



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

901 CIVIL APPLICATION NO.1538 OF 2025
IN
REVIEW APPLICATION (STAMP) NO.26353 OF 2024
IN
WRIT PETITION NO.198 OF 2020

The State of Maharashtra and others 2

... Applicants

... Versus ...

Sanjay Narsingrao Wadikar and another

... Respondents

...

Mr. G.A. Kulkarni, AGP for applicants

Mr. T.M. Venjane, Advocate for respondent No.1

...

WITH
903 CIVIL APPLICATION NO.1540 OF 2025
IN
REVIEW APPLICATION (STAMP) NO.26366 OF 2024
IN
WRIT PETITION NO.2246 OF 2023

The State of Maharashtra and others 3

... Applicants

... Versus ...

Madhav Shahajirao Jadhav

... Respondent

...

Mr. G.A. Kulkarni, AGP for applicants
Mr. T.M. Venjane, Advocate for sole respondent

...

WITH
902 CIVIL APPLICATION NO.1539 OF 2025
IN
REVIEW APPLICATION (STAMP) NO.30241 OF 2024
IN
WRIT PETITION NO.8930 OF 2019

The State of Maharashtra and others 3

... Applicants

... Versus ...

Balu Aatmaram Kumbhar

... Respondent

...

Mr. G.A. Kulkarni, AGP for applicants
Mr. G.J. Kore, Advocate for sole respondent

...

CORAM : SMT. VIBHA KANKANWADI &
SANJAY A. DESHMUKH, JJ.

DATE : 07th FEBRUARY, 2025

ORDER : (PER : SMT. VIBHA KANKANWADI, J.)

1 These three applications have been filed for condonation of delay

of 607, 607 and 620 days in filing review application in the respective writ petitions to be condoned and to review the decision in respect of main writ petition.

2 The State Government was respondent in Writ Petition Nos.198 of 2020, 2246 of 2023 and 8930 of 2019 respectively. All the writ petitioners in all the matters prayed for writ of mandamus or any other appropriate writ to give directions to respondents to upgrade the services of petitioner to the post of Full Time Librarian. Further, directions were sought against Education Officer (Secondary), Zilla Parishad to submit the proposal in respect of pension of petitioner by counting the service rendered by petitioner as Part Time Librarian to the extent of half. The matters were heard by Division Bench of this Court [**CORAM : RAVINDRA V. GHUGE AND SANJAY A. DESHMUKH, JJ.**] along with other writ petitions for similar reliefs on 23.02.2023, 23.02.2023 and 12.01.2023 respectively. Directions were given on the basis of earlier decisions of this Court. Now, the State intends to review these orders, however, there is delay, as aforesaid.

3 Heard learned AGP Mr. G.A. Kulkarni for applicants and learned T.M. Venjane as well as Mr. G.J. Kore for respondents in respective matters.

4 Learned AGP vehemently submits that petitioners were

challenging the Government Resolution dated 03.08.2006, thereby restricting the up-gradation of Part Time Librarian to Full Time Librarian from 01.04.2006 only. It was stated that it was contrary to Rule 30, 33 of the Maharashtra Civil Services (Pension) Rules, 1982 as well as Article 14 of the Constitution of India. However, the petitioners were not at all entitled for the pension as their service was not pensionable as per the rules itself. When the Department came across the proposals and other Judgments, then this situation was pointed out and, therefore, there is delay, which is not deliberate at all. He submits that this Court had relied on the decisions in **Ganesh Narhar Chavan vs. The State of Maharashtra and others** in Writ Petition No.14935 of 2017 decided on 11.03.2022, **Punjabari Baburao Dighe and others vs. The State of Maharashtra and others** in Writ Petition No.12902 of 2018 decided on 06.05.2022 and **Raju Kishanrao Pawar vs. The State of Maharashtra and others** in Writ Petition No.2074 of 2020 decided on 01.10.2022, however, prior to that there was a decision of this Court in **Satish Ganpatrao Patil and others vs. The State of Maharashtra and others** in Writ Petition No.2311 of 2013 decided on 31.03.2015, wherein the same Government Resolution was already held to be not violative of Article 14 and/or Article 21 of the Constitution of India. The case of present petitioners was not distinguished from the case in **Satish Ganpatrao Patil** (supra), therefore, the subsequent decisions have been rendered *per incuriam* and this

position has been considered in **Sunil Subhash Ekhande vs. The State of Maharashtra and others** in Writ Petition No.11525 of 2018 decided at the Principal Seat on 01.08.2023 and therefore, the decisions in the present case are not required to be reviewed.

