



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

**REVIEW APPLICATION NO.66 OF 2026
IN
WRIT PETITION NO.8025 OF 2025**

1. The State of Maharashtra
Through the Additional Chief Secretary,
Public Works Department,
Mantralaya, Mumbai-32
 2. The Chief Engineer
Public Works Regional Division,
Chhatrapati Sambhajanagar
- ...Review Applicants
(Orig. Respondents)

Versus

1. Venkat s/o Naganna Mittewad,
Age : 56 Years, Occu: Service,
(As Executive Engineer,
Public Work Division-2, Jalna),
R/o: Plot No.54, Shrikrushna Nagar,
Near Paripurti Nursing Home, Shahnoorwadi,
Chhatrapati Sambhajanagar
- ...Respondent
(Orig. Petitioner.)

...

Mr. S. R. Wakale, AGP for Applicant/State
Mr.A. S. Deshmukh, Advocate for the / Respondent

...

**CORAM : N. B. SURYAWANSHI AND
ABASAHEB D. SHINDE, JJ.**

RESERVED ON : APRIL 09, 2026

PRONOUNCED ON : MAY 06, 2026

JUDGMENT (Per Abasaheb D. Shinde J.):

FACTS

1. The respondent entered services as a Junior Engineer in
Construction Division, Zilla Parishad, Nanded in May 1990.

During his service, he did A.M.I.E. (Civil) in 2006. After completing almost six years of service as Junior Engineer, he achieved status of Sectional Engineer w.e.f 01.04.1996. According to the Respondent, he initially entered service with 'Local Self Government'. The Chief Executive Officer, Zilla Parishad, Nanded was the appointing authority. The Divisional Commissioner, in his capacity as Administrative Head of 'Local Self Governments' conferred status of 'Sectional Engineer' to the respondent. Thereafter, by virtue of completing A.M.I.E (Civil), Zilla Parishad, Nanded promoted the Respondent to the post of Assistant Engineer, Grade-2, Gazetted Officer, Group-B (Junior Level). The said promotion was given to the respondent in January 2007 with retrospective effect from July 2000.

2. The Public Works Department (PWD) and the Water Resources Department (Irrigation Department) of applicant No.1 herein who were competent authorities appointed the respondent for the post of Junior Engineer (Civil) while working in the District Technical Services in Zilla Parishad as Sub Divisional Engineers (S.D.E.'s) / Sub Divisional Officers (SDO's) in Maharashtra Engineering Service (M.E.S.) Group-A. Though the appointment of the respondent is shown as promotion, however, according to the respondent, it was his first appointment in the state government service. The respondent accordingly entered the service of applicant no.1 herein in February 2008. It is pertinent to note that the said entry of the respondent itself was from the reserved category, as per the prevailing policy, while appointing the respondent as Sub

Divisional Engineer. The Respondent thereafter was also promoted by the applicants to the post of Executive Engineer. Even on this occasion, the respondent was given benefit from reserved category. By virtue of said promotion, the name of the respondent was included in the list of seniority for being considered to the post of Superintendent Engineer by promotion. Though the said process of promotion could not materialize in the year 2023-24, however, the respondent was expecting his promotion in the year 2024-25. However, since the name of respondent was not included in the list for being considered for promotion to the post of Superintendent Engineer, the respondent therefore approached the Maharashtra Administrative Tribunal, Bench at Aurangabad (hereinafter referred to as '*the tribunal*').

3. Before the Tribunal, the applicants have relied upon the Government Resolution dated 07.05.2021 issued by the State Government through General Administration Department (hereinafter referred to as 'the said Government Resolution'). The said Government Resolution has been promulgated with regard to cut-off date from which the government servant is eligible for promotion. The Tribunal, relying upon Clauses-3 (a) and (b) of the said Government Resolution dismissed the Original Application filed by the respondent by an order dated 17.06.2025.

4. The respondent, therefore, approached this Court by filing Writ Petition No.8025 of 2025, challenging not only the order

passed by the learned Tribunal dated 17.06.2025 but also seeking reliefs with regard to inclusion of the respondent's name in the list of candidates eligible for promotion to the post of Superintendant Engineer.

5. This Court, after hearing the applicants as well as the respondent and after perusal of Clauses 3(a) and (b) of the said Government Resolution, held that both these clauses speak about the date of entry in the government service. This Court observed that the said clauses have nothing to do with entry in the service of Local Self Government, which precedes the entry in the government service. This Court further held that these clauses specifically speak of an employee's entry in service (necessarily government) either on 25.05.2004 or before or after the said date. This Court, therefore, came to the conclusion that since the respondent entered the State Government's service in 2008 for the first time, his entry in the State Services would necessarily be counted for seniority to be considered for promotional avenues. In that view of the matter, this Court interfered with the order passed by the learned Tribunal by setting aside the said order and by further directing the applicants to consider the respondent's entry in state government services in the year 2008 for all practical purposes, including gradation/seniority for further promotional avenues leaving the said discretion with the Committee constituted for filling up the post of Superintendent Engineer by promotion as to whether the respondent can be considered for the said post. It is this judgment and order which is sought to be reviewed in this

application.

