

(2019) 04 J&K CK 0054

In the Jammu And Kashmir High Court

Case No : Review Petition (LPA)(1) (RPLPA) No. 02 Of 2019, Letters Patent Appeals (LPASW) No. 18 Of 2018

Syed Barjas Akhtar

APPELLANT

Vs

State Of Jammu & Kashmir And Ors

RESPONDENT

Date of Decision : 09-04-2019

Acts Referred:

Code Of Civil Procedure, 1908 — Order 47 Rule 1
Supreme Court Rules, 1966 — Order 40 Rule 1, Order 40 Rule 5

Citation : (2019) 04 J&K CK 0054

Hon'ble Judges : Ali Mohammad Magrey, J;Sanjeev Kumar, J

Bench : Division Bench

Advocate : J.H. Reshi

Final Decision : Dismissed

Judgement

Ali Mohammad Magrey, J

1. The petitioner/ appellant, by medium of this review petition, is seeking review of judgment dated 8th of March, 2019, passed in LPASW No. 18/2019, whereby and whereunder the appeal of the appellant/ review petitioner herein stands dismissed, operative portion whereof reads as under:

"20/- In the circumstances, the LPA, being without any merit, fails, and is dismissed as such. The impugned judgment and order is upheld. The respondents are directed to initiate a process of selection against the post in question and consider all eligible candidates including the appellant and respondent no.6 if at all they fulfill the eligibility criteria."

2. The review petitioner/ appellant is seeking the review of judgment aforesaid, inter alia, on the following grounds:

(i) "That the order of disengagement, of the petitioner impugned in the OWP 2473/2013, as anganwari worker in the anganwari center Ringmando-B, Laripora, Tehsil Doru, District Anantnag is per se illegal and bad in law for reason

it has been passed without any prior notice or opportunity of being heard whatsoever given to her despite of the fact the Hon'ble Court of Principal District Judge by his order dated 24.11.2012 passed in the case has asked official respondents to consider both plaintiff as the petitioner herein but for some ulterior motive, the said order had been given an altogether different interpretation and meaning;

(ii) That the Hon'ble writ court has been pleased to decide the writ petition filed as against aforesaid order at her back as the learned counsel engaged by her, had chosen not to appear when the case had come up for hearing as such said Hon'ble writ court had no opportunity or occasion to appreciate true facts in the right perspective;

(iii) That the fact of the matter is that the said post of anganwari worker occupied by the petitioner since last more twelve years in the anganwari centre Ringmando-B, Larkipora, Teshil Doru, District Anantnag was properly advertised and given due publicity along with other such 38 vacancies vide an advertisement No.28/SW of 2008 dated 24.03.2008 available in the ICDS Project, Larkipora, Tehsil Doru, District Anantnag. Copy thereof is annexed to the review petition as Annexure-II;

(iv) That the submissions of the learned counsel appearing for the state/official respondents recorded by Hon'ble court at Para 6 of the judgment herein are totally contrary to the stand taken by the official respondents in the objection filed by them before the Hon'ble writ court which have not been taken into consideration or considered by the Hon'ble writ court or by this Hon'ble court at all;

(v) That it is the admitted case of the official respondents as proper response was received and no eligible candidate from the said hamlet had applied for filling up of the of the aforesaid post, in terms of the aforesaid advertisement notice, therefore no merit list could be framed by the selection committee, and in the interest of administration and on the recommendation of the MLA concerned, petitioner was engaged subject to the approval of the selection committee and that she is continuing to work on the said post satisfactorily till date;

(vi) That the petitioner is not the only non-local candidate who was appointed as such anganwari worker, in terms of aforesaid advertisement notice but other candidates were also appointed along with her to fill up the vaccines against which no application were received in terms of aforesaid advertisement and no suitable candidate was found within such hamlet, in a manner like this. Apart from this, scores of such other non-local candidates have been appointed at different anganwai centres across the state on need basis wherever no applications were received or local suitable candidate were not available at right point of time;

(vii) That the submission of the learned counsel, appearing for the private respondent No.6, recorded at para 7 of the judgment that she was the only

eligible candidate, who had applied for the said post and was denied appointment, is belied by her own record, pleadings and the stand taken by the official respondents in the case;

