

(2014) 04 MAD CK 0234

In the Madras High Court

Case No : Review Application No. 50 of 2014

Union of India and Garrison Engineer (Maint)

APPELLANT

Vs

M. Manikandan and Central Administrative Tribunal

RESPONDENT

Date of Decision : 09-04-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 40 Rule 1, Order 47 Rule 1
Constitution of India, 1950 — Article 137

Citation : (2014) 04 MAD CK 0234

Hon'ble Judges : T.S. Sivagnanam, J;Chitra Venkataraman, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

T.S. Sivagnanam, J.—This Review by the Union of India and others is directed against the order and direction issued in W.P. No. 14010 of 2013 dated 29.08.2013.

2. The review petitioners were the respondents 1 to 4 in the said writ petition. The writ petition was filed by the first respondent herein for issuance of writ of certiorarified mandamus to quash the order passed by the first petitioner herein dated 28.05.2013 and to direct the petitioners herein to appoint the first respondent as a Clerk/Mazdoor/Peon/Chowkidar on compassionate ground on the basis of his application dated 13.01.2003 submitted by the father of the first respondent as against the vacancies that arose from the year 2003 onwards. It is to be pointed out that the prayer in the writ petition was an amended prayer. At the first instance, the first respondent-writ petitioner sought for issuance of a writ of mandamus to issue a positive direction to the petitioners herein to appoint the petitioner on compassionate grounds. Since during the pendency of the writ petition, an order was passed on 28.05.2013 rejecting the request, the first respondent-writ petitioner sought for amendment of the prayer, which was permitted by the Division Bench by order dated 20.08.2013. Before we examine the ground on which the petitioners seek to review the order and direction issued

by the Division Bench in the writ petition certain facts would be essential.

3. The first respondent filed an application before the Central Administrative Tribunal in O.A. No. 666 of 2012 challenging the order dated 5.6.2009 by which the first respondent's application for compassionate appointment was not considered on the ground that it was submitted beyond a period of three years from the date of demise of his mother, who was employed in the petitioner-Department. The Tribunal disposed of the application on 11.4.2013 by recording the submission made by the Department that the respondent's name has been included for consideration by the Board and based on the said fact, the Department was directed to consider the case of the first respondent on compassionate grounds along with others, who were waiting for appointment as and when the vacancy arises. The respondent-writ petitioner not satisfied with the direction and he having approached the Tribunal for redressal of his grievance within a short time and as the first respondent had earlier filed two original applications in OA Nos. 520 of 2011 and O.A. No. 1079 of 2009 and inspite of the directions issued by the Tribunal in those OAs have not worked out in favour of the first respondent, he approached this Court by filing W.P. No. 14010 of 2013 for issuance of a positive direction to consider and appoint him on compassionate grounds. This as stated earlier the prayer in the writ petition stood amended since the first respondent's request for compassionate appointment came to be rejected by order dated 28.05.2013. Before the Division Bench the petitioner-Department resisted the claim made by the first respondent by referring to the reasons assigned in the order dated 28.05.2013. which is an order rejecting the request for compassionate appointment. In the said order, the reason assigned for rejecting the writ petitioner's request for compassionate appointment was on the ground that the marks secured by the respondent was less and he could not make it in the merit for appointment on compassionate ground compared to other candidates for the period from 01.04.2010 to 31.03.2011. Further it was stated that the first respondent's application for compassionate appointment was beyond the time prescribed in the office memorandum dated 5.5.2003 and the persons name can be kept for consideration for offering compassionate appointment only for three years subject to the condition that the prescribed committee has reviewed and certified the penurious condition of the applicant at the end of first and second year and after three years if compassionate appointment is not possible to be offered, the case may be finally closed and will not be considered again.

4. The Division Bench considered the entire factual matrix along with the chain of events, which ultimately culminated in the filing of the writ petition. At this stage, it would be useful to refer to the observations made by the Division Bench while disposing of the writ petition.

