



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CIVIL APPLICATION NO.4520 OF 2024
IN
REVIEW APPLICATION (STAMP) NO.5101 OF 2024
WITH
REVIEW APPLICATION (STAMP) NO.5101 OF 2024

Smita Chandankumar Datwani,
Age: 24 years, Occu.: Student,
R/o. Balbhim Chowk, Karanja Road,
Beed, Dist. Beed.

.. APPLICANT

VERSUS

1. State of Maharashtra
Through its Secretary,
Higher and Technical Department,
Mumbai-32.
2. Dr. Babasaheb Ambedkar Marathwada
University, Through its Registrar,
University Campus, Aurangabad.
3. Board of Examinations & Evaluation,
Dr. Babasaheb Ambedkar Marathwada
University, University Campus, Aurangabad,
Through its Director.

.. RESPONDENTS

...
Mr. S. V. Dixit, Advocate for the petitioner.
Mrs. M. N. Ghanekar, AGP for respondent No.1 – State.
Mr. S. S. Tope, Advocate for respondent Nos.2 and 3 (Through Video Conferencing).

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**CORAM : SMT. VIBHA KANKANWADI AND
S. G. CHAPALGAONKAR, JJ.**

DATE : 2nd MAY, 2024.

ORDER [Per Smt. Vibha Kankanwadi, J.] :-

. Civil Application No.4520 of 2024 has been filed for condoning the delay of 6 days for filing the review application. The applicant is the original petitioner in Writ Petition No.1565 of 2023 filed by her.

Taking into consideration the duration of the delay and the reasons stated in the application, there is no hurdle for this Court to condone the delay and, therefore, the delay stands condoned.

2. Immediately thereafter, with the consent of learned Advocates appearing for all the parties, the review application was taken up for consideration.

3. Heard learned Advocate Mr. S. V. Dixit for the applicant, learned AGP Mrs. M. N. Ghanekar for respondent No.1 – State and learned Advocate Mr. S. S. Tope for respondent Nos.2 and 3 (through video conferencing).

4. Learned Advocate for the review applicant submits that the applicant/petitioner had challenged the letter dated 13.01.2023 issued by the Director of respondent No.3 and further sought directions to respondent Nos.2 and 3 to revise the order of merit and place the petitioner on first rank in the order of merit taking into consideration the fact that the petitioner had scored highest marks and to give her gold medal, however, the said writ petition came to be dismissed. While dismissing the writ petition, this Court had taken note of Rule 14 of Part (C) of Grievance Redressal Mechanism and this Court opined that in view of the said rule, the already declared results cannot be changed, especially taking away the medal from the earlier declared first rank holder, however, it ought to have been appreciated that the

procedure for Grievance Redressal Mechanism created a facility to re-evaluate answer sheets. When there is re-evaluation, then the candidate applying for the same should get full benefits. The said rule does not protect the university's merit list. The intention of the rule cannot be narrowed down. When this Court accepted that the petitioner is a meritorious student and she fought for her rights, she should receive complete justice and benefits flowing from the re-evaluated results. The delay was committed by the university and petitioner cannot be punished for the same.

5. Learned Advocate for the review applicant relied on the decision of the Hon'ble Supreme Court in **Sunil and others Vs. High Court of Delhi and others**, [2023 SCC OnLine SC 516], wherein three candidates had filed representations seeking rechecking of their answer sheets, who had appeared for the examination for the vacant posts of private secretaries in the High Court of Delhi. After the selection committee had rejected their representations observing that there is no provision for rechecking/re-evaluation of the answer sheets in the rules, however, when the said decision was challenged before the High Court on the judicial side, the High Court allowed the writ petitions, but still the question remains as regards the seniority and position that was reckoned after the last appointed candidates and thus the matter was taken before the Hon'ble Supreme Court. Hon'ble Supreme Court observed that "Once on re-evaluation, the marks are

increased the respective candidates whose marks are increased will have to be placed at appropriate place in the merit list. Non-grant of seniority based on revised marks, thus, would render the process of re-evaluation redundant. The candidates whose marks have been increased cannot be deprived of their position in the select list....” Similar view was taken in **Deepa Vs. Maharishi Dayanand University, Rohtak and others, [2002 SCC OnLine P&H 1178]**. After re-evaluation of the marks of the students, it was declared that Rule 4.2 is arbitrary, unreasonable, oppressive and, therefore, does not satisfy the equality clause contained in Article 14 of the Constitution of India. Reliance was placed on the decision in **Manoj Kumar Jindal Vs. Ravishankar University, Raipur and others, [AIR 1981 MP 1]**, wherein it has been observed that :-

“13. Apropos the contention that on basis of the Merit List the candidates meanwhile take admissions on its basis or get jobs and if the Merit list is subsequently change "after five or six months", it may create anomalous position and the candidates who are declared in the Merit List may suffer irreparable Injury. This contention is counter to the provision of the revaluation which, as stated earlier, has its own significance and meaning. There is no reason why after revaluation, if the petitioner is found to have obtained "first position", he should be continued to be ranked in "third position". This would be rank injustice to a student devoted to studies with meritorious performance. The object behind revaluation is that every man should get his due which he deserves. That is the

rule of law and also equity. This appears to be a case where the position in the Merit List entails consequential benefits also. Generally, the toppers have further benefits not only of Division and Merit, but often Medals and Prizes. If that be so, it is all the worst that the petitioner is deprived of his legal right to such benefits. There is no reason why the petitioner should suffer for the default of the University. There is no question of any legal injury to the other two respondents just because under the rules relating to revaluation, they would be relegated from their positions Nos. 1 and 2, to positions Nos. 2 and 3. If the relegated No. 3 had any grievance, he could have availed of the provisions regarding revaluation would not be in the interest of public at large.”

Further, reliance has been placed on the decision by the Hon’ble Single Judge of this Court in **Rajendrakumar Chandrakant Nadkarni Vs. University of Bombay and another, [1990 Mh.L.J. 1143]**, wherein also it was held that candidate must get full benefit on revaluation to award of medals etc. or the order of merit.

6. Learned Advocate Mr. S. S. Tope, who waives notice for respondent Nos.2 and 3, supported the order in the writ petition and also submitted that the petitioner had not challenged the validity of Part (C) of Rule 17 of Grievance Redressal Mechanism in the petition. The learned Advocate for the applicant would have definitely relied on the decisions, which he want to now rely when the arguments were advanced. Merely because he has now searched and could allegedly get support in those decisions, the decision cannot be so reviewed.

There is no error apparent on the face of the record.

7. Only limited question now arises here whether this Court committed error on the face of the record. Learned Advocate for the applicant has fairly stated that he had not relied on the above-said decisions, when he argued the matter on 10.01.2024. After the judgment or order is pronounced, it cannot be so changed if a party gets some supporting decisions. There was no hurdle for the petitioner to rely upon those decisions and be ready with them, when the matter was heard. The plain provision of Rule 14 Part (C) of Grievance Redressal Mechanism has been interpreted by this Court and certainly it has been observed that the validity of the provision is not challenged. Therefore, we do not want to go further into the merits of the case, as subsequent reliance on some decisions cannot be given rise to the party to seek review.

8. With these observations, following order is passed :-

ORDER

I) Civil Application No.4520 of 2024 stands allowed and disposed of.

II) Review Application (Stamp) No.5101 of 2024 stands dismissed.

[S. G. CHAPALGAONKAR]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

scm