

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

MISC. CIVIL APPLICATION (REVIEW) NO. 78 OF 2022

IN

WRIT PETITION NO. 2444 OF 2019

Dr. Manish Y. Ladole and ors.

..vs..

Dr. Panjabrao Deshmukh Krishi Vidyapeeth and ors.

WITH

MISC. CIVIL APPLICATION (REVIEW) NO. 79 OF 2022

IN

WRIT PETITION NO. 2806 OF 2019

Dr. Umakant s/o Tukaramji Dangore and anr.

..vs..

Dr. Panjabrao Deshmukh Krishi Vidyapeeth and ors.

WITH

MISC. CIVIL APPLICATION (REVIEW) NO. 80 OF 2022

IN

WRIT PETITION NO. 2471 OF 2019

Dr. Prashant C. Pagar and ors.

..vs..

State of Maharashtra, thr. Its Secretary and ors.

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

Court's or Judge's orders

Misc. Civil Application No. 78 of 2022

Shri Shantanu Khedkar, Advocate for the applicants.

Shri Abhay R. Sambre, Advocate for non-applicant no. 1

Shri B.G. Kulkarni, Advocate for non-applicant no.2.

Misc. Civil Application No. 79 of 2022

Shri Shantanu Khedkar, Advocate for the applicants.

Shri Abhay R. Sambre, Advocate for non-applicant no. 1

Shri Mohan M. Sudame, Advocate for non-applicants nos. 2 and 3.

Misc. Civil Application No.80 of 2022.

Shri Shantanu Khedkar, Advocate for the applicants.

Mrs. K.R. Deshpande, A.G.P. for non-applicant-State.

Shri Abhay R. Sambre, Advocate a/w Ms. P.S.Chaudhari, Advocate
for non-applicant no.3.

Shri B.G. Kulkarni, Advocate for non-applicant nos.4 and 5.

CORAM : A.S. CHANDURKAR AND VINAY JOSHI, JJ.
CLOSED FOR ORDER ON : 15.07.2022.
ORDER PRONOUNCED ON : 20.07.2022.

Heard finally by consent of all parties.

2. All review applications arise out of the common judgment and order dated 27.02.2020 passed by this Court in Writ Petition Nos. 2444/2019, 2471/2019 and 2806/2019. The applicants of Misc. Civil Application No.78 of 2022 were respondent nos. 2, 3 and 5 in Writ Petition No.2444 of 2019, whilst applicants of Misc. Civil Application No.79 of 2022 were respondent Nos. 2 and 3 in Writ Petition No.2806 of 2019 and applicants of Misc. Civil Application No. 80 of 2022 were respondent Nos. 4, 5 and 7 to 10 in Writ Petition No.2471 of 2019. These applicants have raised a common challenge to the judgment and order of this Court on same grounds. Hence, for the sake of convenience these review applications were heard and taken together for disposal. The applicants seek for review of the common judgment and order dated 27.02.2020 of this Court by stating that an error apparent has been occurred due to misrepresentation made by the petitioners of the respective writ petitions.

3. For the sake of convenience facts of Misc. Civil Application No.78 of 2022 pertaining to Writ

Petition No.2444 of 2019 are considered. At the inception, we deem it necessary to state some of the facts of Writ Petition No.2444 of 2019 and the challenge raised therein. The petitioner (Dr. Amrapali and anr.) being aggrieved by the orders of promotion issued by Dr. Panjabrao Deshmukh Krishi Vidyapeeth, Akola, thereby promoting Assistant Professors to the post of Associate Professors have preferred the Writ Petition for setting aside the promotion of some candidates. Precisely, the challenge was on the ground that the University has midway changed the promotion criteria during the process. The Resolution dated 07.01.2019 of the Executive Council changing the promotion criteria has also been challenged. The petition was filed against the University and some of the promotees, whose promotion has been challenged.

4. On 16.11.2017, the University has issued a notification inviting proposals from eligible candidates for effecting promotions to the post of Associate Professors from the post of Assistant Professors. The last date for submission of proposal was of 06.11.2017. Vide communication dated 18.01.2018, the aspirant candidates were requested to submit relevant documents to establish their eligibility till 20.01.2018. In the meantime, Vice Chancellor in his authority promoted some of the Assistant Professors to the post of Associate Professor on ad-hoc basis. On 03.01.2019, Academic Council by invoking statute

No.75 has modulated the manner of effecting promotions on the post of Associate Professors. The criteria for promotion was changed by reducing the zone of consideration for 1:5 to 1:2 and also fixing minimum benchmark of Academic Performance Index (API) score. On 07.01.2019, Executive Council of University held meeting in which accepted the modified criteria for promotion. By way of Circular dated 07.01.2019, the aspirants were directed to submit information in prescribed proforma till 15.01.2019. The Selection Board has adopted the new modified criteria in terms of Resolution dated 07.01.2019 and accordingly, issued promotion orders.

5. In the Writ Petition, the respondents (applicants herein) raised various grounds including non-maintainability of the petition on the ground that some of the promotees have not been joined in the petition. The petitioner (Dr. Amrapali) is not entitled to raise challenge since she has participated in the promotional process and like others. In short, maintainability of writ is also challenged by stating that the petitioner is estopped for challenging the promotions. This Court has considered the rival submissions and held that the process of promotion for the post of Associate Professor was not in accordance with law and thus, it was set aside. It was also declared that the Resolution of Executive Council dated 07.01.2019 to the extent of modifying criteria

for promotion, was in variance in statute No. 52 and 73 and would not operate till the procedure as contemplated by Section 38 of the Maharashtra Agricultural Universities (Krushi Vidyapeeth) Act, 1983, is complied with.

