

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**BENCH AT AURANGABAD****REVIEW APPLICATION NO. 127 OF 2019**

IN

WRIT PETITION NO. 2581 OF 2005

Asaram S/o Muktaji Shikare,
since deceased through his L.Rs.

1. Vimal W/o Asaram Shikare,
Age : 70 Years, Occu : Household,
 2. Dnyandeo S/o Asaram Shikare,
Age : 51 Years, Occu. Agriculture,
 3. Sanjay S/o Asaram Shikare,
Age : 42 Years, Occu Agriculture
All R/o. Umbre, Tq. Rahuri,
District Ahmednagar
- ... APPLICANTS

VERSUS

1. The State of Maharashtra
Through the Secretary,
Rural Development Department,
Mantralaya, Mumbai – 32
 2. The Chief Executive Officer,
Zilla Parishad, Ahmednagar
 3. The Education Officer (Primary),
Zilla Parishad Ahmednagar
 4. The Block Education Officer,
Panchayat Samiti Akole,
Tq. Akole, Dist. Ahmednagar
- ..RESPONDENTS

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Advocate for the Applicants : Mr. A.S. Shelke
A.PP for respondent-State : R.D. Sanap

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**CORAM :T.V. NALAWADE AND
V. L. ACHLIYA ,JJ.**
DATE : 30th JULY, 2019.

ORDER

1. The application is filed for review of the decision given by this Court in Writ Petition No. 2581 of 2005. The petition was filed by present applicants, legal heirs of deceased Asharam Shikare, for giving direction to respondent Zilla Parishad Ahmednagar to see that the period from 09.03.1988 to 31.03.2002 is counted for pension purpose and other allowances purpose. This Court dismissed the petition, after considering the relevant rules of the Zilla Parishad.

2. Learned counsel for the applicants submitted that in the case reported as **2002 (3) Mh.L. Page 390** (**Baban Shriram Wafare Vs. Zilla Parishad Ahmednagar and others**), in similar circumstances this Court had given direction to see that there was reinstatement in service with continuity and other consequential benefits including pay and its fixation by presuming that there was no such case registered and decided against the employee. Accordingly the pension benefit was ordered by this Court. In that case also there was conviction and then he was acquitted on 29.01.1987. There was suspension order and the said period was treated as leave period, by order the suspension period was up to the period of dismissal from the service, which was issued after the conviction. Reliance was also placed on the observations made by the Apex Court in another case reported as **1968 AIR 9SC0 800** : (**Balvantrai Ratilal Patel Vs. State of Maharashtra**).

3. This Court considered every aspect of the matter including the claim made before the employer by the deceased after taking the decision of acquittal. He has submitted that the period from 09.03.1988 to 31.03.2002 should be treated as period of suspension and he had prayed for giving approval for payment of subsistence allowance only in respect of said period. Accordingly order was made and the period was treated as suspension period for the purpose of giving subsistence allowance. However, the authority refused to treat the said period as qualifying service period for the purpose of pensionary benefit. This Court considered the rules of the Zilla Parishad mainly with regard to qualifying service for the purpose of pension, as argument was advanced mainly on the basis of those Rules of 1964. The case of Balvantrai Ratilal Patel (supra) was cited before this Court and this Court considered that case. The case of Baban Shriram Wafare Vs. Zilla Parishad, Ahmednagar was also cited before this Court and this case was also considered by this Court. The petitioner had admitted the commission of the offence and that is why he was convicted and due to order of conviction he was dismissed from service. This Court interpreted Rule 72 of the Rules of 1981 and held that the employer had the power, discretion to treat the said period, as period spent on duty or not spent on duty and whether to pay the allowance in respect of that period or not to pay the allowance. This Court consider Rule 72 and has observed that by mistake Rule 70 of the Rules of 1981 was mentioned by the Zilla Parishad in the order.

Thus, all the challenges were considered by this Court and the Writ Petition was dismissed.

4. Learned counsel for the Zilla Parishad placed reliance on some observations made by the Apex Court in the case in **Review Petition Criminal No. 453 of 2012 in Writ Petition (Cri.) 135 of 2008** decided with other matter on 08.08.2013 (*Kamlesh Verma Vs. Mayawati and others*). Though it was a criminal matter the Apex Court has considered the law laid down from civil side also. The Apex Court has given the categories of cases in which review will be maintainable and in which case review will not be maintainable. In para No. 16(B) the categories in which review petition are not maintainable are given and they are as under :-

"16(B) When the review will not be maintainable :

- (i) A repetition of old and overruled argument is not enough to reopen concluded adjudications.
- (ii) Minor mistakes of inconsequential import.
- (iii) Review proceedings cannot be equated with the original hearing of the case.
- (iv) Review is not maintainable unless the material error, manifest on the fact of the order, undermines its soundness or results in miscarriage of justice.

(v) A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected but lies only for patent error.

(vi) The mere possibility of two views on the subject cannot be a ground for review.

(vii) The error apparent on the face of the record should not be an error which has to be fished out and searched.

(viii) The appreciation of evidence on record is fully within the domain of the appellate court, it cannot be permitted to be advanced in the review petition.

(ix) Review is not maintainable when the same relief sought at the time of arguing the main matter had been negatived. "

5. In the present proceeding this Court has considered every challenge against the impugned order made by the Zilla Parishad and case law cited was also considered by this Court. The decision is given after considering all the challenges and so allowing the review application will amount to give totally different Judgment as original Judgment. This Court holds that the relief claimed is not within the scope of review. In the result, the application stands dismissed.

[V. L. ACHLIYA]
JUDGE

[T.V. NALAWADE]
JUDGE