

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL,
MUMBAI**

**REVIEW APPLICATION NO.11 OF 2021
IN
ORIGINAL APPLICATION NO.509 OF 2020**

DISTRICT: NASHIK

The Superintending Engineer & Administrator)
Command Area Development Authority,)
Nashik – 2.).... **Applicant**
(Org. Respondent)

Versus

Shri Manoj Ashok Damale,)
R/at. Shree Swami Samarth Co-op. Hsg. Soc.)
Op. Irrigation Colony, Makhamalabad,)
Dist. Nashik).... **Respondent**
(Org. Applicant)

**Shri Ashok J. Chougule, learned Presenting Officer for the Applicant
(Org. Respondent).**

**Shri Arvind V. Bandiwadekar, learned Advocate for the Respondent
(Org. Applicant).**

CORAM : A.P. Kurhekar, Member (J)

DATE : 01.02.2022.

JUDGMENT

1. This Review Application is filed for review of order dated 17.08.2021 passed by this Tribunal in O.A. No.509/2020 whereby Original Respondents were directed to consider the Applicant's claim for appointment on compassionate ground on Group 'C' post subject to fulfillment of eligibility criteria in accordance to law.

2. Shortly stated undisputed facts giving rise to this O.A. are as under:-

Father of the Applicant namely Shri Ashok Damale was in Government service on the post of Jr. Clerk and died in harness on 27.04.2002 leaving behind widow Smt. Lankabai and one son (Applicant). On 15.04.2006 Smt. Lankabai made an application for appointment on compassionate ground for herself or her son. Name of Smt. Lankabai accordingly was taken in waiting list and deleted from waiting list on attaining age of 40 years in terms of G.R. dated 22.08.2005. The Applicant got to know about the deletion of his mother's name from waiting list in view of information received under R.T.I. on 12.03.2012, Therefore, on 17.04.2014 the Applicant requested Original Respondent No.1 to incorporate his name in waiting list in place of his mother. However, his request came to be rejected by letter dated 27.04.2016.

3. The Applicant has challenged communication dated 27.04.2016 in first round of litigation i.e. O.A. No.645/2017. O.A. was allowed by order dated 02.04.2019 giving direction to the Original Respondent to consider the claim of the Applicant for inclusion of his name in waiting list subject to fulfillment of eligible criteria in accordance to Rules. This exercise was to be completed within three months from the date of the order.

4. Original Respondent issued communication dated 03.03.2020 taking the name of the Applicant in Group 'D' post. The Applicant has challenged the said communication in second round of litigation i.e. in O.A. No.509/2020 *inter-alia* contending that he is holding H.S.C. qualification for Group 'C' post. O.A. was heard and decided on merit by order dated 17.08.2021 thereby quashing communication dated 03.03.2020 and Original Respondents were directed to consider the Applicant's claim of Group 'C' post subject to fulfillment of eligible criteria in accordance to Rules. As such, by order dated 17.08.2021, specific directions were given for appointment on compassionate ground on Group 'C' post.

5. Material to note, that when O.A. No.509/2020 was decided the eligibility of the Applicant for Group 'C' post was not at all questioned or disputed by Original Respondent. Indeed, learned P.O. fairly concedes the position.

6. It is on the above background now review application is filed for review of order dated 17.08.2021 on the ground that in view of Rules namely Clerk-cum-Typist Group 'C' in the Government Office, outside Greater Mumbai (Recruitment) Rules, 2017 minimum qualification is degree of statutory University or any other qualification declared by the Government equivalent thereon. In R.A. it is pleaded that the Rules of 2017 were neither noticed nor it was placed before the Tribunal. This is the only ground relied upon for review of the order dated 17.08.2021.

7. Shri A.J. Chougule, learned P.O. sought to contend that inadvertently Rules of 2017 were not brought on record while hearing O.A. No.509/2020 and now, in view of this Rules of 2017 the Applicant being admittedly not pursuing degree qualification he cannot be appointed on Group 'C' post. He therefore, prayed to review the order stating that Department is ready to appoint the Applicant on Group 'D' post.

