

**WITH
CIVIL APPLICATION NO.1742 OF 2017
IN**

**RAST NO.2519 OF 2017
IN
WRIT PETITION NO.8381 OF 2013**

The State of Maharashtra
and another ... Applicants.

Versus

Ramnath S/o Waman Pagar
and another ... Respondents.

...

**WITH
CIVIL APPLICATION NO.1749 OF 2017
IN
RAST NO.2517 OF 2017
IN
WRIT PETITION NO.6242 OF 2014**

The State of Maharashtra
through its Secretalry,
Planning Department,
Mantralaya, Mumbai-32. ... Applicant.

Versus

Sudam S/o Kanhu Aware
and others. ... Respondents.

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Mrs.A.V.Gondhalekar, Additional Government
Pleader for the State.
Mr.A.N.Kakade, advocate for Respondent No.1.

...

**CORAM : S.V.GANGAPURWALA AND
V.K.JADHAV, JJ.**

Date : 17.03.2017.

PER COURT :

1. Heard.

2. The delay in filing the Review is almost 500 days. The reason given is that of administrative exigencies. Though the said ground does not appear to be within the ambit and purview of "sufficient cause", still, we have also considered the Review Applications on its merits.

3. Mrs. Gondhalekar, learned Additional Government Pleader submits that in view of the Government Resolution dated 1.12.1995 and approved by the Apex Court, it is clear that the cadre of Mustering Assistant is a dying cadre and their services would be counted from the date they are absorbed in Government service. The date prior to their absorption in Government service can not counted for pensionary benefits. Learned Additional Government Pleader submits that while passing the judgment under Review, this Court had relied on the judgment dated 19.7.2012, passed in W.P.No.2946/1997 at its Principal seat. According to learned Additional Government Pleader, though the said judgment was assailed before the Apex Court, the Apex Court

dismissed SLP in limine. The said judgment can not be said to be confirmed by the Apex Court nor doctrine of merger would apply.

4. Learned Additional Government Pleader further submits that this Court has considered the judgment of the Industrial Court, whereby permanency is granted to the Respondents, however, because of the intervening circumstances i.e. G.R. dated 1.12.1995 the said order of the Industrial Court granting permanency can not be considered for pensionary benefits. This Court in another group of Writ Petitions had considered that the services of such Mustering Assistants would be counted for the purpose of pensionary benefits on and from the date of their absorption in Government service and not prior to that. On the basis of the same analogy, the case of the present Respondents is required to be considered. Learned Additional Government Pleader relies on the judgment of the Apex Court in the case of **"Kunhayammed and others Vs. State of Kerala and another"** reported in **(2000) 6 Supreme Court Cases 359**, to buttress her submissions that mere

rejection of SLP in limine does not tantamount to merger of the judgment of this Court with that of Apex Court and it will be open for this Court to consider the said judgment.

5. We have heard the learned counsel for respective Respondents.

6. The Review can not be considered as an appeal in disguise. The scope of review would be in a narrow compass. While passing the order under review, this Court had considered the judgment of the Industrial Court which had granted permanency to the Respondents herein. The said judgment has become final as it is not assailed by any party. The petitioner in W.P.No.2946/1997 is similarly situated as the present Respondents herein - original Writ Petitioners. The judgment in W.P.No.2946/1997 dated 19.7.2012 was assailed before the Apex Court. The Apex Court has dismissed the SLP. The benefit given to the petitioner in W.P.No.2946/97 has become final. The present non-applicants/original Writ Petitions are similarly

situated both on facts and on the position of law. For the reasons recorded in the judgment dated 19.7.2012 in W.P.No.2946/1997, we had disposed of the Writ Petitions and granted similar relief. In other group of Writ Petitions which were decided by us, we had directed that their services would be considered from the date of their absorption, as in the said matters, the petitioners therein had not approached the Industrial Court and there was no order granting them permanency. The factual metrix in the present case was different. The original Writ Petitioners in the present case were already granted permanency. Keeping in view the said aspect and the judgment in W.P.No.2946/1997, we had passed similar order.

7. In light of the above, the Review Applications along with Applications for condonation of delay are disposed of. No costs.

(V.K. JADHAV, J.)

(S.V. GANGAPURWALA, J.)

