



IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD

909 REVIEW APPLICATION (CIVIL) NO.76 OF 2021  
IN WP/3928/2018

Premchand Nathu Patil,  
Age 58 yrs., Occ. Retired,  
R/o Pravin Apartment, Plot No.129,  
Block No.1, Adarsh Nagar, Jalgaon,  
Dist. Jalgaon.

... Applicant

... Versus ...

- 1 The State of Maharashtra  
Through the Secretary,  
School Education Department,  
Mantralaya, Mumbai – 32.
- 2 The Deputy Director of Education  
and Chairman, Task Force,  
Nashik Division, Nashik.
- 3 The Accounts Officer,  
Education Department, Jalgaon.
- 4 The Education Officer (Secondary),  
Zilla Parishad, Jalgaon.
- 5 Jalgaon Zilla Maratha Vidya Prasarak  
Cooperative Samaj Ltd., Jalgaon  
Through its Chairman.
- 6 Smt. S.D. Sonawane,  
Age 50 yrs., Occ. Service as Principal,  
Adhyapak Vidyalaya (Men),  
Jalgaon, Tq. & Dist. Jalgaon.

... Respondents

...

Mr. A.S. Shelke, Advocate for applicant  
Mr. P.S. Patil, AGP for respondent Nos.1 to 4  
Mr. A.D. Shinde, Advocate for respondent No.5  
Mr. R.W. Bagul, Advocate for respondent No.6

...

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

**DATE :** 28<sup>th</sup> FEBRUARY, 2024

**ORDER :**

1 Present review application has been filed by the original petitioner to review the Judgment and order passed by this Court in Writ Petition No.3928 of 2018 on 02.05.2019. In the said writ petition the petitioner assailed the order passed by respondent No.2 – Deputy Director of Education dated 18.08.2016 and the order of Principal, College of Education (respondent No.6) dated 04.07.2017, whereby his pay and pay scale were reduced and direction for recovery of excess payment made to him was passed. This Court by the said order passed following order.

“(i) The challenge to the pay fixation as on 01.01.2006 and 16.09.2006 is rejected.

(ii) As far as recovery to the excess payment is concerned, considering the facts and circumstances, the respondents are directed

not to make any recovery and if recovery is made, it be refunded to the petitioner.”

2            Heard learned Advocate Mr. A.S. Shelke for applicant, learned AGP Mr. P.S. Patil for respondent Nos.1 to 4, learned Advocate Mr. A.D. Shinde for respondent No.5 and learned Advocate Mr. R.W. Bagul for respondent No.6.

3            A limited issue arises before this Court – As to whether the said order passed by this Court (CORAM : S.V. GANGAPURWALA AND A.M. DHAVALI, JJ.) can be reviewed now ? Learned Advocate for the applicant contends that in the similarly situated employees there were three writ petitions i.e. Writ Petition No.4339 of 2016, Writ Petition No.4338 of 2016 and Writ Petition No.4341 of 2016. All those three writ petitions were decided on 10.01.2019, thereby the impugned communication came to be quashed and set aside to the extent of petitioners and the Deputy Director of Education was directed to grant pay scale and Grade Pay to petitioners which they were getting as a Secondary School Teachers on the date of transfers or the minimum of the scale of pay of the Junior College of Education, whichever is higher. The consequential order was also passed and it was directed that the decision shall be taken within a period of three months and the consequential benefits were directed to follow. The recovery was directed

to be refunded then to those petitioners. Learned Advocate for the applicant submits that the decision in those three petitions was cited in Writ Petition No.3928 of 2018 and reference of the same is in paragraph No.4(ii). Still further reasoning does not say that the said decision was considered by the Bench and, therefore, there is error apparent on the face of the record requiring review. He also points out that the Headmistress had filed writ petition challenging the decision in respect of those three writ petitions decided on 10.01.2019 and the same came to be rejected.

