

(1998) 11 AHC CK 0036

In the Allahabad High Court

Case No : C.M. Review Application No. 52533 of 1998 in C.M.W.P. No. 23829 of 1995

Ram Das Upadhyay

APPELLANT

Vs

Deputy Director of Education and others

RESPONDENT

Date of Decision : 06-11-1998

Acts Referred:

Citation : (1998) 4 AWC 315 : (1998) AWC 315

Hon'ble Judges : D.K. Seth, J

Bench : Single Bench

Advocate : M.P. Singh, for the Appellant; K.R. Singh, S.C., for the Respondent

Judgement

D.K. Seth, J.—The Writ Petition No. 23829 of 1995 was disposed by a detail reasoned order on 31.7.1998. The case was argued by Mr. Pradeep Kumar Saxena at length and the points raised by him finds mentioned in the second paragraph of the said order.

2. The petitioner has filed this Review Application No. 52533 of 1998 through Shri M. P. Singh learned counsel.

3. The contention of Mr. Singh that the determination or finding in the said order to the extent that the petitioner was in fourth position and that other persons were seniors to the petitioner was an error apparent on the face of the record. He contends that the facts, which were not taken into consideration by the Court when passing the order dated 31.7.1998, are summarised in paragraph 14 of the review application. Relying on the said statement, he contends that by reason of the said fact it is apparent that the petitioner was at serial number 1 and the senior-most teacher. Therefore, on the basis of such fact, the finding in the order dated 31.7.1998 is a finding which is an error apparent on the face of the record. He also contends that one more writ petition has been filed by the petitioner being Civil Misc. Writ Petition No. 5874 of 1989 which is still pending where these facts were incorporated and those facts were not taken into consideration.

4. I have heard Mr. M. P. Singh, learned counsel appearing for the petitioner and Shri K. R. Singh, learned standing counsel at length.

5. After having perused the review application as well as the contention of Mr, M. P. Singh. It appears that the petitioner has sought the review of the said finding on the ground that the petitioner was the seniormost teacher and his name was figuring in serial number 1 of the seniority list. His contention, as summarised in paragraph 14 of the review application, is as follows :

"A. That there was according to Rules, permission was necessary to get by the District Inspector of Schools to open Intermediate Classes and the same given by the D.I.O.S., to the Management of the College on 1.1.1964.

B. That, thereafter the requirement of Lecturers Grade Teachers was advertised in news papers on 25.2.1964.

C. That the applicant/petitioner joined the Lecturer Grade by promotion on dated 1.7.1964.

D. Mr. Om Narain Saxena was also promoted as Lecturer on dated 1.7.1964. Mr. Saxena Joined the post of lecturership on dated 20.7.1964 because Mr. Saxena was interested to get his one more increment which was due on dated 20.7.1964, so Mr. Saxena did not join the post of lecturership on the same date on which ; (1.7.1964) he was appointed. It is accepted here that Mr, Saxena was senior to the applicant/petitioner in age and service in L. T. Grade but due to non-joining the post of lecturership on dated 1.7.1964. Mr. Saxena become junior to the applicant/petitioner if the seniority is calculated from the date of Joining for lecturership.

E. Mr. Rajendra Kumar Tiwari and Mr. Ajab Singh Yadav (since dead) were directly appointed on the post of lecturership. After the advertisement in news papers and in actual these both the teachers had joined the post of lecturership on dated 15.11.1965.

There was manipulation made between D.I.O.S. and Management Committee and Mr. Tiwari and Mr. Yadav and due to resultant of manipulation the dates of joining for the post of lecturership by Mr. Tiwari and Mr. Yadav has been shown on dated 1.8.1963 and 2.8.1963 in place of 15.11.1965. The manipulation become proved because as the date shown for joining by both the teachers, Mr. Tiwari and Mr. Yadav is 1.8.63 and 2.8.63. It is quite impossible to get the joining on 1.8.63 and 2.8.63 because there was no creation of posts and even there was no any advertisement in the news papers and that there was not even permission by D.I.O.S. to open the Intermediate Classes. The D.I.O.S., has made objection after looking these dates of appointment and they gave his view in writing that it is quite impossible to join any post which was not even created and there was not even permission to open the Intermediate Classes."

6. A perusal of the said grounds shows that the petitioner has claimed that though all those teachers were promoted to the post of Lecturer with effect from

1.7.1964 but the said Shri Saxena joined the post on 20.7.1964, whereas the petitioner had joined the post on 1.7.1964, and, therefore, the petitioner was senior to the said Shri Saxena, I have perused the writ petition. This fact has not been pleaded in the writ petition. Mr. M. P. Singh has not been able to draw my attention to any material which was available at the time of hearing of the matter and passing the order dated 31.7.1998," wherefrom it can be ascertained that these facts were present on the record.

7. A review is permissible--(i) on discovery of new or important matter or evidence which was not within the knowledge or could not be produced at the time of passing the decree or order despite exercise of due diligence or. (ii) on account of some mistake or error apparent on the face of the record or. (iii) on any other sufficient reason.

