

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI**

**REVIEW APPLICATION NO.09 OF 2021  
IN  
ORIGINAL APPLICATION NOS.55 & 56 OF 2018**

1. The District Collector. )  
Kolhapur and having Office at )  
Nagala Park, Kolhapur. )
2. The Tahasildar. )  
Tal.: Shahuwadi, Dist : Kolhapur )  
and having office at A/P Shahuwadi,) )  
District : Kolhapur. )
3. The State of Maharashtra. )  
Through Principal Secretary, )  
[Revenue], Revenue & Forest Dept., )  
Mantralaya, Mumbai – 400 032. )  
**)...Applicants**  
**(Ori. Respondents)**

**Versus**

1. Shri Anil Tukaram Mane. )  
Age : 41 Yrs., Working as Copying Clerk )  
[Unpaid Candidate] in the Office of )  
Tahasildar, Tal. Shahawadi, )  
District : Kolhapur and residing at )  
A/P, Kolgaon, Tal.: Shahuwadi, )  
District : Kolhapur. )  
**)...Respondent**  
**(Ori. Applicant in O.A.55/18)**
2. Shri Nitinkumar @ Popat B. Kamble.)  
Age : 43 Yrs., Working as Copying Clerk )  
[Unpaid Candidate] in the Office of )  
Tahasildar, Tal. Shahawadi, )  
District : Kolhapur and residing at )  
A/P, Turukwadi, Post : Kotoli, )  
Tal. : Shahuwadi, District : Kolhapur. )  
**)...Respondent**  
**(Ori. Applicant in O.A.56/18)**

**Mrs. A.B. Kololgi, Advocate for Applicants (Ori. Respondents).**

**Mr. Arvind V. Bandiwadekar, Presenting Officer for Respondents (Ori. Applicants).**

**CORAM : SHRI A.P. KURHEKAR, MEMBER-J**

**DATE : 05.08.2021**

### **JUDGMENT**

1. This is an application for review of order dated 01.03.2021 passed by this Tribunal in O.A.Nos.55 & 56 of 2018 made under Section 22(3)(f) of Administrative Tribunals Act, 1985 read with Order 47 Rule 1 of Civil Procedure Code.

2. Shortly stated facts giving rise to this Review Application are as under :-

The Respondents (Ori. Applicants) have filed O.A.Nos.55 & 56 of 2018 challenging the order dated 15.06.2017 passed by the Applicant – District Collector, Kolhapur (Ori. Respondent No.1) thereby rejecting their claim for absorption in terms of G.R. dated 10.03.2005 as claimed by the Applicants. O.As were heard and allowed on merit by Judgment dated 01.03.2021 thereby quashing the communication dated 15.06.2017 and directions were given to absorb the Applicants in terms of G.R. dated 10.03.2005. It is against this order, the original Respondents have filed the present Review Application.

3. In so far as grounds raised in review are concerned, all that, the Respondents stated as under :-

- (i) The impugned judgment and order is bad in law.
- (ii) The impugned judgment and order is contrary to law justice and equity.
- (iii) The impugned judgment and order passed in contrary to the evidence on record.

- (iv) The impugned judgment and order suffers from error apparent on face of record and hence deserves to be recalled.
- (v) The applicants submits that, the Hon'ble Tribunal lost its sight on the point that, the Respondent has not produced any documentary evidence to show that, payment of 70% of remuneration to the original applicants /Present Respondents and 30% amount is deposited with the Government. This aspect is crucial point which goes to the root of case as to whether the Respondent was actually appointed on the post of copying clerk 15.07.1994 and as to whether the Respondents are actually worked for 10 years. Xerox copy of cash book since 1997 to 2003 is annexed herewith and marked as **Exhibit RA-2**.
- (vi) The Applicants submits that, though Applicants have raised the objection on the point appointment of Respondent on the post of copying clerk from 15.07.1994, even then the Hon'ble Tribunal failed to consider the said objection, hence the impugned order suffers error, apparent on face of record.
- (vii) The Applicants states that, the Hon'ble Tribunal erred in considering the letter dated 24.05.2016 issued by Tahasildar as a proof of appointment of Respondent as copying clerk from 1994.
- (viii) The Applicants submits that, on the basis of G.R. dated 10.03.2005, Applicant has prepared the waiting list "A,B,C" of 20 copying clerk as per their seniority and report of the same is submitted to the Government of Maharashtra on 31.05.2005. The name of Respondent does not appear in the said waiting list. Therefore, it is clear that, Respondents were never in service of copying clerk and or have not completed the requisite stipulations stated in G.R. dated

10.03.2005. Copy of waiting list of copying clerk is annexed herewith and marked as **Exhibit RA-3**.

- (ix) The Hon`ble Tribunal has failed to give proper and justifiable reasoning for allowing the claim of Respondent.
- (x) The Hon`ble Tribunal has misconceived and misinterpreted the case in hand.”

