

(2020) 10 JH CK 0006
In the Jharkhand High Court
Case No : Civil Review No. 41 Of 2019

Amrendra Nath Mishra

APPELLANT

Vs

Sainik School Society And Ors

RESPONDENT

Date of Decision : 01-10-2020

Acts Referred:

Code Of Civil Procedure, 1908 — Order 47, Rule 1
Constitution Of India, 1950 — Article 226

Citation : (2020) 10 JH CK 0006

Hon'ble Judges : Sanjay Kumar Dwivedi, J

Bench : Single Bench

Advocate : Sudarshan Srivastava, Binod Singh

Final Decision : Allowed

Judgement

1. Heard Mr. Sudarshan Srivastava, learned counsel for the petitioner and Mr. Binod Singh, learned counsel for respondents.
2. This civil review petition has been heard through Video Conferencing in view of the guidelines of the High Court taking into account the situation arising due to COVID-19 pandemic. None of the parties have complained about any technical snag of audio-video and with their consent this matter has been heard.
3. The present review application has been filed to review the order dated 10.01.2017 passed in W.P.(S) No.1272 of 2005 which was disposed of with direction to the appellate authority to disposed of the appeal by passing speaking order within stipulated time.
4. Mr. Sudarshan Srivastava, learned counsel appearing for the petitioner submitted that the writ petition was disposed of with direction to the appellate authority to dispose of the appeal as expeditiously as possible preferably within a period of three months from the date of receipt/production of copy of this order, by passing a speaking and reasoned order, communicating the same to the petitioner. He submitted that there is an apparent error on the face of the record

in view of the fact that the appellate authority has already passed the order in appeal on 19th May, 1998 and rejected the appeal preferred by the petitioner. In the writ petition, counter affidavit was filed on behalf of respondent no.4 wherein order dated 24th January, 2005 was enclosed which was marked as Annexure-C disclosing the fact that the appellate authority had disposed of the appeal and order for consideration of a fresh Board of enquiry to enquire into the case to ensure transparent and impartial enquiry.

5. Per contra, Mr. Binod Singh, learned counsel appearing for respondents accepted this position that appeal was disposed of on 19th May, 1998 and it was disclosed in the counter affidavit by respondent no.4 and the said order was annexed as Annexure-C.

6. The scope of a review petition is very limited. Review of a judgment on account of some mistake or error apparent on the face of the record is permissible, but an error apparent on the face of the record has to be decided on the face of each case. Reference may be made in the case of *Meera Bhanja Versus Nirmala Kumari Choudhary* reported in (1995) 1 SCC 170 particularly paragraph 8 and 9 which is quoted hereinbelow:-

8. It is well settled that the 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. In connection with the limitation of the powers of the court under Order 47, Rule 1, while dealing with similar jurisdiction available to the High Court while seeking to review the orders under Article 226 of the Constitution of India, this Court, in the case of *Aribam Tuleswar Sharma v. Aribam Pishak Sharma*, speaking through Chinnappa Reddy, J., has made the following pertinent observations: (SCC p. 390, para 3) "It is true as observed by this Court in *Shivdeo Singh v. State of Punjab*, there is nothing in Article 226 of the Constitution to preclude the High Court from exercising the power of review which inheres in every Court of plenary jurisdiction to prevent miscarriage of justice or to correct grave and palpable errors committed by it. But, there are definitive limits to the exercise of the power of review. The power of review may be exercised on the discovery of new and important matter or evidence which, after the exercise of due diligence was not within the knowledge of the person seeking the review or could not be produced by him at the time when the order was made; it may be exercised where some mistake or error apparent on the face of the record is found; it may also be exercised on any analogous ground. But, it may not be exercised on the ground that the decision was erroneous on merits. That would be the province of a court of appeal. A power of review is not to be confused with appellate power which may enable an appellate court to correct all manner of errors committed by the subordinate court."

9. Now it is also to be kept in view that in the impugned judgment, the Division Bench of the High Court has clearly observed that they were entertaining the review petition only on the ground of error apparent on the face of the record and not on any other ground. So far as that aspect is concerned, it has to be

kept in view that an error apparent on the face of record must be such an error which must strike one on mere looking at the record and would not require any long-drawn process of reasoning on points where there may conceivably be two opinions. We may usefully refer to the observations of this Court in the case of *Satyanarayan Laxminarayan Hegde v. Mallikarjun Bhavanappa Tirumale* wherein, K.C. Das Gupta, J., speaking for the Court has made the following observations in connection with an error apparent on the face of the record:

An error which has to be established by a long-drawn process of reasoning on points where there may conceivably be two opinions can hardly be said to be an error apparent on the face of the record. Where an alleged error is far from self-evident and if it can be established, it has to be established, by lengthy and complicated arguments, such an error cannot be cured by a writ of certiorari according to the rule governing the powers of the superior court to issue such a writ."

7. In view of admitted position regarding Annexure-C, it appears that in Paragraph No.6 of the order dated 02.09.2016 inadvertently recorded that the statutory appeal preferred by the petitioner is still pending and in Paragraph No.7 the direction was issued to dispose of the appeal as expeditiously as possible. This happened as it appears that it was out of mind of the Court that the statutory appeal has already been disposed of. Prima facie, it is an apparent error of the record.

8. In view of the admitted position disposing of the appeal which was already on record in the writ petition, the observation at Paragraph No.6 about pendency of appeal and direction to dispose of the appeal to the appellate authority at Paragraph No.7 are recalled. In place of Paragraph No.6, it will be read as "statutory appeal preferred by the petitioner has already been disposed of and it would be apposite to give a direction to the disciplinary authority to pass a afresh order in view of the finding of the Court of enquiry". The Direction at Paragraph No.7 in the result, is modified to the extent that writ petition stands disposed of with direction to the disciplinary authority to pass a fresh order in view of the finding of the Court of enquiry as expeditiously as possible preferably within a period of three months from the date of receipt/production of copy of this order, by passing a speaking and reasoned order, communicating the same to the petitioner. It is needless to mention here that if the petitioner is found eligible to be paid any admissible dues, the same must be paid within a period of two months thereafter.

9. The order dated 02.09.2016 is reviews/modified to the above extent.

10. In terms thereof, review petition stands allowed and disposed of.