

(2015) 09 PAT CK 0099

In the Patna High Court

Case No : Civil Review No. 120 of 2014 in LPA No. 247 of 2012

Shahla Perween

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 23-09-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 47 Rule 1, 114
Constitution of India, 1950 — Article 226

Citation : (2015) 09 PAT CK 0099

Hon'ble Judges : I.A. Ansari, J; Ashwani Kumar Singh, J

Bench : Division Bench

Advocate : Lalan Kumar Singh, for the Appellant; Avanindra Kumar Jha, AC to AAG, Advocates for the Respondent

Judgement

Ashwani Kumar Singh, J—By the present review application filed under Article 226 of the Constitution of India and Section 114 read with Order XLVII Rule 1 of the Civil Procedure Code (For short "CPC), the petitioner (appellant in Letters Patent Appeal) seeks review of the order, dated 14.03.2014, passed in L.P.A. No. 247 of 2012, vide which the Letters Patent Appeal against the order, dated 06.01.2012, passed by a learned single Judge of this Court, in C.W.J.C. No. 3355 of 2008, has been dismissed in limine.

2. Shorn of details, the brief facts, necessary for disposal of this petition, are as follows:

"(a) An advertisement, vide Advertisement No. 2/1994, was published by the erstwhile Vidyalaya Sewa Board for selection and appointment of Assistant Teachers in Urdu subject in the Secondary schools of Bihar.

(b) In view of the said advertisement, the Vidyalaya Sewa Board, vide Letter No. 557 dated 27.03.1996, sent a panel of Assistant Teachers in Urdu subject, wherein names of 248 candidates were mentioned. From this panel, appointments were made up to Serial No. 235.

(c) The Vidyalaya Sewa Board, again, sent a panel of handicapped candidates for appointment in Urdu subject, wherein the names of 12 candidates were mentioned.

(d) When no further appointment was made from the panel for a long time, some of the candidates filed a writ petition, vide C.W.J.C. No. 8927 of 1999 (Md. Iqbal Azam Khan Vs. State of Bihar & Others), seeking direction for appointment from the panel, in question, i.e., the panel prepared for handicapped candidates in Urdu subject, and the same was disposed of by a learned single Judge of this Court vide order, dated 19.08.2004, observing as under:-

"In relation to Advertisement No. 2/1994, the petitioners, who claimed to be disabled, are before this Court with a request that their cases should be considered against 3% of quota in favour of disabled person. In relation to the very same advertisement, in C.W.J.C. No. 8731/1999 (Manju Kumari Mishra -Vrs. State of Bihar) disposed of on 5.8.2004, this court has observed that cases of disabled persons are required to be considered. If the petitioners fulfil the said criteria, then their cases should also be considered.

With the aforesaid observation, the petition is disposed of."

(e) Since 3 percent of the vacancies were reserved for the handicapped persons as per the reservation rules and 235 candidates had already been appointed earlier from the panel, in question, only 7 posts/vacancies were available for appointment of handicapped persons.

(f) Accordingly, on the basis of their merit positions in the panel, 7 candidates were called for the purpose of verification of their certificates. But, only 5 of them appeared and after verification of the certificates, necessary orders in respect of appointment of the 5 candidates were issued.

(g) The candidates, whose names were mentioned at Serial Nos. 8 to 12, were not invited for verification of their certificates.

(h) Under such circumstances, the petitioner, standing at serial No. 8, filed writ petition, bearing C.W.J.C. No. 3355 of 2008, seeking a direction to be issued to consider and appoint her to the post of Assistant Teacher (Handicapped) in Urdu subject pursuant to the Advertisement No. 2 of 1994.

(i) The case of the petitioner was that out of the seven candidates, who were above the petitioner in the panel, 5 had already been appointed, whereas two others had shown no interest and inclination in joining the post concerned and, as such, for the remaining 2 reserved seats, under handicapped quota, the petitioner was eligible to be appointed.

(j) In the writ petition, a counter affidavit was filed on behalf of respondent No. 2 (the Director, Department of Secondary Education, Government of Bihar, Patna) in which it was contended that the claims of the candidates, whose names were at Serial Nos. 8 to 12 in the merit list of the panel, in question, including the

petitioner, were considered, in view of the direction given, vide order, dated 19.08.2004, passed in C.W.J.C. No. 8927 of 1999, by a Bench of this Court, and a reasoned order had been passed by the Director, Secondary Education, Government of Bihar, Patna, and communicated, vide Memo No. 266, dated 18.04.2007, whereby their claims had been rejected. It was also contended that the panel, in question, was received in the Department, in the year 1996, and, normally, the life of any panel lasts only one year. Therefore, the panel has lived its life. Further, the Government has decentralized the appointments of teachers of the Secondary schools and entrusted the responsibility of appointment of teachers to the Panchayati Raj Institutions. Accordingly, all previous rules and circulars, regarding the appointment of teachers have been amended and new rules, namely, the Bihar District Board and Municipal Body Secondary and Higher Secondary Teachers (Employment & Service Condition) Rules, 2006, have been enforced vide Notification Nos. 1226 and 1227, both dated 11.07.2006. By these new rules, the Municipal Corporations, Municipal Boards, Municipal Panchayats and District Boards have been authorized to prepare panels and appoint the teachers under their respective jurisdictions. After the enforcement of the aforesaid new rules of appointment, the Government Department is not competent to appoint any teacher in the Secondary/Higher Secondary Schools.

