

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

REVIEW APPLICATION ST.NO.2969 OF 2018

IN

WRIT PETITION NO. 2352 OF 2007

Nagnath Devidasrao Padhya,
Age : 46 years,
Occu.: Service as Lab Assistant,
Govt.Medical College, Aurangabad,
R/o.: Plot No.18, 'Shashikunj',
Near Maya Appartment,
Basayye Nagar, Aurangabad **.. APPLICANT**

VERSUS

1. The State of Maharashtra,
Through the Secretary,
Medical Education & Drugs Department,
Mantralaya, Mumbai 400 032,
2. The Director,
Medical Education & Research,
St. George Hospital Compound,
Dental College Building,
Mumbai 400 001
3. The Dean,
Govt. Medical College,
Nanded
4. The Secretary,
Regional Selection Board,
Aurangabad **.. RESPONDENTS**

Mr. Ajay S. Deshpande, Advocate for the applicant
Mrs.V.S. Choudhari, A.G.P. for the respondent/State

**CORAM : SUNIL P. DESHMUKH AND
SANGITRAO S. PATIL, JJ.**

DATE : 12th FEBRUARY, 2017

JUDGMENT (PER : SANGITRAO S. PATIL, J.):

The applicant has sought review of the common judgment and order dated 20th December, 2017, delivered by this Court in Writ Petition Nos.2352 of 2017 and 129 of 2010, whereby the said writ petitions came to be dismissed and the claim of the applicant for a direction to continue his service as Laboratory Assistant from the category of project affected persons, came to be rejected.

2. The applicant filed original application No.777 of 1999 before the Maharashtra Administrative Tribunal Bombay, Bench at Aurangabad ("Tribunal", for short) seeking directions against the present respondent Nos.2 and 3 to appoint him on the vacant post of Laboratory Assistant from project affected persons' category and sought interim relief as well to that effect. The Tribunal passed an interim order in favour of the applicant on 1st November, 1999 and in compliance of that order, he was appointed to the post of Laboratory Assistant on 12th November, 1999 subject to final decision of the Original Application. The said Original Application came to be dismissed by the

Tribunal on 20th November, 2007. The judgment and order passed by the Tribunal was challenged by the applicant by filing Writ Petition No. 2352 of 2007. The said writ petition came to be dismissed by this Court as per the common judgment and order dated 20th December, 2017, which are sought to be reviewed by this application.

3. The learned counsel for the applicant submits that though the Tribunal did not decide the case of the applicant on merits, this Court held that the Tribunal, after considering the case of the applicant on merits rightly dismissed the Original Application. According to him, this is an error apparent on the face of record, warranting review of the common judgment and order. He further submits that as per the Government Resolution dated 18th June, 1990 and Circulars dated 3rd January, 1997, 13th September, 2000, 7th April, 2001 and 20th March, 2002, 5% of the total strength of Group "C" and "D" posts, were reserved for the candidates belonging to the category of project affected persons. Accordingly, there were about 850 group "C" and group "D" posts on the establishment of respondent No.3. However, the respondents wrongly considered the strength of the posts of Laboratory Assistants only

i.e. 20, and calculated 5% of posts on the basis thereof. He submits that the posts reserved for the candidates belonging to project affected persons' category, should have been calculated on the basis of the total strength of group "C" and "D" posts. Had such calculation been made, there would have been sufficient number of vacant posts and the applicant could have been legally accommodated. The learned counsel submits that this is an error on the face of record, inviting the review jurisdiction of this Court.

4. The learned A.G.P. for the respondents submits that there were only 20 sanctioned posts of Laboratory Assistants. There was one post reserved for the candidates belonging to project affected persons' category, which was already filled up. Therefore, it was not possible to accommodate the present applicant by appointing him to the post of Laboratory Assistant. The learned A.G.P. supports the impugned judgment and order passed by this Court and prays that the review application may be rejected.

5. As seen from the prayer Clause (a) in Original Application No. 777 of 1999 filed by the present

applicant, he had sought directions against respondent Nos. 2 and 3 to appoint him on the vacant post of Laboratory Assistant from project affected persons' category in view of Government Resolution dated 18th June, 1990. In the body of the application, there is absolutely no whisper that 5% of posts reserved for the candidates belonging to the category of project affected persons was to be calculated on the basis of the total strength of Group "C" and "D" posts. There is no whisper that the applicant is claiming appointment to any of the posts from group "C" or group "D" cadres. He sought appointment specifically to the post of Laboratory Assistant. When there were only 20 sanctioned posts of Laboratory Assistant, it was necessary for the applicant to come with a case that out of those 20 posts, there was a vacant post and it could be filled up from the candidates belonging to the category of project affected persons. Had there been such a post vacant, the claim of the applicant certainly could have been considered. The respondents came with a specific case that there were only 20 sanctioned posts of Laboratory Assistant, out of which one post was reserved for a candidate belonging to project affected persons (5%) and the said post was

already filled up on 1st July, 1997 by appointing one Magdum Iftekar Malik, who was senior to the present applicant and that he is due for retirement on 30th September, 2036. If that be so, there was no scope for accommodating the present applicant to the post of Laboratory Assistant.

6. The applicant is now trying to set up a new case. It was not at all his case that he should be given appointment to any post coming under group "C" or group "D" category, as a candidate belonging to the project affected persons' category by calculating the posts reserved for the said category at 5% of the total strength of group "C" and "D" posts. The applicant cannot be allowed to set up such a new case in review application. In the circumstances, the contention of the learned counsel for the applicant that there has been mistake in calculating the number of posts of Laboratory Assistants reserved for the candidates belonging to the category of project affected persons merely on the basis of the sanctioned posts of Laboratory Assistants, cannot be accepted. There is no mistake or error apparent on the face of record in holding that there was only one post out of 20

sanctioned posts of Laboratory Assistants, reserved for the category of project affected persons.

7. It is true that the Tribunal has rejected the Original Application mainly on the ground that the applicant was not appointed to the post of Laboratory Assistant by following due procedure. However in paragraph No.3 of the order, the Tribunal has referred to the contention raised by the learned Presiding Officer that there were only 20 sanctioned posts of Laboratory Assistants and quota reserved for project affected persons had already been overflowed because three persons from that category were appointed in consequence of the orders passed by the Tribunal. Though there is no specific observations made by the Tribunal in respect of that contention, in paragraph No.7 of the order, it is mentioned that the Tribunal did not find any merit in the Original Application and accordingly dismissed it. Even if it is accepted that the merits of the matter were not considered by the Tribunal, we dealt with all the contentions raised by the learned counsel for the applicants and decided writ petitions on merits. We do not find any error on the face of record on this count, which would call for

review of the impugned common judgment and order.

8. In the above facts and circumstances of the case, we hold that there is no justifiable ground for taking review of the common judgment and order passed by us. The application is devoid of any substance. It is liable to be rejected and accordingly rejected.

9. The learned counsel for the applicant, at this stage, prays for continuation of the interim relief granted in favour of the applicant protecting his service for a period of six weeks. Interim relief is continued for a period of six weeks from today as sought.

Sd/-
[SANGITRAO S. PATIL]
JUDGE

Sd/-
[SUNIL P. DESHMUKH]
JUDGE