

(2021) 04 J&K CK 0048

In the Jammu And Kashmir High Court

Case No : CM No. 2456, 2457, 2458 Of 2021, RP No. 46 Of 2021

Ahmad Ali And Ors

APPELLANT

Vs

Central Administrative Tribunal And Ors

RESPONDENT

Date of Decision : 22-04-2021

Acts Referred:

Code Of Civil Procedure, 1908 — Order 40 Rule 1, Order 40 Rule 5, Order 47 Rule 1
Constitution Of India, 1950 — Article 32, 136, 145

Citation : (2021) 04 J&K CK 0048

Hon'ble Judges : Vinod Chatterji Koul, J; Ali Mohammad Magrey, J

Bench : Division Bench

Advocate : M. A. Qayoom, Mian Tufail, T. M. Shamsi

Final Decision : Dismissed

Judgement

This application, for the reasons stated and grounds urged therein, is allowed. Since Court proposed to decide the review petition at motion hearing, therefore, no requirement of making good the deficiency of annexing the requisite Court fee, stamp papers, notarization, etc.

CM disposed of as above.

In the instant review petition, filed under Chapter XLVII Rule 1 of the Code of Civil Procedure, seeking review/modification and/ or setting aside of the order dated 16.04.2021 passed in WP(C) No. 761/2021 and CM No. 2246/2021, in so far as it directs that the impugned orders passed by the Central Administrative Tribunal (CAT), Bench, Jammu on 24.03.2021, and order dated 07.08.2018, passed by the respondent No. 2, to remain subject to outcome of the writ petition and with further direction, directing the petitioners to join the Health Department forthwith, for rendering their services and instead the parties deserve to be directed to maintain status quo, on the grounds detailed out in the review petition with particular reference as under:-

I. That the Court has not taken note of the fact that after the passing of their

permanent orders of transfer and posting, the petitioners have been promoted in the transferee departments against the higher posts of Junior Assistant, assistant Stockman and Assistant Storekeeper etc. and they have been drawing the salary against these higher posts for the last more than four years, which has substantiated by the orders placed on record of the writ petition and mentioned in Sub Para-1 of Ground (a) of the review petition.

II. That in terms of order dated 07.08.2018, the petitioners were repatriated back to their respective parent departments against their original borne cadre post, therefore, the order dated 07.08.2018, was an order of reversion and not repatriation and it was, accordingly, challenged by the petitioners before the Court through the medium of SWP No. 1903/2018 and this Court while entertaining the writ petition was pleased to direct that the present status of the petitioners shall not be disturbed. This Court in terms of order dated 16.04.2021, having directed the petitioners to join the Health Department, without indicating as to against which post they have to join and work in the Health Department, therefore, the order dated 16.04.2021, deserves to be reviewed/ modified and/or set aside and in order to protect the present status of the petitioners and their rights and interests the position obtaining as on today deserves to be maintained in the matter, till the final disposal of the writ petition.

III. That the posts on which the petitioners were working before their permanent transfer from Health Department, Kargil, to different other departments, have been filled by the respondents and the lien of the petitioners against those posts has also ceased to exist in terms of Civil Service Regulations. The order dated 16.04.2021, directing the petitioners to join back the Health Department is, therefore, unjust and harmful to the rights and interests of the petitioners and is bound to affect their service career adversely, as such, it deserves to be reviewed/modified and/or set aside and the position obtaining as on today deserves to be maintained in the matter, till the final disposal of the writ petition.

IV. That the petitioners transfer and posting from Health Department, Kargil, to other departments of the Government was an order of appointment by transfer, against available posts. The petitioners having been promoted in the transferee departments thereafter, therefore, the respondent No. 3, who was the successor of the officer, who had issued the order of transfer of the petitioners, had no jurisdiction to issue the order dated 07.08.2018, repatriating the petitioners back to the Health Department, against their original borne cadre posts and that too without issuing any show cause notice to them and/ or providing them an opportunity of being heard. He having done otherwise, therefore, also the order dated 07.08.2018, was legally untenable and deserves to be set aside. The respondent No. 1 while passing order dated 24.03.2021 having not however adverted to the said aspect of the matter and the Hon'ble Court while passing order dated 16.04.2021 having not also taken the said aspect of the matter into consideration and in the process it having passed the order dated 16.04.2021, which has serious adverse consequences on the rights and interests of the

petitioners, therefore, the order deserves to be reviewed/modified and/ or set aside and the respondents deserve to be directed to maintain status quo, as it exists today, till the final disposal of the writ petition.

