



**<sup>s</sup> IN THE HIGH COURT OF JUDICATURE AT BOMBAY,  
NAGPUR BENCH, NAGPUR.**

**WRIT PETITION NO. 919 OF 2024**

Chandrashekhar s/o Shamraoji Chouragade,  
Age about 43 years, Occupation – Service,  
R/o S/o Shamraoji Chouragade, Hudkeshwar  
Road, Pipla Phata, Near Mangalam Lawn,  
Pipla, Nagpur – 440034.

.... **PETITIONER**

**VERSUS**

- 1) The Hon'ble Principal District and  
Sessions Judge, Gondia, Tahsil and  
District Gondia.
- 2) Shailesh s/o Shiwalal Pardhi,  
Aged about 42 years,  
Occupation – Bailiff (In the Court of  
Civil Judge, Junior Division, Tirora),  
Tahsil – Tirora, District – Gondia.
- 3) Ku. Padma d/o Homraj Kumbhare,  
Aged about 34 years,  
Occupation – Junior Clerk (In the  
Court of District Court, Gondia),  
Tahsil and District - Gondia.
- 4) Nitin s/o Ramesh Chindhalore,  
Aged about 42 years,  
Occupation – Bailiff (In the Court of  
Civil Judge, Senior Division, Gondia)  
Tahsil and District - Gondia.
- 5) Ramesh s/o Udaram Khedkar,  
Aged about 47 years,  
Occupation – Service / Peon (In the  
Court of 5<sup>th</sup> Civil Judge, Junior Division,  
Gondia), Tahsil District - Gondia.

- 6) Mukesh s/o Hiranman Bondre,  
Aged about 39 years,  
Occupation – Junior Clerk (In the  
Court of Civil Judge, Junior Division,  
Deori), Tahsil – Deori, District – Gondia.
- 7) Mahadeo s/o Dudhram Kewat,  
Aged about 44 years,  
Occupation – Service / Peon (in the  
Court of Chief Judicial Magistrate,  
Gondia), Tahsil and District - Gondia.
- 8) Smt. Laxmi w/o Aniruddha Kanoje,  
Aged about 36 years,  
Occupation – Junior Clerk (In the Court  
of 2<sup>nd</sup> Joint Civil Judge, Senior Division,  
Gondia), Tahsil and District - Gondia.
- 9) Raisul s/o Ashok Maladhare,  
Aged about 36 years,  
Occupation – Bailiff (In the Court of  
Joint Civil Judge, Junior Division,  
Gondia), Tahsil and District - Gondia. .... **RESPONDENTS**

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Mr. A.N. Rangari, Counsel for the petitioner,  
Mr. F.T. Mirza, Senior Counsel, assisted by Ms. S. Mirza, Counsel for  
respondent No.1,  
Mr. I.N. Chaudhari, Counsel for respondent Nos.2 to 9.

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**CORAM : NITIN W. SAMBRE &  
ABHAY J. MANTRI, JJ.**

**DATE OF RESERVING THE JUDGMENT : 01.08.2024**  
**DATE OF PRONOUNCEMENT OF THE JUDGMENT : 28.08.2024**

**JUDGMENT : (Per : Abhay J. Mantri, J.)**

Rule. Rule made returnable forthwith. Heard finally with  
consent of the learned Counsel for the parties.

2. The petitioner has invoked the jurisdiction of this Court to recall/review the judgment and order dated 07-11-2023 passed by this Court (Coram: A.S. Chandurkar and Abhay J. Mantri, JJ.) in Writ Petition No.8546/2019, to the extent of setting aside his selection and appointment on the post of Bailiff.

3. The petitioner's case is that on 24-08-2010, he was appointed as a 'Sweeper' in respondent No.1-District Court, Gondia. On 07-12-2019, a Memorandum/Notice was published for conducting the written examination for the post of Bailiff. On 13-12-2019, the Advisory Committee of District and Sessions Court, Gondia, held a meeting to decide the criteria for grant of promotions for the post of Bailiff as per Paragraph 580 of the Civil Manual. Accordingly, the minutes of the Advisory Committee were prepared. In the said meeting, the Committee had unanimously decided to fill the said post abide by the judgment in the case of *Rajendra Kumar Srivastava & Ors. vs. Samyut Kshetriya Gramin Bank & Ors.* reported in *AIR 2010 SC 699* as per the principle of '*seniority-cum-merit*' basis. It was also unanimously resolved that the benchmark should be fixed at 60 out of 100 with the condition that the candidates must obtain a minimum of 8 marks in the written examination, and those candidates will be considered for promotion.

