

(2023) 12 J&K CK 0060
In the Jammu And Kashmir High Court
Case No : Review Petition No. 65 Of 2023

J&K Entrepreneurship Development Institute Sempora,
Pampore And Others

APPELLANT

Vs

Raheela Nazir And Others

RESPONDENT

Date of Decision : 29-12-2023

Acts Referred:

Code Of Civil Procedure, 1908 — Section 114, Order 47, Order 47 Rule 1

Citation : (2023) 12 J&K CK 0060

Hon'ble Judges : Tashi Rabstan, J;M. A. Chowdhary, J

Bench : Division Bench

Advocate : Abdul Rashid Malik, Younis Hafiz, R.A.Jan, Adil Mushtaq

Final Decision : Dismissed

Judgement

Tashi Rabstan, J

1. We have heard learned counsel for parties and considered the matter.
2. A writ petition [WP(C) no.988/2021] filed by Raheela Nazir and others (writ petitioners) was allowed by learned Single Judge vide judgement dated 27th October 2022, directing respondents therein to complete the process of regularization of the services of writ petitioners against the posts on which they have been appointed with effect from the date they have successfully completed their two years' contractual service with all consequential benefits and pass appropriate orders within a period of two months.
3. Against the Writ Court judgment dated 27th October 2022, the appellants – review petitioners herein, directed a Letters Patent Appeal [LPA no.55/2023]. This Court upon considering the case set up by appellants, hearing learned counsel for parties and after going through the impugned judgement, found that Writ Court judgement did not call for any interference and resultantly dismissed the appeal vide judgement dated 10th April 2023.

4. In the instant motion, appellants/review petitioners pray for review of judgement dated 10th April 2023.

5. It is a submission of learned counsel for review petitioners that this Court erred in passing the judgement under review as the posts in question were advertised purely on contractual basis to implement Three-year Action Plan 2020 and by no means attained the status of recruitment and the service rules enforceable has not been considered by this Court. He also contends that three year action plan was approved by the Chairman of the Governing Body (Chief Secretary) of appellant-Institute with a stipulation that the institute shall not create any liability and all extra expenditure shall be met out of proposed saving plan and that the action plan 2030 was implemented under the said policy on the background that the Institute shall generate funds from the earnings by way of implementation of various schemes vis-à-vis Seed Capital Fund Scheme, Youth Startup Loan Scheme and NMDFC Term Loan Scheme, but all the schemes were subsequently implemented by other agencies and as on date, appellant/review petitioner-Institute is not implementing any of the aforesaid schemes on the basis whereof respondents/writ-petitioners were recruited. It is also next contended by learned counsel for review petitioners that closure of these schemes has drastically affected the earnings of the Institute and appellants are facing severe financial scarcity by way of reduced earnings and it is difficult for the Institute to bear the salaries of not only the petitioners, but also the employees working on regular cadre of appellant-Institute. All the appointments in the Institute are made on contract basis as per the decision of the Sub-Committee meeting of Governing Body held on 18th December 2007. It is also contended by counsel for review petitioners that the Government vide Order no.1076-JK(GAD) of 2020 dated 27th November 2020 constituted a committee to look into the nature and quantum of illegalities/irregularities pointed out in special audit report of J&K Entrepreneurship Development Institute (JKEDI) 2020 and that the committee observed that Vision 2020 is only an Action Plan and by no means whatsoever attains the status of recruitment and service rule. He also asserts that no regularization process can be conducted by appellant-Institute without the assistance of an Restructuring Committee who shall submit its report to General Administration Department for further necessary action, which has been appointed in the instant case by the Government vide Government Order no.462-JK(GAD) of 2022 dated 21st April 2022.

6. Meticulous examination of petition on hand, supplicating review of judgement dated 27th October 2022, makes it known that none of the grounds adumbrated therein can, strictly speaking, be said to fall within ambit and scope of Order XLVII Rule 1 of the Code of Civil Procedure. Review petition on hand, in essence, challenges correctness of the order of this Court without pointing out any "error apparent on the face of the record" which can be reviewed. It is well settled that review proceedings have to be strictly confined to the ambit and scope of Order XLVII Rule 1 CPC.

7. The Supreme Court in *Thungabhadra Industries Ltd. s. The Government of Andhra Pradesh* (1965 (5) SCR 174 at 186) has opined:

"What, however, we are not 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 that 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 distinct 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 corrected. but lies only for patent error."

8. In *Smt. Meera Bhanjia v. Smt. Nirmala Kumari Choudhury* (1995 (1) SCC 170) while quoting with approval a passage from *Abhiram Taleswar Sharma v. Abhiram Pishak Sharma & Ors.* (1979 (4) SCC 389), the Supreme Court held that review proceedings were not by way of an appeal and had to be strictly confined to the scope and ambit of Order XLVII Rule 1 CPC. Under Order XLVII 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 XLVII Rule 1 CPC. In exercise of jurisdiction under Order XLVII Rule 1 CPC, it is not permissible for an erroneous decision to be "reheard and corrected". It must be remembered that a review petition has limited purpose and cannot be allowed to be "an appeal in disguise". [See: *Parsion Devi and others v. Sumitri Devi and others*, (1997) 8 SCC 715].

9. There is a clear distinction between an erroneous decision and an error apparent on the face of the record. While the first can be corrected by the higher forum, the later only can be corrected by exercise of review jurisdiction. A review cannot be permitted to operate as an appeal in disguise so as to enable an aggrieved party to reagitate the matter and get it corrected.

10. In *Shanti Conductors Private Limited v. Assam State Electricity Board and others*, (2020) 2 SCC 677, the Supreme Court, following *Parsion Devi* (supra) dismissed review petitions and held that the scope of review is limited and that an applicant/petitioner under the guise of review petition cannot be permitted to reagitate and reargue the questions which have already been addressed and decided.

