

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**REVIEW APPLICATION NO.227 OF 2023
IN
WRIT PETITION NO.6882 OF 2019**

Manoj S/o Suresh Udmale,
Age-28 years, Occu:Service as
Shikshan Sevak at Arts, Science
& Commerce College, Rahuri,
R/o-At Post-Shambhunagar,
Burudgaon Road, Ahmednagar,
Tq. & Dist-Ahmednagar.

...APPLICANT

VERSUS

- 1) The State of Maharashtra,
Through its Chief Secretary,
Education Department,
Mantralaya, Mumbai-32,
- 2) The Deputy Director of Education,
Region, Pune,
- 3) The President,
Shivaji Shikshan Prasarak Mandal,
Rahuri, Tq-Rahuri,
Dist-Ahmednagar,
- 4) The Principal,
Arts, Science & Commerce College,
Rahuri, Tq-Rahuri, Dist-Ahmednagar,
- 5) Namdeo S/o Raosaheb Dethe,
Age-39 years, Occu:Service,
R/o-Mahegaon, Tq-Rahuri,
Dist-Ahmednagar.

...RESPONDENTS

...
Mr. Rajendra S. Deshmukh, Senior Counsel i/b.
Mr. A.S. Shelke Advocate for Applicant.
Mr. A.M. Phule, A.G.P. for Respondent Nos.1 and 2.
Mr. R.R. Karpe Advocate for Respondent Nos.3 and 4.
Mr. P.S. Dighe Advocate for Respondent No.5.
...

**CORAM: SMT. VIBHA KANKANWADI AND
Y.G. KHOBRAGADE, JJ.**

DATE OF RESERVING ORDER : 28th JULY 2023

DATE OF PRONOUNCING ORDER : 9th AUGUST 2023

ORDER [PER SMT. VIBHA KANKANWADI, J.] :

1. Present applicant – original petitioner, by invoking the constitutional powers of this Court under Articles 226 and 227 of the Constitution of India, in Writ Petition No.6882 of 2019, had sought following reliefs:-

“(C) By issuing writ of certiorari, the impugned appointment order dated 01.09.2017 by the respondent no.3 and thereby the impugned approval order dated 30.06.2018 at Exh- _ to respondent no.5 may kindly be quashed and set aside.

(D) By issuing writ of mandamus, the respondent no.2 and 3 may kindly be directed to consider the claim of the petitioner for appointment as full time Teacher in English subject in place of the respondent no.5 and for that for that purpose pass necessary orders. ”

2. After hearing all the parties, this Court had found that it is not a fit case where a writ jurisdiction can be exercised and therefore, the Writ Petition was dismissed on 13th October 2022.

3. It was contended in Writ Petition No.6882 of 2019 that the petitioner is having due qualification and was eligible for the post of Shikshan Sevak. He is a member of Scheduled Caste (for short "SC") category. He was appointed by respondent No.3 as Shikshan Sevak by order dated 1st August 2015 for the period of three years i.e. till 31st July 2018 from SC category. Respondent Nos.3 and 4 had forwarded his caste certificate to the caste scrutiny committee, which came to be verified and the validity has been granted on 31st March 2016. Thereafter respondent No.2 had granted the approval on 25th May 2016. Respondent No.5 was appointed from Other Backward Class (in short "OBC") category and he has no concern with the appointment of the petitioner. The petitioner was appointed on clear vacancy as a part time Shikshan Sevak from SC category. Respondent No.2, without application of mind, directed that the salary of the petitioner should be stopped and such letter was issued on 8th July 2016. The petitioner then preferred Writ Petition No.10948 of 2016. After the notices were issued to respondent Nos.2 and 3 in respect of the said Writ Petition, they terminated the services

