

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

REVIEW APPLICATION (CIVIL) NO. 172 OF 2022
IN
WRIT PETITION NO. 4869 OF 2020

Dr. Mrs. Asha Dagdu Akolkar,
Age; 40 years, Occ: Service,
R/o Sharadchandra Mahavidyalaya,
Shiradhon, Tq. Kallam, Dist. Osmanabad

...Original
Petitioner/Applicant

Versus

1. Hindustan Education Society,
Ausa, Tq. Ausa, Dist. Latur
Through its Secretary,
2. Sharadchandra Mahavidyalaya,
Shiradhon, Tq. Kallam, Dist. Osmanabad,
Through its Principal
3. Dr. Babasaheb Ambedkar Marathwada
University, Aurangabad
Through its Registrar
4. The Joint Director,
Higher Education, Aurangabad
Division, Aurangabad.
5. Bharat s/o Madhukarrao Nalge,
Age 31 years, Occu : Service,
R/o Ausa, Tq. Ausa, Dist. Latur.

...Original
Respondents/Respondents

Mr R.R. Deshpande, advocate h/f Ms. Priyanka R. Deshpande, Advocate
for the applicant

Mr M.C. Syed, Advocate for Respondent Nos. 1 and 2

Mr K.M. Suryawanshi, Advocate for Respondent No. 3

Mr G.O. Wattamer, AGP for respondent No. 4/State

Mr Rajendra S. Deshmukh, Senior Counsel i/by Mr R.B. Dhaware,
advocate for respondent No.5

WITH

REVIEW APPLICATION (CIVIL) NO. 219 OF 2022
IN
WRIT PETITION NO. 1574 OF 2021

1. Hindustani Education Society,
Afsar Nagar, Ausa, Tq. Ausa, Dist. Latur
Through its Secretary,
 2. Sharad Chandra Mahavidyalaya,
Shiradhon, Tq. Kalamb, Dist. Osmanabad,
Through its Principal
- ...Applicants

Versus

1. Bharat S/o Madhukarrao Nalge
Age : 38 yrs., Occu : Service (at present Nil)
R/o. Ausa, Tq. Ausa, Dist. Latur.
 2. Dr. Babasaheb Ambedkar Marathwada
University, University Campus, Aurangabad
Through its Registrar
 3. The Joint Director,
Higher Education, Aurangabad
Division, Aurangabad
 4. Dr. Mrs. Asha Dagdu Akolkar
Age : 40 yrs., Occu: Service
In Sharad Chandra Mahavidyalaya,
Shiradhon, Tq. Kalamb, Dist. Osmanabad
- ...Respondents

Mr M.C. Syed, Advocate for Applicants
Mr Rajendra S. Deshmukh, Senior Counsel for respondent No.1
Mr K.M. Suryawanshi, Advocate for Respondent No. 2
Mr G.O. Wattamer, AGP for respondent No. 3/State
Mr R.R. Deshpande, Advocate for Respondent No. 4

CORAM : SHRIKANT D. KULKARNI, J.
RESERVED ON : 02.08.2022
PRONOUNCED ON : 17.08.2022

PER COURT :

1. These review applications are born out of Writ Petition
No. 4869/2020 and Writ Petition No. 1574/2021, which were disposed of
by common judgment and order dated 04.05.2022 at the hands of this
Court.

2. Writ Petition No. 4869/2020 filed by the petitioner/Dr Mrs Asha Dagdu Akolkar and Writ Petition No. 1574/2021 filed by the petitioners/Hindustan Education Society and Another came to be dismissed.

3. In the above premise, the respective petitioners/applicants have preferred these two review applications and those are being disposed of by common order.

4. Heard Mr R.R. Deshpande, learned counsel for the applicant/Dr Mrs Asha Dagdu Akolkar, Mr M.C. Syed, learned counsel for the applicants/Hindustan Education Society and another, Mr G.O. Wattamwar, learned AGP for the State, Mr Rajendra R. Deshmukh, learned senior counsel for Bharat Madhukarrao Nalge and Mr K.M. Suryawanshi, learned counsel for Dr. Babasaheb Ambedkar Marathwada University, Aurangabad.

