

HIGH COURT OF CHHATTISGARH, BILASPUR

Review Petition No.62 of 2015

- State of Chhattisgarh, Through : The Secretary, Department of Higher Education, Mahanadi Bhawan, Mantralaya, Naya Raipur, Chhattisgarh
- The Commissioner, Directorate of Higher Education, Government of Chhattisgarh, Near Govt. Science College, Raipur, Chhattisgarh
- The Principal, Government Girls P.G. College, Bilaspur, District Bilaspur, Chhattisgarh

---- Petitioners

Versus

- Kanhaiya Lal Shrivastava, S/o Shri B.S. Shrivastava, Tabla Teacher (Terminated) R/o Hatri Chowk, Kila Ward, Juna Bilaspur, Tahsil and District Bilaspur, Chhattisgarh
- The State of Madhya Pradesh, Through the Secretary, Government of Madhya Pradesh, Vallabh Bhawan, Bhopal, Tahsil and District Bhopal (MP)
- The Commissioner, Directorate of Higher Education, Satpuda Bhawan, Bhopal, Tahsil and District Bhopal (M.P.)

---- Respondents

(Application for review of the order dated 23.06.2014 passed in W.P. (S)
No.4184 of 2005

(By circulation in chamber)

S.B. : Hon'ble Mr. Justice Prashant Kumar Mishra

28/07/2015

IA No.01

1. This is an application for condonation of delay in filing the review petition.
2. For the reasons mentioned in the application (IA No.1), the same is allowed and the delay of 346 days in filing the review petition is condoned.

3. The matter is taken up for consideration in the chamber under provisions of sub-rule (2) of Rule 90 under Chapter VI of the High Court of Chhattisgarh Rules, 2007.

4. The review petitioner/State seeks review of the order dated 23.06.2014 passed in W.P. (S) No.4184/2005 solely on the ground that the temporary appointment of the writ petitioner is illegal and *de hors* the rules, as the post of Tabla Teacher is a 100% promotional post and as such, the order passed in respect of cancelling the appointment of the writ petitioner is just and proper. According to the review petitioners, the fact of temporary appointment of the writ petitioner on the promotional post i.e. Tabla Teacher could not be brought before the notice of this Court in the writ petition.

5. On going through the record of W.P.(S) No.4184/2005, it appears that in the said petition, the review petitioner/State has filed its return on 20.09.2012. In the said return, the fact that the post of Tabla Teacher is a promotional post has not been contended and even during the course of arguments also, learned counsel for the State has not argued this fact before the Court except the fact that the writ petitioner was given appointment as a member belonging to OBC category, whereas, the post offered was reserved for general category.

6. There is no other ground pointed out by the petitioner showing any manifest error on the record and has not further brought into the notice, any new facts, which could not be produced earlier despite diligent efforts made by the petitioner. It is well settled principles of law that the 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 of the Code of Civil Procedure. Even in exercise of review jurisdiction by the High Court under Article 226 of the Constitution, the petitioner has not produced any ground for review.

7. It appears that the petitioner by presentation of this review petition

seeks an opportunity to argue the entire case afresh on merits under the garb of the review petition, which is not permissible and tenable in law.

8. It is well settled principle of law that under the garb of review petition, the petitioner should not be permitted to argue the entire case afresh, which would amount to convert the review petition into an appeal and the same is not sustainable in law. (See: Meera Bhanjan v. Smt. Nirmal Kumar Chowdhary, AIR 1995 SC 455, Lily Thomas etc. v. Union of India and others, AIR 2000 SC 1650, Ajit Kumar Rath v. State of Orissa and others, AIR 2000 SC 85, Government of T.N. & Others v. M. Ananchu Asari and others, (2005) 2 SCC 332, and Kerla State Electricity Board v. Hitech Electrothermicism & Hydropower Ltd. and others, (2005) 6 SCC 651.

9. As a sequel, the review petition, *sans substratum* is liable to be and is hereby dismissed.

Sd/-

Judge

(Prashant Kumar Mishra)