of the petitioner. Thereafter Civil Application was filed in the said Writ Petition and the Civil Application as well as Petition came to be disposed of with directions by this Court by order dated 4th December 2017. Respondent Nos. 3 and 4 reinstated the petitioner by order dated 5th April 2018. There is no back log of OBC category in respondent No.3 institution. However, respondent No.2 issued order dated 30th June 2018 appointing respondent No.5 as full time Shikshan Sevak from OBC category, which was contrary to the Judgment and order dated 4th December 2017 passed in the said Writ Petition. The petitioner contends that respondent No.2 ought to have issued approval to the services of the petitioner with effect from 1st August 2015 as the petitioner was reinstated. However, the said approval order dated 6th August 2018 states that services of the petitioner are approved with effect from 2nd September 2017. In fact the appointment of respondent No.5 on post of full time Shikshan Sevak is with an intention to defeat the claim of the petitioner to that post from SC category. The petitioner had then made representation on 9th July 2018, however the same was not considered, as it appears from approval letter dated 21st November 2018 issued by respondent No.2 and therefore, the said Writ Petition was filed.

4. After considering the affidavit-in-reply of respondent Nos.3, 4 and 5, the rejoinder was also filed by the petitioner and taking into consideration the documentary evidence also, this Court had dismissed the Writ Petition.

5. Now the present Review Petition has been filed for reconsideration of the said decision by this Court.

6. Heard learned Senior Counsel Mr. Rajendra S. Deshmukh, instructed by learned Advocate Mr. A.S. Shelke appearing for the applicant, learned AGP Mr. Phule appearing for respondent Nos. 1 and 2, learned Advocate Mr. R.R. Karpe appearing for respondent Nos. 3 and 4, and learned Advocate Mr. P.S. Dighe appearing for respondent No.5.

7. Learned Senior Counsel Mr. Deshmukh instructed by learned Advocate Mr. Shelke for the applicant – original petitioner vehemently submitted that there is total suppression of facts by respondent Nos. 3 and 4 i.e. management, as well as respondent No. 2, the State had not filed any reply to the petition. In fact by Government Circular dated 31st January 2001, a part time teacher can be appointed as full time teacher if he

satisfies the criteria of the subject requirement and reservation. It was therefore, incumbent upon respondent Nos. 3 and 4 as well as respondent No. 2 to demonstrate that on the date of appointment of respondent No. 5 i.e. on 1st September 2017 there was vacancy of OBC category which he claims though his initial appointment as part time teacher was from open category. The factual position then existed on 1st September 2017 was suppressed. Even after certain appointments later on, it cannot be said that there is no vacancy from SC category on full time post. As on 1st September 2017 in all four posts of SC category were vacant. Learned Senior Counsel has demonstrated as to how those posts were vacant. It is then submitted that suppression of material facts had gone unnoticed due to non filing of the reply by respondent Nos. 1 and 2 and therefore, the review is necessary. Further, though the statement was made before this Court that there is otherwise termination of the applicant - petitioner with effect from 8th September 2022 i.e. during the course of the hearing of the Petition but it will not attract the subject matter of challenge in the Writ Petition as the petitioner had challenged the appointment of respondent No.5 and that the approval to his appointment as contrary to law. Thereafter the applicant has filed appeal before the School

Tribunal at Aurangabad and his appeal is pending for consideration.

8. Learned APP representing respondent Nos. 1 and 2, learned Advocate Mr. Karpe appearing for respondent Nos. 3 and 4 – management and learned Advocate Mr. Dighe for original respondent No.5, all have submitted that the review petition is not maintainable in view of the fact that there is no error apparent on the face of record. All the parties were heard by this Court while dismissing the Writ Petition. Complete opportunity was given to bring every fact on record and all the documents were considered. The decision in earlier writ petition was also considered by this Court. The learned Advocates are, therefore, supporting the reasons given by this Court while dismissing the Writ Petition.

9. Learned Advocate for respondent No. 5, in addition, has submitted that a review petition cannot be in disguise to appeal. The mistake or error apparent on the face of record is one which is self evident and does not require a process of reasoning and the fact that change of Advocate will not give a new ground for the petitioner to prefer a review petition. In support of his contentions, learned Advocate relied on ***Inderchand Jain (Dead)***

Through LRS vs. Motilal (Dead) Through LRS., (2009) 14 SCC 663, wherein it has been held that review is not an appeal in disguise. The review Court cannot sit in appeal over its own order and rehearing of the matter is impermissible in law. Review is exception to general rule that once a judgment is signed or pronounced, it should not be altered. Courts should not invoke their inherent jurisdiction for reviewing any order. Further, learned Advocate relied on ***Parsion Devi and others vs. Sumitri Devi and others, (1997) 8 SCC 715***, wherein distinction between erroneous decision and mistake or error apparent on the face of record was clarified. He further relied on ***Kamlesh Verma vs. Mayawati and others, (2013) 8 SCC 320***, wherein it was held that repetition of old contentions / arguments by new counsel is not enough to reopen a concluded matter.