11. The Supreme Court in *Shri Ram Sahu (Dead) through Legal Representatives and others v. Vinod Kumar Rawat and others*, (2021) 13 SCC 1, restated the law qua the scope of review under Section 114 read with Order XLVII, CPC.

12. Again, the Supreme Court in a judgement dated 24th February 2023, passed in Civil Appeal no.1167-1170 of 2023 titled as S. Murali Sundaram v. Jothibai Kannan and others, reported as (2023) SCC OnLine SC 185, observed that even though a judgement sought to be reviewed is erroneous, the same cannot be a ground to review in exercise of powers under Order XLVII Rule 1 CPC. In the case of Perry Kansagra Vs. Smriti Madan Kansagra, (2019) 20 SCC 753, it was observed by the Supreme Court that Review Court, while exercising review jurisdiction in an application under Order XLVII Rule 1 read with Section 114 CPC, does not sit in appeal over its own order. It was also observed that rehearing of the matter is impermissible in law and review is not appeal in disguise and that power or review can be exercised for correction of a mistake but not to substitute a new view inasmuch as such powers can be exercised within the limits of the statute dealing with the exercise of power. It is wholly unjustified and exhibits a tendency to rewrite a judgement by which the controversy has been finally decided

13. In Arun Dev Upadhyaya v. Integrated Sales Service Limited and another (2023) 8 SCC 11, the Supreme Court iterated the law, by holding that:

“15. From the above, it is evident that a power to review cannot be exercised as an appellate power and has to be strictly confined to the scope and ambit of Order XLVII Rule 1 CPC. An error on the face of record must be such an error which, mere looking at the record should strike and it should not require any long-drawn process of reasoning on the points where there may conceivably be two opinions.”

14.A Constitution Bench in Beghar Foundation v. Justice K.S. Puttaswamy (Retired) and others, (2021) 3 SCC 1, held that even change in law or subsequent decision/judgement of a Coordinate Bench or Larger Bench by itself cannot be regarded as a ground for review.

15.In Sanjay Kumar Agarwal v. State Tax Officer, (2023) SCC OnLine SC 1406, the Supreme Court has observed that the parties are not entitled to seek review of judgement merely for the purpose of rehearing and a fresh decision of the case. Applying principles of Order 47 Rule 1 CPC, it is said that a review of judgement is open, inter alia, if there is a mistake or 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 record. The Supreme Court has culled down following propositions relevant for review of the judgment:

“(i) A judgment is open to review inter alia if there is a mistake or an error apparent on the face of the record.

(ii) A judgment pronounced by the Court is final and departure from that principle is justified only when circumstances of a substantial and compelling character make it necessary to do so.

(iii) 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 record justifying the court to exercise its power of review.

(iv) In exercise of the jurisdiction under Order 47 Rule 1 CPC, it is not permissible for an erroneous decision to be "reheard and corrected".

(v) A Review Petition has a limited purpose and cannot be allowed to be "an appeal in disguise".

(vi) Under the guise of review, the petitioner cannot be permitted to reagitate and reargue the questions which have already been addressed and decided.

(vii) An error on the face of record must be such an error which, mere looking at the record should strike and it should not require any long-drawn process of reasoning on the points where there may conceivably be two opinions.

(viii) Even the change in law or subsequent decision/ judgment of a co-ordinate or larger Bench by itself cannot be regarded as a ground for review."

16. In the case in hand, the submissions made by learned counsel for review petitioners have been given thoughtful consideration by us. There is no potency in the submissions and contentions made by learned counsel for review petitioners, including with respect to paragraph 07 of the judgement, more particularly given the strenuous submission having been made by Mr R.A. Jan, learned senior counsel appearing for respondents, that all that has been observed and said by this Court in paragraph 08 of the judgement knocks the bottom out of the basic edifice of review petition.

17. This Court while passing the judgement, review of which is sought herein, has seen, observed and, thus, held that the Writ Court judgement did not call for any interference as Writ Court has correctly said that appellant-Institute processed case of writ petitioners for regularization and there was no need to create the posts for regularization of services of writ petitioners as such posts were already available in the appellant-Institute inasmuch as Government Order no.462-JK(GAD) of 2022 dated 21st April 2022 was not impinging upon writ petitioners' right of regularization as they had been appointed against available posts and had successfully completed their contractual term. This Court while going through the record gathered that writ petitioners had been appointed only after putting them to the process of selection initiated by appellants in pursuance of advertisement notices issued and that writ petitioners are not backdoor appointees as they partook in selection process, competed with other eligible candidates and were selected on the basis of their merit and therefore, the Writ Court had rightly said that writ petitioners and contractual employees regularized from time to time prior to the year 2017 constituted one homogeneous class and resultantly there could be no further classification within the class. The reliance made by learned counsel for review petitioners on *The Government of Tamil Nadu and another etc. etc. v. Tamil Nadu Makkal Nala Paniyalargal and others*

etc.etc., 2023 LiveLaw (SC) 294, does not render any aid and assistance to the case set up by review petitioners or for that matter submissions made by him, given the discourse made herein before qua scope of review.

18. While having glimpse of review petition on hand, no case muchless cogent or material one has been made out by review petitioners/appellant to seek review of writ order dated 10th April 2023. Same grounds and submissions, factual in character, have been made, which find place in the Letters Patent Appeal. There is no error apparent on the face of the record warranting review of the judgement dated 10th April 2023. The review petition is wholly misplaced and liable to be dismissed.

19. In view of foregoing reasons and discussion, review petition on hand is, dismissed.