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

**MISC. CIVIL APPLICATION NO.639 OF 2022 (FOR REVIEW)
IN
WRIT PETITION NO.884 OF 2022**

Pundlik s/o Dadaji Pipare,
Aged about 60 years,
Occupation : Retired, r/o flat No.001,
Nirmiti Heights Aishwari Society,
Beltarodi Road, Nagpur-27. **Applicant.**

:: V E R S U S ::

1. State of Maharashtra,
Through it's Secretary,
Water Resources Department,
Mantralaya, Mumbai-32.

2. Chief Engineer,
Water Resources Department,
First Floor, Sinchan Seva
Bhavan, Civil Lines, Nagpur-01. **Non-applicants.**

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Shri M.V.Samarth, Senior Counsel with Shri C.M.Samarth, Counsel
for the Applicant.

Mrs.S.S.Jachak, Assistant Government Pleader for Non-applicants.

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

DATE : OCTOBER 21, 2022.

ORAL JUDGMENT (Per : Urmila Joshi-Phalke, J.)

1. The present application has been filed by the respondent in Writ Petition No.884/2022 for review of certain observations in the judgment passed by this Court in the said writ petition on 22.8.2022. The present application for review is filed on the ground that this Court has passed judgment and order in the

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said writ petition and allowed the petition of non-applicants i.e. original petitioners and quashed and set aside order passed by the Maharashtra Administrative Tribunal at Nagpur in Original Application No.324/2020. The grievance in the said writ petition was regarding extending second benefit of Assured Career Progression Scheme (hereinafter referred to as 'ACPS' in short) and the benefit of the same was wrongly given to the applicant. It is contention of the applicant that non-applicant No.2 issued communication dated 3.6.2020 to non-applicant No.1 thereby seeking guidance from non-applicant No.1 in regard to counting of 12 years to grant the second benefits of ACPS. The said communication was challenged by the applicant by filing Original Application No.324/2020 before the Maharashtra Administrative Tribunal at Nagpur. The said original application was allowed by the Tribunal. The order passed by the Tribunal was challenged before this Court by non-applicants by filing Writ Petition No.884/2022. This Court, while passing judgment and order, had observed in paragraph No.20 that after promotion as Junior Engineer, the applicant received second benefit under the ACPS within seven years for which he was not entitled. This Court further observed in paragraph No.21 that as the ACPS Clause (2) specifically states that the benefit of the said Scheme would be given to the employees who had completed 12 years of continuous service on the said post,

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the case of the petitioners did not cover under the same, therefore, contention of the petitioners that respondent had received the second benefit erroneously is sustainable. The applicant would not be entitled for the second benefit from 01.10.2006 as on that day he had completed only seven years of service. He would be entitled for the said benefit after completing 12 years of service as a 'Junior Engineer' and on upgraded post as a 'Sectional Engineer'.

2. It is contended by the applicant that the above view has been taken by this Court by applying provision in Clause 2(2) of the Government Resolution dated 20.7.2001 which contemplates 12 years' continuous service on respective post is necessary. In fact, the said Government Resolution is not applicable in the case of the applicant at all as the said Government Resolution is applicable only for extending first benefit of ACPS. The aforesaid provision was mandatory for extending first benefit of ACPS and second benefit of MACPS. It is submitted that above observations are apparent error on the face of record and, therefore, deserve to be reviewed.

3. Heard learned senior counsel Shri M.V.Samarth with Advocate Shri C.M.Samarth for the applicant and learned Assistant Government Pleader Mrs.S.S.Jachak for non-applicants.

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4. Learned counsel Shri M.V.Samarth for the applicant submitted that this Court erred in not appreciating that the Tribunal in its order dated 18.2.2021 has relied upon provision in Clause 3 of Annexure-A of the Government Resolution dated 1.7.2011 and held that the applicant is entitled for Second Time Bound Promotion after 12 years from the date of first benefit. He submitted that the applicant has received the first benefit on 1.10.1994 and subsequently he became entitled to get second benefit w.e.f. 1.10.2006. This Court has observed that Second Time Bound Promotion for granting further 12 years from second benefit of MACPS the effect is considered from the date of his functional promotion. The second MACPS has been regulated and implemented in entire State in accordance with provisions in the Government Resolutions dated 1.4.2010 and 1.7.2011. The said Government Resolutions have been issued by the Finance Department of the Government for Implementation of second MACPS. He further submitted that this Court has over looked provisions in the Government Resolution dated 8.6.1995. However, the applicant has received First Time Bound Promotion as Class-II Employees w.e.f.1.10.1994. The above observations of this Court is likely to enhance the entire complexion in the entire State of Maharashtra affecting benefits of all the employees working through the State of Maharashtra which is not contemplated in law. None of