10. At the outset, it is to be noted that the said Writ Petition No.6882 of 2019 came to be filed on 4th May 2019. The journey of the writ petition was that the affidavit-in-reply on behalf of respondent Nos. 3 and 4 was filed on 28th January 2020. Affidavit-in-reply was also filed by respondent No.5 on the same day i.e. on 28th January 2020. Further, the petitioner – applicant filed rejoinder on 10th August 2022. Thereafter sur-rejoinder was filed on behalf of respondent Nos. 3 and 4 on 23rd September

2022 and then sur-rejoinder was filed by respondent No.5 on 26th September 2022. Taking into consideration all these contentions and the documents and after hearing both sides, this Court had dismissed the Writ Petition on 13th October 2022. It does not appear from the record of Writ Petition No.6882 of 2019 that at any point there was insistence by the petitioner that respondent Nos. 1 and 2 should file an affidavit. Learned Senior Counsel taking instructions from his instructing Advocate, submitted that oral request was made to the Court seeking directions to respondent Nos. 1 and 2. We do not approve the same in view of the fact that if such request would have been made, then it would have been definitely reflected in any of the orders passed by this Court. Even as regards the rejoinder is concerned, leave was sought by the petitioner and then it was taken on record. When the said request was not made at the relevant time, now the petitioner – applicant cannot say that there is suppression of facts by respondent Nos. 1 and 2. Respondent Nos. 3 and 4 had filed affidavit-in-reply and also the sur-rejoinder. If any information was required from the Government, the petitioner could have also insisted for supply of necessary documents by invoking the Right to Information Act, but he has not done the said act. In order to come a conclusion

that there is a suppression of factual position, there was nothing. If any information is now extracted or received by the petitioner, then he cannot seek review on the basis of new documents.

11. To the review petition also, respondent Nos. 3 and 4 have filed short affidavit-in-reply and almost the same facts have been reiterated apart from the objection to the review petition. It has been reiterated that Writ Petition No. 2783 of 2015 was filed by respondent No. 5 seeking directions to appoint him on full time post of teacher and the said Writ Petition came to be disposed of in the light of the statement made by the management that his claim would be considered upon full time vacancy falling in the institution. Again the documents showing the position as on 7th April 2014, 1st September 2017 and 25th February 2019 have been given. Affidavit-in-reply has also been by respondent No.5 to the review petition and he has also reiterated the same facts. Thus, it is to be noted that on the same set of facts there cannot be a review, much less on the ground that there was suppression of material facts. When the petitioner was seeking the above said reliefs, then he ought to have brought all the necessary documents or ought to have seen that those necessary facts are before the Court. Unless the material is produced, which would

show that there was suppression, it cannot be said that now there is ground.

12. Another important fact to be noted is that even now the petitioner – applicant is accepting that during the pendency of the Writ Petition, he stood otherwise terminated with effect from 8th September 2022. He has subsequently challenged the said order before the School Tribunal. Now it can be certainly said that the petitioner has not given the date of appeal which he has preferred before the School Tribunal, Aurangabad. Mere use of the word 'subsequently' is not enough. We can infer that the meaning of the said word is, subsequent to the pronouncement of the decision by this Court on 13th October 2022. Now, as on the date of decision by this Court on 13th October 2022 if the applicant stood otherwise terminated and his termination was not under challenge, then whether his right to challenge the order of appointment of respondent No. 5 would have survived, is a question and therefore it was found that it was not a fit case to exercise the powers under Article 226 and 227 of the Constitution of India.

13. The decisions relied upon by the learned Advocate for respondent No. 5 are perfectly applicable here and the review application is, therefore deserves to be dismissed.

14. Accordingly, the Review Application stands dismissed.

[Y.G. KHOBRADE]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

asb/AUG23