16. We have perused the impugned order dated 28.5.2013. The paragraph 2 of the impugned order speaks about the scheme of compassionate appointment as framed and made applicable to the respondent organisation. In paragraph 3,

after referring to the circular of the Ministry of Defence dated 9.3.2001, the first respondent has referred to the decision of the Hon"ble Supreme Court in Umesh Kumar Nagpal Vs. State of Haryana and Others, . In paragraph 4 of the impugned order, it has been mentioned that the date of death of the Government servant is 6.6.2002, and the documents were received from the petitioner only on 29.7.2010. This observation/finding in the impugned order is factually incorrect. It is evidently clear that the first respondent has passed the impugned order dated 28.5.2013, without reference to any of the earlier orders passed by the Tribunal in O.A. No. 1079 of 2009 dated 10.3.2011, O.A. No. 520 of 2011 dated 1.11.2011 and O.A. NO. 666 of 2012 dated 11.4.2013. The controversy in all the earlier Applications before the Tribunal, repeatedly raised by the respondents was regarding the issue as to whether the petitioner's application for compassionate appointment was within the prescribed time or belatedly submitted. After contest, the Tribunal rejected the case of the respondent Department and recorded a finding that the Application for compassionate appointment was received on 13.1.2003, well within time and therefore, direction was issued to consider such application along with the documents which were given.

20. Though such direction was issued, the respondents did not comply with the same, but filed Application for extension of time and the petitioner was compelled to file another Application before the Tribunal in O.A. No. 666 of 2012, which was disposed of by recording the statement made by the respondents in their reply statement, wherein the respondents stated that they have included the petitioner in the Board. Thus it appears, the Tribunal was led to believe that since the respondents have already included the petitioner's name in the Board, no further direction would be necessary except to direct the respondents to consider the case of the petitioner. However, now the first respondent by the impugned order once again rejected the petitioner's application by stating that three year limitation which could not have been a reason to reject the petitioner's application in the light of the various orders passed by the Tribunal and fact that the application given by the petitioner for compassionate appointment was well within the time, and it is on account of the delay caused in the office of the respondent the matter was not taken up for consideration. In fact the petitioner's father's representation made to the second respondent on 30.6.2009, submitted that his initial request was well within the prescribed time but the office of the Garrison Engineer (M) NAS, Arakonnam, failed to process the case in the right direction and kept pending for years since 2003, and hence, there is no lapse on his part and that the office of the Garrison Engineer has hidden all facts and forwarded the Application on 30.1.2009. Hence, we are of the firm view that the rejection of the candidature of the petitioner by the impugned order is wholly unsustainable, perverse, arbitrary and unreasonable.

22. The petitioner has produced documents to show that the family continuous to be in indigent circumstances. This fact has not been specifically disputed by the respondents in the impugned order. The petitioner has been held to have secured

lower marks by comparing the marks secured by him along with the candidates for the period from 1.4.2010 to 31.3.2011. Such comparison is unreasonable since the petitioner's candidature has been evaluated along with persons who are far juniors to him in age. However, no material has been placed before this Court to show as to on what basis, the marks secured by the petitioner has been arrived as 63 marks. The reasonable manner in which the petitioner's candidature should have been evaluated is to treat him on par with such of those applicants who are eligible for being considered for compassionate appointment on the date when the petitioner made such a request i.e. in 2003. If such interpretation is not given, then the object, purpose and intent of the scheme of compassionate appointment would stand defeated moreso, in the instant case when the delay is solely attributable to the respondents and this conclusion is based on the finding of the Tribunal in the earlier two original applications filed by the petitioner. The finding recorded by the Tribunal in this regard have attained finality as the respondent have not challenged those orders.

25. Admittedly, the respondents did not consider the application within a reasonable time and under the guise of collecting a copy of the application in 2009, they rejected the application which was submitted within the time frame as being beyond the period of three years from the date of death of the Government servant. This action of the respondent was struck down by the Tribunal, not once, but twice. The first respondent having filed a reply statement before the Tribunal stating that the petitioner's name has been included in the Board, in all fairness should have adhered to his statement and issued a letter of appointment to the petitioner, on the contrary the petitioner's candidature has been rejected in a most arbitrary an unreasonable manner and therefore the impugned order calls for interference. Though under normal circumstances this Court will not issue a positive direction to offer appointment, but considering the fact that the petitioner whose family still continues to be in indigent circumstance is languishing from 2003, compelled to approach the Tribunal on three occasions, and this Court by way of this writ petition. The Hon'ble Supreme Court in *State of Jammu & Kashmir Vs. Shiv Ram Sharma and Others*, and in *Praveen Singh Vs. State of Punjab and Others*, , has observed that the rejection of candidature if found to have been done at the cost of "fair play", "good conscience" and "equity" could be interfered. It is a fit case where a positive direction should be issued to the respondents to appoint the petitioner in the post commensurate with his educational qualification within a time frame.

