



Serial No.01
Daily List

HIGH COURT OF MEGHALAYA
AT SHILLONG

Review Pet.No.13/2025

Date of Judgment: 20.11.2025

Khasi Hills Autonomous District Council, Shillong represented by the Secretary to the Executive Committee, KHADC, Shillong.

..... Petitioner

Vs.

1. Shri Cyprian Dkhar, S/o Shri J. Nonglang, R/o Rynjah-Lapalang, Shillong, East Khasi Hills District, Meghalaya.

2. The State of Meghalaya represented by its Secretary to the Government of Meghalaya, District Council Affairs Department, Shillong.

3. The Registrar (Judicial Service), High Court of Meghalaya, Shillong.

4. Smti. Vyblue of Rest Mawlieh, Magistrate First Class, Subordinate District Council Court, Nongstoin, West Khasi Hills District, Meghalaya.

5. Smti. Eblincy Lyngdoh Mawnai, Magistrate First Class, Subordinate District Council Court, Mawkyrwat, South West Khasi Hills District, Meghalaya.

6. Smti. Kerphidalin Warjri, Magistrate First Class, Subordinate District Council Court, Nongpoh, Ri Bhoi District, Meghalaya.

..... Respondents

Coram:

Hon'ble Mr. Justice Soumen Sen, Chief Justice
Hon'ble Mr. Justice W. Diengdoh, Judge

Appearance:

For the Petitioner : Mr. T.T. Diengdoh, Sr.Adv with
Mr. CCT Sangma, Adv

For the Respondents : Mr. K. Paul, Sr.Adv with
Mr. B. Snaitang Adv for R/1
Ms. T. Sutnga, Adv for R/4-6



- | | | |
|-----|--|--------|
| i) | Whether approved for reporting in Law journals etc.: | Yes |
| ii) | Whether approved for publication in press: | Yes/No |
-

JUDGMENT: (Oral)

This is an application for review of an order dated 19.08.2025 passed by a Division Bench presided over by the then Hon'ble Chief Justice.

2. The review application was filed by the Khasi Hills Autonomous District Council (hereinafter referred to as the 'KHADC'). The review applicant has prayed for review of the order in so far as the order directed the KHADC and the State to create one supernumerary post by 30.09.2025 and thereafter to complete the entire exercise of selection within a period of three months.

3. It is stated in the review application that while the impugned judgment had appreciated the submissions advanced by the learned senior counsel for the KHADC that there is one existing vacancy and one future vacancy which will arise soon. However, it was not brought to the notice of the Court of the existing vacancy is in respect of the post of Additional Judge, Additional District Council Court, Shillong and



not for the post of Magistrate First Class. It is contended that there is an error apparent on the face of the record as the impugned judgment has failed to consider that a supernumerary post is a shadow post which is created for temporarily accommodating a permanent employee till the employee is absorbed substantially in a regular post and cannot be created for an indefinite period. It is further contended that there are six Magistrates First Class holding the post of Presiding Officer, Subordinate District Council Court within the KHADC with one vacancy remaining to be filled up. There is no requirement nor has there been any decision to create another post of Magistrate First Class and as such the direction of the Court to create one more supernumerary post is not necessary and would result in financial constraint to the Council.

4. In order to appreciate the submissions made on behalf of the KHADC, it is necessary to briefly narrate the facts that has culminated in the judgment.

5. The genesis of the writ petition was an advertisement issued by the KHADC dated 06.11.2019 by which the present applicant had called for applications for filling up of three vacant posts of Magistrate First Class, Subordinate District Council Court, KHADC and on the basis of



the written examination conducted, six candidates had qualified for the interview. After the interview, in the final select list dated 11.01.2021, three candidates were declared selected and three candidates i.e. respondent Nos.4, 5 and 6 were placed in the waiting list. Thereafter, the respondent No.1 (KHADC) on 19.08.2020 sought approval from the Registrar (Judicial Service) High Court of Meghalaya for filling up the remaining vacant posts from the waiting list as a special condition as it was not conducive to conduct fresh examinations because of the situation in the State and country inasmuch as there were many pending cases which required speedy trial. The respondent No.3 then approved the said appointments and the respondent No.2 also by a notification dated 04.02.2022 was pleased to approve the said appointments and the respondent Nos.4, 5 and 6 were then conferred powers by the Governor of Meghalaya in exercise of powers under sub-paragraph (1) of paragraph 5 of the Sixth Schedule to the Constitution of India. Thereafter, the appointment orders were issued in favour of respondent Nos.4, 5 and 6 and they joined their respective posts. This was under challenge in the writ petition and the writ petition was dismissed.