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employees who is likely to be affected by the judgment is party to this litigation and, therefore, the judgment is liable to be reviewed.

5. Learned Assistant Government Pleader Mrs.S.S.Jachak for non-applicants submitted that scope in review petition is very limited and review petitioner by no means an appeal in disguise whereby an erroneous decision is reheard and corrected, but lies only for patent error and, therefore, application deserves to be rejected.

6. In the case of Haridas Das vs. Usha Rani Banik (Smt.) and others, reported at 2006(4) Mh.L.J. (S.C.) 14, while considering the scope and ambit of Section 114 read with Order XLVII, Rule 1 of the Code of Civil Procedure, it is observed and held in paragraph Nos.14 to 18 as under:

"14. In Meera Bhanja vs. Nirmala Kumari Choudhury, (1995)1 SCC 1780 it was held that:

"It is well settled law that the review proceedings are not by way of an appeal and have to be strictly confined to the scope and ambit of Order XLVII, Rule 1, CPC. In connection with the limitation of the powers of the Court under Order XLVII, Rule 1, while dealing with similar jurisdiction available to the High Court while seeking to review the orders under Article 226 of the Constitution of India, this Court, in the case of Aribam Tuleshwar Sharma v. Aribam Pishak Sharma speaking

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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 be exercise of the power of review. The power of review may be exercised on the discovery of new and important matter of 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 merit. That would be in 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 error committed by the Subordinate Court."

15. A perusal of the Order XLVII, Rule 1 show 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 record or any other sufficient reason.

16. [In Aribam Tuleshwar Sharma v. Aribam Pishak Sharma](#) (AIR 1979 SC 1047) this Court held that there are definite limits to the exercise of power of review. In that case, an application under Order XLVII, Rule 1 read with Section 151 of the Code was filed which was allowed and the order passed by the judicial Commissioner was set aside and the writ petition was dismissed. On an appeal to this Court it was held as under: (SCC p-390, para 3)

"It is true as observed by this Court in [Shivdeo Singh v. State of Punjab](#) (AIR 1963 SC1908) there is nothing in [Article 226](#) of the Constitution to preclude a High Court from exercising the power of review which inherent 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 of 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."

17. The judgment in Aribam's case (supra) has been followed in the case of Smt. Meera Bhanja (supra). In that case, it has been reiterated that an error apparent on the face of the record for acquiring jurisdiction to

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review must be such an error which may strike one on a mere looking at the record and would not require any long drawn process of reasoning. The following observations in connection with an error apparent on the face of the record in the case of [Satyanarayan Laxminarayan Hegde v. Mallikarjun Bhavanappa Tiruymale](#) [AIR 1960 SC 137] were also noted:

"An error which has to be established by a long drawn process of reasoning on points where there may conceivably be two opinions can hardly be said to be an error apparent on the face of the record. Where an alleged error is far from self-evident and if it can be established, it has to be established, by lengthy and complicated arguments, such an error cannot be cured by a writ of certiorari according to the rule governing the powers of the superior Court to issue such a writ."

18. It is also pertinent to mention the observations of this Court in the case of [Parsion Devi v. Sumiri Devi](#) (1997)(8) SCC 715). Relying upon the judgments in the cases of Aribam's (supra) and Smt. Meera Bhanja (supra) it was observed as under :

"Under Order XLVII, Rule 1, 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 not 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 XLVII, Rule 1, CPC. In exercise of the jurisdiction under Order XLVII, Rule 1, CPC it is not permissible for an 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."