**SUBMISSIONS OF MR R.R. DESHPANDE,
LEARNED COUNSEL FOR THE APPLICANT IN
REVIEW APPLICATION (CIVIL) NO. 172/2022 (DR
MRS ASHA DAGDU AKOLKAR)**

5. Mr R.R. Deshpande, learned counsel submitted that this review application is well maintainable since certain facts and documents were not placed before this Court. Certain documents were brought to the notice of this Court during the course of argument. But those were not considered by this Court in a proper way. There is an apparent error on the face of the record. The approval granted to Mr Bharat s/o Madhukarrao Nalge came to be cancelled subsequently by the competent authority. The same has been relied upon by this Court while deciding the petitions. He submitted

that Dr Mrs Asha Akolkar was appointed on the establishment of Sharadchandra Mahavidyalaya, Shiradhon way back on 16.08.2002 on the post of Lecturer for the subject of Public Administration which is being run by Hindustan Education Society. She is continuously working in the said College from the date of her joining on 19.08.2002 without any break. The University has also granted approval to the services of Dr Mrs Asha Akolkar. This fact was not considered by this Court. He submitted that Dr Mrs Asha Akolkar was having Post-Graduation Degree in M.A. though she was not possessing required qualification of NET/SET. However, she had obtained degree of M.Phil in the month of February, 2008 in the concerned subject. As such, she was entitled to get permanency in the service and that aspect is not considered by this Court even though there are series of decisions.

6. Mr Deshpande, learned counsel has relied upon the decision in case of ***Madhuri Deshmukh Vs. The State of Maharashtra, Writ Petition No. 1213/2009 dated 24.02.2017*** and submitted that the case of applicant is squarely covered by the said decision. He submitted that at the relevant point of time, Dr Mrs Asha Akolkar was possessing M.Phil degree and as per the U.G.C. guidelines, it was requisite qualification and that aspect is not considered by this Court. Mr Deshpande, learned counsel invited my attention to the grounds raised in the review application (I to XIII) and vehemently submitted that the judgment and order passed by this Court in Writ Petition No. 4869/2020 may be reviewed in view of above meritorious grounds raised by the applicant.

**SUBMISSIONS OF MR M.C.SYED, LEARNED COUNSEL
FOR THE APPLICANTS/HINDUSTAN EDUCATION
SOCIETY AND ANR. IN WRIT PETITION NO. 1574/2021.**

7. Mr M.C. Syed, learned counsel for the applicants submitted that this Court has not considered various provisions of law while rendering the decision. This Court has also not considered various record which resulted in erroneous result. He submitted that the aspect of jurisdiction of the University Tribunal is not considered properly by this Court. He submitted that in the instant case, Bharat Nalge was not terminated orally from the service. He is in service and only converted his service to the clock hour basis which does not mean oral termination. This fact is not considered by this Court. He therefore, urged to allow the review application filed by the applicants.

**SUBMISSIONS OF MR RAJENDRA R. DESHMUKH,
LEARNED SENIOR COUNSEL FOR BHARAT
MADHUKARRAO NALGE.**

8. Mr Rajendra R. Deshmukh, learned senior counsel submitted that scope of review is very limited in view of Order 47 Rule 1 of C.P.C. The applicants are trying to make out new grounds which are not permissible under review. This Court has considered all the contentions raised by the respective applicants and turned down the same. This Court after taking into consideration the pleadings of the respective parties, documents on record and considering the submissions of respective sides, was pleased to dismiss both the petitions. This Court has confirmed the order passed by the University Tribunal. He invited my attention to the common judgment delivered by this Court dated 04.05.2022 and submitted that all the aspects have been dealt with by this Court. No case is made out for review.

SUBMISSIONS OF MR K.M. SURYAWANSHI, LEARNED COUNSEL FOR RESPONDENT/DR. BABASAHEB AMBEDKAR MARATHWADA UNIVERSITY.