26. In the result, the Writ Petition is allowed and the order passed by the first respondent dated 28.5.2013, is set aside and the respondents 1 to 4 are directed to appoint the petitioner on compassionate ground in a post commensurate with his educational qualification within a period of three months from the date of receipt of a copy of this order. No costs. Consequently the connected Miscellaneous Petition is closed.

In terms of the direction issued in the writ petition, the petitioners herein were

directed to appoint the first respondent on compassionate ground in the post commensurate with his educational qualification within a period of three months from the date of receipt of copy of the said order.

5. It is an admitted fact that the petitioners did not offer the appointment to the first respondent as directed by the Division Bench of this Court in its order dated 29.08.2013; on the contrary the petitioners passed an order dated 9.10.2013 on the ground that the first respondent did not obtain the cut off marks required in respect of compassionate appointment considered during the period 2010-11. The first respondent, being aggrieved by such order filed Contempt Petition No. 479 of 2014 on 16.12.2013 and notice was issued to the petitioners herein who were the respondents in the contempt petition. In the meantime, the petitioners herein have filed the present review application on 06.11.2013 along with the application to condone the delay in filing the review application. This Court by order dated 20.03.2014 in M.P. No. 1 of 2013 condoned the delay in filing the review application. Thereafter, the review application has been registered and placed herein.

6. We have heard Mr. G. Masilamani, learned Additional Solicitor General appearing for the petitioners and Mr. N. Rajan, learned counsel appearing for the first respondent-writ petitioner.

7. The petitioners seek to review of the order passed in writ petition on the ground that the main writ petition was filed seeking compassionate appointment by suppressing the fact that the first respondent's father is already in Government service and his family was not in indigent condition. It is further submitted that they have a own house and sufficient income and these facts were not placed by the first respondent and he submitted a false certificate that his father was not in government employment and in view of the ineligibility to apply under compassionate scheme which goes to the root of the matter, the review application has been filed. Further it was contended that the petitioner's father is receiving family pension and the family has also received all terminal benefits, which was paid after the demise of the respondent's mother and this would show that the family of the deceased employee is not in indigent circumstances.

8. When a query was raised by this Court to the learned Additional Solicitor General of India in observing that the grounds raised in review application were not the grounds which were placed before the Division Bench, which heard the writ petition, it is fairly submitted by the learned Additional Solicitor General of India that the grounds of review were not pleaded by the petitioners in the writ petition nor was it ground on which the first respondent's application for compassionate appointment was rejected. It is the endeavour of the learned Counsel to contend that as per the regulation, if one member of the deceased family is employed or receiving pension, it is stated that such family is not in indigent circumstances and therefore, not entitled for the benefit of the scheme of compassionate appointment. Further by referring to the various clauses in the

scheme, it is submitted that the family should be in penury condition then only, a member in the family would be entitled to seek for employment on compassionate ground under the scheme. It is further submitted that though the fact that the issue relating to first respondent-father's employment was not canvassed in the writ petition, it being a question of fact can be agitated in the review petition as no direction could be issued by the Writ Court, which could be contrary to law, which is the scheme governing the compassionate appointment.

9. In support of his contention, the learned counsel placed reliance on the decision of the Hon''ble Supreme Court reported in Life Insurance Corporation of India Vs. Mrs. Asha Ramachandra Ambekar and another, to submit that when one member of the deceased family is gainfully employed, compassionate appointment cannot be offered and the courts cannot confer benediction impelled by sympathetic consideration and the courts are to administer law, however, inconvenient it may be.

10. Learned counsel also placed reliance on the decision of the Hon''ble Supreme Court reported in 1993 Supp(4) SCC 595 [S. Nagaraj vs. State of Karnataka] for the proposition that in a review petition, the facts could be re-examined and re-considered and the Courts have power to rectify or recall the order, which was passed when it is necessary in the interest of justice or to prevent the abuse of process of court.

11. On the above ground, learned counsel seeks for review of the order and the directions issued by the Division Bench dated 29.08.2013.

12. Learned Counsel appearing for the first respondent submitted that the petitioners have to be punished for having committed wilful disobedience of the order and directions issued by this Court and when the Division Bench has issued a positive direction to grant appointment to the first respondent, in utter disregard to the directions issued, the petitioners have once again rejected the first respondent's case, which calls for stringent action against the petitioners.

