

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

MCA NO. 202 OF 2022 (For Review)
IN
WRIT PETITION NO. 484 OF 2017

Vinod Ashokrao Chondikar

...VERSUS...

The Collector & Chairman, District Selection Committee, Chandrapur and
others

*Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders.*

Court's or Judge's order

Shri. S.A. Dutonde, Advocate for Applicant/Petitioner
Ms. N.P. Mehta, A.G.P., for Respondent nos. 1 and 5.
Shri Sukrut S. Sohani, Advocate, h/f. Shri S.V. Sohani, Advocate for
Respondent nos. 2, 3 and 6.
Shri N.R. Raut, Advocate, h/f. Shri N.B. Kalwaghe, Advocate for
Respondent no. 4

CORAM : SUNIL B. SHUKRE AND
SMT. M. S. JAWALKAR, JJ.

DATE : 21st APRIL, 2022.

Heard Ms. N.P. Mehta, learned Assistant Government Pleader appearing for respondent nos. 1 and 5, Shri Sukrut S. Sohani, Advocate, holding for Shri S.V. Sohani, learned counsel appearing for Respondent nos. 2, 3 and 6 and Shri N.R. Raut, Advocate, holding for Shri N.B. Kalwaghe, learned counsel appearing for Respondent no. 4.

2. Reply may be filed by the respondents on or before next week.

3. The learned counsel appearing for the applicant submits that sub-Rule (1) of Rule 5 of the Maharashtra Zilla Parishads District Services (Recruitment) Rules, 1967 (In short, "Rules of 1967") provides that the upper age limit prescribed for an appointment to the posts in the District Services under the relevant recruitment rules shall be relaxable by five years in respect of candidates belonging to Backward Classes.

4. The learned counsel submits that the proviso cannot be read as conferring power upon the authority to relax the age of the backward class candidates when the backward class candidate claims appointment in an open category. He further submits that such relaxation is permissible only when the appointment to the posts which are mentioned in and that too when sufficient candidates are not available for filling up those particular posts.

5. On going through the judgment dated 05/03/2019 of which review has been sought in this petition, we find that these submissions have been generally considered by this Court and, therefore, now it would not be permissible for this Court to reconsider the same and if that is done, it would amount to sitting in an appeal over the judgment delivered by this Court which is not permissible in law.

6. The learned counsel for the applicant submits that the reliance has been placed on the

judgment under review on the case of *Jitendra Kumar Singh and Anr. V/s. State of Uttar Pradesh and Ors.*, 2010 (3) SCC 119, but, he submits that it was not pointed out by the arguing counsel for the petitioner then that the judgment of Jitendra Kumar Singh (*supra*) was overruled in the case of *Nirav Kumar Dilipbhai Makwana Vs. Gujarat Public Service commission and Ors.*, Civil Appeal No. 5185 of 2019 (arising out of S.L.P. (Civil) No. 3938 of 2018) decided on 04/07/2019.

7. The judgment in the case of *Nirav Kumar Dilipbhai Makwana (supra)* came as a subsequent event. The judgment in the present case was delivered on 04/07/2019 and whereas, the judgment under review was delivered on 05/03/2019.

8. Even if we consider the judgment of *Nirav Kumar Dilipbhai Makwana (supra)*, which has appeared on the legal front as a subsequent development, still, we do not think that it would have any such impact on the judgment under review as to compel this court to reconsider and review the judgment. In *Nirav Kumar Dilipbhai Makwana (supra)*'s case what the Apex Court has held is of non-applicability of the principle laid down in the case of *Jitendra Kumar Singh (supra)* to the facts of the case of *Nirav Kumar Dilipbhai Makwana (supra)*, and the Apex Court has not observed that *Jitendra Kumar Singh (supra)*'s case does not lay down a correct proposition of law. This is evident from the observations made in the paragraph 28 of the judgment of the Apex Court which are reproduced as follows:

“On consideration of sub-section (3) of Section 6 of the 1994 Act and the Instructions dated 25/03/1994, this Court held that grant of age relaxation to a reserved category candidate does not militate against him as general category candidate if he has obtained more marks than any general category candidates. This judgment was based on the statutory interpretation of 1994 Act and the instructions dated 25/03/1994 which is entirely different from the statutory scheme under consideration in the instant appeal. Hence, the principle laid down in Jitendra Kumar Singh (Supra) has no application to the facts of the present case.”

9. It would be clear from the above referred observations that the Hon’ble Supreme Court has only found the ratio of case of *Jitendra Kumar Singh (supra)* as not applicable to the case of *Nirav Kumar Dilipbhai Makwana (supra)* and nothing more. Whereas, in the present case, this Court has found that in a fact situation of this particular case, the principle of *Jitendra Kumar Singh’s (supra)* case would be applicable.

10. Apart from what is stated above, we must make it clear that the Hon’ble Supreme Court has dismissed the special review petition for special leave to appeal filed by the petitioner against the judgment under review by its order passed on 04/07/2019 thereby

effectively scaling the fate of the petitioner. Such dismissal of the special leave petition by the Hon'ble Supreme Court has resulted into the judgment of this Court dated 05/03/2019 attaining finality.

11. In view of above, we find no merit in the application. The application stands dismissed.

(Smt. M.S. Jawalkar, J.)

(Sunil B. Shukre, J.)