

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI**

**REVIEW APPLICATION NO.27 OF 2015  
IN  
ORIGINAL APPLICATION NO.651 OF 2012**

Shri Vijayshingh P. Pawar. )  
Age : 57 Yrs., Working as Sales Tax )  
Officer, Class-II, Having Office at )  
Bandra-Kurla Compld, Bandra (E), )  
Mumbai – 400 051. )  
R/o. Neera CHS Ltd., Sector 8-B, CBD, )  
Belapur, Navi Mumbai. )...**Applicant**

**Versus**

1. The State of Maharashtra. )  
Through Addl. Chief Secretary, )  
Finance Department, Mantralaya, )  
Mumbai – 400 032. )
2. The Addl. Commissioner of Sales Tax )  
M.S, Mumbai and having Office at )  
Vikrikar Bhavan, 3<sup>rd</sup> Floor, Mazgaon, )  
Mumbai – 400 010. )...**Respondents**

**Mr. A.V. Bandiwadekar, Advocate for Applicant.**

**Mrs. K.S. Gaikwad, Presenting Officer for Respondents.**

**CORAM : P.N. DIXIT, VICE CHAIRMAN  
A.P. KURHEKAR, MEMBER-J**

**DATE : 22.10.2019**

**PER : A.P. KURHEKAR, MEMBER-J**

**ORDER**

1. This Review Application is filed under Order 47 of Civil Procedure Code read with Section 22(3)(f) of Administrative Tribunals Act, 1985 seeking review of the Order passed by this Tribunal in O.A.651/2012 decided on 16.06.2015 whereby his claim for promotion to the post of Assistant Commissioner, Sales Tax without insisting for Caste Validity Certificate was rejected.

2. Undisputed facts leading to the litigation as well as present Review Application are as follows :-

- (i) The Applicant was appointed as Sales Tax Inspector from VJ(A) category in 1986.
- (ii) The Director of Social Welfare, Maharashtra State, Pune declared Caste Certificate of the Applicant invalid.
- (iii) The Applicant had filed Writ Petition No.3566/1996 wherein by order dated 02.08.1996, the order of Director, Social Welfare was stayed.
- (iv) The Hon'ble High Court disposed of Writ Petition No.3566/1996 on 30.08.1996 and order of Director of Social Welfare was set aside. The matter was remanded to the Caste Scrutiny Committee for decision within stipulated period.
- (v) The Caste Scrutiny Committee invalidated the Caste Certificate of the Applicant by order dated 06.01.1998.
- (vi) The Applicant had filed Writ Petition No.298/1998 wherein by order dated 02.02.1998, the operation and implementation of the order of Scrutiny Committee was stayed.
- (vii) The Applicant had filed C.A.No.2979/2005 in Writ Petition No.298/1998 seeking direction to the

Respondents to promote him provisionally from VJ(A) category or from Open category.

- (viii) The Hon'ble High Court by order dated 03.08.2005 issued directions to the Respondents. By order dated 01.10.2005, the Applicant was promoted to the post of Sales Tax Officer.
- (ix) The Hon'ble High Court disposed of Writ Petition No.298/1998 by order dated 25.08.2010 and the case was remanded to the Caste Scrutiny Committee to decide the matter within ten months. However, no such decision was taken in the matter.
- (x) The Applicant made representation on 04.04.2011 to the Respondents for promotion to the post of Assistant Commissioner in view of pendency of issue before Caste Scrutiny Committee. However, his representation was rejected by order dated 27.07.2011.
- (xi) Being aggrieved by order dated 27.07.2011, the Applicant has filed O.A.651/2012 for direction to the Respondents to promote him to the post of Assistant Commissioner, Sales Tax without insisting upon production of Caste Validity Certificate in view of non-finalization of Caste issue by Caste Scrutiny Committee.
- (xii) O.A.651/2012 was decided on merit and dismissed by this Tribunal on 16.06.2015.
- (xiii) In O.A.651/2012, the Applicant's Advocate Shri A.V. Bandiwadekar referred to the various decisions of Hon'ble Supreme Court and Hon'ble High Court to bolster-up his claim that he can be promoted without insisting for Caste Validity Certificate particularly on the ground that the Caste Scrutiny committee has not decided the matter. However, the Tribunal did not find favour with the Applicant and held that the Applicant himself failed to produce Caste Validity Certificate and was unwilling to

take the matter to its logical conclusion. This Tribunal has passed detailed Judgment with the elaborate reasoning. While dismissing the O.A, the Tribunal recorded its finding in following Paragraphs, which are as follows :-