5 Per contra, respondents – original petitioners strongly opposed delay condonation applications and review applications by submitting that no reasonable ground has been shown for condonation of delay. All the facts were known to respondents/State. Still there were no submissions advanced nor the decision in **Satish Ganpatrao Patil** (supra) was shown and relied by the Government. Therefore, there is absolutely no necessity to review the decisions in the present case.

6 The first and the foremost point that is required to be decided is the delay condonation application. Perusal of contents of applications would show that absolutely no reasonable ground has been shown for condonation of delay. It is lamely stated that the delay is caused because when the Department came across the proposals and other Judgments, then it was found that the petitioners never worked on 100% grant-in-aid post as a Full Time Librarian around and on 01.11.2005 and, therefore, they were not entitled for the pension. When it was not their pensionable service, question

of up-gradation and grant of pension and the consequential benefits was not in question. Then it is stated that time was spent to collect the individual record from concerned Departments and further time was consumed due to administrative exigencies. Here, the delay is more than 600 days. If we consider the orders in Writ Petition Nos.198 of 2020 and 2246 of 2023, then it can be seen that those are same as those were passed on the same date i.e. on 23.02.2023. As aforesaid, the reliance was on three Judgments i.e. **Ganesh Chavan** (supra), **Punjahari Dighe** (supra) and mainly on **Raju Pawar** (supra) and, therefore, the directions were given to the State that the State would verify the case of each petitioner in the light of service condition and tenure of employment and upon conferring that they are entitled for the benefits in the light of two Judgments i.e. **Ganesh Chavan** (supra) and **Punjahari Dighe** (supra), the State would proceed to extend such benefits to them as expeditiously as possible and preferably on or before 31.08.2023. Thus, the State had almost six months for collection of data and considering the claim of each petitioner. Further, the order also stated that where the State comes to the conclusion that the particular petitioner is not entitled for the particular benefit, then the reasoned order would be passed and the said order would be communicated to the concerned petitioner within a period of 30 days. Therefore, in the light of these directions the collection of data ought to have been within a period of six months at that time itself, then the

State ought to have come to the conclusion as to whether a particular petitioner is entitled to the relief claimed and conferred or not. But it appears that no such activity had taken place within the aforesaid six months. Whatever the reason that has been now given is too general. When the Department started collecting data in respect of each of the petitioners before us now has not been explained with documentary evidence. As regards Writ Petition No.8930 of 2019 is concerned, the order that was passed on 12.01.2023 took into consideration the decision in **Raju Kishanrao Pawar** (supra) where also almost same directions were given and in **Raju Kishanrao Pawar** (supra) reliance was placed on the decisions in **Ganesh Chavan** and **Punjabari Dighe** (supra). Therefore, in that case also sufficient time was available and each step has not been explained by the applicants/State.

7 Interestingly, in all matters State was the respondent. Learned AGP who was representing the State ought to have brought to the notice of Division Bench that already some decisions are given, which might be contrary to each other. Then the recourse which was available as per the law of precedent could have been taken. Now, only upon the decision in **Sunil Subhash Ekhande** (supra) these applications have been filed. However, as we have called the original record of Writ Petition No.2246 of 2023, then we are able to consider that such petitions are there since 2015 at least before the

Benches and at the Principal Seat. Photo copies of those decision were part and parcel of Writ Petition No.2246 of 2023. Those decisions are :

- 1) **Uttam Sandu Badak and others vs. The State of Maharashtra and others** in Writ Petition No.10426 of 2015 decided on 22.02.2019.
- 2) **Balasaheb Shripati Munde vs. The State of Maharashtra and others** in Writ Petition No.15008 of 2017 decided on 09.10.2019.
- 3) **Punjahari Baburao Dighe and others vs. The State of Maharashtra and others** in Writ Petition No.12902 of 2018 with companion matters decided on 06.05.2022.
- 4) **Rajendra Rangnath Sambhus vs. The State of Maharashtra and others** in Writ Petition No.6337 of 2019 decided on 04.07.2022.
- 5) **Raju Kishanrao Pawar vs. The State of Maharashtra and others** in Writ Petition No.2074 of 2020 with companion matters decided on 01.10.2022.
- 6) **Kiran Keshavrao Girhe and others vs. The State of Maharashtra and others** in Writ Petition No.6630 of 2013 with companion matters decided on 28.01.2015.