4            Learned Advocate for the applicant relies on the decision in **Board of Control for Cricket, India and another vs. Netaji Cricket Club and others** [AIR 2005 SC 592], wherein it has been held that -

“Section 114 of the Code empowers a court to review its order if the conditions precedents laid down therein are satisfied. The substantive provision of law does not prescribe any limitation on the power of the court except those which are expressly provided in Section 114 of the Code in terms whereof it is empowered to make such order as it thinks fit. Order 47, Rule 1 of the Code provides for filing an application for review. Such an application for review would be maintainable not only upon discovery of a new and important piece of evidence or when there exists an error apparent on the face of the record but also if the same is necessitated on account of some mistake or for any other sufficient reason. Thus, a mistake on the part of the Court which would include a mistake in the nature of the

undertaking may also call for a review of the order. An application for review would also be maintainable if there exists sufficient reason therefor. What would constitute sufficient reason would depend on the facts and circumstances of the case. The words 'sufficient reason' in Order 47, Rule 1 of the Code is wide enough to include a misconception of fact or law by a Court or even an Advocate. An application for review may be necessitated by way of invoking the doctrine '*actus curiae neminem gravabit*'."

4.1 Further, he relies on the decision in **State of Rajasthan and Another vs. Surendra Mohnot and others** [AIR 2014 SC 2925] and **Perry Kansagra vs. Smriti Madan Kansagra** [AIR 2019 SC (Supp) 122], wherein it has been held that -

"It is well settled that an error which is required to be detected by a process of reasoning can hardly be said to be an error apparent on the face of the record. To justify exercise of review jurisdiction, the error must be self-evident. Tested on this parameter, the exercise of jurisdiction in the present case was not correct. The exercise undertaken in the present case, was as if the High Court was sitting in appeal over the earlier decision dated 17.02.2017. Even assuming that there was no correct appreciation of facts and law in the earlier judgment, the parties could be left to challenge the decision in an appeal. But the review was not a proper remedy at all. High Court erred in entertaining the review petition and setting aside the earlier view dated 17.02.2017."

Learned Advocate for the applicant, therefore, submits that the

decision given by this Court in applicant's earlier writ petition on 02.05.2019 deserves to be reviewed.

5 Affidavit-in-reply is also filed by Mr. Ayub Sikandar Tadavi, serving as Accounts Officer, Education Department, Jalgaon on behalf of respondent Nos.2 and 3 supporting the reasons given by this Court and the action taken as well as pay fixation.

6 Respondent No.6 has filed affidavit of Shashikala Dodhu Sonawane, serving as Principal, Adhyapak Vidyalaya (Men), Nutan Maratha Campus, Jalgaon supporting the decision of this Court.

7 On behalf of respondents in the nutshell it is said that this is not a case for review when a reasoned Judgment has been delivered by this Court.

8 At the outset, the ratio laid down in the authorities relied by the learned Advocate for the applicant is certainly binding on this Court and it is well settled law as stated in **Perry Kansagra** (supra) that an error which is required to be detected by a process of reasoning can hardly be said to be an error apparent on the face of the record. It is also held that to justify exercise of review jurisdiction, the error must be self-evident and, therefore, the said ratio is then required to be applied to the facts herein. The other three

petitions were decided earlier i.e. on 10.01.2019 and the said decision was cited in Writ Petition No.3928 of 2018 i.e. the applicant's writ petition. In spite of citing their own order when a different decision has been taken, that too, after elaborating the reasons, then it cannot be said that the error is self evident. This Court cannot sit as an Appellate Court over the order passed on 02.05.2019. Now, it will be a process of reasoning that would be required to be given if the review is to be then entertained on its merits, which is not within the purview even under Article 137 of the Constitution of India or Section 114, Order 47 Rule 1 of the Code of Civil Procedure.

9           We would rely on the decision in **Haryana State Industrial Development Corporation Ltd. vs. Mawasi and others, AIR 2012 SUPREME COURT 3874**, wherein it has been observed that -

“The power of review is a creature of statute, Court, quasi-judicial body or administrative authority cannot review its judgment or order or decision unless it is legally empowered to do so.”

9.1          Further reliance can be placed on the decision in **Kishor R. Madan vs. Ramesh A. Phatnani, 2004(1) ALL MR 176**, wherein this Court had observed -

“Review proceedings cannot be equated with the original hearing of the case or an appeal. Finality to the order passed by the

court cannot be revoked and the matter cannot be reconsidered except when glaring omission or patent mistake or grave error has crept up in the order delivered earlier. Merely because the order sought to be reviewed was overruled in another case subsequently is no ground to review the decision.”

