

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Review No.44 of 2015

IN

LPA 1121 of 2013

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1. Bishwambhar Kumar, son of Dilip Kumar Singh, resident of Village- Guagachhi,
Police Station - Manihari, District- Katihar.

.... Petitioner/s

Versus

1. The State of Bihar.
2. The District Education Officer, Katihar, District- Katihar.
3. The Block Development Officer, Amdabad, District- Katihar.
4. The Mukhiya, Gram Panchayat Raj Durgapur, Police Station + Block -
Amdabad, District - Katihar.
5. The Gram Panchayat Raj Durgapur, through its Panchayat Sachiv, Police Station
+ Block - Amdabad, District - Katihar.
6. The Appellate Officer, District- Teacher Employment Appellate Authority,
Katihar, District - Katihar.
7. Rakesh Kumar Paswan, son of Ram Khelawan Paswan, resident of village-
Ajampur Gola, Police Station + P.O. Manihari, District- Katihar.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Anil Kumar Jha, Sr. Adv.
Mr. Santosh Kumar Verma, Adv.
For the State : Mr. Amit Kumar Anand, A.C. to GP-15
For Respondent No.7 : Mr. Ratnakar Ambastha, Adv.

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CORAM: HONOURABLE THE ACTING CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

C.A.V. JUDGMENT

(Per: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH)

Date: 06.10.2015

By the present application under Order XLVII Rule 1
and Section 114 of the Code of Civil Procedure (for short 'CPC'), the
appellant (in the Letters Patent Appeal) seeks review of the order of
the Division Bench, dated 08.08.2014, passed in L.P.A. No.1121 of
2013, vide which the Letters Patent Appeal of the petitioner was
dismissed *in limine* finding no merit in the appeal against the order,

dated 24.06.2013, passed by the learned Single Judge, vide which the Writ Petition of the petitioner has been dismissed.

2. The brief facts of the case are as follows :

- (a) The petitioner applied for the post of Panchayat Teacher under the Gram Panchayat Raj, Durgapur (for short 'Gram Panchayat'), in the district of Katihar, on 15.11.2008, against a vacancy meant for handicapped quota. The petitioner belongs to physically handicapped (Deaf-Mute) category and had secured 50.11% marks in the Intermediate Examination. His case is that though he appeared on the date of counseling on 28th February, 2009, ignoring his claim, Respondent No.7 Rakesh Kumar Paswan, who belongs to Scheduled Caste category, was appointed against the vacancy.
- (b) Being aggrieved by the appointment of Rakesh Kumar Paswan, the petitioner filed an appeal under Rule 18 of the Bihar Panchayat Primary Teacher (Employment and Service Condition) Rules, 2006, before the District Teachers Employment Appellate Tribunal (for short 'Tribunal'), Katihar, vide Appeal No.44 of 2010. The contention of the petitioner before the Tribunal was that the roster point on which the vacancy had arisen was



meant for handicapped category and the petitioner, being one of the candidates, who had applied in that category, ought to have been appointed against that post, but the respondents erroneously treated it to have been reserved for the Scheduled Caste category and appointed Rakesh Kumar Paswan, a Scheduled Caste candidate, against the said vacancy.

- (c) The Tribunal issued notices to the Respondent Mukhiya, Secretary of the Gram Panchayat and Rakesh Kumar Paswan. After service of notices, the parties were heard. They adduced oral and documentary evidence before the Tribunal. After appreciating the evidence on record and hearing the parties, the Tribunal held that the vacancy was meant for Scheduled Caste category and not for handicapped category. It further held that the petitioner had secured 50.11% marks in the Intermediate Examination, whereas Rakesh Kumar Paswan, who belonged to the Scheduled Caste category, had secured 51% marks in the said Examination.
- (d) On examination of relevant records presented by the Panchayat Secretary, the Tribunal also held that as the petitioner was not present during counseling held on

29.12.2010, he could not have claimed appointment against the post, in question. Accordingly, the Tribunal rejected the appeal of the petitioner vide order, dated 12.03.2013.

- (e) Aggrieved by the dismissal of the appeal by the Tribunal, the petitioner assailed the order before this Court in writ petition bearing C.W.J.C. No. 8463 of 2013. The learned Single Judge, after hearing the parties, dismissed the writ petition vide order, dated 24.06.2013, holding therein that the Tribunal committed no error in rejecting the appeal of the petitioner as the post, in question, was for the Scheduled Caste category and Respondent No.7 was, indisputably, a candidate of that category and had also secured higher marks (51%) than the petitioner (50.11 % marks) in Intermediate Examination.
- (f) Aggrieved by the dismissal of his writ petition, the petitioner filed Letters Patent Appeal vide L.P.A. No. 1121 of 2013, which was dismissed *in limine* vide order, dated 08.08.2014, keeping in view the finding recorded by the learned Single Judge that the post, in question, was reserved for Scheduled Caste candidates.
- (g) The petitioner challenged the aforesaid order, dated



08.08.2014, before the Supreme Court in S.L.P.(C) No.501-502 of 2015. The Supreme Court disposed of the application filed by the petitioner vide order, dated 19.01.2015, giving liberty to the petitioner to file review before this Court. In view of the aforesaid order, dated 19.01.2015, the petitioner, Bishwambhar Kumar, has filed the present review petition.