8. Whereas, Shri A.V. Bandiwadekar, learned Advocate for the Original Applicant opposed the review *inter-alia* contending that it does not fulfill requirement or condition precedent of Order 47 Rule 1 of C.P.C. and secondly the qualification of the Applicant is required to be considered as on the date of making application and subsequent change in recruitment Rules is of no consequence so as to deny Group 'C' post to the Applicant. In this behalf he made reference to the decision of Hon'ble High Court in ***Writ Petition No.1284 of 2011, Aparna Narendra Zambre v/s. Assistant Superintendent Engineer decided on 01.08.2011.***

9 In view of the submissions advanced at bar, issue posed of consideration is to whether order dated 17.08.2021 can be reviewed on the ground raised by the Department that Rules, 2017 were not noticed by them.

10. At this juncture, it would be apposite to reproduce order 47 Rule 1 of CPC, which is as follows :-

“1. Application for review of judgment.- (1) Any person considering himself aggrieved.-

- (a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred,
- (b) by a decree or order from which no appeal is allowed, or
- (c) by a decision on a reference from a Court of Small Causes,

and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgment to the Court which passed the decree or made the order.

(2) A party who is not appealing from a decree or order may apply for a review of judgment notwithstanding the pendency of an appeal by some other party except where the ground of such appeal is common to the applicant and the appellant, or when, being respondent, he can present to the Appellate Court the case on which he applied for the review.”

11. Needless to mention that the review proceedings have to be strictly confined to the ambit and scope of Order 47, Rule 1 of CPC. The review is by no means an appeal in disguise whereby the matter is re-heard. True, under Order 47, Rule 1 of CPC, the Judgment may be opened to review, if there is mistake or error apparent on the face of record. An error which is not self-evident and has to be detected by the process of reasoning can hardly be said to be an error apparent on the face of record justifying the Court to exercise its powers of review. In exercise of jurisdiction under Order 47 of CPC, it is not permissible that the matter to be re-heard and erroneous view to be corrected. Suffice to say, it

must be remembered that the Review Petition cannot be allowed as an appeal in disguise. There is clear distinction between an erroneous decision and error apparent on the face of record. Erroneous decision can be corrected by the higher forum in appeal in Writ Jurisdiction, whereas error apparent on the face of record can be corrected by exercise of review jurisdiction. This is fairly settled legal position.

12. Now turning to the facts of the present matter curiously there is no such specific averment in Review Application that despite exercising of due diligence, Rules 2017 were not produced when O.A. No.509/2020 was heard on merit. All that it is stated in R.A. in para 4, which is as under.

“4. The Applicant (Org. Respondent) submits that they received knowledge about the judgement passed by Hon'ble Tribunal on 24/08/2021 and immediately the Applicant/Org. Respondent woke up for compliance of the order dated 17/08/2021. At relevant time it has been noticed that the condition mentioned in G.R. dated 06/06/2017 has not been fulfilled and complied by the Applicant and hence implementation of order dated 17/08/2021 is not possible. As the time of final hearing, the fact of G.R. dated 06/06/2017 was not intimated by the Applicant/Org.Respondent and therefore, the same was not presented before the Hon'ble Tribunal. Hence, the Applicant/Org.Respondent prays to consider the G.R. dated 06/06/2017 and decide the matter on merit.

13. Suffice to say, there is no such pleading to satisfy pre-requisite of Order 47 Rule 1 of C.P.C. Apparently, Respondent have not exercised due diligence during the hearing of O.A. Therefore, general statement made in review that Rules, 2017 were not produced before the Tribunal could not be the ground to review the order.

