

**HIGH COURT OF MADHYA PRADESH BENCH AT**

**GWALIOR**

**BEFORE**

**HON'BLE SHRI JUSTICE ANAND PATHAK**

**&**

**HON'BLE SHRI JUSTICE HIRDESH**

**ON 27<sup>th</sup> SEPTEMBER, 2024**

**REVIEW PETITION NO.1134/2024**

**Prakhar Pandey and Others**

**VS.**

**Himadri Raje and Others**

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**Appearances:-**

Shri Harish Dixit – learned Senior Advocate with Shri Parth Dixit – Advocate for the petitioners.

Shri Vivek Khedkar – Additional Advocate General for the respondent-State.

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**JUDGMENT**

With consent heard finally.

1. This review petition is preferred under Order 47 Rule 1 CPC against the order dated 27-01-2024 passed in W.P. No.209/2013.
2. Precisely stated facts of the case are that respondents/defendants invited advertisement for recruitment on the post of Transport Constable in the year 2012 wherein as per M.P. Transport Department Subordinate (Class-III Executive) Services Recruitment Rules, 2011 (hereinafter referred as 'Rules of 2011'), certain

qualifications were prescribed for Male as well as Female candidates. Said rules were challenged by the Female Candidates by way W.P. No.209/2013 Himadri Raje & Others Vs. State of M.P. and Others. The said writ petition was allowed vide order dated 27-01-2014 by the Division Bench of this Court and order was passed in following terms:-

*“(i)Schedule III of Rule 9 of Rules of 2011, which prescribes minimum physical qualification of Transport Constable (Female) as 1.68 Meter height is hereby quashed. The minimum qualification of chest would not be applicable to female.*

*(ii)The State is directed to prescribe proper physical qualifications in regard to height for Transport Constable (Female) in accordance with the observations made by this Court in the order.*

*(iii)The appointments made by the Transport Department of male candidates against the posts reserved for female candidates are hereby set aside.*

*(iv)It is directed that the State shall fix the physical qualification of height for the post of Transport Constable (female) in Transport Department and incorporate the same in the Rules of 2011 within a period of four weeks from today and thereafter the State shall conduct a fresh selection of remaining vacancies to the post of Transport Constable (female), which could not be filled up in pursuance to the selection process initiated vide notification (Annexure P-3) issued by the VYAPAM.*

*No order as to costs.”*

The said order was challenged by the State Government in SLP

vide SLP (c) No.29839/2014 but the SLP was also dismissed vide order dated 29-08-2023. Meanwhile, it appears that some eligible Female Candidates were not found eligible to fill up the quota, therefore, in place of Female Candidates, Male Candidates were appointed.

Thereafter, contempt petition was filed by the petitioner vide CONC No.661/2024 to remove Male Candidates who were appointed against the post reserved for Female Candidates. Therefore, respondents initiated proceedings for removal of Male Candidates who were appointed against the post reserved for Female Candidates. Hence, this petition is filed by those persons who were affected by the said proceedings.

It is the submission of learned counsel for the petitioners that direction No.iii of the order passed in W.P. No.209/2013 (supra) comes in way of present petitioners because now respondents intend to remove petitioners treating them to be the candidates appointed against the post reserved for Female Candidates as they are meritorious candidates and serving for last 12 years in the department. Therefore, review of the order dated 27-01-2024 passed in W.P. No.209/2013 is in the interest of justice unless this condition is clarified to the extent that only those candidates would be removed who were appointed against the post reserved for Female Candidates and the State Government would not proceed against the petitioners.

Learned counsel for the respondents opposed the prayer and submits that review petition suffers from inordinate delay and latches and the application for condonation of delay I.A. No.713/2024 does not contain sufficient reasons for such delay in filing the review petition. He informs this Court that recently on 25-09-2024 order has been passed by the Transport Department in which all candidates who were appointed against the post reserved for Female Candidates have been removed. If names of present petitioners are in the said order then they may file writ petition as per law.

Heard the learned counsel for the parties and perused the record.