“Learned Presenting Officer has placed on record a copy of recommendations of the Maharashtra Public Service Commission regarding competitive examination for the post of Sales Tax Officer held in May, 1984, (P. 145-146 of the Paper Book). The Applicant’s name is at Sr. No. 55. He scored a total of 286 marks and was selected from DT/NT category. The claim of the Applicant that he was selected on merit and not from DT/NT category is clearly incorrect. As regards section 10 of the 2000 Act, the claim of the Applicant that it applied prospectively and he is not covered by it, cannot be accepted. Detailed reasoning for rejecting the claim is given subsequently in para 8 below. Obviously, if he entered service on the basis of Certificate of VJ-A category, and if that Certificate is not validated, his appointment will have to be held invalid. There will be no question of considering him for further promotions.

The responsibility of producing Caste Validity Certificate has been cast on the concerned Officers, who have been given six months time to produce such Certificates. The Applicant could also have produced Caste Validity Certificate within six months and he would have been considered for promotion. We are not convinced that this order dated 24.8.2004 will entitle the Applicant for being promoted provisionally, subject to production of Caste Validity Certificate, when he has failed to do so for almost 5 years after the order of Hon. High Court in Writ Petition no. 298/1998 dated 25.8.2010. For some reason, he appears to be reluctant to approach High Court with a view to ensure that order of Hon. High Court dated 25.8.2010 is complied with in letter and spirit. It is also a fact, that the Applicant has once been promoted provisionally and cannot expect to be promoted provisionally once again.

It is seen that the Applicant has failed to produce Caste Validity Certificate and the Respondents are refusing to give him provisional promotion subject to production of validity Certificate as he was already been given such promotion once in 2005 and he has failed to produce the Caste Validity Certificate till now. Even when Hon. High Court directed the Scrutiny Committee to decide his caste claim within stipulated time, for

some reason, the Applicant is unwilling to take the matter to its logical end. The other claim of the Applicant that his initial appointment was from open category is not supported by facts. All the case laws cited by him have been discussed extensively and we are unable to find any judgment which will help him.”

3. Now, the Applicant has filed the present Review Application seeking review of Judgment in O.A.651/2012 on the ground that there is apparent error on the face of record, and therefore, it needs to be rectified by exercising powers of review.

4. Before advertng to the submission advanced by the learned Advocate, it would be apposite to take note of important subsequent development which are taken place during the pendency of this Review Application and have bearing over the present issue. During pendency of this matter, the Caste Scrutiny Committee, Nagpur by its order dated 16.01.2017 invalidated Caste Certificate of the Applicant and order was passed for initiating prosecution against the Applicant for securing false Caste Certificate. The operative order of Caste Scrutiny Committee is as follows :-

“अर्जदार यांनी त्यांची जात राजपूत असतांना राजपूत भामटा असा जातीत बदल करून खोट्या कागदपत्रांच्या आधारे अर्जदाराने विमुक्त जाती प्रवर्गाचे जात प्रमाणपत्र प्राप्त केलेले आहे. करिता महाराष्ट्र अनुसूचित जाती, अनुसूचित जमाती, विमुक्त जाती, भटक्या जमाती, इतर मागासवर्ग व विशेष मागासप्रवर्ग (जातीचे प्रमाणपत्र देणे व त्याच्या पडताळणीचे विनियमन) अधिनियम २००० (सन २००१ चा महाराष्ट्र अधिनियम क्रमांक २३) मधील कलम १० अन्वये घेतलेले लाभ वसुल करण्याबाबत व कलम ११ (१) (क) अन्वये अर्जदाराविरुद्ध प्रथम वर्ग न्याय दंडाधिकारी (जे.एम.एफ.सी) यांचे न्यायालयात लेखी तक्रार दाखल करण्यासाठी मा. आयुक्त, विक्रीकर विभाग, महाराष्ट्र शासन विक्रीकर भवन, माझगाव, मुंबई-१० यांना प्राधिकृत करण्यात येत आहे. त्यांनी केलेल्या कार्यवाहीचा अहवाल या समीतीस कळवावा.”

