



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

REVIEW APPLICATION NO.223 OF 2014
IN
WRIT PETITION NO.8733 OF 2013

Sugriv S/o Dinkar Shendge

... APPLICANT

VERSUS

1. The State of Maharashtra,
through it's Secretary,
Water Resources Department
Maharashtra State, Mantralaya,
Mumbai – 32.
2. The Superintendent Engineer and
the Member Secretary,
Regional Selection Committee,
Group 'C' category, Vigilance Squad
(Dakshata Pathak) Aurangabad,
Circle, Irrigation Department,
Aurangabad

... RESPONDENTS

...
Advocate for the Applicant : Mr. B.V. Thombre
AGP for Respondent/State : Ms. P.J. Bharad

...
**CORAM : MANGESH S. PATIL &
PRAFULLA S. KHUBALKAR, JJ.**

DATE : 13.12.2024

PER COURT:

Heard the learned advocate Mr. Thombre for the Applicant who is original petitioner and the learned AGP and perused the record.

2. The Petitioner had applied for a post of senior clerk in the Special Recruitment Process undertaken by the respondents for appointing differently abled persons against the seats specifically reserved

for them under Section 33 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (the Disabilities Act), pursuant to an advertisement dated 05.08.2011.

3. Since the Petitioner was not being considered, he approached the Maharashtra Administrative Tribunal by preferring Original Application No.54/2014 with following prayers :

- “B. To direct respondent No.3 to accommodate the applicant on the remaining 1 post out of 4 clear vacant posts of the Senior Clerk as per Advertisement dated 05.08.2011 by following due procedure of law.*
- C. To direct the respondent No.3 to compete the total number of vacant posts of Senior Clerk for physically handicapped category in the office within six weeks.”*

His original application was dismissed on 11-10-2013.

4. The Petitioner challenged the order of the Tribunal in the writ petition No.8733 of 2013. The writ petition was dismissed by order dated 27.02.2014 with following observations :

- “2. The petitioner is a physically handicapped person and claims employment as a Senior Clerk.*
- 3. It is an admitted position that the petitioner does not possess both upper limbs and the percentage of the disability is quantified at 50% in the certificate issued on 26.2.2010 by the competent authority.*
- 4. The petitioner tendered an application seeking appointment as a Senior Clerk in pursuance to the advertisement issued in that behalf. There are three posts earmarked for Orthopedically Handicapped categories, which are specified as OL (one leg affected), BL (both leg affected), OAL (one hand and one leg affected) and OA (one hand affected). Admittedly, the petitioner does not fall within the specified categories mentioned in the advertisement. Apart from this, even on consideration of the practicability to prescribe*

reservation for the category to which the petitioner belongs, it would be humanly impossible for him perform the functions prescribed for a post of Senior Clerk. The petitioner does not have both the upper limbs. Since the petitioner does not fulfill the criteria prescribed in the advertisement, the respondents authorities were justified in not considering his claim for appointment.”

5. The original petitioner seeks review of this order.
6. Mr. Thombre would take us through the checkered history leading to the filing of the review application. He would also take us through the provisions of the Disabilities Act, the various decisions annexed to the petition and would submit that the order under review overlooks the benevolent provisions of the Disabilities Act, its aims and objects and merely refuses to entertain the petition and justifies the order of the Tribunal on the ground that the petitioner did not fall in the categories of disabilities mentioned in the advertisement. The categories of the disabilities provided in the advertisement were not in accordance with Section 33, but the Tribunal ignored it and even the order under review does not take that into consideration. Merely because the petitioner does not have both the upper limbs, he cannot be held to be not eligible, and the order be reviewed.
7. The learned AGP justifies the order and submits that there are no sufficient and enough grounds to exercise the powers of review as have been provided under Section 114 of the Code of Civil Procedure. She would further submit that in fact there is enormous delay in preferring review and in spite of office objections, not even an application

seeking condonation of delay has been preferred. Even the petitioner has been remiss in circulating the review application, which has been pending for more than 10 years.

8. We have considered the rival submissions and perused the papers. At the outset, it is necessary to emphasize that the power of review sought to be invoked has to be exercised within the statutory and permissible limits.

9. The submissions of the learned advocate for the petitioner and the averments in the application would unequivocally demonstrate and address to the alleged illegality in passing the order under review rather than make any attempt to make out the grounds permissible under law in the light of Section 114 of the Code of Civil Procedure. No formal defect, error, or any other sufficient cause is being demonstrated.

10. Even if now as is being demonstrated that the categories of disabilities mentioned in the advertisement were not in consonance with the disabilities enlisted in Section 33, it would be a matter of selection process pursuant to an advertisement which was never taken exception of by the applicant. It is after the result was declared that he had approached the Tribunal with the aforementioned prayers which did not find favour with either the Tribunal or this Court.

11. Under the guise of seeking a review, the attempt is to challenge the order sought to be reviewed on all counts. Precisely for this reason, in the absence of specific grounds mentioned in the application,

we cannot undertake and exercise the extraordinary power of review.

12. The Review Application is rejected.

(PRAFULLA S. KHUBALKAR, J.)

(MANGESH S. PATIL, J.)

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