

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL**  
**NAGPUR BENCH NAGPUR**  
**REVIEW APPLICATION NO.10/2021**  
**IN ORIGINAL APPLICATION NO. 414 / 2018 (S.B.)**

Chandu Bapuraoji Gadmail,  
aged about 37 years, Occ. Nil,  
R/o Village Didhi Hanode,  
Tah. Ashti, District Wardha.

**Applicant.**

**Versus**

- 1) The State of Maharashtra,  
through Principal Secretary,  
Department of Home, Mantralaya, Mumbai.
- 2) The Sub Divisional Officer,  
Office of the Sub Divisional Officer,  
Arvi (President, Police Patil Recruitment and  
Selection Committee, Arvi).
- 3) Abhijit Diliprao Honade,  
Aged about Major,  
Occ. Service (Police Patil),  
R/o Village Dighi Hanode,  
Tah. Ashiti, District Wardha.

**Respondents.**

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**S/Shri S.D. Malke, Ku.A. Malke, Ku. K. Agrawal, Id. Advs. for the applicant.**

**Shri M.I. Khan, the Id. P.O. for the respondent nos. 1 & 2.**

**Shri P.N. Sharma, P.J. Deshmukh, Adv. for respondent no.3.**

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**WITH**  
**REVIEW APPLICATION NO.11/2021**  
**IN ORIGINAL APPLICATION NO. 415 / 2018 (S.B.)**

Awadhoot yashwantrao Shendre,  
Aged about 37 years, Occ. Nil,  
R/o Village Dhadi, Tq. Ashti, Dist. Wardha.

**Applicant.**

**Versus**

- 1) The State of Maharashtra,  
through Principal Secretary,  
Department of Home, Mantralaya, Mumbai.
- 2) The Sub Divisional Officer,  
Office of the Sub Divisional Officer,  
Arvi (President, Police Patil Recruitment and  
Selection Committee, Arvi).
- 3) Yuwaraj Dhanraj Chore,  
Aged about Major,  
Occ. Service (Police Patil),  
R/o Village Dhadi, Tah. Ashiti,  
District Wardha.

**Respondents.**

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**S/Shri S.D. Malke, Ku.A. Malke, Ku. K. Agrawal, Id. Advs. for the  
applicant.**

**Shri M.I. Khan, the Id. P.O. for the respondent nos. 1 & 2.**

**Shri U.K. Bisen, Adv. for respondent no.3.**

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**WITH**  
**REVIEW APPLICATION NO.12/2021**  
**IN ORIGINAL APPLICATION NO. 416 / 2018 (S.B.)**

Rajendra Keshavrao Shinde,  
Aged about 37 years, Occ. Nil,  
R/o Village Wadgaon Pnde,  
Tah. Arvi, District Wardha.

**Applicant.**

**Versus**

- 1) The State of Maharashtra,  
through Principal Secretary,  
Department of Home, Mantralaya, Mumbai.
- 2) The Sub Divisional Officer,  
Office of the Sub Divisional Officer,  
Arvi (President, Police Patil Recruitment and  
Selection Committee, Arvi).

- 3) Prafulla Subhashrao Khuthe,  
Age about Major, Occ. Service (Police Patil),  
R/o Village Wadgaon Pnde,  
Tah. Arvi, District Wardha.

**Respondents.**

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**S/Shri S.D. Malke, Ku.A. Malke, Ku. K. Agrawal, Id. Advs. for the applicant.  
Shri M.I. Khan, the Id. P.O. for the respondents.**

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**WITH**  
**REVIEW APPLICATION NO.13/2021**  
**IN ORIGINAL APPLICATION NO. 417 / 2018 (S.B.)**

Pankaj Annaji Dakhore,  
Age about 37 years, Occ. Nil,  
R/o Village Saykheda, Tq. Arvi, Dist. Wardha.

**Applicant.**

**Versus**

- 1) The State of Maharashtra,  
through Principal Secretary,  
Department of Home, Mantralaya, Mumbai.
- 2) The Sub Divisional Officer,  
Office of the Sub Divisional Officer,  
Arvi (President, Police Patil Recruitment and  
Selection Committee, Arvi).
- 3) Umesh Madhukar Thakare,  
Aged about Major,  
Occ. Service (Police Patil),  
R/o Village Saykheda, Tq. Arvi, Dist. Wardha.

**Respondents.**

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**S/Shri S.D. Malke, Ku.A. Malke, Ku. K. Agrawal, Id. Advs. for the applicant.  
Shri M.I. Khan, the Id. P.O. for the respondents.**

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**WITH**

**REVIEW APPLICATION NO.14/2021**  
**IN ORIGINAL APPLICATION NO. 629 / 2018 (S.B.)**

Surekha Jagadish Moon,  
Age about 37 years, Occ. Nil,  
R/o Viilage Durgadda,  
Tq. Deoli, District Wardha.

**Applicant.**

**Versus**

- 1) The State of Maharashtra,  
through Principal Secretary,  
Department of Home, Mantralaya, Mumbai.
- 2) The Sub Divisional Officer,  
Office of the Sub Divisional Officer,  
Arvi (President, Police Patil Recruitment and  
Selection Committee, Arvi).
- 3) Sandhya darwesh Maishkar,  
Aged about Major,  
Occ. Service (Police Patil),  
R/o Village Durgadda Tah. Deoli, District Wardha.