(k) After taking into consideration the arguments advanced by respective counsel for the parties and perusing the materials available on record, the learned single Judge dismissed the writ petition, vide order, dated 24.06.2013, observing as under:-

"...and the stand taken in the counter affidavit, copy whereof was served on the counsel for the petitioner on 7.9.2011 it becomes clear the petitioner will not be entitled for appointment on the post of Assistant Teacher as she did not fall within the prescribed number of posts on which her appointment could be made in the handicapped category. As a matter of fact the vacant posts of teachers cannot be filled up now after they have been transferred to the control of Zila Parishad and now the official of the Government on the basis of the old selection process of the year 1996 cannot take any step for filling up such post of Teacher.

In any view these facts, categorically asserted in the counter affidavit, have not been controverted by the petitioner despite service of the counter affidavit on the counsel for the petitioner.

That being so, this application is wholly misconceived and is, accordingly, dismissed."

(l) Aggrieved by the dismissal of her writ petition, the petitioner filed L.P.A. No. 247 of 2012, which was dismissed by a Division Bench of this Court in limine, vide order, dated 14.03.2014."

3. We have heard Mr. Lalan Kumar Singh, learned counsel for the petitioner.

4. During the course of arguments, Mr. Lalan Kumar Singh, learned Counsel

appearing for the petitioner, has contended that the order, dated 14.03.2014 passed in L.P.A. No. 247 of 2012, is a non-speaking order. Mr. Singh has submitted that while passing the aforesaid order, this Court failed to appreciate the fact that the name of the petitioner appears at serial No. 8 in the merit list of the panel among 12 handicapped candidates. In view of the Advertisement No. 2 of 1994, seven seats were reserved for handicapped category, out of which, five have already been appointed and rest two candidates, placed above the petitioner in the merit list, have shown no inclination to join the post and, hence, two posts are already lying vacant. Mr. Singh further submits that the petitioner has already become overaged for any other public employment and, as such, her case may be considered sympathetically for appointment against the vacant post, which is already available. He further submits that the petitioner is continuously pursuing the matter and there is no laches on her part and this aspect of the matter was not considered either by the learned single Judge or by the Division Bench, while hearing the Letters Patent Appeal. He submits that denial of the claim of the petitioner, in the given facts and circumstances of the case, is illegal, improper, unjust and against the provision of law. He submits that if the review petition is not allowed, it would cause grave hardship to the petitioner.

5. In order to satisfy ourselves, we have examined the materials available on record. We find that the petitioner did apply for the post of Assistant Teacher (Handicapped) in Urdu subject pursuant to the advertisement, which was issued in the year 1994. In the light of the direction given by the learned single Judge, in writ petition, bearing C.W.J.C. No. 8731 of 1999, the claims of the candidates, at serial No. 8 to 12, including the petitioner, whose name was at serial No. 8, in the panel of handicapped candidates, were considered by the Director, Secondary Education, Government of Bihar, Patna, and, vide reasoned order, dated 18.04.2007, their claims have been rejected. The said order, dated 18.04.2007, was annexed to the counter affidavit filed in the writ petition. The petitioner did not file any rejoinder to the counter affidavit filed on behalf of the State. The said order, dated 18.04.2007, passed by the Director, Secondary Education, Bihar, Patna, has not been assailed by the petitioner in any proceeding.

6. We further find that the respondents have made a categorical statement in the counter affidavit that the Government has decentralized the appointments of teachers of the Secondary Schools and entrusted the responsibility of appointments of teachers to the Panchayati Raj Institutions. It would be evident that after enactment of new rules, namely, the Bihar District Board and Municipal Body Secondary and Higher Secondary Teachers (Employment and Service Condition) Rules, 2006, the Municipal Corporations, Municipal Boards, Municipal Panchayats and District Boards have been authorized to prepare the panel and appoint the teachers under their respective jurisdictions.

7. Taking into consideration the arguments advanced on behalf of the parties and the materials available on record, the learned single Judge has dismissed the writ

petition, vide order, dated 06.01.2012. The order passed by the learned single Judge was challenged in L.P.A. No. 247 of 2012, but finding no merit in the appeal, the same was also dismissed by the Division Bench in limine, vide order dated 14.03.2014.

8. We have given our thoughtful consideration to the submissions made by the learned counsel for the petitioner and perused the materials available on record. A perusal of the application, filed by the petitioner seeking review of the order, dated 14.03.2014, shows that none of the grounds stated therein can, strictly speaking, be said to fall within the ambit and scope of Order XLVII Rule 1 CPC. The petitioner, in effect, has challenged the correctness of the order passed by the Division Bench mainly on the ground that the order is non-speaking without pointing out "any error apparent on the face of record".

9. It is true that there is nothing in Article 226 of the Constitution of India 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 error or palpable errors committed by it, but there are certain limits to the exercise of power of review. Such power may be exercised for the correction of a mistake or error apparent on the face of record, but cannot be exercised where different views, on the same subjects, are possible. The limitations, on the power of the Court under Order XLVII Rule 1 CPC, are similar and applicable to the jurisdiction available to the High Court under Articles 226 of the Constitution of India. A review cannot be treated as an appeal in disguise or employed for rehearing a matter for correcting an arguably erroneous decision. The power of review can be exercised only for correction of a patent error, which is apparent on the face of the record, and not an error which has to be traced after elaborate arguments being noted for establishing it. It is a well settled principle of law that merely because a party was not satisfied with the order of the Court or it was possible to take another interpretation of law and fact, no case for review can be held to be such an error which would call for review.

10. In the present case, we are of the opinion that the petitioner has failed to establish that there was an error or a mistake apparent on the face of the record or there was such other material available with the petitioner, which, if not taken into consideration, would cause miscarriage of justice.

11. For the foregoing reasons, the review application is without any merit and is accordingly dismissed.