



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

925 REVIEW APPLICATION (CIVIL) NO. 202 OF 2024
IN WP/2553/2018

DHAIRYASHIL CHANDRAKANT PATIL
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

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Advocate for Applicant : Ms. Pradnya Talekar
i/b. M/s. Talekar And Associates
AGP for Respondent Nos. 1 to 3 : Mr. A.R. Kale

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CORAM : MANGESH S. PATIL &
SHAILESH P. BRAHME, JJ.
DATE : 28 AUGUST 2024

PER COURT [*Shailesh P. Brahme, J.*] :

1. Heard learned counsel for the applicant and learned AGP for respondent nos. 1 to 3.
2. Applicant is seeking review of judgment and order dated 10.07.2024 passed in Writ Petition No. 2553/2018. The grounds mentioned in paragraph no. 24 are certified to be good grounds for recalling the judgment in question to the extent of applicant.
3. By our common judgment dated 10.07.2024 four petitions were disposed of including the petition of the present applicant. In all the petitions, common orders dated 06.02.2018 and 29.06.2017, passed by respondent no. 2 – Deputy Director of Education were under challenge. By the impugned orders the approval granted to the applicants' appointment was revoked.
4. The applicant was appointed on 02.04.2004 as a Junior Clerk. His appointment was approved initially by the Education

Officer on 29.12.2009. The complaints were made against his appointment and approval. The respondent no. 2 – Deputy Director of Education conducted enquiry and found substance. Hence, the approval was revoked on 29.06.2017. The applicant sought review of the order. The matter was re-considered and order of revocation was confirmed by order dated 06.02.2018.

5. We have recorded, in judgment under review, to the extent of present applicant, that complaint was made against appointment of the applicant. It was alleged to be a backdoor entry. The applicant was alleged to be relative of President Mr. Jijabrao Tarachand Pawar.

6. It was vehemently argued before us while hearing writ petitions that once having granted approval by the Education Officer, it could not have been revoked subsequently by the respondent no. 2 – Deputy Director of Education as he had no power or jurisdiction. Those submissions were disapproved by our reasoned orders recorded in paragraph nos. 16 to 19. We recorded that considering the nature of allegations, it was permissible for the higher authority to embark on an enquiry to find out the truth. We observed as follows :

“22. In the above referred matter, approval granted by Education Officer was revoked by Commissioner of Education. It was not a case of fraud, violation of policy of reservation or nepotism. Under peculiar circumstances, the orders of the Commissioner of Education were quashed holding that there did not exist either appellate or review jurisdiction. However, case in hand reflects that jurisdiction of the Deputy Director of Education was derived from express liberty given by High Court and additionally there were allegations of fraud and nepotism. We do not accept the submissions of learned Counsel for the petitioners in this regard. The judgment cited is not applicable to the matter in hand.”

7. The reason for referring to our findings in paragraph nos. 16 to 20 is that there were allegations of nepotism and fraud against the applicant as well as the Management. It is not that only for the reason of his so called relationship with President, his appointment was found to be a backdoor entry. Even if it is accepted that there exists no relationship between him and the President, which is one of the grounds taken in this review petition, still there are other circumstances which were referred by us to demonstrate that it was a backdoor entry.

8. For the first time in this proceeding, it is contended by the applicant by filing affidavit that there is no blood relationship with Mr. Jijabrao Tarachand Pawar or Vijayabai Vishwasrao More. This stand was not taken by the applicant in the writ petition or during the course of argument. It was a specific complaint of the intervenor made to respondent no. 2 – Deputy Director of Education on 23.05.2016 which was enquired into. In paragraph no. 3 (c), internal page no. 7, applicant was alleged to be grandson of President's sister. The applicant himself annexed the complaint dated 23.05.2016 to the petition. He did not deal with the allegations of relationship to clarify the position. As there was no denial of relationship by him, the matter was considered. Therefore, we do not find that there is any error on the face of the record, considering our findings in paragraph no. 37. The ground raised in this regard is devoid of any substance.

9. Another ground for review which is pressed into service is that it is discovered after the judgment and order under review that the proposal seeking approval to the appointment of the applicant was submitted on 15.06.2004 by the then

Headmaster and reminder was also issued on 13.09.2004 but it was recorded by us that there was delay of four years in submitting the proposal for approval, which itself is a mistake on the face of record. Pertinently, the documents which are annexed to the applicant at exhibit 'B' and 'C' were not before the Court when we decided the matter. The veracity of the documents can not be tested now. It is not clarified in the present application as to when these documents were discovered by the applicant and what was the source. The pleadings in paragraph no. 18 are absurd.

10. The respondent nos. 4 and 5 were also represented by an independent lawyer who was also heard when we decided the matters by the common judgment and order dated 10.07.2024. The counsel appearing for the respondent nos. 4 and 5 supported the petitioner and adopted his submissions. Had the proposal seeking approval was submitted on 15.06.2004 and reminder was also sent on 13.09.2004, it was open for the Management to disclose this fact. It is tried to be contended by learned counsel for the applicant that the respondent no. 4 – Management should have brought these facts on record and applicant cannot be held responsible for procedural lapses. A specific ground no. 5 has been incorporated casting asperation against respondent nos. 4 and 5.

11. The respondent nos. 4 and 5 were supporting the applicant in the petition. It reveals from record that the proposal was forwarded to the Education Officer by covering letter dated 01.06.2008 which was at exhibit 'C' annexed to the petition. The approval which was granted by the Education Officer on 29.12.2009 referred to proposal dated 01.06.2008. Therefore, it cannot be accepted that there was ever any submission of proposal

on 15.06.2004. The ground raised for seeking review in this regard is clearly an afterthought and cannot constitute even the ground of discovery of new fact or material much less with an explanation therefor.

12. We have considered the grounds stated in the application. We do not find that there is any apparent error in recording the finding or discovery of new record. On the contrary, this attempt of review is an appeal in disguise. A useful reference can be made to law laid down by Supreme Court in *State of W.B. Versus Kamal Sengupta*, (2008) 8 SCC 612. Its paragraph nos. 21 and 22 read 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 fact or law. In any case, while exercising the power of review, the concerned court/tribunal cannot sit in appeal over its judgment/decision.”

13. In the present matter, there is nothing on record to show that the additional evidence which is pressed into service was not within knowledge of applicant and even after the exercise

of due diligence, the same could not be produced before the Court earlier. This is more so when the Management was supporting the applicant. We find no substance in the application.

14. The application is dismissed.

[SHAILESH P. BRAHME, J.]

[MANGESH S. PATIL, J.]