V. That the purpose of issuing an order of stay is to preserve the rights of the parties in status quo with reference to the application of the Judgment of the Apex Court delivered in case titled Dalpat Kumar V. Prahlad Singh reported in AIR 1993 SC 276.

VI. That a constitutional Bench of the Hon'ble Supreme Court in case Shri Kihota Hollohon Vs. Mr. Zachilhuand others (AIR 1993 SC 412) has also authoritatively pronounced that the purpose of interlocutory order is to preserve in status quo the rights of the parties so that the proceedings do not become infructuous by any unilateral overt acts by one side or the other, during its pendency.

VII. That the order dated 16.04.2021, suffers from an error apparent on the face of the record which warrants its review/modification and/or setting aside and to avoid any miscarriage of justice, the parties deserve to be directed to maintain status quo till the final disposal of the writ petition VIII. That in case the order dated 16.04.2021 is not reviewed/ modified and/or set aside to the extent indicated above, the petitioners shall suffer incalculable loss and injury which cannot be compensated by any method whatsoever.

Heard learned counsel for the petitioners, perused the records and considered the matter.

Admittedly, this Court while considering the writ petition, filed by the review petitioners, challenging the final order and Judgment dated 24.03.2021, passed by the Central Administrative Tribunal (CAT) Bench, Jammu, in terms whereof, the CAT, Bench Jammu declining to interfere with the impugned order dated 07.08.2018, issued by respondent No. 2, in terms whereof petitioners have been repatriated as Class-IV employees of Health Department, Kargil, from various departments to the Health Department against their original cadre posts, leaving it open to the petitioners to make a representation on the grounds detailed out in the petition with particular reference that respondent No. 1, had no authority under law to pass such order, entertaining the writ petition and sought returns from other side to pass final orders after hearing the parties on the issue and while doing so, the Court after detailed discussion qua the claim of the review petitioners for grant of interim stay passed the order dated 16.04.2021, of which review is sought after proper application of mind with adherence to principles for grant of ad-interim relief and protecting the lis, which in the opinion of the Court does not warrant any review/modification/setting aside. The contention raised by Mr. M. A. Qayoom, learned appearing counsel for the petitioners that principles laid down by the Constitutional Bench of Supreme Court in case titled Shri Kihota Hollohon Vs. Mr. Zachilhuand others (AIR 1993 SC 412) as also the other Judgment of the Supreme Court titled Dalpat Kumar V. Prahlad Singh reported in AIR 1993 SC 276 is not adhered to, has no substance, as the grant of interim

relief depends on the peculiar facts and circumstances of the case. Mere entertaining the writ petition for examining the issue in detail by seeking returns from other side and for purpose of examining the records of the CAT, Bench, Jammu, does not mean that the petitioners have cast iron case for allowing the writ petition and for grant of relief on their asking, it shall not be proper for the interest of the parties to go into the merits of the case at this stage, lest that may prejudice the rights of the parties, therefore, we refrain from making any observation and record any finding on the merits of the case, but while doing so, we record satisfaction qua protecting the lis of the parties, by keeping the impugned orders of the CAT, Bench Jammu as also repatriation order of respondent No. 2 subject to outcome of the writ petition. It is made clear that in the event petitioners succeed in the writ petition, there shall be no difficulty for the Court to set aside the order of respondent No. 2, having repatriated the petitioners to the Health Department as also the order passed by the CAT, Bench, Jammu, thereby restoring the original position of the petitioners wherefrom they have been repatriated with further release of all consequential benefits.

What requires to be stated, at the outset, is that in the instant review petition, the petitioners have touched the merits of the case, which, in a review petition, is unwarranted as per law. It is well settled that the scope of review of an order is very limited and it cannot be a forum to re-argue the matter already decided by the Court. A review cannot also be used as a tool for changing the opinion/view of the Court. In a review petition, it is only an error, apparent on the face of the record, which can be considered and gone into by the Court.