14. Apart, as rightly pointed out by learned Advocate for the Applicant, eligibility i.e. fulfillment of educational qualification of the Applicant was required to be examined in reference to the application made by him. Admittedly the Applicant has passed 12th std. examination in 2011, it is on the basis of H.S.C. qualification he made application for appointment on compassionate ground on 17.04.2016 which was initially rejected on

the ground that there is no provision of substitution of heir. In first round of litigation i.e. in O.A. No.645/2017 this stand was rejected and directions were given to include the name of the Applicant in waiting list subject to fulfillment of eligibility criteria. As such, when Department rejected the claim of the Applicant by order dated 17.04.2016 even that time also Rules 2017 were not in place. The Applicant father died on 2002 and since then he is litigating for appointment on compassionate ground. Indeed, in view of decision of Hon'ble Supreme Court in **AIR 1989 SC 1976 (Smt. Sushma Gosain & Ors. V/s Union of India)** appointment ought to have been given immediately to remedy the family in distress even by creating supernumerary post to accommodate the heirs of deceased Government servant. As such, had department acted diligently the Applicant would have got the Group 'C' post much earlier. Rules, 2017 which requires degree qualification has been notified on 06.06.2017. As such, when the Applicant was entitled to Group 'C' post as per the then existing Rules he could not be deprived of appointment of Group 'C' post because of change in Rules which has taken place in 2017. It is because of inordinate delay of more than 20 years (since death of father of the Applicant) Applicant is struggling for appointment on compassionate ground. As such, eligibility criteria about qualification of the Applicant was required to be considered in reference to application which is much prior to Rules 2017, and therefore now ground raised in review that he is not eligible for Group 'C' post has to be rejected.

15. In **Aparna Narendra Zambre' case (cited supra)** there was issue of status of Applicant (married daughter) for entitlement to appointment on compassionate ground. In that case deceased Mohan Kulkarni (father of Aparna Zambre) died on 08.09.2003. That time the Petitioner Aparna Zambre was unmarried. She made an application for appointment on compassionate ground on 20.07.2004 and that time also she was unmarried. Her name was included in waiting list on 22.08.2005. However, she got married on 11.07.2007. Department

rejected her claim. Main reason for rejection of her name was that the Applicant being married in mean time, she was not entitled for appointment on compassionate ground. Hon'ble High Court held eligibility criteria has to be considered in reference to the date when he become eligible for consideration of appointment on compassionate ground. In para 9 & 10 Hon'ble High Court held as under:-

9. Two broad questions would arise while answering this issue. Firstly, whether the eligibility of the candidate such as petitioner No. 1 should be reckoned with reference to the date when she became eligible for consideration to be appointed on compassionate ground, or whether her eligibility should be reckoned with reference to the date when the suitable vacancy becomes available? Secondly, whether the expression "unmarried daughter" in clause 3(a) of the Government Resolution can be said to be just and fair, as it excludes the married daughter for being appointed on compassionate ground?

*10. So far as the first point is concerned, we agree with the petitioners that there are authorities of the Apex Court, on Service Jurisprudence, in abundance, taking the view that the required qualification of the candidates should be examined with reference to the date of making application and not with reference to the date of selection. The Apex Court has consistently held that, in the absence of a fixed date indicated in the advertisement / notification inviting applications, with reference to which, the requisite qualification should be judged, the only certain date for the scrutiny of the applications will be the last date for making the applications. [See **Rekha Chaturvedi v. University of Rajasthan**, 1993 Supp (3) SCC 168, and **Ashok Kumar Sonkar v. Union of India & Ors.**, (2007) 4 SCC 54.]*

Ultimately, impugned communication was quashed and set aside with direction to reconsider her claim.

16. Now reverting back to the review as stated earlier powers of review can be exercised only on the ground of Order 47 Rule 1 of C.P.C. and no such ground is made out in present R.A.

17. The totality of the aforesaid discussion leads me to sum up that review holds no water and liable to be dismissed.

ORDER

Review Application is accordingly dismissed with not order as to costs.

Sd/-
(A.P. Kurhekar)
Member (J)

Place: Mumbai
Date: 01.02.2022
Dictation taken by: N.M. Naik.