4. Along with Review Application, the Respondents have produced some record in the form of Cash Book purported for the year 1997 to 2003 and waiting list prepared by Collector. Material to note that these documents which are now filed along with Review Application were not at all produced in O.A. when it was decided on merit. Except written statements, not a single document was produced by the Respondents in rebuttal of documents tendered by the Applicants to establish their claim for absorption.

5. Mrs. A.B. Kololgi, learned Presenting Officer sought to contend that the documents now tendered in review does not disclose that the Applicants have worked as Unpaid Copying Clerks, and therefore, the direction given by the Tribunal for which their absorption in terms of G.R. dated 10.03.2005 is incorrect, and therefore, order needs to be reviewed.

6. Per contra, Shri Bandiwadekar, learned Advocate for original Applicants submits that these documents now sought to be tendered cannot be considered in review since it does not fall within the parameters of review as contemplated under Order 47 Rule 1 of CPC. He further submits that the Tribunal allowed the O.A. in view of report of Tahasildar, Shahuwadi dated 24.05.2016 as well as Certificates issued by Tahasildars from time to time in favour of Applicants certifying that the Applicants have worked for more than 10 years as Unpaid Copying Clerks and were rightly held entitled for absorption in terms of G.R.

dated 10.03.2005. He, therefore, submits that review is not maintainable and liable to be dismissed.

7. While allowing the O.A, the Tribunal in Para Nos.9 to 14 held as under :-

**9.** Thus, the controversy is about the absorption of Applicants in terms of G.R. dated 10.03.2005. Material to note that Collector, Kolhapur rejected the claim of the Applicants solely on the report of Tahasildar dated 20.03.2017 whereby Tahasildar all that informed to the Collector that record showing 70% remuneration to the Applicants is not available. What is material to note that earlier, the Tahasildar, Shahuwadi by his detailed report dated 24.05.2016 has categorically informed to the Collector that the Applicants have worked for more than 10 years and are eligible for absorption in terms of G.R. dated 10.03.2005. However, the Collector at the time of passing impugned order dated 15.06.2017 completely forgotten and neglected the report of Tahasildar dated 24.05.2016. Once Tahasildar, Shahuwadi by letter dated 24.05.2016 certified on the basis of available report that Applicants have worked for more than 10 years and are eligible for absorption, there was no reason to reject the claim of Applicants on the basis of subsequent short report of Tahasildar dated 20.03.2017 which was only to the effect that report was not available. Indeed, the Collector, Kolhapur ought to have referred the matter back to Tahasildar, Shahuwadi inviting his attention to its earlier report dated 24.05.2016.

**10.** It is nowhere the case of the Respondents that the report of Tahasildar dated 24.05.2016 was false. As such, once Tahasildar, Shahuwadi by letter dated 24.05.2016 verified the record and satisfied that the Applicants have worked for more than 10 years and accordingly, recommended for their absorption. Unless said report is doubted by the Respondents, the claim of the Applicants for absorption could not have been rejected mechanically on the basis of subsequent report of Tahasildar, Shahuwadi dated 20.03.2017. .

**11.** Apart significant to note that what is stated in report dated 20.03.2017 is that the record of payment of 70% remuneration is not available. Thus, the claim of Applicants has been rejected mechanically, solely on the ground of non-availability of record. It is very likely that during the course of time, the record was lost. Indeed, in view of report of Tahasildar dated 24.05.2016, at the time of issuance of second report dated 20.03.2017, the then Tahasildar should have clarified about the veracity of the report dated 24.05.2016.

**12.** Indeed, the Applicant tried to obtain the copies of record availing the provisions of Right to Information Act. However, by letter dated 02.11.2017 (Page No.52 of P.B.) they were informed that the record itself is not available. As such, it is not the case of Respondents that the Applicants have never worked as Unpaid Copying Clerks. Their claim is rejected only on the ground of non-availability of record. Whereas,

earlier Tahasildar, Shahuwadi by his detailed report dated 24.05.2016 certified the eligibility of the Applicants for absorption in terms of Circular dated 10.03.2005. In absence of any pleadings or allegations on behalf of Respondents about the non-reliability of report dated 24.05.2016, I see no reason to discard report dated 24.05.2016 which was issued by Tahasildar on the basis of the then available record. Indeed, there is reference at the end of letter dated 24.-05.2016 about annexing necessary documents about the entitlement of the Applicants in terms of G.R. dated 10.03.2005. Thus, the report of Tahasildar dated 24.05.2016 was based upon the documents which were forwarded to Collector along with his report dated 24.05.2016. However, this aspect has been also again over-looked by Collector, Kolhapur.

