

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

**CIVIL APPLICATION NO.9675 OF 2019
WITH REVIEW APPLICATION (ST.) NO. 20517 OF 2019
IN WP/6064/2014**

**NIKHIL SANTOSH CHAUDHARI
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS**

...
Advocate for Applicant : Mr. Anil S. Bajaj
AGP for Respondent Nos. 1 & 2 : Mrs. V. N. Patil Jadhav
Advocate for Respondent No.3 : Mr. P. Katneshwarkar
...

**CORAM : S. V. GANGAPURWALA AND
R. N. LADDHA, JJ.**

DATE : 03rd SEPTEMBER, 2021

PER COURT :

Civil Application No.9675 of 2019 :-

1. Heard learned counsel for applicant, learned AGP and the learned counsel for respondent No.3.
2. For the reasons stated in the application, application for condonation of delay is allowed.
3. Civil Application is disposed of.

Review Application (St.) No.20517 of 2019 :-

4. The applicant claims review of the order dated 05-09-2018 passed in Writ Petition No.6064 of 2014. The present applicant had filed original application before the Maharashtra Administrative Tribunal for operating the wait list. The tribunal

dismissed the original application filed by the petitioner. Aggrieved thereby, the petitioner filed writ petition bearing Writ Petition No.6064 of 2014. Under order dated 05-09-2018, the writ petition is allowed on the following terms :-

"I. The order passed by the tribunal is set aside.

II. Respondent Nos. 1 and 2 shall consider the petitioner and respondent No.3 for appointment to the post of Measurer from the OBC category as the persons from the OBC Ex-serviceman and OBC part time are not available, pursuant to the said advertisement. Same shall be considered within a period of four weeks.

III. The writ petition is, accordingly, allowed. No costs."

5. The present review application is filed on the premise that respondent No.3 had not applied to the department for considering his case from the wait list. The wait list can be operated only for one year. The petitioner had approached the Tribunal well within a period of one year and respondent No.3 had not approached the Tribunal within a period of one year. His case could not have been considered, as such the operative part of the order whereby it is directed that respondent Nos. 1 and 2 shall consider petitioner and respondent No.3 for the appointment to the post of Measurer from the OBC category, as the persons from the OBC Ex-serviceman and OBC part time are not available, be

reviewed.

6. Mr. Bajaj, learned counsel, submits that this Court would not have directed that respondent No.3 should be considered, because respondent No.3 had not approached the Court within a period of one year. The wait list lapses after one year. The selection process is of the year 2012 and respondent No.3 approached the Court in the year 2015. This aspect needs to be considered. The learned counsel for petitioner relies upon the judgment of the Allahabad High Court in case of *Manoj Kumar Pandey Vs. State of U.P. and another* reported in *(2007) 2 All.L.J. 692*.

7. According to the learned counsel for respondent No.3, respondent No.3 was a party to the original application before this Court. Also, the original petitioner misrepresented the Court. Respondent No.3 has not given no-objection for appointing the original petitioner. However, the petitioner played a fraud upon the Court and respondent No.3. Respondent No.3 has 109 marks and the petitioner has only 108 marks. The matter was before the Tribunal wherein the present respondent No.3 was also a party.

8. We have considered the submissions canvassed by the learned counsel for the parties.

9. On merits, respondent No.3 is more meritorious than

the petitioner. The review cannot be dealt with as an appeal in disguise. The scope of review is in narrow campus.

10. We have, under judgment and order dated 05-09-2018, decided the matter on merits, after the same was remitted by the Hon'ble Apex Court. It is not disputed that respondent No.3 is a party to the litigation since the inception. Respondent No.3 is also entitled to put forth his case, being a party in the original application and before this Court. The petitioner is also a wait listed candidate. Under the order of which review is sought, we have not directed to give appointment to the candidates, but have given directions to respondent Nos. 1 and 2 to consider the petitioner and respondent No.3 for appointment. The eligibility would be considered by respondent Nos. 1 and 2. Admittedly, respondent No.3 is more meritorious than the petitioner.

11. In the case of *Manoj Kumar Pandey* (supra) referred to by the learned counsel for petitioner, the wait listed candidate had approached the Court after the lapse of the operation of the wait list and had sought directions for appointment. In the present case, in the original application filed by the petitioner before the Tribunal, respondent No.3 was already a party in the proceedings and naturally the Tribunal would be required to consider the case

put forth by the petitioner and respondent No.3 also. In view of that the judgment relied upon by the learned counsel for petitioner would not be applicable to the present case.

12. In the light of the above, review application is rejected and disposed of.

(R. N. LADDHA, J.)

(S. V. GANGAPURWALA, J.)

SVH