Law on the subject is no more *res integra*. The Apex court of the country, in case titled '*Kamlesh Verma v. Mayawati & Ors.*' reported in '(2013) 8 Supreme Court Cases 320', while dealing with a similar issue, held as under:

"13. Review of the earlier order cannot be done unless the court is satisfied that material error, manifest on the face of the order, undermines its soundness or results in miscarriage of justice. This Court, in *Col. Avtar Singh Sekhon v. Union of India & Ors.* [1980 (Supp) SCC 562], held as under:

"12. A review is not a routine procedure. Here we resolved to hear Shri Kapil at length to remove any feeling that the party has been hurt without being heard. But we cannot review our earlier order unless satisfied that material error, manifest on the face of the order, undermines its soundness or results in miscarriage of justice. In *Sow Chandra Kante v. Sheikh Habib* this Court observed :

1.A review of a judgment is a serious step and reluctant resort to it is proper only where a glaring omission or patent mistake or like grave error has crept in earlier by judicial fallibility.... The present stage is not a virgin ground but review of an earlier order which has the normal feature of finality."

15. An error which is not self-evident and has to be detected by a process of reasoning can hardly be said to be an error apparent on the face of the record

justifying the Court to exercise its power of review. A review is by no means an appeal in disguise whereby an erroneous decision is re-heard and corrected, but lies only for patent error. This Court, in *Parsion Devi & Ors. v. Sumitri Devi & Ors.*, [JT 1997 (8) SC 480 : (1997) 8 SCC 715], held as under:

"7. It is well settled that review proceedings have to be strictly confined to the ambit and scope of Order 47 Rule

1 CPC. In *Thungabhadra Industries Ltd. v. Govt. of A.P.* this Court opined:

11. What, however, we are now concerned with is whether the statement in the order of September 1959 that the case did not involve any substantial question of law is an 'error apparent on the face of the record'). The fact that on the earlier occasion the Court held on an identical state of facts that a substantial question of law arose would not per se be conclusive, for the earlier order itself might be erroneous. Similarly, even if the statement was wrong, it would not follow that it was an 'error apparent on the face of the record', for there is a distinction which is real, though it might not always be capable of exposition, between a mere erroneous decision and a decision which could be characterised as vitiated by 'error apparent'. A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected, but lies only for patent error.' (emphasis ours)

8. Again, in *Meera Bhanja v. Nirmala Kumari Choudhury* while quoting with approval a passage from *Aribam Tuleshwar Sharma v. Aribam Pishak Sharma* this Court once again held that review proceedings are not by way of an appeal and have to be strictly confined to the scope and ambit of Order 47 Rule 1 CPC.

9. Under Order 47 Rule 1 CPC a judgment may be open to review inter alia if there is a mistake or an error apparent on the face of the record. An error which is not self-evident and has to be detected by a process of reasoning, can hardly be said to be an error apparent on the face of the record justifying the court to exercise its power of review under Order 47 Rule 1 CPC. In exercise of the jurisdiction under Order 47 Rule 1 CPC it is not permissible for an erroneous decision to be 'reheard and corrected'. A review petition, it must be remembered has a limited purpose and cannot be allowed to be 'an appeal in disguise.'

16. Error contemplated under the rule must be such which is apparent on the face of the record and not an error which has to be fished out and searched. It must be an error of inadvertence. The power of review can be exercised for correction of a mistake but not to substitute a view. The mere possibility of two views on the subject is not a ground for review. This Court, in *Lily Thomas & Ors. v. Union of India & Ors.*, [(2000) 6 SCC 224], held as under:

"54. Article 137 empowers this Court to review its judgments subject to the provisions of any law made by Parliament or any rules made under Article 145 of the Constitution. The Supreme Court Rules made in exercise of the powers under Article 145 of the Constitution prescribe that in civil cases, review lies on any of

the grounds specified in Order 47 Rule 1 of the Code of Civil Procedure which provides:

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.'

Under Order 40 Rule 1 of the Supreme Court Rules no review lies except on the ground of error apparent on the face of the record in criminal cases. Order XL Rule 5 of the Supreme Court Rules provides that after an application for review has been disposed of no further application shall be entertained in the same matter.

