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| Apurva Dnyaneshwar Mhatre     | } | Petitioner  |
| versus                        |   |             |
| State of Maharashtra and Ors. | } | Respondents |

Mr. J. K. Jadhav for respondent no. 5.

DATED :- NOVEMBER 3, 2017

1. We have heard Ms. Sarnaik appearing for the petitioner, Mr. Patki appearing for the State and Mr. Govilkar appearing for the Maharashtra University of Health Sciences. The only contention raised before us by Ms. Sarnaik, in support of the second review petition by the petitioner, is that the review petitioner is the writ petitioner in Writ Petition No. 2091 of 2014. That writ petition, along with another writ petition being Writ

Petition No. 2545 of 2014 was decided by a common judgment dated 3<sup>rd</sup> October, 2016. While that judgment was delivered, this court was not informed that the order challenged in that writ petition, withdrawing and cancelling a non-creamy layer certificate obtained by the petitioner's parents, was based on a clarification and certificate from the Bharat Petroleum Corporation Limited (BPCL). However, when that clarification or certificate was issued by the BPCL certifying that the petitioner's father was indeed working with the said Corporation, in what grade and what scale he was working was not clarified or mentioned in the same. Now, a document, copy of which is at page 237 of the paper book, has been issued and which in clear terms states that the petitioner's father joined in labour cadre and was an employee of the said BPCL since 3<sup>rd</sup> July, 1984 working as Utility Operator (Estates) equivalent to Class 'C' of the Central State Government status at the Mumbai Refinery. He retired on 30<sup>th</sup> June, 2016 as Utility Operator equivalent to Class 'C' of State Government status.

2. This would, therefore, coupled with page 238 of the paper book, clarify that the petitioner's father was indeed entitled to the non-creamy layer certificate and that was not obtained by perpetrating a fraud on the Committee. Hence, the order under

review be recalled and the petition be heard again. Alternatively and without prejudice, this court should grant a relief similar and on par with another candidate, who had moved this court by filing a writ petition being Writ Petition No. 2028 of 2014. In her case as well, the petition was dismissed, but bearing in mind that the petitioner in that petition was studying for MBBS course and was on the verge of completing it, she was allowed to continue if not as a reserved category candidate, but an open or non-reserved candidate. For that purpose, a condition was imposed that she should deposit a sum of Rs.10 lacs with the State Government. Only then and on other conditions she was allowed to continue her studies and appear for the examination. At least such relief should be granted.

3. Mr. Patki appearing for the State would submit that both these contentions were canvassed specifically before this court when the initial order was passed and also when Review Petition (L) No. 61 of 2016 was moved through another advocate. Therefore, in this virtually third round, no relief should be granted. The review petition is entirely misconceived and must be dismissed.

4. We have heard both sides. We find that this court was specifically informed by the petitioner's counsel at the initial

stage itself that the father never attempted to perpetrate a fraud or pull a fast one. On the other hand, this court was also informed about the employment of the petitioner's father. While dealing with the arguments on these lines, the court was informed that the father of the petitioner went to the extent of denying his employment with BPCL. He denied and asserted that he is no longer an employee and he has quit the job in 2008. However, the other person one Mr. Gharat, who had challenged the issuance of the non-creamy layer certificate in favour of the father of the petitioner invited the attention of the Committee as also this court to certain documents, which would indicate that the petitioner's father was very much in employment of BPCL. This court was, therefore, convinced that a false statement was made and a certificate of the above nature was obtained by suppressing the relevant and material fact. The relevant and material fact was about the employment of the petitioner's father with BPCL and his earning a salary. The salary amount and obtained by the petitioner's father consistently would denote that he could not have been termed as a non-creamy layer candidate. In these circumstances, this court refused any relief to the petitioner.

5. We do not think that this finding of fact can be re-opened and by the process desired. We cannot go behind our order now

and consider whether the finding of fact was rendered correctly or erroneously. That is the function of an appellate court. In the garb of entertaining a review petition, we cannot convert ourselves into an appellate court. All the more when a review petition was filed earlier and seeking the same reliefs. The petitioner had also approached the Hon'ble Supreme Court in Special Leave Petition (Civil) No. 36134 of 2016, which also came to be dismissed on 9<sup>th</sup> December, 2016.

6. For the reasons aforesaid, we do not think that the review petition can now be entertained. It is entirely misconceived. It is dismissed but without any order as to costs.

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