

**IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR**

RP No.32/2019

**Reserved on: 27.11.2024.
Pronounced on: 30.12.2024.**

**Bashir Ahmad Mir, Aged about 62 years
S/o Late Abdul Gani Mir R/o Rozabal,
Khanyar, Srinagar.**

...Petitioner(s)/Appellants.

Through: Mr. Salih Pirzada, Advocate, with
Mr. Bhat Shafi, Advocate.

Vs.

**High Court of Jammu and Kashmir,
through Registrar General, Srinagar/
Jammu.**

....Respondent(s)

Through: Mr. M. I. Qadiri, Sr. Advocate.

**CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE PUNEET GUPTA, JUDGE**

O R D E R

01. The instant review petition has been preferred seeking review of the judgment and order dated 30th April, 2019 passed in SWP No.2631/2017.

02. By virtue of the order which is sought to be reviewed, the Division Bench of this Court had dismissed the writ petition of the petitioner seeking reversal of the order bearing No.659 dated 17th August, 2017, whereby the claim of the petitioner seeking fixation of his seniority from the date of his appointment in the subordinate judiciary and consequent release of benefits in his favour has been rejected.

03. The case set up by the petition before this court was that he came to be appointed as Junior Assistant in the Subordinate Judiciary on 5th December, 1985 and was subsequently transferred to the High Court of

Jammu and Kashmir on 17th July, 1993. The petitioner sought fixation of his seniority in the High Court from the date of his appointment in the Subordinate Judiciary and in this regard submitted many representations to the respondents for extending him the same treatment as has been extended to Mr. Mian Rafiq and Rashid Munim pursuant to the judgment dated 26.05.2011 delivered in SWP No.3437/1997, by virtue of which their seniority was fixed from the date of their initial appointment in the Subordinate Judiciary. The representations so submitted by the petitioner having not been considered by the respondent, the petitioner approached this court by filing SWP No.672/2017 which was disposed of in terms of order dated 19th April, 2017 directing the respondent to examine and settle the claim made by the petitioner and pass appropriate orders. The claim of the petitioner was considered and rejected by the respondent in terms of order No. 659 dated 17th August, 2017 while relying on the decision of the Hon'ble Supreme Court in case titled *K. P. Sudhakaran and anr. V. State of Kerala and others : AIR 2006 SC 2138*. Against the said order of rejection, the petitioner preferred another writ petition being SWP No.2631/2017, which came to be dismissed by this Court vide order dated 30th April, 2019. By the medium of present review petition the petitioner has sought review of the said dismissal order dated 30th April, 2019.

04. Heard learned counsel for the parties.

05. After having heard learned counsel for the parties and taking note of the judgments relied upon by the parties, we are of the opinion that this review petition is not maintainable on the ground that the grounds urged by the petitioner seeking review of the order 30th April, 2019 have already been taken note of in the judgment and order sought to be reviewed. The petitioner by the medium of present review petition seeks reversal of the decision rendered which is not permissible in law while dealing with an application for review.

06. The power of review can be pressed into service only when there is some mistake or error apparent on the face of the record. The power of review is very limited and cannot be exercised even if order/ judgment is

erroneous. It has been repeatedly held by the Hon'ble Supreme Court that the jurisdiction and scope of the review is not that of an appeal and it can be entertained only if there is an error apparent on the face of the record.

07. In *Kamlesh Verma v. Mayawati and Others*, (2013) 8 SCC 320, while dealing with the issue, the Apex Court detailed the grounds on which a review is maintainable and otherwise. In paragraphs 19 and 20 of the judgment, it was held as under:-

“19. 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. 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.

Summary of the principles

20. Thus, in view of the above, the following grounds of review are maintainable as stipulated by the statute:

20.1. When the review will be maintainable:

i) *Discovery of new and important matter or evidence which, after the exercise of due diligence, was not within knowledge of the petitioner or could not be produced by him;*

ii) *Mistake or error apparent on the face of the record;*

iii) *Any other sufficient reason.*

The words “any other sufficient reason” have been interpreted in Chhajju Ram v. Neki, AIR 1992 PC 112 and approved by this Court in Moran Mar Basselios Catholicos v. Most Rev. Mar Poulouse Athanasius, AIR 1954 SC 526, to mean “a reason sufficient on grounds at least analogous to those specified in the rule”. The same principles have been reiterated in Union of India v. Sandur Manganese & Iron Ores Ltd.,(2013) 8 SCC 337.

20.2. When the review will not be maintainable:

i) *A repetition of old and overruled argument is not enough to reopen concluded adjudications.*

ii) *Minor mistakes of inconsequential import.*

iii) *Review proceedings cannot be equated with the original hearing of the case.*

iv) *Review is not maintainable unless the material error, manifest on the face of the order, undermines its soundness or results in miscarriage of justice.*

v) *A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected but les only for patent error.*

vi) *The mere possibility of two views on the subject cannot be a ground of review.*

vii) *The error apparent on the face of the record should not be an error which has to be fished out and searched.*

viii) *The appreciation of evidence on record is fully within the domain of the appellate court, it cannot be permitted to be advanced in the review petition.*

ix) *Review is not maintainable when the same relief sought at the time of arguing the main matter had been negatived.”*

08. In the decision rendered by the Hon’ble Supreme Court in ***Ajit Kumar Rath v. State of Orissa and others : (1999) 9 SCC 596***, relied upon by the learned counsel for the petitioner, it has been held as under:

“30.The provisions extracted above indicate that the power of review available to the Tribunal is the same as has been given to a court under Section 114 read with Order 47 CPC. The power is not absolute and is hedged in by the restrictions indicated in Order 47. The power can be exercised on the application of a person on 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 order was made. The power can also be exercised on account of some mistake or error apparent on the face of the record or for any other sufficient reason. A review cannot be claimed or asked for merely for a fresh hearing or arguments or correction of an erroneous view taken earlier, that is to say, the power of review can be exercised only for correction of a patent error of law or fact which stares in the face without any elaborate argument being needed for establishing it. It may be pointed out that the expression "any

other sufficient reason" used in Order 47 Rule 1 means a reason sufficiently analogous to those specified in the rule."

(Emphasis supplied)

09. In the present review petition, the petitioner is seeking rehearing of the writ petition whereas the judgment under review has already considered and taken note of all the contentions raised in the present review petition, therefore, the petitioner cannot seek rehearing of the writ petition under the garb of this review petition as this Court is not sitting over the matter as an appellate authority.

10. While applying the ratio as has been laid down in the aforesaid judgments, this Court is of the firm opinion that there is no scope for this court to substitute the view already taken while deciding the writ petition.

11. Therefore, in the given circumstances, we are of the opinion that this review petition is not maintainable as the counsel for the review petitioner has failed to project any error apparent on the face of record which could justify review of the judgment and order dated 30th April, 2019 passed in SWP No.2631/2017.

12. For the aforesaid reasons this review petition is found to be without merit and is, accordingly, dismissed.

(PUNEET GUPTA)
JUDGE

(TASHI RABSTAN)
CHIEF JUSTICE

Srinagar
30.12.2024
Abdul Qayoom, Secy.

Pronounced by me today on 30th of December, 2024 in terms of
Rule 138(4) of the Jammu and Kashmir High Court Rules, 1999.

(TASHI RABSTAN)
CHIEF JUSTICE