56. It follows, therefore, that the power of review can be exercised for correction of a mistake but not to substitute a view. Such powers can be exercised within the limits of the statute dealing with the exercise of power. The review cannot be treated like an appeal in disguise. The mere possibility of two views on the subject is not a ground for review. Once a review petition is dismissed no further petition of review can be entertained. The rule of law of following the practice of the binding nature of the larger Benches and not taking different views by the Benches of coordinated jurisdiction of equal strength has to be followed and practised. However, this Court in exercise of its powers under Article 136 or Article 32 of the Constitution and upon satisfaction that the earlier judgments have resulted in deprivation of fundamental rights of a citizen or rights created under any other statute, can take a different view notwithstanding the earlier judgment.

58. Otherwise also no ground as envisaged under Order XL of the Supreme Court Rules read with Order 47 of the Code of Civil Procedure has been pleaded in the review petition or canvassed before us using the arguments for the purposes of reviewing the judgment in Sarla Mudgal case, [JT 1995 (4) SC 331] It is not the case of the petitioners that they have discovered any new and important matter

which after the exercise of due diligence was not within their knowledge or could not be brought to the notice of the Court at the time of passing of the judgment. All pleas raised before us were in fact addressed for and on behalf of the petitioners before the Bench which, after considering those pleas, passed the judgment in Sarla Mudgal case. We have also not found any mistake or error apparent on the face of the record requiring a review. Error contemplated under the rule must be such which is apparent on the face of the record and not an error which has to be fished out and searched. It must be an error of inadvertence. No such error has been pointed out by the learned counsel appearing for the parties seeking review of the judgment. The only arguments advanced were that the judgment interpreting Section 494 amounted to violation of some of the fundamental rights. No other sufficient cause has been shown for reviewing the judgment.

The words 'any other sufficient reason appearing in Order 47 Rule 1 CPC' must mean 'a reason sufficient on grounds at least analogous to those specified in the rule' as was held in *Chhajju Ram v. Neki*, [AIR 1922 PC 112] and approved by this Court in *Moran Mar Basselios Catholicos v. Most Rev. Mar Poulouse Athanasius*, [AIR 1954 SC 526] Error apparent on the face of the proceedings is an error which is based on clear ignorance or disregard of the provisions of law. In *T.C. Basappa v. T. Nagappa*, [AIR 1954 SC 440] this Court held that such error is an error which is a patent error and not a mere wrong decision. In *Hari Vishnu Kamath v. Ahmad Ishaque* [AIR 1955 SC 233], it was held:

23. It is essential that it should be something more than a mere error; it must be one which must be manifest on the face of the record. The real difficulty with reference to this matter, however, is not so much in the statement of the principle as in its application to the facts of a particular case. When does an error cease to be mere error, and become an error apparent on the face of the record? Learned counsel on either side were unable to suggest any clear-cut rule by which the boundary between the two classes of errors could be demarcated.

Mr. Pathak for the first respondent contended on the strength of certain observations of Chagla, C.J. in - '*Batuk K. Vyas v. Surat Borough Municipality*, [AIR 1953 Bom 133?]' that no error could be said to be apparent on the face of the record if it was not self-evident and if it required an examination or argument to establish it. This test might afford a satisfactory basis for decision in the majority of cases. But there must be cases in which even this test might break down, because judicial opinions also differ, and an error that might be considered by one Judge as self-evident might not be so considered by another. The fact is that what is an error apparent on the face of the record cannot be defined precisely or exhaustively, there being an element of indefiniteness inherent in its very nature, and it must be left to be determined judicially on the facts of each case.'

Therefore, it can safely be held that the petitioners have not made out any case within the meaning of Article 137 read with Order XL of the Supreme Court Rules

and Order 47 Rule 1 CPC for reviewing the judgment in Sarla Mudgal case. The petition is misconceived and bereft of any substance."