It is further to be noted that in **Punjahari Dighe's** decision (supra) the earlier decisions in many matters were relied. The Government Pleaders then representing had also relied on some decisions including the decision in **Satish Ganpatrao Patil** (supra). Paragraph No.56 of that

Judgment clearly shows about the scope which was decided in **Satish Ganpatrao Patil** (supra) and a specific statement has been made that since the case is totally different and distinguishable on the facts the point is not required to be referred to Larger Bench. Then paragraph No.58 also takes note of the submission on behalf of Government that in Judgments relied by petitioners Government Resolution of 2006 was not considered and, therefore, those Judgments were *per incuriam*. That point has also been dealt with by the Division Bench and it was specifically then observed that the Government Resolution dated 03.08.2006 taking away the rights vested in the employees under Government Resolution dated 28.06.1994 is illegal, arbitrary and violative of Article 14 of the Constitution of India. The learned AGP appearing before us has not stated that the State has approached Hon'ble Supreme Court challenging the decision in **Punjahari Dighe** (supra) and whether any stay has been granted to the operation of Judgment and order therein. Thereafter, in **Raju Kishanrao Pawar** (supra) other companion matters were also considered, wherein also decision in **Punjahari Dighe** (supra) was cited, so also **Satish Ganpatrao Patil** (supra). Same points appears to have been raised on behalf of Government and in paragraph No.13 of the decision in **Raju Kishanrao Pawar** (supra) it is observed that the State of Maharashtra has neither challenged the decision in **Ganesh Chavan** (supra) nor **Punjahari Dighe** (supra) before Hon'ble Supreme Court nor

review petitions were filed. Paragraph Nos.14 and 15 were on the point as to why the Division Bench dealing with the decision in **Raju Kishanrao Pawar** (supra) relied on **Ganesh Chavan** (supra) and **Punjahari Dighe** (supra). All these things, therefore, were considered in those matters. Thereafter, it appears that those decisions were then cited before the coordinate Bench in **Sunil Subhash Ekhande** (supra), who has taken a different view. However, the fact remains is, when the case of **Sunil Subhash Ekhande** (supra) has been decided on 01.08.2023 but prior to that there are decisions which have attained finality, then only on the basis of decision in **Sunil Subhash Ekhande** (supra) whether review is permissible. Another fact which is now emerging from the original petitioners is that in some of the matters which have been decided by this Court the benefits have been conferred, therefore, again there would be disparity. It is only due to the delay that has been caused by the State Government. For some persons implementation of the order was the recourse taken by the State and now, only in another matter when the decision is in favour of the State Government, the Government states that there should be review. This approach of the State Government is absolutely not proper. Immediately after the decision in **Ganesh Chavan** (supra) and **Punjahari Dighe** (supra) if the steps would have been taken by the State Government to challenge those decisions before Hon'ble Supreme Court and then if the Judgment and order passed in those matters would have been

stayed, every confusion or so called illegality would have been avoided.

8 The reason for the delay is absolutely not explained and general reason has been given that when Department came across the proposals the facts came to the knowledge of the State. In fact, the facts were never suppressed by any of the petitioners. Every details regarding the petitioners' appointment and the service conditions, duration was available with the Education Department and, therefore, though in each matter almost six months time was given, the State has not taken appropriate steps in its own interest. Therefore, both the applications i.e. civil application for condonation of delay as well as review applications deserve to be dismissed. As aforesaid, the delay has been caused unnecessarily. At the cost of repetition, it appears that though six months time was given, neither the State has gone ahead to obey the steps which were required to be taken for obeying the orders of the Court in respective petitions nor took a decision to challenge the order. Further, Judgment in **Sunil Subhash Ekhande** (supra) was pronounced on 01.08.2023, but present applications have been filed in September – October, 2024, that means, almost a year thereafter. Therefore, costs is required to be imposed for unnecessarily taking the recourse of filing review application. For the aforesaid reasons, we proceed to pass following order.

ORDER

- i) Civil Application Nos.1538 of 2025, 1540 of 2025 and 1539 of 2025 stand dismissed.
- ii) Costs of Rs.25,000/- (Rupees Twenty Five Thousand only) in each application be deposited, on or before 17.03.2025.
- iii) After the amount is deposited, it be disbursed to respondents – original petitioners.

(SANJAY A. DESHMUKH, J.)

(SMT. VIBHA KANKANWADI, J.)

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