13. On merits of the contention advanced by the learned Additional Solicitor General, it is submitted that the order which was impugned in the writ petition does not state that the first respondent has come out of indigent circumstances and the ground on which the first respondent's candidature was rejected was on the ground that he did not obtain adequate marks, which has been dealt with by the Division Bench in para 22 of its order and held to be unsustainable. Further it is submitted that there is no suppression of facts relating to the first respondent's father employment and the fact that he was employed as a Watcher in the Forest Department was disclosed to the petitioner Department. The copy of the Service Register was produced and the first respondent's mother's Service Register also contains the particulars regarding the employment of the first respondent's father. Therefore, the petitioners have made factually an incorrect statement in the memorandum of grounds of review application to state that the first respondent has suppressed facts. Further it is

submitted that the salary certificate of the respondent's father having been produced even at the time when the respondent's mother was given employment and the death cum terminal benefits have been disbursed to the respondent's father and the Department is fully aware of the said fact and it is too late for the Department to state that the first respondent has come out of the penury conditions. Therefore all the grounds, which have been raised in the review application alleging suppression of facts deserves to be outrightly rejected.

14. Further it is submitted that the Division Bench has drawn specific reasons in para 25 of its order as to why a positive direction should be granted in the matter and the Hon"ble Apex Court in several cases have issued positive direction to grant appointment in this regard. Reference was made to the decision of the Hon"ble supreme Court in the case of Bhawani Prasad Sonkar vs. Union of India and others reported in Bhawani Prasad Sonkar Vs. Union of India (UOI) and Others, . It is further submitted that the receipt of family pension or death cum terminal benefits will not disentitle the first respondent from claiming compassionate appointment and merely because family pension was paid also will not disentitle the respondent for being considered on compassionate ground. In this regard, reference was made to the decision of the Hon"ble Supreme Court in the case of Govind Prakash Verma vs. LIC and others reported in (2005) 10 SCC 289.

15. We have heard the learned counsel on either side and perused the materials placed on record.

16. Before we venture into the facts of the case, it would be first necessary to examine the scope and power of this Court in exercising review jurisdiction under Order 47 Rule 1 of CPC r/w 114 of Code of Civil Procedure. In this regard, useful reference may be made to the decisions of the Hon"ble Supreme Court in the following cases:

- (i) Bhavnagar University Vs. Palitana Sugar Mill Pvt. Ltd. and Others,
- (ii) S. Bagirathi Ammal Vs. Palani Roman Catholic Mission,
- (iii) Inderchand Jain (D) through L.Rs. Vs. Motilal (D) through L.Rs.,
- (iv) Rajendran vs. Ramboy reported in (2007) 15 SCC 513
- (v) Lily Thomas, Vs. Union of India and Others,

The legal principle as pointed out by the Hon"ble Supreme Court which could be culled out from the above mentioned decisions are that an application for review would lie, when the order suffers from an error apparent on the face of the record and permitting the same to continue would lead to failure of justice. The limitations on exercise of power of review has been well settled and the first requirement for entertaining a review is that the order which is sought to be reviewed should suffer from error apparent on the face of the order and permitting the order to stand, will lead to failure of justice. In the absence of

such error, finality attached to the order cannot be distributed.

It has been further held that the power of review can also be exercised by the Court in the event discovery of new and important matter or evidence takes place, which despite exercise of due diligence was not within the knowledge of the applicant or could not be produced by him at the time when the order was made. Further a review would lie, if the order has been passed on account of some mistake or for any other sufficient reason.

It has been further held that it is beyond any doubt or dispute that the Review Court does not sit in appeal over its own order and rehearing of the matter is impermissible in law, as review is not an appeal in disguise. The power of review can be exercised for correction of a mistake, but not to substitute a view and such power can be exercised within the limits of the statute dealing with exercise of power.

The Hon'ble Supreme Court in the case of *Inderchand Jain (D) through L.Rs. Vs. Motilal (D) through L.Rs.*, summarized the law on the exercise of the power of review as under:-

(i) Review proceedings are not by way of appeal and have to be strictly confined to the scope and ambit of Order 47 Rule 1 CPC.