17. In a review petition, it is not open to the Court to re-appreciate the evidence and reach a different conclusion, even if that is possible. Conclusion arrived at on appreciation of evidence cannot be assailed in a review petition unless it is shown that there is an error apparent on the face of the record or for some reason akin thereto. This Court, in Kerala State Electricity Board v. Hitech Electrothermics & Hydropower Ltd. & Ors., [JT 2005 (7) SC 485], held as under:

"10.In a review petition it is not open to this Court to reappreciate the evidence and reach a different conclusion, even if that is possible. Learned counsel for the Board at best sought to impress us that the correspondence exchanged between the parties did not support the conclusion reached by this Court. We are afraid such a submission cannot be permitted to be advanced in a review petition. The appreciation of evidence on record is fully within the domain of the appellate court. If on appreciation of the evidence produced, the court records a finding of fact and reaches a conclusion, that conclusion cannot be assailed in a review petition unless it is shown that there is an error apparent on the face of the record or for some reason akin thereto. It has not been contended before us that there is any error apparent on the face of the record. To permit the review petitioner to argue on a question of appreciation of evidence would amount to converting a review petition into an appeal in disguise."

18. Review is not re-hearing of an original matter. The power of review cannot be confused with appellate power which enables a superior court to correct all errors committed by a subordinate court. A repetition of old and overruled argument is not enough to re-open concluded adjudications. This Court, in Jain Studios Ltd. v. Shin Satellite Public Co. Ltd., [JT 2006 (7) SC 40 : (2006) 5 SCC 501], held as under:

"11. So far as the grievance of the applicant on merits is concerned, the learned counsel for the opponent is right in submitting that virtually the applicant seeks the same relief which had been sought at the time of arguing the main matter and had been negated. Once such a prayer had been refused, no review petition would lie which would convert rehearing of the original matter. It is settled law that the power of review cannot be confused with appellate power which enables a superior court to correct all errors committed by a subordinate court. It is not rehearing of an original matter. A repetition of old and overruled argument is not enough to reopen concluded adjudications. The power of review can be exercised with extreme care, caution and circumspection and only in exceptional cases."

12. When a prayer to appoint an arbitrator by the applicant herein had been made at the time when the arbitration petition was heard and was rejected, the same relief cannot be sought by an indirect method by filing a review petition.

Such petition, in my opinion, is in the nature of 'second innings' which is impermissible and unwarranted and cannot be granted."

19. Review proceedings are not by way of an appeal and have to be strictly confined to the scope and ambit of Order XLVII Rule 1 of CPC. In review jurisdiction, mere disagreement with the view of the judgment cannot be the ground for invoking the same. As long as the point is already dealt with and answered, the parties are not entitled to challenge the impugned judgment in the guise that an alternative view is possible under the review jurisdiction."

A cue can, in this behalf, be also had from the decision rendered by a Division Bench of this High Court in the case of 'State of JK & Ors. vs. Govt. Handloom Silk Weaving Factory & Ors.', reported in '2016 (2) JKJ 795(HC)', of which I was the author, wherein, it has been held as follows:

"13. At the very outset it needs to be kept in mind that review jurisdiction of the Court is limited. It is settled law that it is only an error apparent on the face of the record which can be considered and one into by the Court. In the present review petition, the grounds of facts of law urged in review petitions, as narrated above, including the submissions made at the Bar by the learned Counsels appearing in these review Petitions, which in content and substance were the same as taken in the respective review petitions, cannot in any manner be considered as errors on the fact of record. Instead the grounds sought to be raised and urged may constitute grounds of appeal alone. In fact, the instant review petitions on grounds enumerated herein appear to be disguised Second Appeals. As noticed above, the grounds taken by the review petitioners are either that the findings recorded by the Court are not legally tenable, or that the same are perverse, or that the same are unacceptable. A judgment may be wrong, erroneous incorrect, perverse, legally untenable, etc. etc., the only course available for the aggrieved party is to go in appeal. Such grounds do not constitute errors of fact or of law on the face of the record as would call for a review."

We have also considered the submission made by Mr. M. A. Qayoom, learned counsel appearing for the petitioners, regarding the grant of interim relief, qua maintaining the status of the petitioners wherefrom they have been repatriated by reviewing the order, which as detailed out in the forgoing paras is not admissible as there is no error apparent on the face of the record of the interim order of which review/modification/setting aside is sought. We also make it clear that petitioners can avail the appropriate remedy if they feel aggrieved of the interim order passed by this Court on 16.04.2021, by filing appeal.

In light of the above, having carefully considered the petition at hand and the submissions made at Bar, it is held that the review petition deserves to be dismissed and it is, accordingly, dismissed in limini along with connected CM(s) .