

Judgement delivered on : 31.07.2025

Court No. - 47

Case :- CIVIL MISC REVIEW APPLICATION No. - 311 of 2024

Applicant :- Saeed Ahmad And 12 Others

Opposite Party :- State Of U.P. And 4 Others

Counsel for Applicant :- V.R. Tiwari, Vinod Kumar Singh

Hon'ble Siddharth, J.

Hon'ble Ajit Kumar, J.

(Civil Misc. Delay Condonation Application No. Nil of 2024)

1. Heard learned counsel for the parties.
2. Cause shown for delay in filing the review application is sufficient to condone the delay.
3. Accordingly the delay in the filing the review application is hereby condoned and the delay condonation application is allowed.

(Order on Review Application)

1. Heard Sri G.K. Singh, learned Senior Advocate assisted by Sri Vinod Kumar Singh, learned counsel for the review applicants and Sri Tej Bhan Pandey, learned Standing Counsel representing State respondents.
2. By means of this review application the applicants have sought review of order dated 07.11.2017 passed by the Division Bench of this Court to which one of us (Ajit Kumar, J) was a member, whereby, special appeal filed by State of U.P. has been allowed setting aside the judgment and order passed by the learned Single Judge in Writ Petition No. 32823 of 1998.
3. The sheet anchor argument advanced by learned counsel for the review applicants necessitating review of the judgment, according to him was that the applicant Madarsa since stand recognized under the Rules 22.08.1987, hence in view of rule 10 of 1987 Rules the creation of posts in such Institution should be taken to have stood approved by Deputy Director, Science Education, Directorate of U.P.
4. Thus, the grounds for the review of the judgment were basically to the effect that the judgment of Full Bench in the case

of Gopal Dubey v. District Inspector of Schools, 1999 (2) AWC 962 was not attracted at all to the case in hand and yet the Division Bench ignoring the 1987 Rules and the letter of Deputy Director of Education dated 08.12.1995 manifestly erred in reversing the judgment of learned Single Judge and hence the judgment of Division Bench in special appeal deserves to be reviewed.

5. *Per contra* it is argued by learned Standing Counsel that for the legal aspect as had been discussed by Division Bench in its order dated 07.11.2017, it showed that report does not suffer from any error, much less an error of law apparent on the face of record, as there has been no sanction letter sanctioning the post in question placed by the Committee of Management of the Institution before the authority. It was argued on behalf of the State respondents that a mere recognition of the Institution could not have taken to have resulted in an *ipso facto* sanction of posts. It was submitted that this aspect had been dealt with in Gopal Dubey (supra) placing reliance upon the relevant portion of the Full Bench judgment which had been considered and quoted by the Division Bench. The relevant quoted portion that was placed is reproduced hereunder:

"This contention, if accepted, may lead to situation that the management creates posts of teachers and other employees in connection with the new subject and the State Government is compelled to bear the financial liability without any further involvement in the matter. Such a situation, as we read the provisions of the two enactments, is not contemplated. It also does not appeal to common logic. The result is that for the purpose of creating a new post of teacher or other employee for/in connection with a new subject, which it has been permitted to open, the management has to obtain prior approval of the Director as required under Section 9 of the Payment of Salaries Act. This statutory mandate cannot be said to have been satisfied by raising a presumption on the basis of recognition granted for that subject."

6. Having heard learned counsel for the respective parties and their arguments raised across the bar and having considered the grounds raised in the review application as well as pleadings raised in the writ petition and the documents brought on record, in our considered view, the only question that arises for consideration of this Court is as to whether there was sufficient material available on record in support of sanction of posts, 29 in number and the bench having ignored the same in its judgment erred manifestly and if Rule 10(e)(iv) and letter dated 08.12.1995 had been considered and appreciated, it would have resulted in dismissal of appeal.

7. In order to appreciate the above arguments, we first proceed to consider Rule 10(e)(iv) of 1987 rules as this was also claimed to

be reflected in the order/ letter of Deputy Director, Urdu dated 08.12.1995. The relevant rule 10(e)(iv) is reproduced hereunder:

"(च) किसी विद्यालय में अध्यापकों के पदों का सृजन उप शिक्षा निदेशक विज्ञान शिक्षा निदेशालय, उ० प्र० के पूर्वानुमोदन से किया जायेगा। "

8. We have quoted the relevant provisions as contained under rule 10 of 1987 Rules above and from a bare reading thereof, it clearly transpires that the rule contemplated a prior sanction of posts by the Deputy Director of Education.

9. Learned Senior Advocate had submitted that since the Institution had stood recognized, posts also stood sanctioned prior to the Institution coming into grant in aid under the order dated 31.03.1996. In defence of his argument learned Senior Advocate had relied upon the order passed by Deputy Director of Education (Urdu), U.P., Lucknow dated 18.12.1995, which, according to learned Senior Advocate acknowledged sanction of posts as per the 1987 Rules (quoted above). The letter dated 08.12.1995 is reproduced hereunder:

"प्रेषक,

निदेशक उर्दू/प्रा०मा०

सेवा में,

जिला बेसिक शिक्षा अधिकारी,

देवरिया।

पत्रांक/ /उर्दू/156 बार/995-96, दिनांक 8/12,1995

विषय:- मदरसा इस्लामिया महुआवारी, पथरदेवा देवरिया में नियमित कार्यरत शिक्षण एवं शिक्षणेत्तर कर्मचारियों के वेतन भुगतान के संदर्भ में।