9. Mr K.M.Suryawanshi, learned counsel for respondent No. 3/Dr. Babasaheb Ambedkar Marathwada University argued on similar lines. He submitted that Dr Mrs Asha Akolkar was not possessing requisite qualification of NET/SET at the relevant point of time. On the other hand, Mr Bharat Nalge was possessing NET/SET qualification. He was selected after conducting the interview by the Selection Committee. He was appointed by following due procedure. His services were approved by the University. After completion of two years probation, he has become permanent on the said vacant post. These aspects have been considered by this Court. No merit in the review applications.

SUBMISSIONS OF MR G.O. WATTAMWAR, LEARNED AGP FOR STATE.

10. Mr G.O. Wattamwar, learned AGP for the State argued on similar lines.

11. I have considered the submissions of learned counsel for the respective parties. Perused the grounds for review made in the review applications filed by the respective applicants.

12. The scope of review under Order 47 Rule 1 of CPC read with section 114 is limited and under the guise of review, the applicants cannot be permitted to reagitate and reargue questions which have already been addressed and decided. Further, under Order 47 Rule 1, a judgment may

be open to review *inter alia* if there is a mistake or an error apparent on face of record.

13. In ***Meera Bhanja Vs. Nirmala Kumari Choudhary*** reported in ***AIR 1995 SC 455***, it is held by the Hon'ble Supreme Court as under :-

"8. It is well-settled that the review proceedings are not by way of an appeal and have to be strictly confined to the scope and ambit of Order 47 Rule 1 CPC. In connection with the limitation of the powers of the court under Order 47 Rule 1, while dealing with similar jurisdiction available to the High Court while seeking to review the orders under Article 226 of the Constitution, this Court, in Aribam Tuleshwar Sharma v. Aribam Pishak Sharma, (1979) 4 SCC 389: (AIR 1979 SC 1047) speaking through Chinnappa Reddy, J. has made the following pertinent observations:

"It is true there is nothing in Article 226 of the Constitution to preclude the High Court from exercising the power of review which inheres in every court of plenary jurisdiction to prevent miscarriage of justice or to correct grave and palpable errors committed by it. But, there are definitive limits to the exercise of the power of review. The power of review may be exercised on the discovery of new and important matter or evidence which, after the exercise of due diligence was not within the knowledge of the person seeking the review or could not be produced by him at the time when the order was made; it may be exercised where some mistake or error apparent on the face of the record is found, it may also be exercised on any analogous ground. But, it may not be exercised on the ground that the decision was erroneous on merits. That would be the province of a court of appeal. A power of review is not to be confused with appellate power which may enable an appellate court to correct all manner of errors committed by the subordinate court."

15. A perusal of Order 47 Rule 1 shows that review of a judgment or an order could be sought: (a) from the discovery of new and important matters or evidence which after the exercise of due diligence was not within the knowledge of the applicant; (b) such important matter or evidence could not be produced by the applicant

at the time when the decree was passed or order made; and (c) on account of some mistake or error apparent on the face of the record or any other sufficient reason."

14. Having regard to the above legal position made clear by the Apex Court, let me examine whether the applicants have made out the case for review in the background of grounds raised in their respective review applications.

15. On careful study of those grounds, it would reveal that the applicants intend to project their new case by taking help of new material which they had collected. The applicants have raised the grounds like in an appeal. While making review application, it is not permissible. It is settled law that every error whether factual or legal cannot be made subject matter of review under Order 47 Rule 1 of the Code though it can be made subject matter of appeal arising out of such order. In other words, to attract the provisions Order 47 Rule 1 of the Code, the error/mistake must be apparent on the face of the record of the case.

16. Mr R.R. Deshpande, learned counsel has placed reliance in case of ***Shivdeo Singh Vs. State of Punjab and others*** reported in ***AIR 1963 SC 1909*** on the point of review. The Apex Court in the said decision has held that there is nothing in Article 226 of the Constitution to preclude a High Court from exercising the power of review which inheres in every court of plenary jurisdiction to prevent miscarriage of justice or to correct grave and palpable errors committed by it. As such, review filed by the respective applicants is rightly maintainable, but the scope is very limited.