(ii) Power of review may be exercised when some mistake or error apparent on the face of record is found. But error on the face of record must be such an error which must strike one on mere looking at the record and would not require any long-drawn process of reasoning on the points where there may conceivably be two opinions.

(iii) Power of review may not be exercised on the ground that the decision was erroneous on merits.

(iv) Power of review can also be exercised for any sufficient reason which is wide enough to include a misconception of fact or law by a court or even an advocate.

(v) An application for review may be necessitated by way of invoking the doctrine *actus curiae neminem gravabit*.

The Hon'ble Supreme Court in the case of *The State of West Bengal and Others Vs. Kamal Sengupta and Another*, held that the term "mistake or error apparent" by its very connotation signifies an error, which is evident per se from the record of the case and does not require detailed examination, scrutiny and elucidation either of the facts or the legal position. If an error is not self-evident and detection thereof requires long debate and process of reasoning, it cannot be treated as an error apparent on the face of the record for the purpose of Order 47, Rule 1 CPC. To put it differently an order or judgment cannot be corrected merely because it is erroneous in law or on the ground that a different view could have been taken by the Court on a point of fact or law. The Court while exercising the power of review, cannot sit in appeal over its decision.

The Hon''ble Supreme Court in the case of S. Bagirathi Ammal Vs. Palani Roman Catholic Mission, , explaining the term "error" contemplated under Order 47, Rule 1 CPC held that it is not an error, which has to be fished out and searched, rather it must be an error of inadvertence, it should be something more than a mere error and it must be one which must be manifest on the face of the record, an error ceases to be a mere error and becomes an error apparent on the face of the record depends upon the materials placed before the Court and if the error is so apparent that without further investigation only one conclusion can be drawn, in such circumstances, the review will lie. Further, under the guise of review, the parties are not entitled to rehearing of the same issue."

17. As admitted by the learned Additional Solicitor General appearing for the parties, the grounds on which the review petition has been filed is not on the ground that the respondent's candidature was rejected by order dated 28.05.2013, which was impugned in W.P. No. 14010 of 2013. Further the petitioners did not raise the contention now raised in the review petition in the writ petition. Therefore, it is evidently clear that the petitioners seek for review of the order and direction in the writ petition on new grounds, which were not canvassed earlier. This would be a sufficient ground to reject the review petition at the very threshold. Nevertheless we have elaborately heard learned Additional Solicitor General on the points canvassed.

18. The petitioners would state that the first respondent has suppressed the employment of his father and that he was in government service. This has been factually found to be incorrect. We called for the service register of the first respondent's deceased mother and from it we find even at the time when she was offered employment, the employment of her husband [first respondent's father] was disclosed and recorded and at that relevant point of time, he was working as a Watcher in the Forest Department and the salary particulars of the first respondent's father also finds place in the said record. Therefore, there is no case of suppression of fact as alleged by the petitioners and the petitioners have made an incorrect statement in the memorandum of grounds raised in the review petition. It is to be noted that at the very first instance when the first respondent's father made an application on 13.01.2003 to the petitioners requesting for an employment for his son on compassionate ground, the fact regarding his employment has been disclosed. That apart, the certificate issued by the Tahsildar, Tambaram also gives the financial status of the family. Further it would be relevant to mention that when the first respondent's father submitted a representation, he pointed out that though he is employed, his salary is not at all sufficient to maintain his day to day minimum expenditure and they are suffering due to sudden loss of his father, mother grand father, grand mother, dependent sister of his wife [first respondent's mother] within a short period and that her younger sister was suffering from brain shrinking from birth and lived for 27 years and she was totally bed ridden and the entire family was put to lot of suffering and the first respondent's father has to incur a huge medical expenditure. He also enclosed his pay certificate along with the representation/

application. Necessary documents including the pay certificate attested by the Superintendent, Guindy National Park, Raj Bhavan, Madras-22 candidate was enclosed to show that the first respondent's father was working in the Guindy National Park Range of Wildlife Division, Chennai and his pay was Rs. 7,028/- and after deduction the net pay was Rs. 3,737/-. Thus, it is clear that these records were very much available with the petitioners to show that the first respondent's father was employed. Once it is clear of the issue that there is no suppression of facts on the part of the first respondent, the review on the ground of suppression of material facts does not arise.