(viii) That the Hon'ble writ court has wrongly held that parameters provided under the Government Order No. 07-SW of 2010 dated 18.01.2010 for appointment of anganwari workers have not been complied with but stand flouted with impunity while making of appointment of the petitioner as against the said post when as a matter of fact said government order was prospective in nature while as the petitioner had been appointed as AWW way back in the year 2008 and this Hon'ble Court has committed any error and mistake of fact and law by upholding the same view;

(ix) That this Hon'ble court has committed an error and mistake apparent on the face of record in the para 15 of its judgment, by holding that the appellants service as on date is legally no more in existence as the interim order dated 18.12.2013 passed in the SWP No.2473/2013 and by virtue of which her disengagement order No. CDPO/ICDS/Lp/Estt/2013/486-91 dated 02.12.2013 was stayed, has merged in the final order of dismissal dated 19.05.2017, impugned herein when as a matter of fact this Hon'ble court by an order dated 29.11.2018 passed in the condonation of delay application No. CDLSW No.73/2018, filed in the instant LPA, was pleased to pass a fresh stay order in the case where under respondents, were asked not to disturb the services of the petitioner and as a consequence thereof petitioner as on date is continuing to work on the said post without any demur or break. Copies of the stay orders issued from time to time by the Hon'ble writ court and the aforesaid stay order and order issued by the department concerned in compliance thereof are collectively annexed to this review petition for the perusal of this Hon'ble court as Annexure-III;

(x) That showing sudden door to the petitioner, for no fault, after rendering an uninterrupted and continuous service as an anganwari worker at Anganwari Centre Ringmandoo-B, Larkipora, Tehsil Doru, District Anantnag will not only deprive her of her and her family dependent on her of their only source of livelihood but is bound to cause a great hardship and material injustice to them;

(xi) That allowing her to continue on the said post will cause no prejudice or harm to anyone whatsoever as no one at relevant point of time, eligible for the post had applied for the same in response to the aforesaid advertisement notice but will definitely prejudice the petitioner and her family herein as she has by now already crossed the age limit of 44 years, prescribed for the post, as her date of birth is 23.03.1971;

(xii) That Hon'ble Apex court in numerous of its judgments, including in the judgment reported in the (2000) 8 CCC 25 and relied upon by the counsel of the petitioner and referred to by this Hon'ble Court at para 5 and 15 of the impugned judgment, has been pleased to directed in number of such cases, not disengage

any such appointee or person, who may have continued to work against a particular post, continuously and uninterruptedly for such a long time, in the, interest of justice;

(xiii) That the petitioner is not holding any statutory post but is working as a petty Anganwari Worker not even at par with a class IV post or daily wage worker engaged by the government in any other department and can continue work as such only till the continuous of the aforesaid scheme by the government;

(xiv) That the state of Jammu and Kashmir by virtue of the J&K Civil Services (Special Provisions) Act, 2010 and other similar schemes promulgated by other corporations and authorities, have regularized the services of hundreds and thousands, of such similarly situated persons as the petitioner herein, therefore it may not be fair and in the interest of justice if she for reason is thrown out from her job at this stage or point of time;

(xv) That any such action or order therefore will not be in the interest of justice and will be a gross violation of Article 14, 16 and 21 of the Constitution of India; and

(xvi) That there are multiple other vacancies available right now in the ICDS Larkipora, Tehsil Doru so the petitioner can be very well be retained in the interest of justice and along with her, respondent No.6 can also be adjusted if she chooses to do so."

3. We have heard the learned counsel for the petitioner, considered the matter and perused the documents placed on record.

4. What requires to be stated, at the outset, is that in the instant review petition, the review petitioner/appellant has touched the merits of the case, which, in a review petition, is unwarranted as per well settled position of law. The grounds urged in the review petition have already been decided and findings returned thereon by this Court and, if the review petitioner/ appellant was aggrieved of the said findings, he ought to have availed the remedy under law for challenging the same before the appropriate Court. In fact, the instant review petition, on grounds enumerated therein, appears to be a disguised appeal. The grounds taken by the review petitioner/ appellant are either that the findings recorded by the Court are not legally tenable, or that the same are perverse, or that the same are unacceptable. A judgment may be wrong, erroneous, incorrect, perverse, legally untenable, etc. etc., but, the only course available for the aggrieved party is to go in appeal against the said judgment before the appropriate forum. Such grounds do not constitute errors of fact or of law on the face of the record as would call for a review.