17. It may not be out of place to mention here that Dr Mrs Asha Akolkar and Mr Bharat Nalge were fighting for the permanent post of Assistant Professor in the Sharadchandra Mahavidyalaya run by Hindustan Education Society. It is an admitted position that in the year 2008, Dr Mrs Asha Akolkar was not possessing requisite qualification of NET/SET. Mr Bharat Nalge was having requisite qualification of NET/SET in the year 2018 as per the UGC guidelines. The education institute after conducting the interview and by completing procedural formalities, appointed Mr Bharat Nalge on the post of Assistant Professor to teach the subject of Public Administration. The University has granted approval to the appointment of Mr Bharat Nalge. It is now pointed out that said approval has been withdrawn by the University. It might be because of education institution, who played the politics in the appointment. Mr Bharat Nalge has completed probation of two years and has become permanent on the post of Assistant Professor. The education institute has converted the services of Mr Bharat Nalge and Dr Mrs Asha Akolkar as well into clock hour basis. That dispute reached to the corridors of University and College Tribunal, Aurangabad, by way of an appeal by Mr Bharat Nalge.

18. Following was the question for adjudication before the College and University Tribunal, Aurangabad.

Whether changing the status of Mr Bharat Nalge from Assistant Professor on permanent basis to clock hour basis amounts to termination of his service or amounts to reduction in rank.

19. The University and College Tribunal was pleased to allow that appeal. The judgment and order passed by the University Tribunal was

challenged before this Court by Dr Mrs Asha Akolkar and education institution by way of two different writ petitions. This Court has upheld the findings recorded by the University Tribunal. It is held by this Court that Mr Bharat Nalge has become permanent after completion of his two years probation and thus acquired confirmation on the said post. He cannot be displaced or disturbed from the said post without following due procedure as provided under the University Act and Regulations/Rules. This Court has held that Dr Mrs Asha Akolkar was not having requisite qualification for the vacant post of permanent Lecturer/Assistant Professor to teach subject of Public Administration at the relevant point of time. This Court has held after considering the facts of the case, documents on record and the provisions of law that putting Mr Bharat Nalge on clock hour basis amounts to illegal termination by recording reasons and also discussing various citations relied upon by the respective sides. Now, the respective applicants have attempted to challenge the decision rendered by this Court by way of review by raising various new grounds and placing on record new material. Mr Deshpande, learned counsel has also referred various citations in support of his argument. As pointed out earlier, the scope of review is very limited. The learned counsel for the respective applicants failed to point out that there is apparent error on the face of the record or some grave mistake is committed by this Court while rendering the decision by common judgment.

20. Under Order 47 Rule 1 of CPC, a judgment may be open to review inter alia if there is a mistake or an error apparent on the face of the record. An error which is a 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 under Order 47 Rule 1 of CPC. In exercise of the jurisdiction under Order 47 Rule 1 of CPC, it is not permissible for erroneous decision to be reheard and corrected. A review petition, it must be remembered has a limited purpose and cannot be allowed to be “an appeal in disguise” (***Parsion Devi Vs. Sumitri Devi***) (1997) 8 SCC 715.

21. It is nothing but an attempt made by respective applicants to challenge the decision rendered by this Court like an appeal by raising various new grounds which is not permissible. The proper remedy would be an appeal.

22. Having regard to the above legal position, I am unable to accept the arguments advanced by Mr R.R. Deshpande, learned counsel and Mr M.C. Syed, learned counsel for the respective applicants. This Court has dealt with all the contentions raised by the respective applicants. There is no apparent error/mistake on the face of record while delivering common decision in above referred two writ petitions. No case is made out for review.

ORDER

Review Application (Civil) No. 172 of 2022 in Writ Petition No.4869 of 2020 and Review Application (Civil) No. 219 of 2022 in Writ Petition No. 1574 of 2021 filed by the respective applicants stand dismissed.

[SHRIKANT D. KULKARNI, J.]