



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

**CIVIL APPLICATION NO.8205 OF 2024
IN RAST/9881/2024**

**THE STATE OF MAHARASHTRA AND OTHERS
VERSUS
DEVIDAS DHONDIBA TEKALE AND ANOTHER**

....
Mr. A. S. Shinde, AGP, for the Appellant-State
Mr. Satyajit S. Bora, Advocate for the Respondent No.1
....

**CORAM : SANDIPKUMAR C. MORE AND
SANJAY A. DESHMUKH, JJ.**

RESERVED ON : 06/08/2025

PRONOUNCED ON : 13/08/2025

ORDER : (Per : Sandipkumar C. More, J.)

1. By way of this application, the applicants, who are the original respondents in Writ Petition No.823 of 2004, are seeking condonation of delay of 2237 days in filing review application in respect of orders dated 16/01/2018 and 23/08/2018 in the aforesaid writ petition as well as subsequent review application No.25 of 2018 respectively.

2. Under the order dated 16/01/2018 passed in Writ Petition No.823 of 2004, this court had directed the present applicants to regularize the service of present respondent No.1 i.e. one of the

original petitioners as a full time librarian with retrospective effect with all consequential service benefits. Further, this court under order dated 23/08/2028 in Review Application No.25 of 2018, had modified the earlier order dated 16/01/2018 and thereby granted payment of arrears also.

3. Learned AGP submits on behalf of the applicants that both the aforesaid earlier orders passed by this court are required to be reviewed since there was no sanctioned post of full-time librarian in existence in the school of present respondent No.2, wherein respondent No1. was working as a part-time librarian. According to learned AGP there cannot be automatic up-gradation of respondent No.1 to the post of full-time librarian for want of sanctioned post as per the earlier Government Resolution dated 28/06/1994. He pointed out that unless such sanctioned post of full-time librarian is available or created by the Government, such up-gradation granted by this court, was not at all permissible. He pointed out that Government Resolution dated 03/08/2006 was challenged in Writ Petition No.7779 of 2012 by which only 922 sanctioned posts of full-time librarian were available in the State of Maharashtra, but in the school of respondent No.1, no such sanctioned post of full-time librarian was there. According to him,

for the applicant in Writ Petition No.7779 of 2012, a sanctioned post of full-time librarian was available, but no such case was there in the school of respondent No.1.

4. According to learned AGP this court erred in granting benefits to the respondent No.1 by relying on the order of this court in the Writ Petition No.7779 of 2012. In short, learned AGP has sought review of the orders dated 16/01/2018 and 23/08/2018 on the grounds that the sanctioned post for full-time librarian was not available in the school of respondent No.1 at the relevant time and that there was no automatic up-gradation to the post of full-time librarian as per earlier Government Resolution dated 28/06/1994. Learned AGP also pointed out that while granting benefits to respondent No.1, this court also did not consider the aspect that the students strength in the school of respondent No.1 was below 1000 and for that reason also the act of this court for adverting the respondent No.1 to the post of full-time librarian, was erroneous. For that purpose, he relied on a chart of students strength dated 26/07/2017 issued by the Headmaster of the school of respondent No.1 for the period from 1992-93 to 2017-18. According to learned AGP while passing the orders under review, the students strength was only 703. Learned AGP also relied on following judgment.

Sunil Subhash Ekhande vs. State of Maharashtra, 2023 (6) ABR 255.

5. On the contrary, learned counsel for respondent No.1 strongly opposes the submissions made on behalf of the present applicants. Firstly, he pointed out that there is inordinate delay in filing such review application and by placing reliance on number of judgments, he submitted that there is no sufficient cause mentioned in the application for condonation of such a huge delay and therefore, the application for condonation of delay itself needs to be dismissed without going into merit of the main review application. According to him, the interpretation of GR dated 28/06/1994 in respect of post of full-time librarian, has already been done by this court in the earlier judgments and since respondent No.1 was appointed on 03/10/1994, his right to claim post of full-time librarian, had already accrued from the year of his appointment when the students strength exceeded more than 1000. He submitted that merely because some judgments of this court interpreted otherwise in respect of creation of full-time post by this court, cannot give any right to the present applicants for reviewing the earlier orders which were passed by taking correct view. He pointed out that the applicant State has not filed any review application in respect of the judgments on the basis of which this court had granted benefits to

respondent No.1. With these submissions, learned counsel for respondent No.1 sought dismissal of the application on the grounds of delay as well as merit. He also relied on following judgments / orders.