7. Thus, an application for review would lie *inter alia* when the order suffers from an error apparent on the face of record and permitting the same to continue would lead to failure of justice. The power of review can also be exercised by the Court on the discovery of new and important matter of 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. An application for review would also lie if the order is passed on account of some mistake. It is well settled that reviewing Court is not an appellate court over its own order. Thus, the powers of review can be exercised for correction of mistake and such powers can be exercised within the limits of the statutes. The term 'mistake' or 'error' apparent is discussed by the Honourable Apex Court in the case of State of West Bengal and others vs. Kamal Sengupta and another, reported at (2008) 8 SCC 612 and observed that the term 'mistake or error apparent' by its very connotation signifies an error which is evident per se from the record of the case and does not require detailed examination, scrutiny and elucidation either of the facts or the legal position. If an error is not self-evident and detection thereof requires long debate and process of reasoning, it cannot be treated as an error

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apparent on the face of the record for the purpose of Order 47 Rule 1 CPC or Section 22(3)(f) of the Act. To put it differently an order or decision or judgment cannot be corrected merely because it is erroneous in law or on the ground that a different view could have been taken by the Court/Tribunal on a point of fact or law.

8. The Honourable Apex Court in the case of **Ram Sahu (dead) through LRs vs. Vinod Kumar Rawat and others,** reported at **2021(3) Mh.L.J. 268** by referring catena of decisions of the Honourable Apex Court observed that the principles which can be culled out from the above noted judgments are:

(i) The power of the Tribunal to review its order/decision under Section 22(3)(f) of the Act is akin/analogous to the power of a civil court under [Section 114](#) read with Order 47 Rule 1 CPC.

(ii) The Tribunal can review its decision on either of the grounds enumerated in Order 47 Rule 1 and not otherwise.

(iii) The expression "any other sufficient reason" appearing in Order 47 Rule 1 has to be interpreted in the light of other specified grounds.

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(iv) An error which is not self evident and which can be discovered by a long process of reasoning, cannot be treated as an error apparent on the face of record justifying exercise of power under [Section 22\(3\)\(f\)](#).

(v) An erroneous order/decision cannot be corrected in the guise of exercise of power of review.

It is further held in the case cited *supra* that to appreciate the scope of review, it would be proper for this Court to discuss the object and ambit of Section 114 CPC as the same is a substantive provision for review when a person considering himself aggrieved either by a decree or by an order of Court from which appeal is allowed but no appeal is preferred or where there is no provision for appeal against an order and decree, may apply for review of the decree or order as the case may be in the Court, which may order or pass the decree. From the bare reading of Section 114 CPC, it appears that the said substantive power of review under Section 114 CPC has not laid down any condition as the condition precedent in exercise of power of review nor the said Section imposed any prohibition on the Court for exercising its power to review its decision. However, an order can be reviewed by a Court only on the prescribed grounds mentioned in Order 47 Rule 1 CPC.

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9. Keeping in mind the aforesaid principles, let us consider the claim of the applicant. As per the contention of the applicant, the observations in paragraph Nos.21 and 22 that the applicant has received first benefit under the Time Bound Promotion w.e.f. 1.10.1994. Thus, after his promotion, he had received second benefit under ACPS within seven years for which he was not entitled and observations in paragraph No.21 that the ACPS Clause (2) specifically states that the benefit of the said Scheme would be given to the employees who had completed 12 years of continuous service on the said post, the case of the petitioners did not cover under the same, therefore, contention of the petitioners that respondent had received the second benefit erroneously is sustainable. The respondent would not be entitled for the second benefit from 01.10.2006 as on that day he had completed only seven years of service. He would be entitled for the said benefit after completing 12 years of service as a 'Junior Engineer' and on upgradation post as a 'Sectional Engineer'.

