



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

REVIEW APPLICATION NO. 166 OF 2025

IN

WRIT PETITION NO. 12489 OF 2024

SACHIN S/O DNYANESHWAR DAHIHANDE

VERSUS

THE STATE OF MAHARASHTRA AND ANOTHER

...

Advocate for Applicant : Mr. P. P. More h/f Mr. Rathod Ganesh Amrut

AGP for Respondent Nos. 1 and 2 : Mrs. R. P. Gaur

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CORAM

**: R. G. AVACHAT AND
SHAILESH P. BRAHME, JJ.**

RESERVED ON

: 10.09.2025

PRONOUNCED ON

: 24.09.2025

ORDER : (PER : SHAILESH P. BRAHME, J.)

Heard both sides.

2. In the present review, judgment delivered in Writ Petition No. 12489/2024 on 10.03.2025, by the Division Bench, of which one of us was a party, is sought to be reviewed. The respondents' petition was allowed and judgment and order dated 01.11.2023 passed by the Maharashtra Administrative Tribunal (hereinafter referred as 'Tribunal') directing them to consider claim of the applicant to the post of Talathi was set aside.

3. The respondents had undertaken selection process for 84 posts of Talathi. A final merit list was published on 20.12.2021. The applicant was at Sr. no. 1 in the wait list. Three candidates from the merit list were excluded due to criminal action for malpractices. The applicant's Original Application No. 526/2022, before the Tribunal was allowed directing the respondents to consider his claim against the vacant posts being wait listed candidate.

4. The Division Bench in the judgment sought to be reviewed found favour with the respondents mainly on the ground that wait listed candidate has no enforceable right and the selection list as well as wait list was found to be lapsed.

5. The learned counsel Mr. P.P. More appearing for the applicant draws our attention to specific findings recording in para No. 14, which is according to him *ex facie* illegal and unfounded. It is submitted that it was not the case of the respondents that due to selection process of 2023 it was not possible to accommodate the applicant. It is submitted that it is a mistake apparent on the face of record to dislodge the claim when the wait list was subsisting at the relevant time, applicant was at Sr. No. 1 and eligible to occupy the vacant post of unreserved candidate.

6. The learned A.G.P. Mrs. Gaur submits that a possible view has been taken by the Division Bench considering the material on record and the same cannot be faulted in review jurisdiction. It is submitted that the submissions of the applicant are not sufficient to constitute ground to recall the judgment in question. It is reiterated that applicant does not have any vested right to claim the post.

7. Having considered the rival submissions of the parties, the vulnerable portion of the judgment in question is as follows:

“14- Apart from above legal position, the learned A.G.P. has brought to notice the subsequent selection process of 2023. A large number of posts were found vacant. In such circumstances, we presume that the State has impliedly lapsed earlier selection list as well as wait list”.

8. It reveals from record that the predominant submissions of the respondents in Writ Petition were that applicant had no vested right, though he was at Sr. No. 1 in wait list and the life of the wait list expired. Though

cursorily it was disclosed by the respondents that further selection process was undertaken in the year 2023 but the interplay between the selection process of 2019 with which present controversy is concerned and selection process of 2023, was not placed on record. Neither there was any pleading nor any material placed on record by the respondents to show connection between these two selection processes. It was not the case put up by the respondents that due to fresh selection process of 2023 the vacant posts were either not available or prohibited to be filled in by any wait listed candidate.

9. We have gone through the letter dated 04.03.2025, which is at page No. 200 of the paper book, addressed by the Collector to the Assistant Government Pleader. The Tribunal had rendered decision on 01.11.2023. The letter in question was not produced in the writ petition. It is difficult to assume that the observations in paragraph No. 14 of the judgment in question is in pursuance of the letter. The learned A.G.P. is also unable to explain as to what was the foundation for the vulnerable findings recorded in paragraph no. 14 referred above. Under these circumstances, we find merit in the submission of Mr. P. P. More that findings recorded in the judgment in question to dislodge the claim of the appellant is apparently erroneous and without any foundation.

10. It is not disputed that in the selection process of 2019, three candidates figuring in the merit list were found to be ineligible due to criminal action proposed against them and those posts were vacant. The applicant was at Sr. No. 1 in the wait list, which was subsisting at the relevant time. He is entitled to be considered for the vacant post. There is nothing on record to indicate that vacancy was subject to outcome of action taken against those candidates or it stood abolished. The letter dated 04.03.2025 addressed by the Collector also cannot be said to be adverse to the claim of the applicant, albeit it was not part of record.

11. We are not shown any circumstance or the subsequent development for not granting relief in favour of the applicant. Three posts in the merit list were vacant and the applicant from the unreserved category is eligible to occupy one of the posts. We are of the considered view that the judgment sought to be reviewed is vitiated for the reasons assigned above. We, therefore, pass following order.

ORDER

(A) Review application is allowed.

(b) Judgment dated 10.03.2025 passed in Writ Petition No. 12489/2024 is quashed and set aside and the judgment and order passed by the Tribunal on 01.11.2023 in Original Application No. 526/2022 stands confirmed.

(C) Respondents shall accommodate the applicant against one of the vacant posts of Talathi in the selection process of 2019.

(SHAILESH P. BRAHME, J.)

(R. G. AVACHAT, J.)

mkd/-