

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH : NAGPUR.

MISC. CIVIL APPLICATION NO. 210 OF 2020 (FOR REVIEW) IN
WRIT PETITION NO.3934 of 2008(d)

Shyamrao Mulchand Kahalkar

vs.

State of Maharashtra through its Secretary, Department of Agriculture, Animal Husbandry,
Dairy Development and Fisheries and anr.

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Shri R. M. Sharma, Advocate for applicant.

Ms N. P. Mehta, Assistant Government Pleader for non-applicant nos.1 and 2.

CORAM :- A.S.CHANDURKAR AND URMILA JOSHI-PHALKE, JJ.

DATE :- AUGUST 11, 2022

Admit.

Heard finally with the consent of the learned counsel for
the parties.

The present applicant who was working as Helper on daily wages at Tumsar Chilling Centre under Government Milk Scheme, Gondia approached the Maharashtra Administrative Tribunal (for short, the Tribunal) vide Original Application No. 344/2003 seeking the relief of regularisation of his services. The Tribunal allowed the Original Application and directed grant of benefit to the applicant in view of the decision of the Hon'ble Supreme Court in Appeal No.3070/1999 (*State of Maharashtra vs. R. S. Khurana*) decided on 24.07.2001. Review Application preferred by the Department came to be dismissed on 07.01.2008. Being aggrieved the State Government filed Writ Petition No.3934/2008 in this Court.

The Division Bench vide judgment dated 13.04.2009 noted that the issue was covered by the judgment of this Court in *State of Maharashtra and anr. vs. Pandurang Sitaram Jadhav [2008 CLR 151]*. On that ground, the writ petition was allowed and the order passed by the Tribunal came to be set aside.

According to the applicant, the judgment of this Court in *Pandurang Sitaram Jadhav* (supra) had been challenged before the Hon'ble Supreme Court by filing Civil Appeal Nos. 10064-10075/2010 and on 25.05.2019 the civil appeal preferred by the said appellant was allowed. Consequently, the order passed by the Division Bench in *Pandurang Sitaram Jadhav* (supra) has been set aside. It is on that basis that the present review application has been filed.

It is submitted by the learned counsel for the applicant that since the judgment on the basis of which the writ petition preferred by the State of Maharashtra was allowed on 13.04.2009 has now been set aside, the prayers made in Writ Petition No.3934/2008 deserve re-consideration. It is submitted that similarly placed applicants have been granted benefit of regularisation and continuity in view of the judgment of the Hon'ble Supreme Court dated 25.05.2019. The judgment dated 13.04.2009 in Writ Petition No.3934/2008 therefore deserves to be recalled.

The learned Assistant Government Pleader for the non-applicants opposed the aforesaid submissions. It is submitted that the review application has been preferred only after the decision of the Hon'ble Supreme Court. Similarly, the relief has been granted only to those parties who had approached the Hon'ble Supreme Court. Since the applicant did not file any further proceedings, he would not be entitled to any relief.

At this stage, we are not concerned with the merits of the claim made in the writ petition. The short ground on which recall of the order is sought is that the judgment in *Pandurng Sitaram Jadhav* (supra) of this Court has been set aside by the Hon'ble Supreme Court. Since that was the only ground for allowing the writ petition and as the entire basis of the said judgment of this Court dated 13.04.2009 has been set aside, we find that Writ Petition No.3934/2008 requires re-consideration on its own merits.

Hence for that reason the order dated 13.04.2009 in Writ Petition No.3934/2008 is recalled and the writ petition is restored for re-consideration. All points raised in the writ petition shall be considered when the proceedings are taken up for consideration.

Miscellaneous Civil Application(Review) No.210 of 2020 is allowed in aforesaid terms. No costs.

Writ Petition No.3934/2008

The original petitioners shall re-construct the record of the writ petition.

Shri R.M.Sharma, Advocate waives notice for the respondent.

The parties are at liberty to file additional affidavits in support of their contentions.

Put up for hearing in the week commencing from 05.09.2022.

(URMILA JOSHI-PHALKE, J.)

(A.S.CHANDURKAR, J.)

Andurkar..