- A) Order in Civil Application No.11390 of 2024 alongwith other similar applications (The State of Maharashtra and others vs. Ramesh Kashinathrao Hatte and another, passed by this court on 27/02/2025;**
- B) Union of India (UOI) and others vs. Jahangir Byramji Jeejeebhoy (d) through his L.R., air 2024 SC 1884;**
- C) Apex Court order passed on 21/08/2024 in Civil Appeal No.9512 of 2018 (Pradip Madhorao Mahalle and others vs. State of Maharashtra through its Secretary Finance Department Mumbai and others;**
- D) Order in Civil Application No.2243 of 2024 along with other civil applications (The State of Maharashtra and another vs. Sanjay Ramnath Ingle and another), passed on 22/02/2024;**
- E) Judgment in Writ Petition No.11525 of 2018 alongwith other writ petitions (Sunil Subhash Ekhande vs. State of Maharashtra and others), passed at Principal Seat, on 01/08/2023;**

F) Sanjay Kumar Agarwal and others vs. State Tax officer (1) and others, MANU/SC/1198/2023;

G) The State of Maharashtra and others vs. Rajagonda Bhimgonda Patil and others, MANU/MH/6385/2024;

6. Heard rival submissions. Also perused the documents on record alongwith the citations relied by either of the parties.

7. Though we allowed the parties to make submissions on the delay condonation application as well as the review petition, but important question which required to be decided in the instant matter, is whether to condone the huge delay of more than six years. On perusing the delay condonation application, it is clearly evident that there is no specific cause is mentioned for condonation of delay. The State has merely stated usual reasons for condonation of delay such as the department subsequently came across the proposals and other judgments contrary to the judgment under review and that it was found that the present respondent No.1 i.e. original petitioner never worked on 100% grant-in-aid post as a full-time librarian. It was also argued that no sanctioned post of full-time librarian was available in the school of respondent No.1.

8. For condonation of such huge delay, certain observation of Hon'ble Apex Court in the case of **Union of India (UOI) and others vs. Jahangir Byramji** (supra) is useful, which is as follows.

“26. The length of the delay is a relevant matter which the court must take into consideration while considering whether the delay should be condoned or not. From the tenor of the approach of the appellants, it appears that they want to fix their own period of limitation for instituting the proceedings for which law has prescribed a period of limitation. Once it is held that a party has lost his right to have the matter considered on merits because of his own inaction for a long, it cannot be presumed to be non-deliberate delay and in such circumstances of the case, he cannot be heard to plead that the substantial justice deserves to be preferred as against the technical considerations. While considering the plea for condonation of delay, the court must not start with the merits of the main matter. The court owes a duty to first ascertain the bona fides of the explanation offered by the party seeking condonation. It is only if the sufficient cause assigned by the litigant and the opposition of the other side is equally balanced that the court may bring into aid the merits of the matter for the purpose of condoning the delay.”

On going through the aforesaid observation, it has been made clear that when the party has lost its right because of its own inaction for a long, it has to be presumed that such delay is deliberately caused.

9. Further, it is extremely important to note that the applicant – State in other similar matters, had also filed review applications alongwith applications for condonation of delay in group of Civil Application No.11390 of 2024 and others, wherein the respondents were also granted reliefs similar to present respondent No.1. On going through the order dated 27/02/2024 passed by Co-ordinate Bench of this Court, it is clearly evident that in those delay condonation applications also similar grounds / reasons as that of this application, were raised for condoning the delay of more than 600 days. This court in those applications, refused to condone the delay of even 600 days. Not only this, but this court had in fact imposed heavy costs of Rs.25,000/- in each application in the aforesaid matter on the applicant-State. The Hon'ble Apex Court in the case of **Sanjay Kumar Agrawal and others** (*supra*) has made following observation.

“(ii) The well-considered judgment sought to be reviewed did not fall within the scope and ambit of Review. The

Review Petitioners had failed to make out any mistake or error apparent on the fact of record in the impugned judgment, and had failed to bring the case within the parameters laid down by this Court in various decision for reviewing the impugned judgment.”

In the instant case also, the orders under review, are passed by this court by considering the submissions of rival parties. Therefore, as per the aforesaid observation, these orders can be said as well reasoned orders which do not fall within the scope and ambit of review.