6. However, in appeal the Hon'ble Division Bench after hearing the learned counsel for the parties and considering the materials on record had directed the Council and the State to create one supernumerary post. This direction according to the applicant, there is an error apparent on the face of the record.

7. In deciding the said appeal, the Hon'ble Division Bench after recording the submissions of the parties as well as the decisions relied upon and referred to by the respective parties formulated the question that is whether the actions of the respondent No.1 i.e. the review applicant in affording appointments to candidates over and above the advertised vacancy is justifiable or whether the said decision is visible in arbitrariness and illegal.

8. The Hon'ble Division Bench after referring to the mandate of paragraphs 4 and 5 (1) of the Sixth Schedule has recorded that in matters of appointment of the judicial officer, the District Council is the appointing authority and the recruitment rules have not yet been published as apprised to the Court and the same are waiting approval of the Governor. As such, this Court occupying a very special place in the system of administration of justice in this hill, the reason for directing



the creation of one supernumerary post followed from paragraphs 11 to 20 of the said judgment, which are reproduced hereunder for convenience: -

“Facts in detail:

On 6th November, 2019, the Khasi Hills Autonomous District Council, Shillong published an advertisement inviting applications for filling up three vacant posts of Magistrates First-Class for the Subordinate District Council Court, Khasi Hills Autonomous District Council, Shillong. The candidate was to be a citizen of India belonging to the Schedule Tribes of Meghalaya, conversant in the Khasi language and customs, be not more than 37 years and less than 25 years and have at least five years’ standing as an Advocate. In this recruitment process, a written test followed by a personal interview was taken. After the selection process on 11th January, 2021, the said District Council announced the list of three successful candidates and a waiting list of another three. In a communication by the District Council dated 11th January, 2021, the following was inserted “the result is valid for a period of one year from the date of this publication”. On 19th August, 2021, this Court was approached with a request from the Secretary to the Executive Committee of the Council to the effect that there were three further vacant posts and that as a special case, the Council be allowed to fill up these vacancies from the said waiting list. This Court approved the said proposal of the Council as would be evident from the communication of the Registrar Judicial service to the Council dated 25th October, 2021. On 6th December, 2021, the Council extended the validity of the select list till 31st March, 2022. On 4th February, 2022, the three waitlisted candidates were appointed by the Hon’ble Governor as Magistrate First-Class, Subordinate District Council Court, Shillong along with powers of Judicial Magistrate of the First-Class.

**Views:**

When the appointments to the three posts of First-Class Magistrates were made with publication of a select list which included a list of the selected candidates and a list of waitlisted candidates, the selection process initiated by the advertisement of 6th November, 2019 was concluded. The list so published was in relation to that process and was valid for one year. That is to say if any of the selected candidates did not join or resign or was discharged within the one-year period, then the list of waitlisted candidates could be utilised to fill up that vacancy.

Now, according to the above cited authorities, this waiting list could not be used to fill up any other vacancy for which a new selection process had to be initiated. However, there is one exception to this rule, namely, grave urgency to fill up the post. On 19th August, 2021, the Council wrote to this Court that “the current situation in the State and the country as a whole” referring to the covid pandemic and the need for more judicial officers to conduct speedy trial, necessitated filling up of the vacant post from the said waiting list. This High Court as it is evident from the communication dated 25th October, 2021 acceded to this request.

Does this mean that the right of a selecting authority to appoint candidates from the waiting list of a selection process which had been concluded was being exercised by the selecting authority? When the High Court acceded to this request, could it be said that a policy decision in this behalf had been taken?

We hold on the basis of the above authorities that subsequent appointments of the respondent Nos.4, 5 and 6 on 28th February, 2022, 28th February, 2022 again on 4th March, 2022 on the basis of which all three joined duties on 3rd March 2022 and 4th March, 2022, respectively were invalid. It is plain that these respondents have been discharging their functions for well over three and a half years. Two judgments cited by learned Deputy Solicitor General, Dr. Mozika in *Sivanandan C.T. & ors v. High Court of Kerela & ors* reported in (2024) 3 SCC 799 (paragraph 55) and in *Vivek Kaisth & anr v. State of Himachal Pradesh & ors* reported in (2024) 2 SCC 269 (paragraphs 43



and 44) come to the rescue of the government. The Supreme Court took into account the long service which the judicial officers had rendered, the experience they had gained and the contribution they had made to the judiciary and declined to “unseat” them. Here the service rendered by the respondent Nos.4, 5 and 6 is similar in nature. Hence, I am also of the view that their service should not be interfered with.

Mr. D.K. Mishra, learned Senior Advocate appearing for these respondents also made similar arguments as the learned Deputy Solicitor General. He did not fail to argue that the induction of his clients from the waitlist was further to a considered policy decision of the selecting authority with the concurrence of the High Court, based on grave urgency to fill up the vacancies for the cause of speedy judicial administration during covid period.