9.2 Further reliance can be placed on the decision in **Lily Thomas vs. Union of India and others, AIR 2000 SUPREME COURT 1650**, wherein it has been observed that -

“The dictionary meaning of the word “review” is “the act of looking, offer something again with a view to correction or improvement. It cannot be denied that the review is the creation of a statute. The power of review can be exercised for correction of a mistake and not to substitute a view. Such powers can be exercised within the limits of the statute dealing with the exercise of power. 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. Once a review petition is dismissed no further petition of review can be entertained. The rule of law of following the practice of the binding nature of the larger benches and not taking different views by the Benches of coordinated jurisdiction of equal strength has to be followed and practiced. However, the Supreme Court in exercise of its powers under Art. 136 or Art. 32 of the Constitution and upon satisfaction that the earlier judgments have resulted in deprivation of fundamental rights of a citizen or rights created under any other statute, can take a different view notwithstanding the earlier judgment.”

10 Further, this Court in Review Application (Stamp) No.14527 of 2020 observed that -

7. The scope of the review petition is required to be considered. In Vinay Sharma & another Vs. State (NCT of Delhi) & others [(2018) 8 SCC 186], it has been observed that "Power of review cannot be confused with appellate power which enables a superior court to correct all errors committed by a subordinate court. A repetition of old and overruled argument is not enough to reopen concluded adjudications." Here, in this case, the points which have been raised by the review petitioners can be termed as repetition of old and overruled arguments. Further, in Haryana State Industrial Development Corporation Limited Vs. Mawasi & others [(2012) 7 SCC 200], it has been held that "Roving inquiry or de novo hearing in guise of review is impermissible." Reliance was placed in this decision on the case Thungabhadra Industries Ltd. Vs. Govt. of A.P.[AIR 1964 SC 1372] (Three Judges Bench), wherein it has been observed thus -

"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."

Further note was taken in respect of the decision in Parsion Devi Vs. Sumitri Devi [(1997) 8 SCC 715], wherein it has been observed thus -

"9. ... 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 47 Rule 1 CPC. ... A review petition, it must be remembered has a limited purpose and cannot be allowed to be 'an appeal in disguise'."

The same ratio is reiterated in Vikram Singh alias Vicky Walia & another Vs. State of Punjab & another [(2017) 8 SCC 518], wherein it has been held that "Review cannot be made on those grounds which were already urged during appeal." In this case, the term "an error apparent on the face of the record" has been explained with the help of earlier pronouncement of the Hon'ble Apex Court in Kamlesh Verma Vs. Mayawati [(2013) 8 SCC 320], wherein it was held that "an error which is not self-evident and has to be detected by a process of reasoning is not an error apparent on the face of the record."

11           The ratio laid down in **State of West Bengal & others vs. Kamal Sengupta & another, (2008) 8 SCC 612**, can be taken into account wherein it has been observed thus -

"21. At this stage, it is apposite to observe that where a review is sought on the ground of discovery of new matter or evidence, such matter or evidence must be relevant and must be of such a character that if the same had been produced, it might have altered the judgment. In other words, mere discovery of new or important matter or evidence is not sufficient ground for review *ex debito justitiae*. Not only this, the party seeking review has also to show that such additional matter or evidence was not within its knowledge and even after the exercise of due diligence, the same could not be

produced before the court earlier.

22. 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 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 factor law. In any case, while exercising the power of review, the court/tribunal concerned cannot sit in appeal over its judgment/ decision."

12 Therefore, taking into consideration the scope of the review, provision of review, facts of the present case and the law laid down in above said authorities, this is absolutely not fit case where the Judgment and order passed by this Court on 02.05.2019 deserves to be reviewed. There is absolutely no merit in the application. It deserves to be rejected. Accordingly, it is rejected. No order as to costs.

( S.G. CHAPALGAONKAR, J. )

( SMT. VIBHA KANKANWADI, J. )