

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**REVIEW PETITION (ST) NO. 17710 OF 2018
IN
WRIT PETITION NO.1043 OF 2018**

**WITH
CIVIL APPLICATION NO.198 OF 2018
IN
REVIEW PETITION (ST) NO. 17710 OF 2018**

Shubhangi Santosh Patil
and others.

..Petitioners

Versus

Union of India
and others

..Respondents

....

Mr. Nitin Mulye, Advocate for the Petitioners.
None for the Respondents.

....

**CORAM : R.M. SAVANT &
R. G. KETKAR, JJ.**

DATE : 19th JULY, 2018

P.C. (Per R.G. Ketkar, J.) :

1. Heard Mr. Nitin Mulye, learned Counsel for the petitioners. Mr. Mulye submits that he has served the Review Petition on the other side. Despite service, none appears on behalf of the respondents.

2. By this Petition under Section 114 read with Order XLVII Rule 1 of Code of Civil Procedure, 1908 (for short, 'C.P.C.'), the petitioners have sought review of the order dated 5.2.2018 passed by this Court (Coram: R.M. Borde & R.G. Ketkar, JJ.) in Writ Petition No.1043/2018. By that order, Writ Petition instituted by the petitioners herein was summarily rejected.

3. In support of this Petition, Mr. Mulye invited our attention to Government Resolution (for short, 'G.R.') dated 5.8.2010. He submitted that said G.R. cannot be made applicable to the petitioners, who are admittedly Asha Workers. The directives in G.R. dated 5.8.2010 is applicable to Anganwadi Workers. He submitted that Anganwadi Workers are required to work four hours a day so as to ensure that nutritious food is given to the children studying in Anganwadies. As against this, Asha Workers have to visit the places and take the needy persons to nearby primary health center. The nature of the duties discharged by Asha Workers and Anganwadi Workers are totally different and G.R. dated 5.8.2010 cannot be made applicable to the petitioners.

4. Mr. Mulye relied upon the decision of Apex Court in the case of **State of Karnataka and others v Ameerbi and others, (2007) 11 SCC 681** and in particular paragraph-31. Apex Court held that the posts of Anganwadi Workers are not statutory posts. They have been created in terms of the scheme. It is one thing to say that there exists a relationship of employer and employee by and between the State and Anganwadi Workers but it is another thing to say that they are holders of civil post. Apex Court held that Anganwadi Workers do not carry on any function of the State. They do not hold post under a Statute. Their posts are not created. In short, Apex Court held that they are not holding civil posts.

5. Mr. Muley submitted that Anganwadi Workers are not precluded from contesting election. He also invited our attention to the order dated 4.5.2017 passed by the Division Bench of Nagpur Bench of this Court (Coram:B.R. Gavai & A.S. Chandurkar, JJ.) in Misc. Civil Application No.488/2017 filed in Writ Petition No.2060/2017. By order dated 5.4.2017, the Division Bench dismissed Writ Petition No.2060/2017 following the order dated 6.10.2015 passed by the Division Bench in Writ Petition No.5559/2015. By order dated 4.5.2017, Division Bench recalled order dated 5.4.2017 and restored Writ Petition No.2060/2017 to the file. He, therefore, submitted that Review Petition deserves to be allowed thereby restoring Writ Petition to the file of this Court.

6. We have considered the submissions advanced by Mr. Mulye. We have also perused the material on record. By order dated 5.2.2018, this Court dismissed the Writ Petition. In that case the petitioners challenged the order dated 15.4.2015 passed by the Commissioner, Family Welfare and Director issuing instructions to the Deputy Chief Election Officer to obtain resignations from the Asha Workers engaged on contract basis in the event of their election to the elective office under the local authority. The petitioners contended that holding of office as Asha Workers on contractual basis was not a disqualification as contemplated by Section 14(f) of the Maharashtra Village Panchayat Act, and as such, no such direction can be issued. While issuing the circular, the Commissioner had referred to the

