

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

**REVIEW PETITION (L) NO. 1 OF 2017
IN
WRIT PETITION NO. 2545 OF 2014**

**Pritesh Ramakant Jadhav } Petitioner
 versus
State of Maharashtra }
and Ors. } Respondents**

Ms. Pooja Thorat with Mr. A. B. Seth
i/b.Mr. V. M. Thorat for the Petitioner.

Mr.Abhay Patki-AGP for respondent no. 1.

**CORAM :- S. C. DHARMADHIKARI &
 B. P. COLABAWALLA, JJ.**

DATED :- NOVEMBER 3, 2017

P.C. :-

1. We have heard Ms. Pooja Thorat for the review petitioner.
2. This review petitioner is the original writ petitioner in Writ Petition No. 2545 of 2014. That writ petition, together with writ petition No. 2091 of 2014 was dismissed on 3rd October, 2016 by a detailed judgment and order.
3. The petitioner in Writ Petition No. 2091 of 2014 sought a review of the judgment and which attempt was not countenanced and her review petition was dismissed earlier. Now, the very

argument, which was canvassed earlier by the petitioner in Writ Petition No. 2545 of 2014, is being canvassed that there was no suppression of relevant and material fact that the father of the petitioner had not suppressed any fact much less of his visiting a country abroad, his being a doctor possessing super-speciality degree, his ailment which eventually prevented him from carrying on any professional work. It is that later part of the serious ailment and not being able to work and therefore generate any income which has not been considered while passing the order under review. If the correct facts had been placed before the Committee and equally this court, then, possibly, the writ petition would have been allowed or at least alternate relief would have been granted based on the judgment of the Hon'ble Supreme Court of India in the case of *Kumari Madhuri Patil and Anr. vs. Additional Commissioner, Tribal Development and Ors.*¹.

4. We are afraid, we cannot entertain these contentions of Ms.Thorat. Her arguments overlook the fact that in para 54 of the order under review, we have noted that the petitioner's father was a qualified surgeon. We have not only noted his educational qualifications, but how he went on a job assignment to Malaysia and thereafter to Saudi Arabia. We have faulted him for not

¹ (1994) 6 SCC 241

disclosing his income or earnings from his assignments abroad. It is in these circumstances that we had upheld the order of the Committee in cancelling and withdrawing the non-creamy layer certificate. In para 55, we have also referred to the facts and figures as emerging from the bank accounts. We have also referred to in para 56 the further fact that the passport was found to be cancelled. After noting all these arguments eventually we had upheld the Committee's findings. They were held to be not perverse or vitiated by any error apparent on the face of the record. That is how the petition was dismissed.

5. We may be wrong in our judgment, but surely, in review jurisdiction, we cannot revisit such factual findings as if we are a higher or an appellate court. Equally, in para 58, we had considered the request of Ms. Thorat that based on the judgment and final paragraph thereof in *Kumari Madhuri Patil's* case (supra), we should grant alternate relief. We do not think that this relief can be granted in review jurisdiction as if we are an appellate court.

6. The distinction between the power of review and appellate power is clear in law. In the later power, the court can re-visit even factual findings. In review jurisdiction, the parameters are laid down by section 114 read with Order XLVII Rule 1 of the

Code of Civil Procedure, 1908. Once the case does not fall in that parameters, then, review jurisdiction cannot be exercised. Precisely, that is our conclusion and hence, we proceed to dismiss the review petition. It is dismissed but without any order as to costs.

(B.P.COLABAWALLA, J.) (S.C.DHARMADHIKARI, J.)