



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CIVIL APPLICATION NO.6903 OF 2025
IN
REVIEW APPLICATION (STAMP) NO.16999 OF 2025
WITH
REVIEW APPLICATION (STAMP) NO.16999 OF 2025
IN
WRIT PETITION NO.5268 OF 2019

Nilkanth s/o Panditrao Aghor
Age: 58 years, Occu.: Retired as
Registrar (District Court Osmanabad),
R/o. Dharashiv (Osmanabad).

.. Applicant

Versus

1. State of Maharashtra
Department of Law and Judiciary
Mantralaya, Mumbai.
2. Accountant General
Through its Account Officer Pay
Verification Unit Department,
Aurangabad.
3. The Principal District Judge,
Osmanabad (In Administrative Capacity)
District Court, Osmanabad,
Tq. And Dist. Osmanabad.
4. Accounts Department
District Court, Osmanabad
Tq. And Dist. Osmanabad.
5. The Principal Secretary
Law and Judiciary Department
Mantralaya, Mumbai.
6. Accountant General Nagpur,
Accounts Department, Nagpur.

.. Respondents

...

Mr. Gaurav L. Deshpande, Advocate for the applicant.

Mr. G. A. Kulkarni, AGP for Respondent Nos.1 to 5/State.

...

**CORAM : SMT. VIBHA KANKANWADI &
PRAFULLA S. KHUBALKAR, JJ.**

DATE : 09 JULY 2025

ORDER :-

1. Civil Application No.6903 of 2025 has been filed for condonation of delay of 7 days in filing review application.

2. Learned AGP waives notice for respondent Nos.1 to 5/State. It is in respect of delay of 7 days only and, therefore, we find that there is no necessity to issue notice to respondent No.6.

3. For the reasons stated in the application, the delay stands condoned.

4. Civil Application No.6903 of 2025 stands allowed and disposed of.

5. Review application be registered.

6. We have heard learned Advocate appearing for the applicant and learned AGP for respondent Nos.1 to 5/State. No necessity to issue notice to respondent No.6.

7. The applicant seeks review of the judgment passed by this Court on 06.05.2025 in Writ petition No.5268 of 2019. In the said writ petition, by invoking the constitutional powers of this Court under Article 226 of the Constitution of India, the petitioner had raised objection in respect of direction of recovery of overpayment from pensionary benefits of the petitioner by order dated 10.01.2019 and also taken exception to the objection dated 29.10.2018 raised by respondent No.2 about petitioner's pay fixation and the order dated 28/29.12.2018 of refixation of pay of the petitioner. Learned Advocate appearing for the petitioner submits that the pay fixation of the petitioner was correct. The petitioner had joined the services on 02.11.1984 as English Section Writer at Civil Court, Junior Division, Paranda, District Osmanabad and by various promotions he was promoted to the post of Registrar on 15.09.2018. He retired from the said post by superannuation on 30.09.2018. During the process of verification of his service book, Accountant General had raised an objection on 29.10.2018 regarding the pay fixation of the petitioner. It was then inferred that there is overpayment to the petitioner to the extent of Rs.5,41,658/-. The said recovery was ordered from his pensionary benefits. The learned Advocate for the petitioner while arguing in the main petition had relied on the decision in ***State of Punjab and others vs. Rafiq Masih (White Washer) and others, (2015) 4 SCC 334.*** Learned Advocate for respondent Nos.3 and 4 had then relied on the

decision in ***High Court of Punjab and Haryana and others vs. Jagdev Singh, (2016) 14 SCC 267*** and dismissed the petition. However, according to learned Advocate for the applicant, when this Court had taken note of the undertaking, which was taken from the applicant, according to him, it had failed to consider the proviso to Rule 134A of the Maharashtra Civil Services (Pension) Rules, 1982 i.e. giving a reasonable opportunity to the pensioner to show cause as to why the amount due should not be recovered from him. The second submission is that in similar circumstances, similarly situated employees from the Court at Aurangabad, Jalna, this Court in Writ Petition No.598 of 2019 decided on 20.03.2024 had relied on ***Rafiq Masih (Supra)*** and the writ petition was partly allowed. He also submits that he has filed written notes of arguments which were not considered by this Court. In the written notes of arguments, the applicant had clarified as to how his pay fixation was correct and the recovery was unjustified. On these grounds, he seek review. He had also taken the other grounds that in respect of present applicant also he had given the undertaking, but in similarly situated persons when the undertakings were given, the view has been taken that the recovery cannot be so ordered from a retired employee. There was discrimination against him and, therefore, the applicant ought to have been given similar treatment, as has been given to the other employees.