directives issued by the State Government on 5.8.2010. The petitioners contended that those directives relate to Anganwadi Workers who are engaged on the post admissible for honorarium and are paid out of the funds received under the scheme formulated by the Central Government. The directives issued by the State Government on 5.8.2010 are in pursuance of the guidelines issued by the Central Government and those cannot be made applicable in case of Asha Workers. The Division Bench held that the policy that has been adopted by the State Government, while issuing directions on 5.8.2010, can be made applicable in an uniform manner in identical circumstances. The petitioners, in their capacity as Asha Workers are expected to render services in the village and the functions performed by the petitioners as Asha Workers are connected with the schemes and the functions which are required to be implemented by the Village Panchayat. The Division Bench, therefore, held that an elected member of the local authority, while holding the elective office, is not expected to hold any office in respect of which honorarium is payable and the duties to be performed are akin to the responsibilities to be carried out by such local authorities. Even on application of principle of parity, the directives issued by the Commissioner cannot be said to be unreasonable or arbitrary.

7. In paragraph-2 of that order, it was observed that the petitioners are holders of posts in a scheme formulated by the State and are

entitled to receive an honorarium. The engagement of the petitioners as Asha Workers is on contractual basis. They have no right to the posts. The engagement of the petitioners cannot be equated with an employee holding a civil post and as such, the petition invoking the writ jurisdiction under Article 226 of the Constitution of India was not entertainable. It was further observed that in identical circumstances, the Division Bench of this Court, Bench at Nagpur, dealing with Writ Petition No.5559/2015 decided on 6.10.2015 has turned down the challenge to the order which was dependent on the directives issued by the Commissioner on 15.4.2015. The Division Bench accordingly dismissed the Petition summarily.

8. Mr. Muley relied upon the decision of Apex Court in the case of **State of Karnataka vs. Ameerbi** (supra). In that case the only question that was considered was whether Anganwadi Worker holds a civil post so as to be entitled to invoke the jurisdiction of the Administrative Tribunal. In paragraph-20, the Apex Court held that Anganwadi Workers do not carry on any function of the State. They do not hold post under a statute. Their posts are not created. Recruitment rules ordinarily applicable to the employees of the State are not applicable in their case. The State is not required to comply with the constitutional scheme of equality as adumbrated under Articles 14 and 16 of the Constitution of India. No process of selection for the purpose of their appointment within the constitutional scheme exists.

9. In paragraph-31, the Apex Court noted that one of the questions which was raised was in regard to the right of an Anganwadi Worker to contest an election. It was held that they are indisputably free to do so. A holder of a civil post may not be entitled to do so.

10. Ultimately in paragraph-39, the Apex Court held that the Administrative Tribunal had no jurisdiction to entertain the application filed by the respondent purported to be under Section 15 of the Administrative Tribunals Act, 1985 before the Karnataka State Administrative Tribunal. In our opinion, said decision is not applicable to the present case as the controversy involved is materially different.

11. Mr. Mulye relied upon order dated 4.5.2017 passed by the Division Bench of this Court at Nagpur. By that order, the Division Bench recalled the order dated 5.4.2017 and restored Writ Petition No.2060/2017. A perusal of order dated 5.4.2017 shows that the Division Bench solely relied upon the order dated 6.10.2015 passed in Writ Petition No.5559/2015. In the order dated 5.2.2018, the Division Bench gave independent reasons as is evident from paragraph-1 of that order.

12. After considering the material on record, we do not find that the petitioners have made out any case for review of the order dated 5.2.2018. In the case of **Kamlesh Verma Vs. Mayawati, AIR 2013 SC 3301**, the Apex Court held that the jurisdiction and scope of review is not

that of an appeal and it can be entertained only if there is an error apparent on the face of the record. An error which is not self-evident and has to be detected by a process of reasoning can hardly be said to be an error apparent on the face of the record justifying the Court to exercise its power of review. A review is by no means an appeal in disguise whereby an erroneous decision is re-heard and corrected, but lies only for patent error. Error contemplated under the rule must be such which is apparent on the face of the record and not an error which has to be fished out and searched. It must be an error of inadvertence. The power of review can be exercised for correction of a mistake but not to substitute a view.

13. Hence, Review Petition fails and the same is dismissed. In view of dismissal of Review Petition, Civil Application No.198/2018 for stay does not survive and same to accordingly stand disposed of. Order accordingly.

[R. G. KETKAR, J.]

[R.M. SAVANT, J.]

Deshmane (PS)

Pradipkumar
Prakashrao
Deshmane

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by Pradipkumar
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