SUBMISSIONS :

6. Learned AGP appearing for the applicants would submit that Clauses 3(a) and (b) of the said Government Resolution ought to have been interpreted in its proper perspective. He would further submit that, had Clauses 3 (a) and (b) of the said Government Resolution been interpreted the way which the learned AGP tried to canvass, the conclusion of this Court would have been different. This according to the learned AGP is a good ground for review.

7. Per contra, learned Counsel appearing for respondent would submit that merely because different interpretation with regard to Clauses 3 (a) and (b) of the said Government Resolution is possible, the order under review cannot be interfered with. He, therefore, urge for dismissal of the Review Application.

CONSIDERATION :

8. For better appreciation, we reproduce Clauses 3 (a) and (b) of the said Government Resolution, which reads thus :-

“3. जे मागासवर्गीय अधिकारी / कर्मचारी संदर्भाधीन क्र.१ येथील दि.२५/०५/२००४ च्या शासन निर्णयातील तरतुदीनुसार पदोन्नतीमधील आरक्षणाचा लाभ घेऊन सेवाज्येष्ठता यादीत वरच्या स्थानावर आले आहेत, असे अधिकारी / कर्मचारी -

(अ) दि.२५/०५/२००४ रोजी किंवा त्यापूर्वी शासन सेवेत रुजू झाले

असल्यास त त्याच्या दि.२५/०५/२००८ रोजीच्या सेवाज्येष्ठतेनुसार पुढील पदोन्नतीस पात्र ठरतील व ;

(ब) दि.२५/०५/२००८ नंतर शासन सेवेत रुजू झाले असल्यास ते त्यांच्या सेवा प्रवेशाच्या मूल सेवाज्येष्ठतेनुसार पुढील पदोन्नतीस पात्र ठरतील.”

9. This Court has already interpreted these Clauses while deciding the Writ Petition in favour of Respondent as discussed in aforesaid paragraphs. We are afraid, that merely because another view is possible after interpreting these Clauses, the same itself cannot be a ground for reviewing the judgment and order rendered by this Court. The scope of review has been underscored by the Hon'ble Apex Court in the case of ***Arun Dev Upadhyaya Vs. Integrated Sales Service Ltd. And Anr.; (2023) 8 SCC 11*** and more particularly from paragraphs 29 to 35, which read thus :-

“29. A three-Judge Bench of this Court comprising of Hon'ble Shri S.R. Das, C.J., M. Hidayatullah and Shri K.C. Das Gupta, JJ. in Satyanarayan Laxminarayan Hegde v. Millikarjun Bhavanappa Tirumale [Satyanarayan Laxminarayan Hegde v. Millikarjun Bhavanappa Tirumale, 1959 SCC OnLine SC 10 : AIR 1960 SC 137] , discussed the scope of the phrase “error apparent on the face of record”. The challenge before this Court in the said case was the judgment [Mallikarjun Bhavani Tirumale v. Satyanarayan Laxminarayan Hegde, 1952 SCC OnLine Bom 82] of the High Court on the ground whether it suffers from an error apparent on the face of the record. The High Court had issued a writ of certiorari and had quashed order of the Tribunal and restored that of the Mamlatdar. In para 8 of the Report, the issue which was to be considered is reflected. The same is reproduced hereunder : (Satyanarayan Laxminarayan Hegde case [Satyanarayan Laxminarayan Hegde v. Millikarjun Bhavanappa Tirumale, 1959 SCC OnLine SC 10 : AIR 1960 SC 137] , AIR p. 139, para 8)

“8. The main question that arises for our consideration in this appeal by special leave granted by this Court is whether there is any error apparent on the face of the record so as to enable the superior court to call for the records and quash the order by a writ of certiorari or

whether the error, if any, was ‘a mere error not so apparent on the face of the record’, which can only be corrected by an appeal if an appeal lies at all.”