8. Learned AGP objects to the review and submits that every point was considered by this Court, which was raised in the original petition. The additional points and citations cannot be considered in a review.

9. Before proceeding to consider the submissions, we would like to consider the legal position and the scope of review in ***Vinay Sharma & another Vs. State (NCT of Delhi) & others [(2018) 8 SCC 186]***, wherein it has been observed that "Power of review cannot be confused with appellate power which enables a superior court to correct all errors committed by a subordinate court. A repetition of old and overruled argument is not enough to reopen concluded adjudications." Further, in ***Haryana State Industrial Development Corporation Limited Vs. Mawasi & others [(2012) 7 SCC 200]***, it has been held that "Roving inquiry or de novo hearing in guise of review is impermissible." Reliance was placed in this case on the decision in ***Thungabhadra Industries Ltd. Vs. Govt. of A.P.[AIR 1964 SC 1372]*** (Three Judges Bench), wherein it has been observed thus :-

"11.... A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected, but lies only for patent error. We do not consider that this furnishes a suitable occasion for dealing with this difference exhaustively or in any great detail, but it would suffice for us to say that where without any

elaborate argument one could point to the error and say here is a substantial point of law which stares one in the face, and there could reasonably be no two opinions, entertained about it, a clear case of error apparent on the face of the record would be made out."

Further note was taken in respect of the decision in ***Parsion Devi Vs. Sumitri Devi [(1997) 8 SCC 715]***, wherein it has been observed thus :-

"9. ... 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 face of the record justifying the court to exercise its power of review under Order 47 Rule 1 CPC. ... A review petition, it must be remembered, has limited purpose and cannot be allowed to be 'an appeal in disguise'."

We may restrict ourselves only to point out that there are consistent decisions of the Hon'ble Apex Court that the review Court cannot sit as an Appellate Court. However, lastly, we may rely on the decision in ***Lily Thomas vs. Union of India and others, AIR 2000 SUPREME COURT 1650***, wherein it has been observed that :-

"The dictionary meaning of the word "review" is "the act of looking, over something again with a view to correction or improvement. It cannot be denied that the review is the creation of a statute. The power of review can be exercised for correction of a mistake and not to substitute a view. Such powers can be exercised within the limits of

the statute dealing with the exercise of power. The review cannot be treated as an appeal in disguise. The mere possibility of two views on the subject is not a ground for review. Once a review petition is dismissed no further petition of review can be entertained. The rule of law of following the practice of the binding nature of the larger benches and not taking different views by the Benches of coordinated jurisdiction of equal strength has to be followed and practiced. However, the Supreme Court in exercise of its powers under Art. 136 or Art. 32 of the Constitution and upon satisfaction that the earlier judgments have resulted in deprivation of fundamental rights of a citizen or rights created under any other statute, can take a different view notwithstanding the earlier judgment.”

10. Under such circumstance, when the entire facts were before this Court including the written notes of arguments, then on the facts, the applicant is precluded from canvassing, that this Court had erred, in the review before this Court. Now, as regards the decisions those were considered by this Court i.e. **Rafiq Masih (Supra)** and **Jagdev Singh (Supra)** are concerned, the learned Advocate for the applicant is armed with another judgment, which clarifies the difference between the two, however, he had not relied on the same, when the matter was heard. Now, he says that it is a position of law, but when he had relied on **Rafiq Masih (Supra)** and the other party had relied on the decision in **Jagdev Singh (Supra)**, he ought to have then placed the said decision also

before this Court. Now, he cannot say that since it is a position of law, he should be allowed to argue on the said point. Another point that is involved in the same itself is that whether it relates to the undertakings those were given. The applicant admits that he had given the undertakings and how those undertakings were to be interpreted was in question and it would be a question of fact and, therefore, on this point also, it would have been a mixed question of fact and law, as to which decision would then be applicable and on this count also, he cannot now raise the said point by way of review. The other points which have been raised are mostly on factual aspects, which he cannot now raise. We do not find this to be a fit case for review, as there is no error apparent on the face of the record.

11. The review application stands dismissed.

[PRAFULLA S. KHUBALKAR]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

scm