5. A review cannot also be used as a tool for changing the opinion/ view of the Court. In a review petition, it is only an error, apparent on the face of the record, which can be considered and gone into by the Court. It is not open to the Court, dealing with review of its decision, to re-appreciate the evidence and reach a

different conclusion, even if that is possible. Conclusion arrived at, on appreciation of evidence and after hearing the rival parties, cannot be assailed in a review petition, unless it is shown that there is an error apparent on the face of the record. The power of review has to be exercised with extreme care, caution and circumspection, that too, only in exceptional cases.

6. Law on the subject is no more *res integra*. The Apex court of the country, in case titled '*Kamlesh Verma v. Mayawati & Ors.*' reported in '(2013) 8 Supreme Court Cases 320', while dealing with a similar issue, at paragraph Nos. 13, 15 to 19, laid down as under:

"13. Review of the earlier order cannot be done unless the court is satisfied that material error, manifest on the face of the order, undermines its soundness or results in miscarriage of justice. This Court, in *Col. Avtar Singh Sekhon v. Union of India & Ors.* [1980 (Supp) SCC 562], held as under:

"12. A review is not a routine procedure. Here we resolved to hear Shri Kapil at length to remove any feeling that the party has been hurt without being heard. But we cannot review our earlier order unless satisfied that material error, manifest on the face of the order, undermines its soundness or results in miscarriage of justice. In *Sow Chandra Kante v. Sheikh Habib* this Court observed:

"1. A review of a judgment is a serious step and reluctant resort to it is proper only where a glaring omission or patent mistake or like grave error has crept in earlier by judicial fallibility.... The present stage is not

a virgin ground but review of an earlier order which has the normal feature of finality."

14.-----

15. 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. A review is by no means an appeal in disguise whereby an erroneous decision is re-heard and corrected, but lies only for patent error. This Court, in *Parsion Devi & Ors. v. Sumitri Devi & Ors.*, [JT 1997 (8) SC 480: (1997) 8 SCC 715], held as under:

"7. It is well settled that review proceedings have to be strictly confined to the ambit and scope of Order 47 Rule 1 CPC. In *Thungabhadra Industries Ltd. v. Govt. of A.P.* this Court opined:

"11. What, however, we are now 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 the 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 distinction which is real, though it might not always be capable of exposition, between a mere erroneous decision and a decision which could be characterized as vitiated by 'error apparent'. A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected, but lies only for patent error.

8. Again, in *Meera Bhanja v. Nirmala Kumari Choudhury* while quoting with approval a passage from *Aribam Tuleshwar Sharma v. Aribam Pishak Sharma* this Court once again held that 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.

9. Under Order 47 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 47 Rule 1 CPC. In exercise of the jurisdiction under Order 47 Rule 1 CPC it is not permissible for an erroneous decision to be 'reheard and corrected'. A review petition, it must be remembered has a limited purpose and cannot be allowed to be 'an appeal in disguise.'

16. Error contemplated under the rule must be such which is apparent on the face of the record and not an error which has to be fished out and searched. It must be an error of inadvertence. The power of review can be exercised for correction of a mistake but not to substitute a view. The mere possibility of two views on the subject is not a ground for review. This Court, in *Lily Thomas & Ors. v. Union of India & Ors.*, [(2000) 6 SCC 224], held as under:

"54. Article 137 empowers this Court to review its judgments subject to the provisions of any law made by Parliament or any rules made under Article 145 of the Constitution. The Supreme Court Rules made in exercise of the powers under Article 145 of the Constitution prescribe that in civil cases, review lies on any of the grounds specified in Order 47 Rule 1 of the Code of Civil Procedure which provides:

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.'

Under Order 40 Rule 1 of the Supreme Court Rules no review lies except on the ground of error apparent on the face of the record in criminal cases. Order XL Rule 5 of the Supreme Court Rules provides that after an application for review has been disposed of no further application shall be entertained in the same matter.