3. We have heard Mr. Anil Kumar Jha, learned Senior Counsel for the petitioner. During the course of arguments, Mr. Jha has contended that in the concerned Gram Panchayat, only one post of Panchayat Teacher was vacant and it was meant for “*Shrawan Badhit*” (Deaf-Mute) and only two candidates of the said category, namely, (1) Punam Sinha and (2) Bishwambhar Kumar (petitioner), had participated in the counseling, but none of them was appointed. He has contended that the Tribunal, in its order, dated 12.03.2013, has erroneously held that the vacant seat was reserved for Scheduled Caste category. Similarly, the finding of fact, given by the learned Single Judge, while dismissing C.W.J.C. No. 8463 of 2013 vide, order dated 24.06.2013, that the post, in question, was meant for Scheduled Caste category, is erroneous.

4. Mr. Jha, learned Senior Counsel, has taken us through the orders passed by the Tribunal and the learned Single Judge and

various documents annexed to the writ petition in order to establish his case that there is an error apparent on the face of the record and the post, in question, was meant for “Deaf-Mute” category and not for Scheduled Caste category.

5. However, upon examination of the record, we find that the roster point on which the vacancy had arisen was reserved for the Scheduled Caste category and not for the handicapped category. There is also a concurrent finding of fact as both the Tribunal as well as the learned Single Judge have returned the finding that the post, in question, was meant for the Scheduled Caste category. In order to satisfy ourselves, we have also examined the material available on record and as stated above, we also find that the roster point, in question, was meant for the Scheduled Caste category.

6. It is well settled that a review proceeding cannot be equated with the original hearing of the case. A party is not entitled to seek review of a judgment merely for the purpose of re-hearing and fresh decision of the case. Review of an earlier order cannot be done unless the Court is satisfied that the material error, manifest on the face of the order, undermines its soundness or results in miscarriage of justice.

7. In *Col. Avtar Singh Sekhon v. Union of India*, [1980 *Supp SCC 562*], the Supreme Court held in paragraph 12 as under :-

“12. A review is not a routine procedure. Here we resolved to hear Shri Kapil at length to remove any feeling that the party has been hurt without being heard. But we cannot review our earlier order unless satisfied that material error, manifest on the face of the order, undermines its soundness or results in miscarriage of justice. In ***Sow Chandra Kante v. Sheikh Habib***, (1975) 1 SCC 674, this Court observed : (SCC p. 675, para 1)

“A review of a judgment is a serious step and reluctant resort to it is proper only where a glaring omission or patent mistake or like grave error has crept in earlier by judicial fallibility.... The present stage is not a virgin ground but review of an earlier order which has the normal feature of finality.”

8. The scope of Order XLVII Rule 1 CPC, dealing with review of a judgment, has been succinctly stated by the Supreme Court in ***Parsion Devi v. Sumitri Devi*** [(1997) 8 SCC 715], in paragraph 7, 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.*** (1964) 5 SCR 174 (SCR at p. 186) 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.*"

9. The error, which is evident and has to be dictated by a process of reasoning, can hardly be said to be an error apparent on the fact of the record.

10. In the case of *Satyanarayan Laxminarayan Hegde vs Millikarjun Bhavanappa Tirumale [AIR 1960 SC 137]*, the Supreme Court, in paragraph 17, made following observations in connection with an error apparent on the fact of the record :-

"17.....An error which has to be established by a long drawn process of reasoning on points where there may conceivably be two opinions can hardly be said to be an error apparent on the face of the record. As the above discussion of the rival contentions show the alleged error in the present case is far from self evident and if it can be established, it has to be established by lengthy and complicated arguments. We do not think such an error can be cured by a writ of certiorari according to the rule governing the powers of the superior court to issue such a writ....."

11. In *Lily Thomas v. Union of India, [(2000)6 SCC 224]*, the principle was reiterated by the Supreme Court with a caution that in exercise of power of review, the Court may correct the mistake but not to substitute the view. The mere possibility of two views on the subject is not a ground for review.

12. In the light of the settled legal position as discussed above, having gone through the present review application, we find that no error apparent on the face of the record has been brought out by the review petitioner warranting review of the order dated 08.08.2014. A perusal of the review application would make it evident that the same is nothing, but an appeal in disguise.

13. Thus, we are of the opinion that in the application, under consideration, the petitioner has failed to establish that there was an error or a mistake apparent on the face of the record or there was such other material available with the petitioner, which, if not taken into consideration, would cause miscarriage of justice.

14. In view of the above discussion, the present review application is dismissed.

(Ashwani Kumar Singh, J)

I. A. Ansari, ACJ.:- I agree.

(I. A. Ansari, ACJ)

Pradeep/AFR

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