10. So far as submissions on merit are concerned, the Hon'ble Apex Court in the same case i.e. **Sanjay Kumar Agrawal and others** (*supra*) by considering its earlier various judgments, has laid down the scope of review as mentioned below.

“16. The gist of the afore-stated decisions is that :

- (i) A judgment is open to review *inter alia* if there is a mistake or an error apparent on the fact of the record.
- (ii) A judgment pronounced by the Court is final, and departure from that principle is justified only when circumstances of a substantial and compelling character make it necessary to do so.

- (iii) *An error which is not self-evident and has to be detected by a process of reasoning, can hardly be said to be an error apparent on the fact of record justifying the court to exercise its power of review.*
- (iv) *In exercise of the jurisdiction Under Order 47 Rule 1 Code of Civil Procedure, it is not permissible for an erroneous decision to be “reheard and corrected.”*
- (v) *A Review Petition has a limited purpose and cannot be allowed to be “an appeal in disguise.”*
- (vi) *Under the guise of review, the Petitioner cannot be permitted to reagitate and reargue the questions which have already been addressed and decided.*
- (vii) *An error on the face of record must be such an error which, mere looking at the record should strike and it should not require any long-drawn process of reasoning on the points where there may conceivably be two opinions.*
- (viii) *Even the change in law or subsequent decision / judgment of a co-ordinate or larger Bench by itself cannot be regarded as a ground for review.”*

11. It is significant to note that the applicant-State wants to review the order in favour of respondent No.1 mainly because the Co-ordinate Bench of this Court at Principal Seat, has taken a

different view in the case of **Sunil Subhash Ekhande** (*supra*). It is held in the said case as follows.

“18. A plain reading of the GR of 28th June 1994 does not indicate the ‘creation’ of posts. It simply declares the contents of the Chiplunkar Committee report and resolves to accept it by creating full-time posts. That GR did not actually create these posts. It is only by the GR of 3rd August 2006 that the government acted in furtherance of its earlier resolutions and upgraded the earlier posts to full-time posts with conditions.”

12. The learned AGP by relying on this observation, submitted that the observation in orders under review, has been set aside by interpreting the word ‘creation’ of the posts with reference to the Government Resolution dated 28/06/1994. He, thus, submitted that the observation of this court in the orders under review that respondent No.1 automatically converted into full-time librarian by virtue of Government Resolution dated 28/06/1994, is erroneous. However, the Hon’ble Apex Court while discussing the scope of review, has clearly observed that even the change in law or subsequent decision of coordinate or larger bench by itself cannot be regarded as a ground for review. After such observation of the Hon’ble Apex Court, nothing survives in the submission of learned AGP that the Co-ordinate Bench of this Court at Principal Seat has

taken a different view and therefore, review of earlier orders in the instant matter is permissible.

13. Even this court in the case of ***The State of Maharashtra and others vs. Rajagonda Bhimgonda Patil and others*** (*supra*) has taken a similar view by quoting following paragraph.

“29. In Government of NCT of Delhi and anotehr vs. K. L. Rathi Steels Limited and others MANU/SC/0488/2024: (2024) 7 SCC 315, the Hon’ble Supreme Court held that the Explanation to Order XLVII Rule 1 of CPC provides that if the decision on a question of law on which the judgment of the Court is based is reversed or modified by the subsequent decision of the superior court in any other case, it shall not be a ground for the review of such judgment. Thus, even an erroneous decision cannot be a ground for the Court to undertake the review, as the first and foremost requirement of entertaining a Review Petition is that the order, review of which is sought, suffers from any error apparent on the face of the order and in the absence of any such error, the finality attached to the judgment / order cannot be disturbed.”

14. Thus, considering the scope of review, the applicant - State has also failed on merit. This court in order dated 27/02/2025 in

Civil Application No.11390 of 2024 and others by referring the judgment of **Sunil Subhash Ekhande** (*supra*) has held that the said judgment was pronounced on 01/08/2023 and the applicant in those applications filed review based on the observation in the said judgment, almost a year thereafter and therefore, rejected the delay condonation applications.

15. Thus, considering all these aspects, we do not find any substance in the submissions made on behalf of the applicant-State either on the point of delay condonation or on the merit. Resultantly, the civil applications stands dismissed and the Review Application (ST) No.9881 of 2024 is also disposed of.

(SANJAY A. DESHMUKH, J.) (SANDIPKUMAR C. MORE, J.)