

**IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA, AT CHANDIGARH.**

**Letters Patent Appeal No. 1146 of 2014
Date of Decision: September 15, 2015**

Housing Board Haryana

.....Appellant

Versus

Gian Chand and others

.....Respondents

**CORAM: Hon'ble Mr. Justice Satish Kumar Mittal
Hon'ble Mr. Justice Mahavir S. Chauhan**

Present: Mr. Ashwani Talwar, Advocate for the appellant.

Mr. Brijender Kaushik, Advocate for respondent No.1

- 1. Whether Reporters of local papers may be allowed to see the judgment? Yes/No*
- 2. To be referred to the Reporter or not? Yes/No*
- 3. Whether the judgment should be reported in the Digest? Yes/No*

Mahavir S. Chauhan, J.

Respondent Gian Chand, while working as Estate Manager with the appellant-Board, was departmentally proceeded against on the allegation of having caused financial loss to the appellant-Board to the tune of Rs.09,85,000/-. The punishing authority, vide order dated 04.01.2007 (Annexure P4), inflicted upon him penalty of reduction of rank to the post of Clerk besides ordering recovery of Rs.04,00,000/- from him. In the appeal preferred by respondent Gian Chand, the appellate authority, vide order dated 14.03.2008 (Annexure P9) set aside the order of the Punishing Authority and directed that respondent-Gian Chand shall continue to be an Estate Manager,

alongwith all consequential benefits as admissible under the relevant rules. Order dated 14.03.2008 (Annexure P9) was challenged by the appellant-Board before this Court vide Civil Writ Petition No.19152 of 2008 wherein, vide order dated 15.01.2009, order dated 04.01.2007 (Annexure P4) and order dated 14.03.2008 (Annexure P9) were set aside and the matter was remitted to the departmental authorities to decide it afresh from the stage of examining the Inquiry Report. Inquiry Officer, on re-examination of the Inquiry Report, came to the conclusion that charges levelled against respondent-Gian Chand were duly proved. However, the Punishing Authority, vide order dated 30.09.2009 (Annexure P11), ordered recovery of an amount of Rs.07,97,947.90. Vide order dated 09.06.2010 (Annexure P12), the Appellate Authority set aside order dated 30.09.2009. Order dated 09.06.2010 (Annexure P12) was challenged by the appellant-Board vide Civil Writ Petition No.10371 of 2012 which was dismissed vide order dated 27.03.2014.

02. Consequent upon passing of order dated 04.01.2007 (Annexure P4) respondent-Gian Chand was relieved to join his duties on the post of Clerk. He, however, elected not to join his duties as a Clerk and, instead, absented from duty for the period from 08.01.2007 to 17.03.2008. A charge sheet dated 11.12.2007 was served upon him in this regard. In the inquiry, allegations against respondent-Gian Chand, though were proved, but the Punishing Authority, vide order dated 09.09.2009 (Annexure P3), observed that he deserved a major punishment but taking a lenient view ordered the period of absence from duty to be treated as leave of the kind due. Order dated

09.09.2009 (Annexure P3) having been challenged, the Appellate Authority, vide order dated 29.07.2010 (Annexure P2) held that the period of absence from duty would be treated as leave of kind due and respondent-Gian Chand was not entitled to 'be paid anything except whatever has already been paid to him for the period from 8.1.2007 to 17.3.2008". However, on an application made by respondent-Gian Chand, the Appellate Authority, vide its order dated 14.2.2011 (Annexure P1) reviewed its order dated 29.07.2010 and directed that respondent-Gian Chand "will be treated on duty for the period from 8.1.2007 to 17.3.2008".

03. Civil Writ Petition No. 14846 of 2012 brought by the appellant-Board to lay a challenge to order dated 14.02.2011 (Annexure P1) has been dismissed vide order dated 27.03.2014, by the learned Single Judge, by observing as under:

"It is apparent from the aforesaid order that the Appellate Authority after taking into consideration the observations made in CWP No.19152 of 2008 found that the period with effect from 8.1.2007 to 17.3.2008 is to be treated on duty, inasmuch as, Gian Chand could not be punished for non compliance of non existent orders (penalty for reduction of rank) which had already been set aside in the aforesaid writ petition bearing CWP No.19152 of 2008. Moreover, the order challenging the action of the authorities in exonerating Gian Chand is subject matter of CWP No.10371 of 2012 has already attained finality dismissing the claim of the Housing Board.