**13.** The claim of the Applicant apart from letter dated 24.05.2016 is also corroborated by Certificates issued by Tahasildar from time to time. In O.A.No.55/2018, the Applicant has produced the Certificates dated 04.08.1998, 12.05.2001, 25.03.2003, 24.04.2006 and 31.07.2007 at Page Nos.30 to 34 of P.B. He has also filed Identity Card issued by Employment Exchange to show his registration with Employment Exchange Office, which was one of the requirement of G.R. dated 10.03.2005. Whereas in O.A.No.56/2018 also, the Applicant has produced the Certificates issued by Tahasildar dated 04.05.1998 and 02.03.2009, which are at Page Nos.30 and 31 of P.B. Indisputably, the Applicants were possessing educational qualification for the post of Clerk for absorption in terms of G.R. dated 10.03.2005.

**14.** The totality of aforesaid discussion leads me to sum-up that there is enough material on record in the form of report of Tahasildar fulfilling the eligibility criteria of the Applicants for absorption in terms of G.R. dated 10.03.2005. However, the Collector rejected their claim mechanically without examining the record. This being the position, the impugned orders are not at all sustainable and deserve to be quashed.”

8. Thus, pertaining to note that no such record or any document was produced in O.A. which is now sought to be produced for the first time in Review Application without making any averment for not producing the same in O.A. nor any explanation for the same is forthcoming. Thus, these documents are now filed along with review, as if it is original proceedings. There is absolutely no pleading in Review that these facts were not within the knowledge of Respondents or could not have been produced after exercising of due diligence or for some justifiable reason. Suffice to say, Review is filed in very cavalier manner.

9. 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.”

10. 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.

11. Turning to the facts of the present review, as stated above, in Review Application, nothing is stated as to why the documents now sought to be tendered in Review Application were not produced. There are no such averment and in absence of it, it cannot be said that Respondents could not produce the said documents after exercising of due diligence when O.A. was heard. This being the position, unless Respondents satisfy the rigor of order 41 Rule 1 of CPC, the Tribunal/Court cannot exercise the powers of review.

12. Apart, what sought to be tendered in review are Xerox copies of Cash Books for the period 1997 upto 2002 and waiting list prepared by Collector, Kolhapur showing the names of some candidates who were absorbed in terms of G.R. dated 10.03.2005. Whereas, as per the Certificates issued by Tahasildar, Shahuwadi, the Applicants have worked as Unpaid Copying Clerks right from 1994. Apart, from these Certificates issued by Tahasildars from time to time as discussed in O.A, in the detailed report dated 24.05.2016, Tahasildar, Shahapur has categorically informed the Collector that the Applicants have worked for more than 10 years and are eligible for absorption in terms of G.R. dated 10.03.2005. The Applicants have also tried to obtain information under RTI Act, but they were informed that no such record showing their names is now available, as discussed in order dated 01.03.2021. Thus, at one place under RTI Act, the Applicants were informed that no such record is available, but now after they succeeded in O.A, the Respondents have tendered the Xerox copies of Cash Books and waiting list, that too, without explaining as to why these documents were not tendered when O.A. was heard on merit. Therefore, these documents cannot be accepted as a gospel truth. It cannot be said with certainty that this is the only record duly maintained showing the name of all Unpaid Copying Clerks. There might be some other record showing the names of Applicants as specifically and categorically observed by Tahasildar in his report dated 24.05.2016.



