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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**REVIEW APPLICATION (CIVIL) NO. 41 OF 2025
IN WRIT PETITION NO. 8892 OF 2021.**

The State of Maharashtra and others.
Versus
Dilip Vitthalrao Vedpathak and others.
..
Mr. V.M. Kagne, AGP for applicants.

**CORAM : MANGESH S. PATIL &
S.G. CHAPALGAONKAR, JJ.**

DATE : 8 APRIL, 2025.

ORDER : (Per S.G. Chapalgaonkar, J.) :-

1. The applicants/original respondents seek review of the order dated 8.6.2023 passed by this Court in W.P. No. 8892 of 2021.
2. Respondents had instituted Writ Petition No. 8892 of 2021 seeking direction against State Authorities to consider and treat them as employees appointed before 1.11.2005 and to grant them benefit of pension as was in existence prior to 1.11.2005. It was their contention that in 1995 they were working as Part time Librarian with respondent school, which was receiving 100% grant-in-aid. Their appointments were duly approved by Education officer. There was sufficient strength of students required for the post of “Full Time Librarian”. However, they were continued on part-time basis. Lastly, w.e.f. 1.4.2006, they were granted approval as “Full Time Librarian”.
3. The Government introduced pension scheme, namely,

Defined Contribution Pension Scheme (DCPS) to the employees appointed after 1.11.2005. Since petitioners were appointed in the year 1995 in a school receiving 100% grant in aid, considering their initial appointment, they are entitled to be treated as appointed prior to 1.11.2005 and consequential benefits of the Pension Scheme as existed prior to 1.11.2005.

4. Petition was opposed on behalf of respondents. However, relying upon previous judgments on subject in case of ***Ganesh Narhar Chavan vs. State of Maharashtra W.P. No. 14935 of 2017 and in the case of Punjahari Baburao Dighe vs. State of Maharashtra W.P. No. 12902 of 2018 and Raju Kisanrao Pawar vs. State of Maharashtra W.P. No. 2074 of 2020 alongwith connected matters***, this Court allowed the writ petition vide judgment and order dated 8.6.2023, which is sought to be reviewed by this application.

5. Learned AGP submits that petitioners' appointment as Full Time Librarian is based on terms and conditions of the Government Resolution dated 3.8.2006, hence, would be treated as fresh appointment. According to him, the Division Bench of this Court in case of ***Sunil Ekhande vs. State of Maharashtra (W.P. No., 11525 of 2018, alongwith companion matters*** decided on 1.8.2023, has taken a view that Part time Librarians who are upgraded in pursuance to Govt. Resolution dated 3.8.2006 would be governed by the New Pension Scheme. Learned AGP would further submit that law laid down in the case of ***Satish Ganpatrao Patil Vs. State in W.P. No. 2311 of 2013*** gives quietus to the aforesaid position and judgment under review runs counter to the law laid down therein.

6. We have considered the submissions. Apparently, the main thrust of contention of review petitioner is on the judgment delivered by the Co-ordinate Bench in the case of ***Sunil Ekhande (supra)*** dated 1.8.2023. The judgment under review has been delivered on 8.6.2023. Therefore, review of the order has been sought on the basis of subsequent judgment of this Court on the same subject matter. A reference can be made to Order 47 of CPC. The explanation below Rule 1 of Order 47 reads as under :-

“Explanation : The fact that the decision on question of law on which judgment of this Court is based has been reversed or modified by the subsequent decision of a superior court, in any other case, shall not be a ground for the review of such judgment”

7. It is clear that subsequent decision of even higher court on subject matter would not be good ground for review. Therefore, we cannot countenance the submission of learned AGP that because a coordinate bench of this Court has subsequently taken a different view, our earlier judgment can be reviewed.

8. Learned AGP would further submit that judgment in the case of Satish Ganpatrao Patil holds the field wherein scheme under Govt. Resolution dated 3.8.2006 has been upheld, which contemplates that the appointment of Part Time Librarian as Full Time, shall be treated as fresh appointment and it shall not be treated as up-gradation.

9. We may not delve into aforesaid aspect for the simple reason that the order under review is passed by us relying upon the previous judgments delivered by this Court. In case of Raju Kisan Pawar, relied by us, effect of judgment in case of Satish Ganpatrao Patil (*supra*)

has been considered and thereafter petitioners therein were held entitled to the benefit of the old pension scheme. Pertinently, many decisions have been rendered by this Court on this subject. The State of Maharashtra has released benefit to those petitioners. Without challenging earlier decisions either before the Supreme Court or by way of filing Review, State is not expected to adopt pick and choose policy. If it has previously accepted similar decisions rendered in many cases and has released benefits, review petitions against selected decisions, cannot be countenanced. During the course of hearing, it is also informed to us that in similar matters, even review applications filed by the State have been dismissed by a coordinate bench of this Court.

10. It is well settled that power of review may be exercised when some mistake or error apparent on record is found. Such power cannot be exercised even if the decision is erroneous on merit. Under the guise of review, petitioner cannot be permitted to re-agitate and re-argue the questions, which have already been addressed and decided. If the State authorities are aggrieved by the order being erroneous for any reason, they may resort to remedy of filing appeal before the Supreme Court.

11. In that view of the matter, we do not find any good ground to exercise review jurisdiction within the parameters of Order 47 of CPC. Review application is, therefore, rejected.

[S.G. CHAPALGAONKAR, J.]

[MANGESH S. PATIL, J.]

grt/-