A silver lining in the sky occurred during the close of hearing of this appeal, when learned Deputy Solicitor General remarked that there was existing one vacancy and one future vacancy to arise soon.

Taking into account those submissions, we direct that to have a fair and just result, the clock should be put back where it was when the three posts were filled up from the waiting list. This could be done by creation of one supernumerary post. There should be no difficulty in this because the Council has repeatedly urged that it was in need of more judicial officers to dispose of pending cases.

Hence, we direct the Council and the State to create one supernumerary post. Any approval from the High Court or the government is deemed to have been obtained. Such supernumerary post should be created by 30th September, 2025. Thereafter, a selection test to fill up these posts should be carried out where the appellant is at liberty to participate and to be concluded within a further period of three months. In this way, the grievance of the appellant is also redressed.

In view of the above, this appeal is disposed of.”



9. The creation of the supernumerary post was justified on the basis of the reasoning furnished in paragraphs 19 and 20 of the aforesaid judgment. A plain reading of the said two paragraphs would clearly show that the respondent Nos. 4, 5 and 6 are qualified candidates who had come to the selection process and were discharged with duties for over two years and to discharge them at this stage would not be in the public interest. The writ petitioners are unsuccessful candidates who even did not clear the written examination and dispensing out respondent Nos.4, 5 and 6 would not establish that the appellant was qualified. The Hon'ble Division Bench allowed the deviation, in view of the exceptional circumstances noticed in the instant case and record to such deviation was resorted to meet an emergent situation. The Hon'ble Division Bench has also relied upon several decisions of the Hon'ble Supreme Court in justification of the conclusion arrived at by the Hon'ble Division Bench.

10. The power of review is circumscribed by order 47 Rule 1 CPC. Review jurisdiction is distinct from appellate jurisdiction. The review proceedings are not meant for rehearing of appeal. The power of review can be exercised, inter alia, where some mistake or error is appellants on



the face of the record. It may also be exercised on any analogous ground, but under no circumstances on the ground that the decision was erroneous on merits, that would fall within the exclusive domain of a court of appeal.

11. It is also well-settled that mistake or error apparent on the face of the record has to be self-evident and does not require a process of reasoning and the same is clearly distinct from erroneous decision as has been held in *Parsion Devi & Ors. vs. Sumitri Devi & Ors*¹. In the said decision, the Hon'ble Supreme Court was considering the phrase "mistake or error apparent on the face of record". It was held, 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". There is a clear distinction between an erroneous decision and an error apparent on the face of the record. While the first can be corrected by the higher forum, the latter can only be corrected by

¹ 1997 (8) SCC 715



exercise of the review jurisdiction. A review petition has a limited purpose and cannot be allowed to be “an appeal in disguise”. [See. Paragraphs 19 and 20 in *Barun Kumar Das v. State of West Bengal*²].

12. In *Hari Sankar Pal v. Anath Nath Mitter*³, considering a five Judge Bench of the Federal Court while question whether the Calcutta High Court was justified in not granting relief to nonappealing party, similar to that of the successful whose position was appellant, held: (FCR p.48) “That a decision is erroneous in law is certainly no ground for ordering review. If the court has decided a point and decided it erroneously, the error could not be one apparent on the face of the record or even analogous to it. When, however, the court disposes of a case without advertent to or applying its mind to a provision of law which gives it jurisdiction to act in a particular way, that may amount to an error analogous to one apparent on the face of the record sufficient to bring the case within the purview of Order 47 Rule 1, Civil Procedure Code.

13. The power of review, it is trite to say, should not be confused with appellate power. An Appellate Court is competent to correct errors

²2012(2) CHN 617

³1949 FCR 36: AIR 1949 FC 106



committed by the Court subordinate thereto. In this regard, we can rely upon the judgement of Hon'ble Supreme Court pronounced in the case of ***Thungabhadra Industries Ltd. vs. The Government of Andhra Pradesh***⁴ wherein Hon'ble Supreme Court held:-

“A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected, but lies only for patent error. We do not consider that this furnishes a suitable occasion for dealing with this difference exhaustively or in any great detail, but it would suffice for us to say that where without any elaborate argument one could point to the error and say here is a substantial point of law which stares one in the face, and there could reasonably be no two opinions entertained about it, a clear case of error apparent on the face of the record would be made out.” (emphasis supplied)

14. In this regard I can profitably relied upon the judgement of Hon'ble Apex Court in ***State of West Bengal and Others Vs. Kamal Sengupta & Another***⁵ to understand what can be said to be mistake or error apparent on the face of record.