6. This Court has exhaustively dealt with the objection of maintainability of the petition on account of estoppel due to participation in promotional process and turned down the same with elaborated reasons as incorporated in paragraphs 13 and 14 of the impugned order. Likewise, another objection about non-joinder of all promotees in the Writ Petitions was dealt and answer in negative in paragraph 15 of the judgment. This Court held that Resolution dated 07.01.2019 passed by the Executive Council has traveled beyond the scope of statute No. 75(7) in view of the modification in the condition for promotion. It was held that the procedure adopted by the Selection Board in changing criteria during the process of promotion, was illegal. It is observed that the vacancies exist in the month of October, 2017 and thus, subsequent modification is illegal. On the basis of such principal observation, the Writ Petition was allowed.

7. Admittedly, some of the promotees were not made party in earlier petitions by contenting that they were more meritorious than the petitioner (Dr.

Amrapali) and therefore, challenge has not been raised to their promotions. As referred above, this Court has observed that in their absence petition is maintainable in view of challenge raised. In course of time, the University has also reverted those promotees who were not made party to the Writ Petition. In turn, those promotees for example – one Sachin Bhople has filed Writ Petition No.2412 of 2020 seeking challenge to his reversion to the post of Assistant Professor from Associate Professor. Co-ordinate Bench of this Court in Writ Petition No.2412 of 2020 held that since the petitioner – Sachin Bhople was not a party to earlier petition, the common judgment and order of this Court would not affect his promotion and accordingly, set aside his reversion order.

8. In the wake of such position, the review is sought by the respondents of original writ petitions claiming that the petitioner (Dr. Amrapali) by practicing fraud, by misrepresentation and suppressing essential facts, obtained impugned order. We have thoroughly examined the grounds canvassed in review applications. Though, it is argued that the petitioner (Dr. Amrapali) has practiced fraud and made misrepresentation, but we are unable to find any material to support the said stand. By and large, the grounds canvassed in review application were the defences raised by the applicant in Writ Petition which were already dealt with. The ground of

maintainability of Writ Petition on account of not joining some of the promotees to the petition, has been re-agitated. Moreover, it is submitted that the petitioners (Dr. Amrapali and others) have filed their proposal in terms of modified resolution dated 07.01.2019, which they had suppressed.

9. The batch of learned Counsel appearing for original petitioners have demonstrated that the said fact was very much disclosed by them in earlier petition. Moreover, it is brought our notice that the said ground was equally canvassed by the present applicants in Writ Petitions by way of defence. We have been taken through the written submission of respondent Nos. 2 and 3 of Writ Petition No.2806 of 2019 (applicants of Misc. Civil Application No.79 of 2022) wherein a specific stand was taken that the petitioners were very well aware about the criteria adopted by the University and they have applied as per Circular dated 07.01.2019. It reveals that the grounds raised in review application are nothing but revival of old grounds which were already dealt by this Court while deciding the Writ Petitions. It is stated in review application that the promotional process in terms of Resolution dated 07.01.2019 was fresh, but this Court while disposing Writ Petitions has expressed that the vacancies exist in October/November 2017, and therefore, the procedure prevailing on that date ought to have

adopted for effecting the promotions. Certainly, under the guise of review, the findings recorded by this Court on merits cannot be re-agitated nor the same is scope of review. The law in this regard is well settled. The Supreme Court in reported case of ***Smt. Meera Bhanja vs. Smt. Nirmala Kumari Choudhury AIR 1995 SC 455*** expressed that error apparent on the face of record means an error which strikes one on mere looking at record and would not require any long drawn process of reasoning on points where there may conceivably be two opinions.

10 Way back, the Supreme Court in case of ***M/s Thungabhadra Industries Ltd. vs. The Government of Andhra Pradesh AIR 1964 SC 1372*** has elaborated the scope of review in paragraph 11 which reads as below :

“11..... A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected, but lies only for patent error. We do not consider that this furnishes a suitable occasion for dealing with this difference exhaustively or in any great detail, but it would suffice for us to say that where without any elaborate argument one could point to the error and say here is a substantial point of law which stares one in the face, and there could reasonably be no two opinions entertained about it, a clear case of error apparent on the face of the record would be made out.”

11. We may refer to the another decision of Supreme Court in case of *Lily Thomas etc. vs. Union of India and ors. AIR 2000 SC 1650* wherein it is held that the power of review can be exercised for correction of a mistake and not to substitute a view. The review cannot be treated as an appeal in disguise. The mere possibility of two views on the subject is not a ground for review.

12. We are of the considered view that the applicants have raised the stale grounds by clothing it as fraud and suppression, which were already dealt by this Court. The applicants are unable to point out any error of this Court which would strike by mere looking. The grounds which are canvassed are like the grounds in appeal, which is obviously beyond the scope of review.

13. In view of above, we find no merit in these applications, hence, the review applications stand rejected.

(VINAY JOSHI, J.)

(A.S. CHANDURKAR, J.)

Later on :

At this juncture, the learned Counsel appearing for the review applicants seek for

continuation of interim orders dated 14.02.2022 by which this Court has directed to the University to not to publish the list of candidates, who are found eligible for promotion. It is submitted that the review applicants are desirous to challenge this order and in the meantime to maintain the *staus-quo* as it stands today, seeks for extension. It is informed that the review applicants have already filed SLP against the common order of which the review has been sought. In the light of the said position, only for giving some breathing time to the applicants, the interim order shall stand continue for three weeks from today.

(VINAY JOSHI, J.)

(A.S. CHANDURKAR, J.)

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