4. Accordingly, on 13-12-2019, a written test was conducted, and finally, vide meeting dated 20-12-2019, the Advisory Committee prepared the chart of total marks obtained by the candidates, including the marks of the written examination, and selected six candidates who had secured the highest marks amongst the eligible candidates. In pursuance of the said minutes, respondent No.1 issued the Office Order and appointed six employees as a Bailiff. Being aggrieved by the said order, respondents No.2 to 9, i.e. the petitioners in Writ Petition No.8546/2019, have made representation to respondent No.1 for reconsideration of the selection process/order of promotion to the employees as per seniority-cum-merit basis and justice should be given to them. However, respondent No.1 had not considered their representation. Therefore, they have preferred a Writ Petition challenging the said order of the promotion of respondent Nos.3 to 4 therein as Bailiff. In the said selection process, the petitioner was promoted to Bailiff, and his name was reflected in the said selection list at Serial Number 4.

5. Respondents Nos.2 to 9 have challenged the Bailiff's selection list in Writ Petition No.8546/2019, wherein the petitioner was not made as a party. After considering the material on record, this Court vide order dated 07-11-2023 partly allowed the petition, the operative part of which thus reads as under :

*“a) The writ petition is partly allowed.*

*b) Office orders dated 20-12-2019 and 31-12-2019 issued by respondent No.1-the then Principal District and Sessions Judge, Gondia, are partly set aside to the extent of selection and appointment of respondent Nos.2 to 4 and one C.S. Chouragade to the post of Bailiff.*

*c) Respondent No.1 is directed to select and appoint/promote the candidates who have achieved the benchmark with a minimum of 8 marks in the written examination as per their seniority in the said list to the post of Bailiff.”*

6. Thus, it seems that by the said order, the petitioner's selection and appointment to the post of Bailiff was set aside. Hence, the petitioner has preferred this writ petition.

7. It is pertinent to note that respondent No.1-District Court has chosen not to file a reply despite offering the opportunity. In such an eventuality, it would be proper to draw an inference that they have no grievance about the petitioner's claim.

8. Respondents Nos.2 to 9 have filed their reply and contended that the petitioner had not sought any relief against them. Therefore, they urged to dismiss the petition against them.

9. Mr. A.N. Rangari, learned Counsel for the petitioner, has vehemently contended that the petitioner was not a party to the Writ

Petition No. 8546/2019 and, without hearing him, passed the judgment and order. Therefore, on the sole ground, the judgment and order dated 07-11-2023 is liable to be set aside against the petitioner. He further canvassed that there was no *combined seniority list* of Class 4 employees working on the establishment of the District Court; Gondia was placed before the Court in the earlier Writ Petition No.8546/2019. However, the list of the employees as per the gradation in Class 4 was produced before the Court. Accordingly, in Class 4, the employees' list was arranged as, firstly, the names of the Peons, after that, Watchmen, and lastly, the Sweepers category. Consequently, considering the same, the judgment and order dated 7-11-2023 was delivered. He has also drawn our attention to the combined seniority list of Class 4 employees at Annexure-F, which he obtained under the Right to Information Act from the District Court establishment. Hence, he submitted that as per the said seniority list, the petitioner is at Serial Number 6 in the seniority of the Class 4 employees' category. While delivering the judgment and order dated 07-11-2023, the combined seniority list was not produced before the Court, and, therefore, considering the gradation-wise list produced before the Court, the Court has delivered the judgment. Hence, he has prayed to recall the judgment and order to the extent of the petitioner.

10. He invited our attention to paragraph 10 of the judgment of the Constitution Bench of the Hon'ble Apex Court in the case of *Shivdev Singh & Others v. State of Punjab & Others* reported in *AIR 1963 SC 1909*, and urged that this Court can review its own order to prevent the miscarriage of justice or to correct the grave and palpable errors while passing the order. Thus, he urged the petition to be allowed to the extent of the petitioner.

11. Mr. F.T. Mirza, learned Senior Counsel for respondent No.1, has not disputed the combined seniority list produced by the petitioner at Annexure-F. Therefore, he submitted that an appropriate order may be passed.

12. Mr. I.N. Chaudhari, learned Counsel for respondents Nos.2 to 9, has submitted that the petitioner has not sought any relief against respondents Nos.2 to 9, and, therefore, he has urged to dismiss the petition against them.

13. We have appreciated the submissions of the learned Counsel, we have gone through the record and the authority relied upon by the learned Counsel for the petitioner. Having considered the same, before adverting to the merits of the case, it is relevant to highlight the "*Maxim*"

***“Actus curiae neminem gravabit.”***

The meaning of the *Maxim* is that :-

*“There is no higher principle for the guidance of the court than the one that no act of Courts should harm a litigant, and it is the bounden duty of Courts to see that if a person is harmed by a mistake of the Court, he should be restored to the position he would have occupied but for that mistake.”*

14. At the outset, it appears that respondent Nos.2 to 9, while challenging the minutes of the meeting of the Advisory Meeting dated 20-12-2019 and office order dated 31-12-2019, have not produced the correct combined seniority list of Class 4 employees before the Court. During the hearing, a query was made about the seniority list of the Class 4 employees to the learned Counsel for both parties, but neither party satisfactorily replied to the query nor produced the accurate seniority list before the court. In fact, it was incumbent on the petitioners therein, i.e. respondents Nos. 2 to 9 herein as well as respondent No.1 in the said petition and this petition, to produce a correct common seniority list of Class 4 employees before the Court while determining the authenticity of selection and appointment order for the post of Bailiff.