15. In ***State of West Bengal and Others*** (supra) the Hon'ble Apex Court held:-

“22. 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 selfevident and detection thereof requires long

⁴ AIR 1964 SC 1372

⁵ (2008) 8 SCC 612



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 or Section 22(3)(f) of the Act. To put it differently an order or decision 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/tribunal on a point of fact or law. In any case, while exercising the power of review, the court/tribunal concerned cannot sit in appeal over its judgment/decision.”

23. xxxxxx

24. xxxxxx

25. *In Hari Sankar Pal v. Anath Nath Mitter, 1949 FCR 36 a five Judge Bench of the Federal Court while considering the question whether the Calcutta High Court was justified in not granting relief to nonappealing party, whose position was similar to that of the successful appellant, held: (FCR p.48)*

“That a decision is erroneous in law is certainly no ground for ordering review. If the court has decided a point and decided it erroneously, the error could not be one apparent on the face of the record or even analogous to it. When, however, the court disposes of a case without advertent to or applying its mind to a provision of law which gives it jurisdiction to act in a particular way, that may amount to an error analogous to one apparent on the face of the record sufficient to bring the case within the purview of Order 47 Rule 1, Civil Procedure Code.”

(emphasis supplied)

16. In ***Shri Ram Sahu (Dead) through LRS vs. Vinod Kumar***

Rawat & Ors⁶ power of a review court is stated in following words:

“7. The dictionary meaning of the word “review” is “the act of looking, offer something again with a view to correction or

⁶ (2020) 11 SCR 865



improvement”. It cannot be denied that the review is the creation of a statute. In the case of Patel Narshi Thakershi vs. Pradyumansinghji Arjunsinghji, (1971) 3 SCC 844, this Court has held that the power of review is not an inherent power. It must be conferred by law either specifically or by necessary implication. The review is also not an appeal in disguise.

8. What can be said to be an error apparent on the face of the proceedings has been dealt with and considered by this Court in the case of T.C. Basappa vs. T.Nagappa, AIR 1954 SC 440. It is held that such an error is an error which is a patent error and not a mere wrong decision. In the case of Hari Vishnu Kamath vs. Ahmad Ishaque, AIR 1955 SC 233, it is observed as under:

“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 clearcut rule by which the boundary between the two classes of errors could be demarcated.”

- 8.1 In the case of Parsion Devi vs. Sumitri Devi, (Supra) in paragraph 7 to 9 it is observed and 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., AIR 1964 SC 1372 this Court opined:

“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 characterised 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*, (1995) 1 SCC 170 while quoting with approval a passage from *Aribam Tuleswar Sharma v. Aribam Pishak Sharma* (supra) 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 selfevident 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”. (emphasis supplied)

17. In a fairly recent decision in *S. Murali Sundaram vs. Jothibai Kannan & Ors.*,⁷ the Hon’ble Supreme Court has discussed the scope and ambit of Order 47 Rule 1, Code of Civil Procedure in paragraphs 15 to 17. On a review of its earlier decisions, it was held:

15. *While considering the aforesaid issue two decisions of this Court on Order 47 Rule 1 read with Section 114*

⁷ 2023 SCC Online SC 185



CPC are required to be referred to? In the case of Perry Kansagra (supra) this Court has observed that while exercising the review jurisdiction in an application under Order 47 Rule 1 read with Section 114 CPC, the Review Court does not sit in appeal over its own order. It is observed that a rehearing of the matter is impermissible in law. It is further observed that review is not appeal in disguise. It is observed that 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. It is further observed that it is wholly unjustified and exhibits a tendency to rewrite a judgment by which the controversy has been finally decided. After considering catena of decisions on exercise of review powers and principles relating to exercise of review jurisdiction under Order 47 Rule 1 CPC this Court had summed upon 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 fact 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.”

16. It is further observed in the said decision that an error which is required to be detected by a process of



reasoning can hardly be said to be an error on the face of the record.

17. In the case of Shanti Conductors (P) Ltd. (supra), it is observed and held that scope of review under Order 47 Rule 1 CPC read with Section 114 CPC is limited and under the guise of review, the petitioner cannot be permitted to reargue and reargue questions which have already been addressed and decided. It is further observed that 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 record justifying the court to exercise its power of review under Order 47 Rule 1 CPC.” (emphasis supplied)
18. None of the grounds of the review application fulfils the requirement of Order 47 Rule 1 of the Code of Civil Procedure.
19. In view of the aforesaid, the review petition stands dismissed.
20. However, there shall be no order as to costs.

(W. Diengdoh)
Judge

(Soumen Sen)
Chief Justice

Meghalaya
20.11.2025
“*Lam* DR-PS”