5. Being aggrieved by the decision dated 16.01.2017 passed by Caste Scrutiny Committee, the Applicant has filed Writ Petition No.2009 of 2017 before Hon'ble High Court, Bench at Nagpur seeking protection of his service. In the meantime, the Applicant stands retired from service. The Hon'ble High Court, therefore, in view of law laid down in case of **Arun V. Sonone Vs. State of Maharashtra (2015 (1) Mh.L.J. 457)** held that, if a person who has served for

considerable years and if there is no adverse finding of fact recorded by the Scrutiny Committee, he is entitled to protection of service. Accordingly, his Review Petition was allowed in terms of Prayer Clause (iii) and (iv) which are as follows :-

“(iii) grant protection to the petitioner in service and to quash and set aside the order dated 16.01.2017 passed by the R-1 in Case No.JijaPraPS/Nagpur/NP298/1998/302/2016-17 to the extent in directing the R2 to file written complaint in the Court of JMFC u/s 11(1)(c) of the Act of 2000 and (as per prayer clause);

(iv) to direct the R-2 to release retiral benefits of petitioner with further direction for regular pension of the petitioner and release all the retiral benefits; and grant any other relief stated in the petition.”

6. The Hon'ble High Court accordingly allowed the Writ Petition in terms of prayer Clauses (iii) & (IV) and in Para No.5, directions was given to the Applicant to file Undertaking. Para No.5 is as follows :-

*“5. The petitioner shall file an undertaking in this Court within a period of four weeks from today stating that neither he nor his progeny shall claim any benefit of belonging to 'Rajput Bhamta' (Vimukta Jaati).”*

7. Now, turning to the present Review, Shri A.V. Bandiwadekar, learned Advocate for the Applicant vehemently urged that the Applicant could not have been faulted with for non-securing Caste Validity Certificate and indeed, the material produced in O.A.651/2012 invariably establishes that the Applicant is very much interested in the matter, which is evident from filing Writ Petitions, and therefore, the finding recorded by the Tribunal in O.A.651/2012 that the Applicant was unwilling to take matter to its logical end is obviously incorrect and it amounts to apparent error on the face of record. Thus, according to him, the Applicant was rigorously following the matter but the delay was on the part of Caste Scrutiny Committee, and therefore, provisional promotion should have been granted subject to production of Caste Validity Certificate. He further

submits that the Tribunal did not consider various Judgments cited by him and therefore, error deserves to be corrected by exercising jurisdiction under Section 47 of CPC.

8. As regard subsequent development of invalidation of Caste Certificate, he submits that in view of Judgment of Hon'ble High Court in Writ Petition No.2009/2017, service protection is granted, and therefore, Applicant's case needs to be considered as per the situation existed before invalidation of Caste Certificate.

9. Per contra, Smt. K.S. Gaikwad, learned Presenting Officer submits that the Applicant is seeking re-assessment of the order under challenge, as if it is an appeal and the same is not permissible under the limited jurisdiction under Order 47 of CPC. She has pointed out that the Tribunal has given elaborate reasoning and it being outcome of ultimate analysis of matter on merit, it cannot be said that there is any apparent error on the face of record, which could be corrected in revisional jurisdiction. She further submits that in view of subsequent development of invalidation of Caste Certificate by order dated 16.01.2017, the Applicant's claim for promotion now cannot be considered as no cause of action survives.

10. At this juncture, it would be apposite to reproduce Order 47 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 or review jurisdiction. This is fairly settled legal position.