56. It follows, therefore, that the power of review can be exercised for correction of a mistake but not to substitute a view. Such powers can be exercised within the limits of the statute dealing with the exercise of power. The review cannot be treated like an appeal in disguise. The mere possibility of two views on the subject is not a ground for review. Once a review petition is dismissed no further petition of review can be entertained. The rule of law of following the practice of the binding nature of the larger Benches and not taking different views by the Benches of coordinated jurisdiction of equal strength has to be followed and practised. However, this Court in exercise of its powers under Article 136 or Article 32 of the Constitution and upon satisfaction that the earlier judgments have resulted in deprivation of fundamental rights of a citizen or rights created under any other statute, can take a different view notwithstanding the earlier judgment.

58. Otherwise also no ground as envisaged under Order XL of the Supreme Court Rules read with Order 47 of the Code of Civil Procedure has been pleaded in the review petition or canvassed before us using the arguments for the purposes of reviewing the judgment in Sarla Mudgal case, [JT 1995 (4) SC 331] It is not the case of the petitioners that they have discovered any new and important matter which after the exercise of due diligence was not within their knowledge or could not be brought to the notice of the Court at the time of passing of the judgment. All pleas raised before us were in fact addressed for and on behalf of the petitioners before the Bench which, after considering those pleas, passed the judgment in Sarla Mudgal case. We have also not found any mistake or error apparent on the face of the record requiring a review. Error contemplated under the rule must be such which is apparent on the face of the record and not an error which has to be fished out and searched. It must be an error of inadvertence. No such error has been pointed out by the learned counsel appearing for the parties seeking review of the judgment. The only arguments advanced were that the judgment interpreting Section 494 amounted to violation of some of the fundamental rights. No other sufficient cause has been shown for reviewing the judgment. The words 'any other sufficient reason appearing in Order 47 Rule 1 CPC' must mean 'a reason sufficient on grounds at least analogous to those specified in the rule' as was held in Chhajju Ram v. Neki, [AIR

1922 PC 112] and approved by this Court in *Moran Mar Basselios Catholicos v. Most Rev. Mar Poullose Athanasius*, [AIR 1954 SC 526] Error apparent on the face of the proceedings is an error which is based on clear ignorance or disregard of the provisions of law. In *T.C. Basappa v. T. Nagappa*, [AIR 1954 SC 440] this Court held that such error is an error which is a patent error and not a mere wrong decision. In *Hari Vishnu Kamath v. Ahmad Ishaque* [AIR 1955 SC 233], it was held:

"23. It is essential that it should be something more than a mere error; it must be one which must be manifest on the face of the record. The real difficulty with reference to this matter, however, is not so much in the statement of the principle as in its application to the facts of a particular case. When does an error cease to be mere error, and become an error apparent on the face of the record? Learned counsel on either side were unable to suggest any clear-cut rule by which the boundary between the two classes of errors could be demarcated.

Mr. Pathak for the first respondent contended on the strength of certain observations of Chagla, C.J. in - '*Batuk K. Vyas v. Surat Borough Municipality*, [AIR 1953 Bom 133?] that no error could be said to be apparent on the face of the record if it was not self-evident and if it required an examination or argument to establish it. This test might afford a satisfactory basis for decision in the majority of cases. But there must be cases in which even this test might break down, because judicial opinions also differ, and an error that might be considered by one Judge as self-evident might not be so considered by another. The fact is that what is 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, and it must be left to be determined judicially on the facts of each case.'

Therefore, it can safely be held that the petitioners have not made out any case within the meaning of Article 137 read with Order XL of the Supreme Court Rules and Order 47 Rule 1 CPC for reviewing the judgment in *Sarla Mudgal* case. The petition is misconceived and bereft of any substance."

17. In a review petition, it is not open to the Court to re-appreciate the evidence and reach a different conclusion, even if that is possible. Conclusion arrived at on appreciation of evidence cannot be assailed in a review petition unless it is shown that there is an error apparent on the face of the record or for some reason akin thereto. This Court, in *Kerala State Electricity Board v. Hitech Electrothermics & Hydropower Ltd. & Ors.*, [JT 2005 (7) SC 485], held as under:

"10.In a review petition it is not open to this Court to re-appreciate the evidence and reach a different conclusion, even if that is possible. Learned counsel for the Board at best sought to impress us that the correspondence exchanged between the parties did not support the conclusion reached by this Court. We are afraid such a submission cannot be permitted to be advanced in a review petition. The appreciation of evidence on record is fully within the domain

of the appellate court. If on appreciation of the evidence produced, the court records a finding of fact and reaches a conclusion, that conclusion cannot be assailed in a review petition unless it is shown that there is an error apparent on the face of the record or for some reason akin thereto. It has not been contended before us that there is any error apparent on the face of the record. To permit the review petitioner to argue on a question of appreciation of evidence would amount to converting a review petition into an appeal in disguise."