13. In report dated 24.05.2016 issued by Tahasildar, he stated as under :-

“उपरोक्त संदर्भीय विषयानुसार श्री. अनिल तुकाराम माने रा. कोळगाव ता. शाहूवाडी यांनी तहसील कार्यालय शाहूवाडी येथे महसूल व वनविभाग निर्णय क्र.एस ३०/२००२/ प्र.क्र.२२० ई ७ दि.१०/०३/२००५ च्या निर्णयानुसार महसूल विभागातील १० वर्षे काम केलेल्या कर्मचा-यांना या विभागांमध्ये कायमस्वरूपी तृतीय श्रेणी पदावरती रुजू करून घ्यावे. या निर्णयानुसार विनावेतन प्रतिलिपी म्हणून दिनांक १५/ ७/१९७४ ते ०२/०३/२००९ अखेर १४ वर्षे ३ महिने शाहूवाडी तालुका येथे कार्यालयांमध्ये विनावेतन प्रतिलिपिक म्हणून दिनांक १५/०७/१९९४ ते ०२/०३/२००९ अखेर १४ वर्षे ३ महिने शाहूवाडी तालुका येथे कार्यालयामध्ये विनावेतन प्रतिलिपिक म्हणून सेवा केली आहे. सलग १० वर्षांपेक्षा जास्त कालावधीमध्ये तहसीलदार कार्यालयामध्ये काम केले आहे. सन २००९ नंतरही मंडळ अधिकारी भाग मलकापूर यांचेकडे प्रामाणिकपणे आजअखेर सेवा करीत आहे. तरी शासन निर्णयानुसार तृतीय श्रेणी लिपिक पदावर कायमस्वरूपी शासकीय कर्मचारी म्हणून नियुक्तीस पात्र आहे. सदर अर्जास अनुसरून आपलेकडील संदर्भ क्र.२ अन्वये सदर कर्मचारी यांनी सादर केलेली कागदपत्रे शासन निर्णय दिनांक १०/०३/२००५ नुसार तपासणी करून शहानिशा करून अहवाल सादर करणेबाबत सूचना प्राप्त असून श्री अनिल तुकाराम माने यांनी सादर केलेली कागदपत्रे पाहता ते लिपिक पदाच्या नियुक्तीस पात्र होत आहेत. सरकारी नोकरीत नियुक्ती करण्याचे शासन अटीप्रमाणे त्यांचे पदव्युत्तर पदवीपर्यंत शिक्षण झालेले आहे. त्याबाबतचे त्यांनी प्रमाणपत्र सादर केलेले आहे. त्यांनी सेवायोजन कार्यालयात नोंदणी केलेली असल्याचे देखील प्रमाणपत्र सादर केलेले आहे. ते मागासवर्गीय हिंदू न्हावी जातीचे असून त्यांनी सक्षम अधिका-यांचे प्रमाणपत्र सादर केलेले आहे. त्यांना संगणकीय ज्ञान असून त्यांनी शासनाचे एम.एस.सी.आय.टी कोर्स पूर्ण केला असून त्याचे प्रमाणपत्र सादर केलेले आहे. तसेच त्यांनी मराठी टंकलेखनाची स्पीड ३० व इंग्रजी टंकलेखनाची परीक्षा स्पीड ४० महाराष्ट्र शासनाची परीक्षा पास असल्याबाबतचे प्रमाणपत्र जोडलेले असून त्यांना मराठी व इंग्रजी टंकलेखनाचे ज्ञान अवगत आहे.

तरी वरील कागदपत्रांचे अवलोकन करून श्री. नितिनकुमार बाबुराव कांबळे यांची श्रेणीतील पदावर नियुक्ती होणेस या कार्यालयाची काहीही हरकत नाही. तरी सदरचा अहवाल पुढील आदेशार्थ सविनय सादर करीत आहे.

सोबत शासन निर्णय १०/०३/२००५ ला अनुसरून पात्र असलेल्या कागदपत्रांच्या छायांकित प्रती.”

Similar is the position in respect of Applicant Mr. Nitinkumar B. Kamble in O.A.No.56/2018. The report is identical, which are at page Nos.39 and 36 in O.A.Nos.55 & 56 of 2018 respectively.

14. It is thus apparent that Review Application is filed seeking re-hearing of the matter which is not permissible in the limited jurisdiction of review. The O.A. was decided on the basis of record on its own merit and there is no such apparent error on the face of record produced in O.A. It is well settled that power of review cannot be exercised to substitute the view taken by the Tribunal, hearing review as an appeal in disguise. The powers of review can be exercised only on the grounds enumerated in order 47 Rule 1 of CPC and no such ground is made out in the present Review Application.

15. 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.

16. Suffice to say, the original Respondents have failed to make out a case of review by satisfying rigor of order 47 Rule 1 of CPC, and therefore, such record, reliability of itself is doubtful, cannot be entertained to review the order passed by the Tribunal. The Review Application is, therefore, liable to be dismissed. Hence, the following order.

### **ORDER**

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

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

Mumbai  
Date : 05.08.2021  
Dictation taken by :  
S.K. Wamanse.

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