

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

REVIEW APPLICATION (CIVIL) NO. 119 OF 2017
IN WP/1322/2010

PRALHAD GOVIND KAMBLE
VERSUS
THE STATE OF MAH AND ANOTHER

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Advocate for Applicant : Shri Venjane Tukaram M.
AGP for Respondents: Shri Badakh V.S.

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CORAM : RAVINDRA V. GHUGE, J.
Dated: January 24, 2018

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PER COURT :-

1. The applicant desires that the judgment of this Court dated 30.9.2015 in Writ Petition No. 1322 of 2010 be reviewed for the following reasons:-

(i) The applicant joined as a Daily Wager as a Driver in an earthquake rehabilitation programme on 1.1.1995.

(ii) He worked as a Driver till May, 1995.

(iii) Then he was posted as a Watchman on daily wages at a cement godown.

(iv) When a new vehicle was purchased for the project, he worked from January 1996 to May 1996 as a Driver.

(v) He was absent in the months of August, November and December 1995.

(vi) In all, he worked as a Driver on daily wages intermittently for about 10 months and as a Watchman for about 7 months.

(vii) The Industrial Court applied a Government Resolution dated 2.6.2000, which was issued after the disengagement of the applicant on 5.6.1996 and considering that there are vacant posts of 7 Drivers in various departments of the Government, the applicant was granted reinstatement with continuity and 25% backwages by the judgment dated 5.10.2001. Said judgment was stayed by this Court while admitting this petition by order dated 28.9.2010.

(viii) The applicant is about 43 years' of age today and can work for another 15 years.

(ix) The four judgments of the Honourable Apex Court referred to in the judgment under review, are not applicable to the case of the petitioner though he has worked for about 17 months on daily wages and is out of employment for about 20 years by now.

2. This Court while deciding WP No.1322 of 2010 has concluded that merely because the applicant worked for about 10 months intermittently as driver and for 7 months as a Watchman, would not mean that, he was entitled to reinstatement in service in

public employment. Keeping in view the law laid down by the Honourable Apex Court in the matter of Secretary, State of Karnataka Vs. Umadevi & Others [(2006) 4 SCC 1], back door entries cannot be legitimized. There is no evidence on record before the Labour Court as well as the Industrial Court that a regular selection process was initiated by the State Government for filling in available posts under the earthquake rehabilitation programme. In this backdrop, merely on sympathy, the Industrial Court had directed the reinstatement of the applicant concluding that he may be absorbed in any department of the State Government. Having worked for only 17 months and having been out of employment for 20 years, such sweeping directions cannot be issued.

3. This Court had considered the law laid down by the Honourable Apex Court in the matters of (1) Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division, Kota Vs. Mohan Lal [2013 LLR 1009], (2) Assistant Engineer, Rajasthan Development Corporation and another Vs. Gitam Singh [(2013) 5 SCC 136], (3) BSNL Vs. Man Singh [(2012) 1 SCC 558] and (4) Jagbir Singh Vs. Haryana State Agriculture Marketing Board [(2009) 15 SCC 327], so as to compensate the applicant with some compensation as he was in litigation, notwithstanding the fact that he had attempted a back door entry in public employment.

4. Learned counsel for the applicant then prayed that the compensation amount be enhanced. The Honourable Apex Court has struck a formula of about Rs. 30,000 to Rs. 40,000/- per year of service put in by the employee. The applicant prays for Rs. Two Lakhs. If such amount of compensation is to be paid to a back door entrant, the State exchequer would be drained of funds since several such cases appear before the Court, practically everyday.

5. Considering the law laid down by the Honourable Apex Court in the case of Lily Thomas Vs. Union of India [AIR 2000 SC 1650], that a review application cannot be considered as if a Writ Petition is re-argued, this application being devoid of merit is, therefore, rejected.

(RAVINDRA V. GHUGE, J.)

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