**Respondents.**

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**S/Shri S.D. Malke, Ku.A. Malke, Ku. K. Agrawal, Id. Advs. for the applicant.**

**Shri M.I. Khan, the Id. P.O. for the respondents.**

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**Coram :- Hon'ble Shri Shree Bhagwan, Vice Chairman.**

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**Judgment is reserved on 7<sup>th</sup> October, 2022.**

**Judgment is pronounced on 17<sup>th</sup> October,2022.**

**COMMON JUDGMENT**

Heard Shri S.D. Malke, Id. counsel for applicants, Shri M.I. Khan, Id. P.O. for R-1&2 and Shri P.N. Sharma, Id. counsel for R-3 (in Rev.A. 10/2021 in O.A. 414/2018). None for R-3 (in Rev.A. 11/2021 in O.A. 415/2018).

2. The learned P.O. has filed the copy of Judgment of Hon'ble Supreme Court in the case of **Manish Kumar Shahi Vs. State of Bihar & Ors., (2010) 12 SCC,576** in SLP (C) No.26223/2008, decided on 19/5/2010. It is taken on record and marked Exh-X for identification. The Placitum 'B' of the said Judgment is reproduced as below –

*“ (B) Service Law—Recruitment process—Judicial review—Maintainability—Acquiescence—Candidate challenging recruitment process after having himself taken part in it, held, is not maintainable—Evidence Act,1872—S. 115—Interview/Viva voce marks – challenge to – Appropriate state of challenge—Constitution of India—Art. 226—Maintainability of writ petition—Estoppel/Waiver/ Acquiescence ---*

*The High Court was correct that after having taken part in the process of selection knowing fully well that more than 19% marks have been earmarked for viva voce test, the petitioner is not entitled to challenge the criteria or process of selection. Surely, if the petitioner's name had appeared in the merit list, he would not have even dreamed of challenging the selection. The petitioner invoked jurisdiction of the High Court under Article 226 of the Constitution of India only after he found that his name does not figure in the merit list prepared by the Commission. This conduct of the petitioner clearly disentitles him from questioning the selection and the High Court did not commit any error by refusing to entertain the writ petition.”*

3. As per Maharashtra Administrative Tribunals Act, 1985 under Section 22 (3) (f) provides for Review of decision. However, as per C.P.C., review under Section 22 (3) (f) of Administrative Tribunals Act lies only on the ground which are stipulated in order 47, C.P.C.. These grounds are following:-

- A. Error apparent on the fact of the record.
- B. Subsequent discoveries.

C. Any other ground which is analogous to either ground no. 1 or ground no. 2 mentioned above.

4. After hearing rival submissions it appears that all the matters were considered though neither Id. Counsel for the applicant nor Id. P.O. had filed on record Maharashtra Village Police Patils (Recruitment, Pay, Allowances and other Conditions of Service), 1968 dated 04.11.1960 but during oral submissions both relied on recruitment process and these Rules. Id. Counsel for the applicant was mainly questioning about discrimination made in the interviews but neither any video recording nor any other reliable proofs are available of 2018. Persons who were appointed in 2018 have already completed 4½ years.

5. The learned P.O. has filed the Judgment of Hon'ble Apex Court Judgment in **K. Ajit Babu & Ors. Vs. Union of India & Ors. delivered on 25/07/1997** in which on page no. 3 it was held as under :-

*"We, therefore, find that a right of review is available to the aggrieved persons on restricted ground mentioned in Order 47 of the Code of Civil Procedure if filed within the period of limitation."*

6. The learned P.O. has further placed on record the Judgment of this Tribunal in O.A. No.113/2016, delivered on 03/04/2017. The paras.14,15,16,18 & 19 are reproduced as below -

"14. The learned P.O. then placed reliance on the Judgment reported in **(2010) 10 SCC,707 Shri Girjesh Shrivastava & Ors. Vs. State of Madhya Pradesh & Ors.**, wherein it has been held that the PIL in service matters is not maintainable. The learned P.O. submits that in the present petition the pleadings shows that the applicants want to challenge the selection process for

entire posts as if it is a PIL. However the applicants them self were interested since they were not selected in the process. It is material to note that the applicants have taken part in the process of selection for some of the posts of Police Patil. They have absolutely no locus to challenge the process in respect of other candidates i.e. in case of other posts for which they did not participate in the process.