This is a case where petitioners are in the review jurisdiction against the order dated 27-01-2024 passed in W.P. No.209/2023. Review petition is filed belatedly after ten and half years. Although delay is tried to be explained in application for condonation of delay but reasons assigned therein are not sufficient to condone the delay in view of the above discussion.

Scope of review is well defined. In the case of **Kamlesh Verma Vs. Mayawati and Others, (2013) 8 SCC 320**, principles relating to review jurisdiction have been laid down. The principles relating to review jurisdiction may be summarized as follows:

**When the review will be maintainable:**

*(i) Discovery of new and important matter or evidence which, after the exercise of due diligence,*

*was not within knowledge of the petitioner or could not be produced by him;*

*(ii) Mistake or error apparent on the face of the record;*

*(iii) Any other sufficient reason. The words “any other sufficient reason” have been 11 interpreted in Chhajju Ram Vs. Neki, (1921-22) 49 IA 144 and approved by this Court in the case of Moran Mar Basselios Catholicos Vs. Most Rev. Mar Poulouse Athanasius, AIR 1954 SC 526 to mean “a reason sufficient on grounds at least analogous to those specified in the rule”.*

**When the review will not be maintainable:**

*“(i) A repetition of old and overruled argument is not enough to reopen concluded adjudications.*

*(ii) Minor mistakes of inconsequential import.*

*(iii) Review proceedings cannot be equated with the original hearing of the case.*

*(iv) Review is not maintainable unless the material error, manifest on the face of order, undermines its soundness or results in miscarriage of justice.*

*(v) A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected but lies only for patent error.*

*(vi) The meres possibility of two views on the subject cannot be a ground for review.*

*(vii) The error apparent on the face of the record should not be an error which has to be fished out and searched.*

*(viii) The appreciation of evidence on record is fully within the domain of the appellate Court, it cannot be permitted to be advanced in the review petition.*

*(ix) Reviews is not maintainable when the same relief sought at the time of arguing the main matter*

*had been negatived.” 24. It is also held by the Apex Court in the case of State Of West Bengal & Ors. Vs. Kamal Sengupta & Anr., (2008) 8 SCC 612 that mistake or error apparent on the face of the record means that mistake or error which is prima facie visible and does not require any detail examination. Erroneous view of law is not a ground for review and review cannot partake the category of the appeal.”*

Here petitioners did not challenge the order dated 27-01-2014 in SLP. *Infact*, the State Government went into SLP but the SLP was dismissed vide order dated 29-08-2023 therefore, order passed in W.P. No.209/2013 dated 27-01-2014 was affirmed and attained finality. In the said order, condition No.iii categorically stipulates that appointment made by the Transport Department for Male Candidates against the post reserved for Female Candidates were set aside. Respondents are proceedings against the petitioners or in other words respondents are proceedings against those candidates who were appointed against the post reserved for Female Candidates. It is informed that petitioners were wait listed candidates who got the entry in the select list in place of candidates who did not join for any reason. After delay of 10 years, review petition is filed by the petitioners for clarification but if an order dated 25-09-2024 is already passed by Govt. then in the fitness of things, petitioners have remedy to challenge the said order in writ petition under Article 226 of the Constitution of India rather invoking jurisdiction under Order

47 Rule 1 CPC. Scope of review is very limited that too after ten years for interpretation in an order which already attained finality till Supreme Court. Appropriate remedy for the petitioners is to file writ petition under Article 226 of the Constitution of India.

Another ground for rejection of review petition is that seeking interpretation in the order does not fall under the scope of review jurisdiction. Interpretation of the order passed in W.P. No.209/2013 can be canvassed in appropriate remedy of writ and not in review. After ten years when contingency stares at petitioners then filing review is not an appropriate remedy. Respondents shall proceed as per law and directions given by the learned Division Bench in W.P. No.209/2023 (supra) in letter and spirit.

Review petition sans merits and is hereby *dismissed* giving liberty to the petitioners to avail appropriate remedy, if advised so.

**(ANAND PATHAK)**  
**JUDGE**

**(HIRDESH)**  
**JUDGE**