12. Now, turning to the present case, the submission advanced by the learned Advocate for the Applicant that there is apparent error on the fact of record is misconceived and fallacious. In O.A.651/2012, the Tribunal has considered the submissions advanced by the learned Advocate for the Applicant as well as various authorities by him and



recording finding against the Applicant. It is finding of fact, which is outcome of assessment of the material on record. As such, it cannot be termed as error apparent on the face of record. It may be the case of erroneous view which has to be corrected by filing appeal and not in review. As such, even assuming for a moment that the view taken by the Tribunal in O.A.651/2012 was incorrect, in that event also, the remedy was to file appeal/Writ Petition challenging the same and it can never be challenged by filing Review Application. The Applicant in the present Review is in fact seeking re-hearing of the entire matter which requires long debate and process of reasoning, which is not permissible in revisional jurisdiction. This Court could not sit in appeal. The order 47 of CPC by its very connotation signifies an error, which is evident *per se* from the record of the case and does not require any detailed examination, scrutiny and elucidation either of fact or legal position.

13. At this juncture, it would be apposite to refer the decision of Hon'ble Supreme Court ***Parsion Devi & Ors. Vs. Sumitri Devi & Ors. (1997) 8 SCC 715***, wherein it has been held that if an error is not self-evident and detection thereof requires longer debate and process of reasoning, it cannot be treated as error apparent on the face of record for the purpose of Order 47 under Rule 1 of CPC. In other words, the order or decision or Judgment cannot be corrected merely because its erroneous view in law or on the ground that the different view could have been taken on account of fact or law, as the Court could not sit in appeal over its own Judgment. Similar view was again reiterated by Hon'ble Supreme Court in ***AIR 2000 SC 1650 (Lily Thomas Vs. Union of India)*** where it has been held that the power of review can be exercised for correction of mistake only and not to substitute a view. Such powers can be exercised within limits of statute dealing with the exercise of power and review cannot be treated an appeal in disguise. The mere possibility of two views on the subject is not ground for review.

14. For the reasons stated above, having regard to the settled legal position, we have no hesitation to conclude that this is nothing but an attempt to re-open the matter for fresh hearing and to substitute the view already taken by the Tribunal in the matter. There is no such apparent error on the face of record, which could be corrected in revisional jurisdiction. The Review Application, therefore, liable to be dismissed.

15. Apart, in view of subsequent development of invalidation of Caste Certificate of the Applicant by Caste Scrutiny Committee by order dated 16.01.2017, the claim of the Applicant for consideration of provisional promotion without insisting upon production of Caste Validity Certificate itself has become infructuous. The submission advanced by the learned Advocate for the Applicant that this subsequent event has no bearing over the present issue is nothing but misconception and fallacious. If the submission advanced by the learned Advocate for the Applicant is accepted, then it would be amounting to grant of benefit of promotion to the Applicant considering him as reserved category candidate whose Caste Certificate itself stands invalidated. As such, when Caste Scrutiny Committee has invalidated the Caste Certificate of the Applicant, the question of grant of promotion on the basis of reservation itself does not survive. In other words, when on merit itself, the claim is found untenable, the question of grant of benefits in the intervening period by way of interim relief does not survive. Suppose, if the Caste claim of the Applicant was decided by Caste Scrutiny Committee when Applicant was due for promotion from reserved category and that time itself found invalidated, then consequently, he would not have been even entitled for further continuation in service much less for promotion. Suffice to say, the relief which could not be granted on merit, it never can be granted by way of interim relief. It is a case of *fait-acompli* and nothing survives. The Applicant is attempting to revive the dead cause of action and flogging dead horse.

16. The submission advanced by the learned Advocate for the Applicant that in Writ Petition No.2009/2017, the Hon'ble Bombay High Court granted protection to service, and therefore, the Applicant is entitled to the relief claimed is again fallacious. The Hon'ble High Court has only granted protection to service in terms of prayer Clauses 3 & 4 of the Petition as reproduced above and nothing beyond it. It cannot be construed entitling the Applicant to ask for promotion from Reserved Category when his Caste Certificate itself stands invalidated on merit.

18. The totality of aforesaid discussion leads us to sum-up that the Review Application is devoid of merit and deserves to be dismissed. Hence, the following order.

**ORDER**

The Review Application stands dismissed with no order as to costs.

Sd/-  
**(A.P. KURHEKAR)**  
**Member-J**

Sd/-  
**(P.N. DIXIT)**  
**VICE-CHAIRMAN**

Mumbai  
Date : 22.10.2019  
Dictation taken by :  
S.K. Wamanse.