15. The learned P.O. thereafter relied on the Judgment in **(2001) 3 SCC 328 Buddhi Nath Chaudhary & Ors. Vs. Abahi Kumar & Ors.** In the said case, the appointments were challenged to be improper and it was held that the appointments made long back pursuant to a selection need not be disturbed. In para-5&6 of the Judgment, the Hon'ble Supreme Court has observed as under :-

*“(5) We fail to understand as to how the matter of selection and appointment to a post could have been entrusted to the Transport Commissioner when the Commission had been specifically entrusted with such a job and such Commission, which is an autonomous authority having a constitutional status, has selected the candidates whose appointments were in challenge. If the selection of these candidates was improper the same should have been set aside with appropriate directions to redo the process of selection of at best, the High Court could have directed the Government, which is the appointing authority, to take appropriate steps in the matter. However, in the facts and circumstances of this case, we need not dilate on this aspect nor do we need to examine various elaborate contentions addressed by either side. Suffice to say that all the selected candidates, who are in employment, except one, possess*

*necessary qualification and in regard to that one excepted candidate, it cannot be disputed that he possesses equivalent qualification. Thus the dispute narrows down to one aspect, that is, the selected candidates may not possess necessary experience which is now required to be examined by the Transport Commissioner.*

*(6) The selected candidates, who have been appointed, are now in employment as Motor Vehicle Inspectors for over a decade. Now that they have worked in such posts for a long time necessarily they would have acquired the requisite experience. Lack of experience, if any, at the time of recruitment is made good now. Therefore, the new exercise ordered by the High Court will only lead to anomalous results. Since we are disposing of these matters on equitable consideration, the learned counsel for the contesting respondents submitted that their cases for appointment should also be considered. It is not clear whether there is any vacancy for the post of Motor Vehicle Inspectors. If that is so, unless any one or more of the selected candidates are displaced, the cases of the contesting respondents cannot be considered. We think that such adjustment is not feasible for practical reasons. We have extended equitable considerations to such selected candidates who have worked in the post for a long period, but the contesting respondents do not come in that class. The effect of our conclusion is that appointments made long back pursuant to a selection need not be disturbed.”*

16. The learned P.O. thereafter placed reliance the Judgment reported in **2008 (1) Mh.L.J. 358 Union of India & Ors. Vs. Vinodh Kumar & Ors.** In para-18 of the Judgement the Hon’ble S.C. has observed as under :

*“(18) It is also well settled that those candidates who had taken part in the selection process knowing fully well the procedure laid down therein were not entitled to question the same. (See Munindra Kumar Vs. Rajiv*



*Govil, AIR 1991 SC 1607) [See also Rashmi Mishra Vs. M.P. Public Service Commission, (2006) 11 SCALE 5]"*

18. The selected candidates were not earlier joined as respondents in this case but consequently the selected candidates have been joined as respondent nos.3 to 60. The learned counsel for respondent nos.3 to 60 has placed reliance on the Judgment delivered by Apex Court reported in **(1995) 3 SCC 486 Mandanlal & Ors. Vs. State of Jammu and Kashmir & Ors.** In para-9 of the said Judgment the Hon'ble Apex Court has observed as under :-

*"(9) Before dealing with this contention, we must keep in view the salient fact that the petitioners as well as the contesting successful candidates being respondents concerned herein, were all found eligible in the light of marks obtained in the written test, to be eligible to be called for oral interview. Up to this stage there is no dispute between the parties. The petitioners also appeared at the oral interview conducted by the Members concerned of the Commission who interviewed the petitioners as well as the contesting respondents concerned. Thus, the petitioners took a chance to get themselves selected at the said oral interview. Only because they did not find themselves to have emerged successful as a result of their combined performance both at written test and oral interview, they have filed this petition. It is now well settled that if a candidate takes a calculated chance and appears at the interview, then, only because the result of the interview is not palatable to him, he cannot turn round and subsequently contend that the process of interview was unfair or the Selection Committee was not properly constituted. In the case of Om Prakash Shukla V. Akhilesh Kumar Shukla it has been clearly laid down by a Bench of three learned Judges of this Court that when the petitioner appeared at the examination without protest and when he found that he would not succeed in*

*examination he filed a petition challenging the said examination, the High Court should not have granted any relief to such a petitioner.*

19. The learned counsel for the private respondent nos. 3 to 60 also placed reliance on the Judgment reported in **(2015) 11 SCC 493 Pradeep Kumar Rai & Ors. Vs. Dinesh Kumar Pandey & Ors.**, wherein it has been held that challenge to selection process after participating in interview and declaration of adverse result, held, is not maintainable. The Hon'ble Apex Court observed that once the appellants had participated in the selection process without raising objections, they cannot be allowed to challenge the process after being declared unsuccessful. The candidates cannot approbate and reprobate. Either candidates should not have participated in the interview or they should have challenged the procedure immediately after interviews were conducted”.

7. This Bench specifically asked the learned counsel for applicant that for review what is the point out of following two points –

(i) Error apparent on the fact of the record.

(ii) Subsequent discoveries as explained in Section 47 of CPC and Hon'ble Supreme Court Judgment as quoted supra.

8. The learned counsel for applicant could not satisfy the Bench on these points.

9. In view of above discussion, I pass the following order –

**ORDER**

The Review Applications are dismissed. No order as to costs.

**(Shree Bhagwan)**  
**Vice Chairman**

**Dated :- 17/10/2022.**  
dnk.

I affirm that the contents of the PDF file order are word to word same as per original Judgment.

Name of Steno : D.N. Kadam.

Court Name : Court of Hon'ble Vice Chairman.

Judgment signed on  
and pronounced on : **17/10/2022.**

Uploaded on : **17/10/2022.**