19. De hors this issue, the other point, which was canvassed by learned Additional Solicitor General is by contending that the respondent family is receiving family pension and has received the terminal benefits. The receipt of family pension or the other amounts, which are admissible on the demise of a person by their family members can hardly be a ground for disqualification for appointment on compassionate appointment claim. The Hon'ble Supreme Court in the case of Govind Prakash Verma [cited supra] considered this issue and held as under:

6... "The scheme of compassionate appointment is over and above whatever is admissible to the legal representatives of the deceased employee as benefits of service which one gets on the death of the employee. Therefore, compassionate appointment cannot be refused on the ground that any member of the family received the amounts admissible under the Rules...

20. In the light of the above decision, the point raised by the petitioners deserves to be rejected.

21. Even though the ground raised as regards the petitioner's marks were not available when compared to the candidates to be considered for the year 2010-2011, this question is not argued by the learned Additional Solicitor General.

22. Considering the reasoning given by this Court in para No. 22 of its order in W.P. No. 14010 of 2013, this ground has to be rejected. As per the scheme for compassionate appointment, it is stated that the object of the scheme is to grant appointment on compassionate ground to a dependent family member of a Government servant dying in harness or who is retired on medical grounds, thereby leaving his family in penury and without any means of livelihood, to relieve the family of the Government servant concerned from financial destitution and to help to get over the emergency.

23. When we perused the Scheme as made applicable to the Forest Department, Clause 2 gives the dependent members to whom the Scheme is applicable. Clause 5 deals with the eligibility and Clause 6 Exemptions, which includes Relaxations. Clause 8 deals with belated requests for compassionate appointment. It is stated that the Department can consider request for compassionate appointment even where the death or retirement on medical

grounds of Government servant took place long back, say 5 years or so. The question as to whether a request for compassionate appointment is belated or not, this has to be decided with reference to the date of death or retirement on medical grounds of a Government Servant and not the age of the applicant at the time of consideration. Clause 10 deals with the situation where there is an earning member. This clause reads as under:

10. Where there is an earning member:

(a) In deserving cases even where there is already an earning member in the family, a dependent family member may be considered for compassionate appointment with prior approval of the Secretary of the Department/Ministry concerned who, before approving such appointment, will satisfy himself that grant of compassionate appointment is justified having regard to number of dependents, assets and liabilities left by the Government servant, income of the earning member is residing with the family of the Government servant and whether he should not be a source of support to other members of the family.

(b) In cases where any member of the family of the deceased or medically retired Government servant is already in employment and is not supporting the other members of the family of the Government servant, extreme caution has to be observed in ascertaining the economic distress of the members of the family of the Government servant so that the facility of appointment on compassionate ground is not circumvented and misused by putting forward the ground that the member of the family already employed is not supporting the family.

24. Thus going by the above said Clause, we do not think the contention made by learned Additional Solicitor General could be well entertained by this Court that when the father is already a earning member the family nor being in penury, the scheme frowns on giving appointment to a member of the eligible member of a family of the deceased Government Servant. Thus, the contention that the order had been passed by this Court, ignoring the Scheme is totally unsustainable.

25. In any event, as already pointed out in the preceding paragraphs the ground for rejection of the candidature of the writ petitioner/first respondent is not on account of there being an earning member or the family in penury condition. The contentions now taken are thus a new development or a shape sought to be given by the petitioners and going by the statement in the Service Register we hold that the petitioners cannot now plead ignorance of the fact of the deceased husband's employment nor on an aspect of the writ petitioner/first respondent have suppressed the facts of the employment of the candidates' father.

26. As far as the reliance placed on the decision of the Hon'ble Supreme Court reported in Life Insurance Corporation of India Vs. Mrs. Asha Ramachandra Ambekar and another, is concerned, we can only say that the judgment is distinguishable on facts. The instructions there in Clause 2 and in para 3 of the Hon'ble Supreme Court decision clearly shows that the relaxation of the rules on

compassionate appointment shall be admissible only where none of the members of the family is gainfully employed. As pointed out in the preceding paragraphs, Clause 10 of the scheme provides for such relaxation. Hence, this judgment will have no relevance to the issue on hand.

