IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

902 REVIEW APPLICATION (CIVIL) NO. 206 OF 2018
IN WP/4033/2018

SANTOSH VASANT RASANE ..APPLICANT

VERSUS

THE STATE OF MAHARASHTRA AND OTHERS ..RESPONDENTS

…

Mr. N. B. Khandare h/f Mr. Dnyaneshwar A. Bide, Advocate for the Applicant.
Mr. P. S. Patil, AGP for Respondent Nos.1 to 10.
Mr. B. R. Survase, Advocate for the Respondent No.12.

…

CORAM : S. V. GANGAPURWALA &
SUNIL K. KOTWAL, JJ.

DATED : 30th NOVEMBER, 2018.

PER COURT:-

1. Heard Mr. Khandare, learned counsel for the applicant and Mr. Patil, learned A.G.P. for respondent nos.1 to 10.

2. The reliance is placed by the learned counsel for the applicant on the judgment of the Apex Court in a case of **State Election Commissioner, Bihar, Patna and Others Vs. Janakdhari Prasad and Others** reported in **(2018) 8 Supreme Court Cases 1** and submits that the post held by the petitioner cannot be said to be a post in Government service. Paragraph No.37 of the judgment reads thus:

> "The aforesaid passages clearly show that the Court went by the concept of public element attached to the office or post of Government Pleader. It has not expressed the opinion that they are under the government service. Be that as it may, as has been held by the learned Single Judge and rightly so, there is no master-servant relationship and the respondent was not amenable to any disciplinary proceeding. He has correctly expressed the view that the conduct of the advocate is subject to the discipline of the Bar Council. As we notice, there is nothing on record to show that he was getting any remuneration. Even if some remuneration is attached to the office, he cannot be treated to be under the service of the State Government. The aspects which are essential for establishing a relationship of master and servant are absent. Therefore, the returned candidate could not have been treated to be in service under the State Government."

3. In light of the above, the order dated 30.07.2018 passed in Writ Petition No.4033 of 2018 is recalled. Writ Petition is restored to its original position. Review Application is disposed of.

(SUNIL K. KOTWAL)
JUDGE

(S. V. GANGAPURWALA)
JUDGE

Devendra/November-18