30. After discussing the relevant material on record, the conclusion is stated in para 17 of the report. The view was that where an error which has to be established by a long-drawn process of reasoning on points where there may conceivably be two opinions, can hardly be said to be an error apparent on the face of the record. The view that long-drawn process of arguments to canvass a point attacking the order in a review jurisdiction, cannot be said to be an error apparent on the face of record. Relevant extract from para 17 of the Report is reproduced hereunder : (Satyanarayan Laxminarayan Hegde case [Satyanarayan Laxminarayan Hegde v. Millikarjun Bhavanappa Tirumale, 1959 SCC OnLine SC 10 : AIR 1960 SC 137] , AIR pp. 141-42)

“17. ... Is the conclusion wrong and if so, is such error apparent on the face of the record? If it is clear that the error if any is not apparent on the face of the record, it is not necessary for us to decide whether the conclusion of the Bombay High Court on the question of notice is correct or not. An error which has to be established by a long drawn process of reasoning on points where there may conceivably be two opinions can hardly be said to be an error apparent on the face of the record. As the above discussion of the rival contentions show the alleged error in the present case is far from self-evident and if it can be established, it has to be established, by lengthy and complicated arguments. We do not think such an error can be cured by a writ of certiorari according to the rule governing the powers of the superior court to issue such a writ. In our opinion the High Court was wrong in thinking that the alleged error in the judgment of the Bombay Revenue Tribunal viz. that an order for possession should not be made unless a previous notice had been given was an error apparent on the face of the record so as to be capable of being corrected by a writ of certiorari.”

31. Another case which may be briefly dealt with is *Parsion Devi v. Sumitri Devi* [Parsion Devi v. Sumitri Devi, (1997) 8 SCC 715] , where, this Court ruled that under Order 47 Rule 1CPC, a judgment may be open to review inter alia if there is a mistake or an error apparent on the face of the record. 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. It also

observed that a review petition cannot be allowed to be treated as an appeal in disguise.

32. *A series of decisions may also be referred to wherein, it has been held that power to review may not be exercised on the ground that decision was erroneous on merits as the same would be the domain of the court of appeal. Power of review should not be confused with appellate powers as the appellate power can correct all manners of errors committed by the subordinate courts. The following judgments may be referred:*

(1) Shivdev Singh v. State of Punjab [Shivdev Singh v. State of Punjab, 1961 SCC OnLine SC 29 : AIR 1963 SC 1909]

(2) Aribam Tuleshwar Sharma v. Aribam Pishak Sharma [Aribam Tuleshwar Sharma v. Aribam Pishak Sharma, (1979) 4 SCC 389 : AIR 1979 SC 1047]

(3) Meera Bhanja v. Nirmala Kumari Choudhury [Meera Bhanja v. Nirmala Kumari Choudhury, (1995) 1 SCC 170]

(4) Uma Nath Pandey v. State of U.P [Uma Nath Pandey v. State of U.P., (2009) 12 SCC 40 : (2010) 1 SCC (Cri) 501]

33. *Recently, this Court in a judgment dated 24-2-2023 passed in S. Murali Sundaram v. Jothibai Kannan [S. Murali Sundaram v. Jothibai Kannan, (2023) 13 SCC 515 : 2023 SCC OnLine SC 185] , observed that even though a judgment sought to be reviewed is erroneous, the same cannot be a ground to review in exercise of powers under Order 47 Rule 1CPC. Further, in Perry Kansagra v. Smriti Madan Kansagra [Perry Kansagra v. Smriti Madan Kansagra, (2019) 20 SCC 753] , this Court observed that while exercising the review jurisdiction in an application under Order 47 Rule 1 read with Section 114CPC, the review court does not sit in appeal over its own order.*

34. *In another case between Shanti Conductors (P) Ltd. v. Assam SEB [Shanti Conductors (P) Ltd. v. Assam SEB, (2020) 2 SCC 677 : (2020) 2 SCC (Civ) 788] , this Court observed that scope of review under Order 47 Rule 1 read with Section 114CPC is limited and under the guise of review, the petitioner cannot be permitted to reagitate and reargue questions which have already been addressed and decided. It was further observed that 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 record.*

35. *From the above, it is evident that a power to review cannot be exercised as an appellate power and has to be strictly confined to the scope and ambit of Order 47 Rule 1CPC. 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.

10. We thus find that this Review Application has been filed on the ground that the Clauses referred hereinabove leads to different interpretation. In our considered view this cannot be termed as an error apparent on the face of record. The error apparent on the face of record shall be an error which merely looking at record should strike and it should not require any long-drawn process of reasoning on the points where there may conceivably be two opinions. It is equally settled position of law that, while dealing with the review application the court does not sit in appeal over its own order nor it can be allowed to be converted into an appeal in disguise.

11. In view of the above discussion, we find that the review application is devoid of any merit and the same is liable to be rejected. Hence the review application stands rejected.

(ABASAHEB D. SHINDE, J.)

(N. B. SURYAWANSHI, J.)