15. It is to be noted that in paragraph 8 of the said judgment, we have observed that the petitioners have not assisted this Court while ascertaining the exact facts in dispute. Therefore, as per the

available record produced before the court, i.e. the list of employees by arranging the names as per the gradation in Class 4 employees, we have discussed the said fact in paragraphs Nos.15 to 19 and 21 of the said judgment and held that the petitioner's name was shown at Serial Number 19 in the said list of the employees and, therefore, he was held not eligible to appear for the selection process. Since, as per paragraph Nos. 577, 578 and 580(2)(a) of the Civil Manual, the vacancies are to be filled by considering the trice number of employees according to their seniority. As per the notice, the process was initiated to fill up **five** posts for the bailiff instead of six, and later on, they selected six employees. However, for the selection of six employees, the Advisory Committee called nineteen employees for the said selection process, and the petitioner's name was at Serial Number 19; therefore, his selection and appointment were quashed and set aside. Since he was not eligible as per the paragraphs referred to above. To fill up six Bailiff posts, as per Clause 2(a) of paragraph 580 of the Civil Manual, a ratio of 1:3 (1 each to 3) employees is required, i.e. for six posts, eighteen employees were needed, and the name of the petitioner was at Serial Number 19. Therefore, this Court held that the petitioner was not eligible to appear for the selection process and quashed his selection and appointment.

16. However, by producing an accurate combined seniority list of Class 4 employees at Annexure-F, which is not disputed by respondent No.1-Establishment of District Court, Gondia or other respondents, there is no reason to disbelieve the said seniority list. The list clearly demonstrates that the petitioner is at serial number 6 in seniority. Thus, it appears that the said judgment was delivered since wrong information was provided by the petitioners therein or non-supplying accurate information by the petitioners and respondent No.1 therein. In paragraph 8 of the said judgment, this Court has observed the non-furnishing of correct information by the parties to the Court to come to the proper conclusion. On that basis, if any judgment has been delivered, then it can be reviewed.

17. As per the maxim referred to above, no act of the Court should harm a litigant, and it is the bounden duty of the court to see that if a person is harmed by a mistake of the court, he should be restored to the position he would have occupied previously.

18. Thus, it reveals that based on the incorrect information supplied by the petitioners in Writ Petition No.8546/2019, it appears that this Court has delivered the judgment that caused prejudice to the rights of the petitioner as factually, the said gradation list was incorrect.

However, as per the accurate '*combined seniority list*', the petitioner was at serial number 6 in seniority. Therefore, he was eligible to appear for the bailiff's selection process. He had secured 74 marks and stood at Serial Number 4 in the said selection list. Thus it seems that he achieved the required benchmark. Therefore, he was held eligible and entitled to select and appoint to the post of Bailiff. As a result, it reveals that on the basis of 'seniority-cum-merit' principle, the petitioner was promoted on the post of bailiff. However, by virtue of the judgment and order dated 07-11-2023 delivered in Writ Petition No.8546/2019, the rights of the petitioner were affected by passing the said order as no opportunity of hearing was given to him. Hence, it would be proper to modify the judgment. It further appears that the said judgment and order caused a miscarriage of justice and was delivered without offering any opportunity for a hearing. As such, in our view, the said judgment is liable to be modified to the extent of the petitioner.

19. In view of the aforesaid discussions and for the reasons recorded above, we have no hesitation in concluding that the judgment and order dated 07-11-2023 passed in Writ Petition No.8546/2019 is not binding on the petitioner. Therefore, we deem it appropriate to pass the following order;

- (a) Writ Petition is partly allowed.
- (b) The judgment and order dated 07-11-2023 delivered in Writ Petition No.8546/2019 are hereby modified by quashing and setting aside the same to the extent of the petitioner's selection and appointment to the post of Bailiff. The rest part of the judgment shall remain intact.
- (c) As a sequel, the order dated 31-01-2024 passed by respondent No.1 is hereby quashed and set aside to the extent of the petitioner and restore him on the post of the Bailiff as per the office orders dated 20-12-2019 and 31-12-2019 and pay all consequential benefits in accordance with law.

20. Rule is made absolute in the above terms.

(ABHAY J. MANTRI, J.)

(NITIN W. SAMBRE, J.)

*adgokar*