



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

**CIVIL APPLICATION NO. 1365 OF 2024 IN
REVIEW APPLICATION (ST.) NO. 38004 OF 2023 IN
WRIT PETITION NO. 5150 OF 2013**

BHAGWAN SHIKSHAN PRASARAK MANDAL THROUGH ITS SECRETARY
VERSUS
THE STATE OF MAHARASHTRA THROUGH ITS SECRETARY AND OTHERS

...
Advocate for applicant : Mr. Atul M. Karad
AGP for the respondent – State : Mr. G.A. Kulkarni
Advocate for the respondents no. 8, 10 and 13 : Mr. P.M. Nagargoje
Advocate for respondents no. 9, 11, 12 and 14 : Mr. Ganesh Gadhe
...

**CORAM : MANGESH S. PATIL &
R. M. JOSHI, JJ.**

**RESERVED ON : 06 FEBRUARY 2024
PRONOUNCED ON : 20 FEBRUARY 2024**

ORDER (MANGESH S. PATIL, J.) :

This is a review application taken out by the original petitioners from the writ petition, together with the application for condonation of delay of 2122 days in preferring the review application.

2. For the sake of convenience and to avoid confusion, we are referring to the respective parties by their status in the writ petition.

3. Since a preliminary objection was raised regarding maintainability of the review application, we have heard both the sides extensively on the delay condonation application as also the maintainability of the review application.

4. The sum and substance leading to the filing of this review application together with the application for condonation of delay can be summarized as under :

(a) The writ petition was filed by the employees from the teaching staff of a private unaided college of Pharmacy - respondent no. 8 being run by the respondent no. 7 - management. They were claiming that the benefits of the recommendations of the sixth central pay commission should be extended to them.

(b) By the judgment and order dated 15-01-2018, the writ petition was allowed. The state government, the university and the All India Council of Technical Education (AICTE) Mumbai were directed to see to it that the respondents no. 7 and 8 extend the benefits of recommendations of the sixth pay commission to the petitioners with effect from 01-01-2006.

(c) Simultaneously, some non-teaching staff members of the respondent no. 8 - college preferred a similar writ petition being writ petition no. 11259 of 2017. By the judgment and order dated 28-08-2019 even those petitioners were held entitled to derive the benefit of the recommendations of the sixth pay commission and again the management and the college were directed to implement it with effect from 01-01-2006.

(d) The management challenged the judgment and order in the present matter by preferring Special Leave to Appeal no. 10537 of 2018.

(e) By order dated 09-05-2018, after hearing the matter, the Supreme Court expressed its disinclination to grant any relief on merits, it granted leave to withdraw the Special Leave Petition with liberty to seek a review of the judgment and order passed in the writ petition. Pursuant to such liberty, the management preferred review application no. 59 of 2020 in writ petition no. 5150 of 2013.

(f) Since there was delay in filing the review application, civil application no. 1298 of 2020 for condonation of delay was preferred. However, on 06-02-2020, the management sought to withdraw it simplicitor and was allowed to withdraw the review application no. 59 of 2020.

(g) A similar judgment and order in the writ petition preferred by the non-teaching staff, writ petition no. 11259 of 2017 dated 28-08-2019 was also challenged by the management before the Supreme Court in Civil Appeal no. 6229 of 2023. (***Bhagwan Shikshan Prasarak Mandal and another Vs. Vinayak and others***). By the order dated 26-09-2023, the Supreme Court, for the reasons recorded in the order, allowed the appeal partly and in light of decision in the

matter of ***Union of India and others Vs. Tarsem Singh; (2008) 8 SCC 648*** held that employees i.e. the non-teaching staff were entitled to arrears only for a period of three years prior to the date of filing of the writ petition that too without any interest thereon, in view of the fact that the writ petitions were filed in the High Court belatedly i.e. after about 10 years

(h) The management, therefore, has again preferred the present review application second time together with the application for condonation of delay, seeking review of the judgment and order passed in writ petition no. 5150 of 2013 in light of the decision in the matter of ***Tarsem Singh*** and ***Bhagwan Shikshan Prasarak Mandal*** (supra).

5. Learned advocate Mr. Karad would take us through the checkered history referred to herein-above and would submit that since ***Tarsem Singh*** (supra) already was occupying the field but was not referred to while deciding writ petition no. 5150 of 2013, in view of the subsequent order of the Supreme Court in the matter of non-teaching staff which was passed recently on 26-09-2023, the judgment and order passed in writ petition no. 5150 of 2013 needs to be modified and for that purpose review application has been preferred. Even the writ petition no. 5150 of 2013 was filed belatedly and the arrears payable to the petitioners should have been restricted to three years next before filing of the petition.

6. Mr. Karad would submit that in view of the supervening events, the delay has been caused. It was neither intentional nor deliberate and since the management is merely seeking modification of the order in light of ratio in the matter of **Tarsem Singh** (supra) even the delay deserves to be condoned.

7. Learned advocate Mr. Gadhe and Mr. Nagargoje for the petitioners strongly opposed the application for condonation of delay and the review application and raised a preliminary issue regarding maintainability of the successive review application. They would submit that it is abuse of the process of law. In view of Order XLVII Rule 1, Explanation of the Code of Civil Procedure, any subsequent decision of the Supreme Court cannot be a ground for review. Besides already earlier review application was preferred but was withdrawn without leave of the Court to file a new one on the same cause of action and would be barred by Order XXIII Rule 1(4) of the Code of Civil Procedure.

