

**(2013) 06 JH CK 0074**  
**In the Jharkhand High Court**  
**Case No : Civil Review No. 67 of 2012**

|                                                        |            |
|--------------------------------------------------------|------------|
| Rev. Basant Kumar Barla, Secretary, Managing Committee | APPELLANT  |
| Vs                                                     |            |
| Siya Sharan Prasad and Others                          | RESPONDENT |

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**Date of Decision :** 19-06-2013

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Order 47 Rule 1

**Citation :** (2014) 1 JLJR 214 : (2013) 3 JLJR 723

**Hon'ble Judges :** P.P. Bhatt, J

**Bench :** Single Bench

**Advocate :** Santosh Kumar Soni and A.K. Mahto, for the Appellant; A. Allam, Rajan Raj and Ms. Sunita Kumari, for the Respondent

**Final Decision :** Dismissed

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## Judgement

P.P. Bhatt, J.—The present application is filed under Order 47 Rule 1 of the Code of Civil Procedure, for review of order dated 12.1.2012 passed in A.C. (S.B.) No. 12 of 2007 mainly on the ground that certain material facts could not be brought on record before the Court at the time of hearing of appeal, which resulted into miscarriage of justice and, therefore, the petitioner is constrained to approach this Court by way of filing the present review application. Learned counsel for the applicant submitted that the petitioner challenged the termination order passed by the District Superintendent of Education, Ranchi vide its order dated 7.2.2006 before the learned Jharkhand Education Tribunal, Ranchi and the said order was quashed and set aside by the learned Jharkhand Education Tribunal by its order dated 23.11.2006.

2. Being aggrieved and dissatisfied by the said order, the present applicant i.e. the School Management approached this Court by way of filing A.C. (S.B) 12 of 2007 on 27.4.2007.

3. It is submitted that the respondent's service is ordered to be terminated based on report received from the Ranchi University on 26.6.2007 as the

University authorities found that the appointment was done on the basis of fraudulent documents produced by the respondent and accordingly the respondent was removed from service by the management of the school by its order dated 6.10.2007. It is further submitted that with a view to verify the said allegation of fraud played by the respondent, at the time of employment in 1983, the matter was re-examined and the Controller of the Examinations, Ranchi University, Ranchi by a letter No. Ex./8092 dated 9.7.2012 informed the petitioner that the document of the respondent is found forged and fake. Learned counsel for the applicant submitted that the said fact was very important and vital for determination of real issue in the matter. But, during the pendency of proceedings before the Tribunal as well as the proceedings pending before this Court, unfortunately the entire focus was on the order of termination which was under challenge i.e. order dated 7.2.2006, whereby the respondent's service was ordered to be terminated by the District Superintendent of Education, Ranchi on the ground that there is no sanction post on the establishment. The learned counsel for the applicant submitted that in view of the provision contained in CPC regarding review, the review application can be entertained if the court found that after exercise of due diligence, certain important matter for evidence could not be produced by the applicant at the time when the decree was passed or made. Moreover, on account of some mistake or error apparent on the face of record or for any other sufficient reason, the previous order passed in the matter can be reviewed.

4. It is further submitted that in the instant case there are sufficient reasons which can be considered by the court for reviewing its order as the initial appointment of the respondent was done by playing fraud by the opposite party and, therefore, the review application can be entertained, though there is unreasonable delay in filing of review application.

5. Learned counsel for the applicant in support of his application has referred to and relied upon the following decisions:--

1. Union of India and others Vs. M. Bhaskaran, G. Radhakrishnan and C. Devan,

2. R. Vishwanatha Pillai Vs. State of Kerala and Others,

3. Hamza Haji Vs. State of Kerala and Another,

6. As against that, learned counsel appearing for the opposite parties submitted that the service of opposite party was ordered to be terminated by order dated 7.2.2006 and the said order was challenged by the opposite party before the learned Jharkhand Education Tribunal. It is submitted that the subject matter of proceedings before the learned Jharkhand Education Tribunal was the order under challenge was 7.2.2006 whereby the services of the opposite party was terminated on the ground of non-availability of sanction post on the establishment and in the said order allegation as alleged in the present application were never made. It is further submitted that the learned Jharkhand Education Tribunal allowed the application filed by the opposite party by its

judgment and order dated 23.11.2006 and thereby, quashed and set aside the termination order dated 7.2.2006 and thereby passed an order of reinstatement in the services with back wages.

7. Being aggrieved and dissatisfied with the said judgment and order, the present applicant preferred A.C. (S.B) No. 12 of 2007 before this Court and this Court was pleased to reject the said appeal by its order dated 12.1.2012.

