



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

926 REVIEW APPLICATION (CIVIL) NO. 203 OF 2024
IN WP/2570/2018

DEEPAK SAHEBRAO PAWAR
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

...

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

...

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. 2570/2018. 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 By the impugned orders the approval granted to the applicant's promotion was revoked.

4. The applicant was promoted on 02.04.2004 as a Senior Clerk. It 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 Hence, the approval was revoked on 29.06.2017.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 his appointment and approval. It was alleged to be a backdoor entry.

6. It was vehemently argued before us while hearing the writ petitions that once having granted approvals by the Education Officer, those could not have been revoked subsequently by the respondent no. 2 – Deputy Director of Education as there was no power and jurisdiction. Those submissions were disapproved by our reasoned order by recording observations 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 In the above referred matter, approval granted by Education Officer was revoked by Commissioner of Education.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.

8. It is contended that after the judgment and order under review that the applicant learnt that proposal seeking approval 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, which according to us lend credence to the conclusion of it being a backdoor entry. 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 in review jurisdiction. 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. 19 are absurd.

9. 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.

10. 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.

11. It is contended by learned counsel for applicant that as the proposal was submitted on 01.06.2008 at least the approval to his promotion should have been confirmed from 01.06.2008, though not from date of promotion i.e. 02.04.2004. The applicant is said to have worked as Senior Clerk. The proposal submitted on 01.06.2008 was for promotion given to him on 02.04.2004. It is not the case of the Management that any promotion was given to him on or after 01.06.2008. At the behest of applicant, it cannot be held that he should have been treated to be promoted on or after 01.06.2008. Thereafter, we are not inclined to accept the submission.

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

14. The application is dismissed.

[SHAILESH P. BRAHME, J.]

[MANGESH S. PATIL, J.]