10. On re-appreciation of the entire material on record, we find that while passing the judgment, this Court has considered that the applicant received first benefit under the Time Bound Promotion Scheme on his completion of 12 years continuous service w.e.f. 1.10.1994. For getting the second benefit under the ACPS as per

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conditions imposed either he had to work on the same post as Civil Engineer for next 12 years or he had to work as Junior Engineer continuously for 12 years. The facts on record show that after getting first benefit within 5 years, he was promoted as Junior Engineer. In the year 2005, the post of Junior Engineer was upgraded as Sectional Engineer. As he was promoted as Junior Engineer on 7.7.1999, the period of 12 years is to be counted from 7.7.1999. While passing the judgment, this Court has considered the object behind the said scheme which states that the MACPS contemplates merely placement on the personal basis on the immediate higher grade pay and grant of financial benefits only and it would not amount to functional promotion of the employees concerned. The applicant was put on higher pay scale of 'Junior Engineer' before he completes 12 years of continuous service as a 'Civil Engineer Assistant' and the benefit given under the ACPS to the applicant was from 1.10.2006 i.e. before completing 12 years.

11. The Honourable Apex Court in the case of Union of India and ors. Vs. M.V.Mohanan Nair (2020) 5 SCC 421 observed that both ACP and MACP Schemes are in the nature of incentive schemes devised with the object of ensuring that the employees who are unable to avail of adequate promotional opportunities, get some relief from stagnation in the form of financial benefits. The

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object behind both the Schemes is to provide relief against the stagnation and, therefore, the order passed by the Tribunal directing the petitioners to release the benefits of the applicant which was granted under the second benefit is liable to be quashed and set aside. This Court has observed that the applicant has received the benefit before completing 12 years of service on the same post. Thus, on re-appreciation of material on record, we find that no error is committed by this Court while observing that the second benefit was given to the applicant before completing 12 years of continuous service on the said post. This Court has come to conclusion, on the basis of the Government Resolution dated 20.7.2001, that non-applicant No.1 issued the Government Resolution dated 11.2.2002 in consonance with the provision in the Government Resolution dated 2.07.2001 thereby Time Bound Promotion is granted to the Sectional Engineer on completion of 12 years of continuous service on the said post. It shows that the applicant who was qualified as Diploma Holder in Civil Engineering was appointed as Technical Assistant. On 31.1.1989, the applicant was absorbed on the post of newly created cadre of 'Civil Engineer Assistant. The applicant received first benefit under the Time Bound Promotion vide order dated 2.9.1998 and immediately he was promoted on 7.7.1999 as Junior Engineer. The Government of Maharashtra introduced MACPS Scheme vide Resolution dated

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20.7.2001. As per the Government Resolution dated 6.11.2007, the post of the applicant as 'Junior Engineer, Class-III (Group-C) were accorded the upgradation as 'Sectional Engineer Group-II from 1.4.2005. The non-applicant No.2 had granted second benefit of higher pay scale of promotional post of Deputy Engineer to the applicant w.e.f. 1.10.2006. Thus, admittedly, the applicant had received the first benefit under the time bound promotion w.e.f. 1.10.1994. He received the said time bound benefit before introduction of ACPS. The ACPS was introduced on 01/08/2001 i.e. within seven years after first benefit under the Time Bound Promotion Scheme was granted to the applicant. Thereafter, he was promoted on 7.7.1999. The Clause 2(2) of the Government Resolution granting ACPS specifically states that the benefit of the said Scheme would be given to employees who had completed 12 years of continuous service on the said post and, therefore, as the applicant had received the second benefit before he completes 12 years of continuous service as Junior Engineer, this Court held that he would be entitled for the said benefit after completing 12 years of service as Junior Engineer.

12. Taking into consideration the scope of review petition, facts of the present case and the law laid down by the Honourable Apex Court, submissions made by learned senior counsel for the

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applicant that the observations in paragraph Nos.20 and 21 are mistakes or errors apparent are not acceptable as the term 'mistake or error apparent' by its very connotation signifies an error which is evident per se from the record of the case and does not require detailed examination, scrutiny and elucidation either of the facts or the legal position. If an error is not self-evident and detection thereof requires long debate and process of reasoning, it cannot be treated as an error apparent on the face of the record for the purpose of Order 47 Rule 1 CPC. Thus, an order or decision or judgment cannot be corrected merely because it is erroneous in law or on the ground that a different view could have been taken by the Court/Tribunal on a point of fact or law.

13. In this view of the matter, the misc. civil application for review has no merits and the same deserves to be rejected.

(URMILA JOSHI-PHALKE, J.)

(A.S.CHANDURKAR, J.)

!! BrWankhede !!

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