8. It is submitted that the order passed by the learned Jharkhand Education Tribunal has been confirmed by this Court. It is further submitted that since the School Management has not implemented the order passed by this Court, the respondent is constrained to approach this Court by way of filing the contempt proceedings and during the pendency of contempt proceeding the review application came to be filed at a belated stage, wherein certain new facts have been pointed out before this Court for the first time. It is submitted that the respondent has never been served with any order of termination as alleged by the applicant in the present application. It is further submitted that there was ample opportunity available to the applicant to point out before the learned Jharkhand Education Tribunal as well as this Court, as the appeal preferred by them was pending before this Court till January 2012. It is submitted that the alleged order of termination dated 6.10.2007 is based on report submitted by Ranchi University on 26.6.2007 and the same was very much within the knowledge of applicant. However, this fact could not be brought before the Hon'ble High Court in appeal proceedings. It is further submitted that the scope of review is very limited and, the required ingredients for entertaining and allowing review application do not exist in the present application. Learned counsel appearing for the respondent has also referred to and relied upon the provision as contained in Order 47 Rule 1 of the Code of Civil Procedure, so as to point out the scope of review and submitted that none of the required ingredients exist in the present case.

9. Learned counsel for the respondent further submitted that the case which was relied upon by the applicant is also not applicable to the present case, as in the present case the opposite party has not played any fraud upon the court. The termination order which was served upon the opposite party was under challenge. The subsequent alleged order was never served upon the opposite party and therefore, there is no question of playing fraud by the opposite party with the court in obtaining orders from the learned Jharkhand Education Tribunal. It is further submitted that being aggrieved and dissatisfied by the order dated 23.11.2006, the present applicant preferred appeal before this Court and, therefore, there was ample opportunity available to the applicant at the time of preferring appeal as well as during the pendency of appeal to point out this fact, if the fact was so much relevant for the purpose of determination of issues involved in the case.

10. It is further submitted that the review application has been filed only with a view to delay the execution/implementation of the order passed by this Court

and, therefore, review application filed by the applicant during the pendency of contempt proceeding may be rejected and the order passed by this Court may be given effect.

11. Considering the aforesaid rival submissions and on perusal of the materials placed on record, it appears that the present review application has been filed to review the order passed by this Court on 12.1.2012. On perusal of the order dated 12.1.2012, it appears that appeal was preferred being aggrieved by the order passed by the learned Jharkhand Education Tribunal dated 23.11.2006, whereby the learned Tribunal quashed and set aside the order of termination passed by the District Superintendent of Education dated 7.2.2006 and thereby ordered reinstatement of the opposite party and also allowed all the back wages. Therefore, the scope of enquiry and adjudication in a proceeding of A.C. (S.B) 12 of 2007 was confined to the appreciation of legality and validity of the order passed by the learned Jharkhand Education Tribunal dated 23.11.2006. In the review application for the first time the applicants are coming with a case that the initial appointment of opposite party in 1983 was done by producing fraudulent document and this fact appears to be came in light when the report was submitted by the Ranchi University on 26.6.2007. It appears that the proceedings before this Court were pending when this order came to be passed and therefore, it was the duty of the applicant/appellant before the High Court to point out such relevant and material facts, if the said fact was so much important and relevant to the case.

12. On perusal of the review application and also upon hearing the submissions made by the learned counsel at the time of hearing of review application, it appears that no satisfactory explanation/justification is coining forward or rendered in explaining delay in filing review at such belated stage. The provision as contained in Order 47 Rule 1 is relevant for the purpose of deciding review petition which is reproduced as under:--

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.

13. In view of above provision, it appears that the important ingredients/condition precedent for review application is the due diligence which appears to be lacking in the light of the above facts, as no satisfactory explanation has been put forward by the applicant. Moreover, the other requirement/ingredients as contained in the provision relating to review, the present applicant is required to make out a case for review, but, unfortunately the applicant has failed to make out such case for review. The main ground which is canvassed and agitated by the learned counsel at the time of review application is the fraud played by the opposite party in getting employment has no relevance, while entertaining this review application because according to applicant the said order has been passed on 6.10.2007 which is based on report received from the Ranchi University. However, till date the said order has not been placed on record despite sufficient opportunity available to the applicant in the proceedings which were pending before this Court. Moreover, the allegation regarding fraud is a fresh cause of action and the said order is also required to be communicated to the respondent. The respondent should also be required to be given an opportunity to challenge the said order on the grounds which are available to the opposite party. The order passed by this Court dated 12.1.2012 was confined to the termination order passed by the District Superintendent of Education dated 7.2.2006 and, therefore, there is no question of reviewing the order passed by this Court, It also appears that the present review application has been moved, when the respondent (applicant herein) received notice issued in a contempt proceeding. Moreover, the opposite party was never served with the alleged order of termination passed on the basis of report received from Ranchi University as well as subsequent order passed after verification made by the Ranchi University. Therefore, it cannot be said that the opposite party played fraud upon the Court and by suppressing material fact obtained order. In fact, onus lies upon the applicant to bring such fact on record at the relevant point of time after serving the alleged order upon opposite party. It appears that the applicant has failed to do so and therefore, now at such belated stage" review petition cannot be entertained as the basic/required ingredients for review doesn't exist in the case. In view of the above discussion, it appears that in the present case ingredients for review as required under Order 47 Rule 1 of the CPC are not satisfied. There is no merit in the review application. Hence, the same is ordered to be dismissed.