8. In the present case the counsel for the applicant for review relies on the second ground, i.e., error apparent on the face of the record.

9. The question as to what are to be considered as an error apparent on the face of the record attracted the attention of the Court which had laid down the principle which is now a settled one.

10. 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, it must be left to be determined judicially on the facts of each case. The error is not one limited to one of fact, it includes obvious error of law. Not mere error of fact or law but error apparent on the face of the record is a ground. There is a real distinction between a mere erroneous decision and an error apparent on the face of the record. Where error on a substantial point stares on the face and there could reasonably be no two option, there a clear case of error apparent on the face of the record is made out. 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. There is no reason to construe the word "record" in a very restrictive sense and include within that term only the document which initiated the proceedings, the pleadings and the adjudication and exclude the evidence and other parts of the record. The mistake or error is not confined to the judgment itself, but on any document constituting the records of the case. Error apparent on the face of the record is an error which can be seen by a mere perusal of the record without reference to any other matter. The error must be blatant or obvious which needs no discussion. Mere error or wrong view is certainly no ground as a Court has jurisdiction to decide rightly or wrongly. Mere erroneous decisions are not liable to be reviewed and only errors apparent on the face of the record are liable to be reviewed and such errors must stare on in the face, where no elaborate arguments are necessary to pin point those errors.

11. Reference may be had to the following decisions. Hari Vishnu Kamath Vs. Syed Ahmad Ishaque and Others, ; M.K. Venkatachalam, I.T.O. and Another Vs.

Bombay Dyeing and Mfg. Co., Ltd., ; Ranbir Prasad Vs. Sheobaran Singh, ; Major P. Bardhan v. Dr. B. Sarkar 53 CWN 869 Thungabhadra Industries Ltd. Vs. The Government of Andhra Pradesh, ; Satyanarayan Laxminarayan Hegde and others v. Mallikarjun Bhavanappa Tirumala. AIR 1960 SC 137 Moran Man Basselions Catholic and another v. Most Rev. Mar. Poutose Athanasius and others AIR 1954 SC 526 : Benoy Krishna Rohatgi and Others Vs. Surajbali Misra and Another, ; Ram Baksh Vs. Mt. Rajeshwari Kunwar, : Hrishikesh Saha v. Smt. Radharani Kar 49 CWN 522 and Chandrakant Jagannath Manureka and another v. Shri Padvaikunath Naik. AIR 1989 Bom 522.

12. Thus, the error apparent on the face of the record is a principle based on the materials placed on record either in the form of pleading or on production of any document, in the case itself. It cannot mean to include materials placed on record of some other case, unless the record of that other case is brought on record of this case or relied upon by other means, viz., by connecting each other for simultaneous hearing, etc. The material which is absent on record or the material which is said to be brought on record after the order is passed, by no stretch of imagination, can be said to be on record. If such facts are not on record, in that event the finding arrived at on the basis of record available cannot be said to be an error apparent on the face of the record. The material which is not in existence on the record, if brought subsequently by means of review application, cannot be taken into account, since these facts were not present when the matter was decided. Whether these facts were available in the other writ petition or not is wholly immaterial since the said other writ petition was never disclosed to be pending and no prayer was made for taking up the same together. In any event, the question has to be decided on the basis of the writ petition which was filed by the petitioner himself. The Writ Petition No. 23829 of 1995 was filed by the petitioner himself. He has to succeed on the basis of the pleadings made out in the said writ petition and the materials on record of the said case. No reliance can be placed on a pleading made in any other writ petition unless both are heard together. It was incumbent upon the petitioner to incorporate such pleadings in the present writ petition as well. It is not a case that these materials or facts were not within his knowledge, nor that it could not be discovered or produced despite due diligence.

13. That apart the fact, which has been pleaded in the review application as the basis of the error apparent on the face of the record, is that the petitioner as well as the said Shri Saxena were promoted by resolution dated 1.7.1964 but the said Shri Saxena, having joined the promotional post on 20.7.1964, when the petitioner had joined on 1.7.1964, cannot be treated to be a senior though admittedly in the feeder post the said Shri Saxena was senior to the petitioner. Whether by reason of such fact the petitioner had become senior in the post of lecturer, is a question, which is not free from doubt, and has to be established by long drawn process of reasoning on the point since there may, conceivably, be two opinions ; and as such is not an error staring on the face of the record, even if assuming that, it was on record.

14. Be that as it may. Mr. Fradeep Kumar Saxena, earlier counsel for the petitioner, is not coming forward to plead that there was any mistake on his part. No explanation is available as to why such facts were not brought on record, if at all there was any. This review application has been filed by some other lawyer, viz., Shri M. P. Singh, who was not appearing in the matter when the writ petition was decided earlier. He cannot be said to be in a position to explain as to why these facts were not brought on record. In such circumstances, the grounds made out in the review application does not satisfy the test of grounds for review.

15. In the facts and circumstances aforesaid, there is no merit in the review application so as to enable this Court to admit the same. The review application is therefore dismissed at the admission stage. However, there will be no order as to cost.