18. Review is not re-hearing of an original matter. The power of review cannot be confused with appellate power which enables a superior court to correct all errors committed by a subordinate court. A repetition of old and overruled argument is not enough to re-open concluded adjudications. This Court, in *Jain Studios Ltd. v. Shin Satellite Public Co. Ltd.*, [JT 2006 (7) SC 40: (2006) 5 SCC 501], held as under:

"11. So far as the grievance of the applicant on merits is concerned, the learned counsel for the opponent is right in submitting that virtually the applicant seeks the same relief which had been sought at the time of arguing the main matter and had been negatived. Once such a prayer had been refused, no review petition would lie which would convert rehearing of the original matter. It is settled law that the power of review cannot be confused with appellate power which enables a superior court to correct all errors committed by a subordinate court. It is not rehearing of an original matter. A repetition of old and overruled argument is not enough to reopen concluded adjudications. The power of review can be exercised with extreme care, caution and circumspection and only in exceptional cases.

12. When a prayer to appoint an arbitrator by the applicant herein had been made at the time when the arbitration petition was heard and was rejected, the same relief cannot be sought by an indirect method by filing a review petition. Such petition, in my opinion, is in the nature of 'second innings' which is impermissible and unwarranted and cannot be granted."

19. Review proceedings are not by way of an appeal and have to be strictly confined to the scope and ambit of Order XLVII Rule 1 of CPC. In review jurisdiction, mere disagreement with the view of the judgment cannot be the ground for invoking the same. As long as the point is already dealt with and answered, the parties are not entitled to challenge the impugned judgment in the guise that an alternative view is possible under the review jurisdiction."

7. A cue can, in this behalf, be also had from the decision rendered by a Division Bench of this High Court in the case of '*State of JK & Ors. vs. Govt. Handloom Silk Weaving Factory & Ors.*', reported in '*2016 (2) JKJ 795(HC)*', of which, incidentally, one of us (Magrey, J) is the author, wherein, it has been held as follows:

"13. At the very outset it needs to be kept in mind that review jurisdiction of the

Court is limited. It is settled law that it is only an error apparent on the face of the record which can be considered and one into by the Court. In the present review petition, the grounds of facts of law urged in review petitions, as narrated above, including the submissions made at the Bar by the learned Counsels appearing in these review Petitions, which in content and substance were the same as taken in the respective review petitions, cannot in any manner be considered as errors on the face of record. Instead the grounds sought to be raised and urged may constitute grounds of appeal alone. In fact, the instant review petitions on grounds enumerated herein appear to be disguised Second Appeals. As noticed above, the grounds taken by the review petitioners are either that the findings recorded by the Court are not legally tenable, or that the same are perverse, or that the same are unacceptable. A judgment may be wrong, erroneous incorrect, perverse, legally untenable, etc. etc., the only course available for the aggrieved party is to go in appeal. Such grounds do not constitute errors of fact or of law on the face of the record as would call for a review."

8. From a bare perusal of the law laid down above, it is manifestly clear that the scope of review is very limited. The power of review is exercised when some mistake or error, apparent on the face of the record, is found. A mistake or an error, apparent on the face of the record, means a mistake or an error which is, prima facie, visible and does not require any detailed examination. Such an error must strike one on mere looking at the record and should not require any long-drawn process of reasoning on the points where there may, conceivably, be two opinions. In the present case, the review petitioner/appellant has not been able to point out any error, apparent on the face of the record, but, on the contrary, under the guise of the instant review petition, the review petitioner/ appellant is challenging the order passed by this Court, which is under review. The law, as cited by the learned counsel for the review petitioner/ appellant, is not applicable to the facts and circumstances of the case on hand.

9. In the above background coupled with the law discussed hereinabove, we do not find any error, apparent on the face of the record, in the judgment dated 8 th of March, 2019, passed by this Court in LPASW No. 18/2019, as would warrant its recall on review. It being so, this review petition is found to be without any merit, as a sequel thereto, same shall stand dismissed, alongwith all connected IA(s).