

(2010) 05 DEL CK 0187

In the Delhi High Court

Case No : CM No. 7148 of 2010 and R.A. No. 222 of 2010 in Writ Petition (C)
No. 13857 of 2009

Trilok Chand

APPELLANT

Vs

Union of India and others

RESPONDENT

Date of Decision : 28-05-2010

Acts Referred:

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

Citation : (2010) 05 DEL CK 0187

Hon'ble Judges : Vipin Sanghi, J;Anil Kumar, J

Bench : Division Bench

Advocate : M.K. Bhardwaj, for the Appellant;

Final Decision : Dismissed

Judgement

Anil Kumar, J.

CM No.7148/2010

1. This is an application by the petitioner/applicant for condonation of delay in filing the application for review of order dated 15th December, 2009. The petitioner/applicant has sought condonation of delay in filing the review application on the ground that he was not in Delhi, and therefore, he could know the order and only in last week of December, 2009 he came to know about the order. Despite repeated requests to his counsel, he could not get the order and finally he obtained the order from Internet.

2. The petitioner/applicant contended that he approached another lawyer who took time to first prepare the Special Leave Petition. However even the SLP was not filed, and therefore, the petitioner/applicant approached the earlier lawyer against who thereafter prepared the present application for review which was thereafter filed by him without any further delay.

3. For the reasons stated in the application, there is a sufficient grounds for

condonation of delay in filing the review application and therefore, it is allowed and delay in filing the application for review of order dated 15th December, 2009 is condoned.

R.A.No.222/2010

4. The petitioner/applicant has sought review of the order dated 15th December, 2009 on the ground that there were vacancies, however, the vacancies were not released and were released later on, and therefore, the petitioner/applicant is entitled for consideration of his request for appointment on compassionate ground towards the vacancies which were released later on.

5. The Tribunal while dismissing the petition of the petitioner/applicant against which writ petition being W.P.(C) No.13857 of 2009 was filed which was dismissed by order dated 15th December, 2009, had noted that admittedly no vacancies were available during the year 2002-03. If there were vacancies in year 2002-03, but which were not released for administrative reasons or any other reasons, on release of such vacancies next year, the petitioner/applicant cannot contend that he is entitled for consideration of those vacancies which were released later on as the vacancies for the year 2002-03. The Tribunal had noted that if subsequently vacancies were released in subsequent year that could not give any right to the petitioner/applicant to seek further consideration and had relied on a decision of a Co-ordinate Bench in O.A.No.429/PB/2007.

6. This Court while dismissing the writ petition had also noted that the petitioner/applicant was not eligible for appointment in the year 2000-01, as he had not even passed Bachelor Degree during those years. Since the request of the petitioner/applicant for compassionate appointment could be considered for three years only, therefore, after the expiry of the father of the petitioner/applicant on 26th December, 2009, he could be considered during the year 2000-01; 2001-02 & 2002-03. This Court had also noticed that since the application of the petitioner/applicant was for recruitment, the consideration had to be during recruitment year and not during calendar year. Though the petitioner/applicant has contended that there is an error apparent, however, in the facts and circumstances, this Court does not find any such error which is required to be corrected in exercise of its jurisdiction for review of the order.

7. The review proceedings have to strictly confine to the ambit and scope of Order XLVII Rule 1 of the Code of Civil Procedure. Under the said Order judgment may be opened to review, 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 an error apparent on the face of the record justifying the Court to exercise its power of Review under Order XLVII Rule 1 of the Code of Civil Procedure. It is no more res integra that in exercise of jurisdiction under Order XLVII Rule 1 of the Code of Civil Procedure, it is not permissible for an erroneous decision to be reheard and corrected, as a review petition has a limited purpose and cannot be allowed to be

an appeal in disguise. A Review cannot be sought merely for fresh hearing, or arguments or correction of an erroneous decision taken earlier. The power of review has to be exercised only for correction of a patent error of law or fact which stays in the place without any elaborate argument being needed for establishing it.

8. In the entirety of the facts and circumstances, therefore, there are no such patent error in the order impugned before us which requires to be corrected in exercise of jurisdiction of power of review by this Court. Consequently, the application of the petitioner/applicant is without any merit and it is liable to be dismissed. The application, therefore, is dismissed, however, the parties are left to bear their own costs.