27. As far as the decision reported in *S. Nagaraj and Others Vs. State of Karnataka and Another*, is concerned, there could be no two view at the instant of a review in an order if there being a competent error or gross injustice caused by the order of the Court, ignoring to take or failing to take note of certain factual aspects or even a legal decision. In para 18 of the judgment of the Apex Court, it was pointed out that the entire concept of the writ jurisdiction exercised by the higher courts is founded on equity and fairness, the Apex Court observed as follows:

18... The order of the Court should not be prejudicial to anyone. Rule of stare decisis is adhered for consistency but it is not as inflexible in Administrative Law as in Public Law. Even the law bends before justice. Entire concept of writ jurisdiction exercised by the higher courts is founded on equity and fairness. If the court finds that the order was passed under a mistake and it would not have exercised the jurisdiction but for the erroneous assumption which in fact did not exist and its perpetration shall result in miscarriage of justice then it cannot on any principle be precluded from rectifying the error. Mistake is accepted as valid reason to recall an order.

... Here as explained, the Bench of which one of us (Sahai, J) was a member did commit an error in placing all the stipendiary graduates in the scale of First Division Assistants due to State's failure to bring correct facts on record...

19. Review literally and even judicially means re-examination or reconsideration. Basic philosophy inherent in it is the universal acceptance of human fallibility. Yet in the realm of law the courts and even the statutes lean strongly in favour of finality of decision legally and properly made. Exceptions both statutorily and judicially have been carved out to correct accidental mistakes or miscarriage of justice. Even when there was no statutory provision and no rules were framed by the highest court indicating the circumstances in which it could rectify its order the courts culled out such power to avoid abuse of process or miscarriage of justice.

Basis for exercise of the power was stated in the same decision as under:

It is impossible to doubt that the indulgence extended in such cases is mainly owing to the natural desire prevailing to prevent irremediable injustice being done by a Court of last resort...

Rectification of an order thus stems from the fundamental principle that justice is above all. It is exercised to remove the error and not for disturbing finality. When the constitution was framed the substantive power to rectify or recall the order passed by this court was specifically provided by Article 137 of the Constitution...

The expression, "for any other sufficient reason" in the clause has been given an expanded meaning and a decree or order passed under misapprehension of true state of circumstances has been held to be sufficient ground to exercise the power. Apart from Order XL Rule 1 of the Supreme Court Rules this Court has the inherent power to make such orders as may be necessary in the interest of justice or to prevent the abuse of process of court. The court is thus not precluded from recalling or reviewing its own order if it is satisfied that it is necessary to do so for sake of justice.

28. We do not think that the situation herein is the same as what prevailed in the Hon"ble Supreme Court's decision. As is evident from the reading of the judgment the mistake that was sought to be rectified in the review arose out of the order of the Supreme Court. In para 12 the Supreme Court pointed out that if an order had been passed by the Court, which had jurisdiction to pass it, then the error or mistake in the order can be got corrected by a higher court or by an application for clarification, modification or recall of the order and not by ignoring the order by any authority actively or passively or disobeying it expressly or impliedly. The Supreme Court pointed out the situation therein was that there was a direction in the order passed by the Supreme court originally to absorb all the stipendiary graduates in the scale of First Division Assistants on waiting. The direction covered all the vacancies. Realising the above state of affairs, the Government moved the petition for reviewing the order. Noting such difficulty had arisen, the Supreme Court held that even though the Government was responsible for the above unfortunate state of affairs resulting from the order of the Supreme Court yet it should not desist the Supreme Court from revising and reviewing the orders passed, which would have serious consequences affecting the rights of those who are not petitioners. Thus, it was held that as and when it is brought to the notice that certain of its orders were passed on a wrong or mistaken assumption of facts and that implementation of those orders would have serious consequences, the same has to be reviewed.

29. As far as the present case is concerned, we do not find any similarity to apply the decision in favour of the review petitioners herein. The writ petitioner/first respondent in the application filed as early as in 2003 referred to the employment of the first respondent's father/deceased husband and all other details relating to the financial status of the family and one can only say that when the power is available to relax the condition of penury, the authority could be deemed to have considered all this favourably to the writ petitioner/first respondent, when it had chosen to reject the writ petitioner/first respondent's candidature on the ground that his marks have been less when compared to others for the year 2010-2011 and on the ground of delay.

30. This is a new ground taken by the review petitioners, which was not one considered in the order impugned in the writ petition and hence, on the ground we have already stated herein, we hold that we have no ground to review the order passed in W.P. No. 14010 of 2013 dated 29.08.2013.

31. In the circumstances, the review application is liable to be dismissed and accordingly, the same is dismissed. No costs.