महोदय,

उपर्युक्त विषयक प्रबंधक, मदरसा महुआवारी, पथरदेवा देवरिया के पत्र दिनांक

4.11.93 की फोटो प्रति संलग्नक का अवलोकन करने का कष्ट करें। जिसके द्वारा संलग्नक के क्र०नं०-1 से 21 तक के वेतन भुगतान की प्राप्ति की गयी है। उपलब्ध पत्राजातों के अवलोकन से विदित होता है कि उस कि नियुक्ति अरबी फारसी सेवा नियमावली 22 अगस्त, 1987 के अनुसार नियमानुसार की गयी है किन्तु मदरसा अनुबंधित नहीं।

अतः इसलिए प्रश्नगत प्रकरण में आपको निर्देश दिया जाता है कि मदरसा तब अनुदान सूची पर आ जाये तब तक शिक्षण/शिक्षणेत्तर कर्मचारियों का वेतन भुगतान नियमानुसार राजाज्ञा के अनुसार सुनिश्चित की जाय।

कृपया पत्र की प्राप्ति स्वीकार करें।

संलग्नकः

उक्तवत

भवदीय

अवधेश चन्द्र

उप शिक्षा निदेशक, उर्दू

उत्तर प्रदेश, "

(emphasis added)

10. In so far as the letter of Deputy Director of Education (Urdu), U.P., Lucknow dated 08.12.1995 is concerned upon which heavy reliance was placed by learned Senior Advocate appearing for the review applicants, we find that the letter only refers to a request letter of Manager of the Committee of Management of Madarsa Islamia, Mahuari, Patherdeva, District Deoria dated 04.11.1995. It is nowhere pleaded that 04.11.1995 was a letter giving prior approval to the posts which were claimed to be 29 in number in the Institution.

11. In so far as the 1987 Rules are concerned, it has only come in the recital of letter of Deputy Director of Education that Committee of Management claimed appointment as per the Rules. All those papers running in 221 pages were all produced by Management, but there is nothing indicative in the letter to form a view that there was any authority letter/ order, official in the nature, referring to the posts in question.

12. Thus, it is difficult to decipher anything from the letter which may be indicative of sanction or prior approval of posts in the Madarsa in question. Nowhere it has been pleaded in any of the paragraphs of the writ petition or in the counter affidavit filed in the special appeal or in the affidavit filed in support of review application filed before this Court that a particular order of a particular date was passed by Deputy Director of Education sanctioning the posts. In so far as the order dated 31.03.1996 passed by the State Government is concerned, it only sanctions aid for those institutions that have been brought on grant in aid and which also included the name of applicant Institution but this grant in aid does not indicate that 29 posts were ever sanctioned in the Institution.

13. In so far as the letter of request for taking the Institution on grant in aid, dated 29.01.1996 issued by the State Government and addressed to the Director of Minority Welfare Department, Government of U.P., Lucknow is concerned, it calls for details *qua* the Institutions so as to facilitate enlisting of institution finally on grant-in-aid.

14. Thus, these Institutions have been brought into grant in aid on the basis of minimum norms prescribed by the State Government under the relevant Government Order and in so far as the claim of the petitioners that there are certificates that reflect that Institution in question was having sufficient number of students for the sanction of posts as claimed by the Institution, is concerned, this plea is always open for the Institution to raise before the concerned competent authority for further sanction of posts. But in so far as the current status is concerned, we do not find there to be such number of sanctioned posts available with the Institution as claimed by the review applicants. It is in this background of facts, if we look into the judgment of Division Bench, which is sought to be reviewed, we find that the principles of law laid down by the Full Bench has been correctly applied. The Full Bench in a quite unequivocal term has held that there should be a separate sanction order for the posts. If the Institution disagreed with the minimum number of posts sanctioned by the State Government while taking

the Institution in grant in aid, it was always open for the review applicants to apply for further sanction of posts to meet the requirement as per the norms laid down under the Rules. We certainly do not subscribe to the view that while bringing institutions on grant in aid the State Government had sanctioned posts to match the number of teaching and non teaching staffs working in the Institution in the absence of proper sanction letter.

15. We are conscious of limitation within which a judgment can be reviewed and no fresh hearing is permissible so as to open the issue for fresh adjudication. Supreme Court in the matter of **Kamlesh Verma v. Mayawati & Others, 2013 0 Supreme (SC) 729** vide paragraph 16 of the judgment has held thus:

"16. Thus, in view of the above, the following grounds of review are maintainable as stipulated b the statute:

A) 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" has been interpreted in Chhajju Ram vs. Neki, AIR 1922 PC 112 and approved by this Court in Moran Mar Basselios Catholicos vs. Most Rev. Mar Poulouse Athanasius & Ors., (1955) 1 SCR 520, 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 vs. Sandur Manganese & Iron Ores Ltd. & Ors., JT 2013 (8) SC 275.

B) 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 lies only for patent error.

(vi) The mere possibility of two views on the subject cannot be a ground for 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."

16. In view of the above, we do not find any good ground to review the judgment dated 07.11.2017.

17. Hence the review application is **dismissed**.

18. No order as to cost.

Order Date :- 31.7.2025
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