8. Mr. Gadhe would rely upon the decision in the matter of **Sarguja Transport Vs. State Transport Appellate Tribunal, Gwalior; AIR 1987 SC 88** and the order of a co-ordinate bench of this court in writ petition no. 1171 of 2019 (**Anusaya Sevabhavi Sanstha,**

Kanddhar Vs. State of Maharashtra and others) decided on 26-08-2019.

9. In response, Mr. Karad would strenuously submit that Order XLVII Rule 1 of the Code of Civil Procedure merely bars application to review an order made on an application for review. The earlier review application was simply withdrawn and in view of the subsequent decision in the matter of the non-teaching staff, now the management is merely seeking modification of the order passed in the writ petition in tune with **Tarsem Singh** (supra).

10. Having heard both the sides and having perused the record, so far as the facts and events are concerned, there is not much of a dispute. As far as the decision in **Tarsem Singh** (supra) is concerned, indeed, it was not referred to while deciding the writ petition no. 5150 of 2013. It is also apparent that in the matter of non-teaching staff, as mentioned hereinabove, the Supreme Court by applying the law laid down in **Tarsem Singh** (supra) modified the judgment and order of this Court and restricted the arrears payable to the non-teaching staff to three years next before the writ petition and even the direction to pay the interest was struck down.

11. It is necessary to note that though the management had challenged the judgment and order before the Supreme Court, after

hearing, when the Supreme Court was not inclined to grant any relief to the management, the Special Leave Petition was sought to be withdrawn with liberty to prefer review application. The order of the Supreme Court does not specifically indicate for what purpose and on what grounds the management was granted liberty to prefer a review application but admittedly the management preferred the review application no. 59 of 2020.

12. It is a matter of record that even in that review application, no reference was made to the decision in the matter of **Tarsem Singh** *albeit* some other grounds were raised. However, conspicuously, ground no. (VII) in the review application no. 59 of 2020 was raised referring to a Division Bench order passed by this Court in the matter of **Rangnath Vishnu Raskar Vs. State of Maharashtra and others** (writ petition no. 8949 of 2016 dated 19-12-2017) and particularly, the following observations from paragraphs 13 to 16 from that order, which were also reproduced and read as under:-

“13. Considering the fact that the petitioner had made application before the tribunal on 13.10.2015 for the first time claiming benefit of 6th Pay Commission we are inclined to entertain this petition and grant relief to the petitioner for payment of salary as per the 6th Pay Commission with effect from 1.10.2012 viz. three years prior to the application filed before the College Tribunal on 13.10.2015, we had granted similar relief in Writ Petition No. 6972 of 2005 dated 23.8.2017.

14. In the result, we pass the following order.

15. The respondent Nos. 5 and 6 shall pay salary as per 6th Pay Commission recommendations to the petitioner from 1.10.2012 till the date of his superannuation within a period of three (3) months from the date of this order.

16. Rule is partly made absolute in above terms. No costs."

13. Needless to state that though **Tarsem Singh** was not specifically referred to, the afore-mentioned principle was nothing but the law laid down in **Tarsem Singh** inasmuch as the arrears of salary payable to the petitioners therein were restricted to three years next before filing of the application before the College Tribunal.

14. We are pointing out this precisely to demonstrate that even in the earlier review application, the management had raised the ground regarding entitlement of petitioners to arrears only for a period of three years next before the date of petition. If this be so, when admittedly, the review application no. 59 of 2020 was withdrawn rather abandoned within the meaning of Order XXIII Rule 1(4) of the Code of Civil Procedure, according to us, the management is precluded from preferring a second review application on the same ground.

15. Though the matters in **Sarguja Transport** (supra) and **Anusaya Sevabhavi** (supra) were the petitions under Article 226 of the Constitution of India, it was expressly laid down in the matter of **Sarguja Transport** (supra) that it is a matter of public policy as contained in Order XXIII Rule 4 of the Code of Civil Procedure thereby

debarring a party from filing the writ petition once having withdrawn the earlier writ petition for the same cause and relief, without the leave of the Court and was abandonment of the writ petition.

16. In the light of above, when the management had abandoned the review application no. 59 of 2020, when ground of entitlement of the petitioners to receive the arrears for more than three years next before the petition was expressly raised *albeit* not referring to **Tarsem Singh** (supra), we have no hesitation in concluding that the second review application on the same ground would not be maintainable.

17. Besides, as has been cursorily observed herein-above, even the decision of the Supreme Court in the matter of **Bhagwan Shikshan Prasarak Mandal** (supra) being a subsequent decision, by virtue of Explanation to Rule 1 of Order XLVII of the Code of Civil Procedure, that cannot be taken as a ground to seek review of the judgment and order passed in writ petition no. 5150 of 2013.

18. Further, even the delay of 2122 days is an enormous delay and there are no sufficient and cogent reasons to condone it. The only reason being quoted in the application for condonation of delay is the supervening events which according to the management, entitles it to seek a review.

19. Suffice for the purpose to observe that the application is absolutely devoid of any cause much less sufficient for condoning the delay.

20. The application for condonation of delay together with the Review Application is dismissed.

[R. M. JOSHI]
JUDGE

[MANGESH S. PATIL]
JUDGE

arp/