In view of the aforesaid discussion, the present petition being devoid of any merit is dismissed."

04. Correctness of order dated 27.03.2014, passed by the learned Single Judge is under challenge in this intra-court appeal brought by the appellant-

Board under Clause X of the Letters Patent.

05. We have heard learned counsel for the parties besides examining the documents available on record.

06. The lone argument of learned counsel for the appellant-Board is that the Appellate Authority having held vide order dated 29.07.2010 (Annexure P2) that the period of absence from duty of respondent-Gian Chand would be treated as leave of the kind due and he was not entitled to 'be paid anything except whatever has already been paid to him for the period from 8.1.2007 to 17.3.2008' was not competent to turn around and set aside that order in the garb of review even though under the Haryana Civil Services (Punishment and Appeal) Rules, 1987 (for short, 'the Rules') it was not competent to review its order. Even otherwise, according to learned counsel for the appellant, respondent-Gian Chand having willfully and unauthorized by absented from duty during the period from 8.1.2007 to 17.3.2008, could not be held entitled to pay and allowance by ordering this period to be treated as period spent on duty and, as such, dated 14.02.2011 (Annexure P1) cannot be allowed to sustain and order dated 29.07.2010 (Annexure P2), which is legal and valid, deserves to be restored.

07. On the contrary, learned counsel for respondent-Gian Chand has argued that order dated 04.01.2007 (Annexure P4), inflicting upon him penalty of reduction of rank to the post of Clerk besides ordering recovery of Rs.04,00,000/- from him was set aside by the Appellate Authority and after remand of the case by this Court vide order dated 15.01.2009 passed in Writ

Petition No.19152 of 2008, the Inquiry Officer, on re-examination of the Inquiry Report, though came to the conclusion that charges levelled against respondent-Gian Chand were duly proved yet the Punishing Authority, vide order dated 30.09.2009 (Annexure P11), found the punishment of reduction in rank to be inappropriate and instead ordered recovery of an amount of Rs.07,97,947.90. The Appellate Authority set aside order dated 30.09.2009 vide order dated 09.06.2010 (Annexure P12) which has been upheld by this Court vide order dated 27.03.2014 passed in Civil Writ Petition No.10371 of 2012. This, according to the learned counsel indicates that order dated 04.01.2007 (Annexure P4), inflicting penalty of reduction of rank to the post of Clerk upon respondent-Gian Chand was illegal and, therefore, he cannot be deprived of the benefit of pay and allowances for not complying with that order.

07. No other or further point has been urged on either side.

08. Facts are not in dispute. Still it may be relevant to recapitulate pursuant to order dated 04.01.2007 (Annexure P4), respondent-Gian Chand was relieved to join his duties on the post of Clerk but he elected not to join his duties as a Clerk and, instead, absented from duty for the period from 08.01.2007 to 17.03.2008 which resulted in a charge sheet dated 11.12.2007 being served upon him. In the inquiry, allegations against respondent-Gian Chand, though were proved, yet the Punishing Authority observed that he deserved a major punishment but taking a lenient view ordered the period of absence from duty to be treated as leave of the kind due vide order dated

09.09.2009 (Annexure P3) and the Appellate Authority, vide order dated 29.07.2010 (Annexure P2) also held that the period of absence from duty would be treated as leave of the kind due and respondent-Gian Chand was not entitled to be paid anything except whatever had already been paid to him for the period from 08.01.2007 to 17.03.2008. The controversy revolves around order dated 14.02.2011 (Annexure P1) whereby the Appellate Authority has reviewed its earlier order dated 29.07.2010 (Annexure P2) and has ordered that the period of absence of respondent Gian Chand would be treated as period spent on duty. Operative part of order dated 14.02.2011 (Annexure P1) reads as under:

“I have heard the appellant and the representatives of Housing Board Haryana and gone through the entire case carefully. After going through the entire record and after having considered the pleadings of both the parties, I find that keeping in view the submissions made by the appellant, the order of the Disciplinary Authority dated 09.09.2009 cannot be allowed to sustain in view of the Rules/provisions of the Haryana Civil services (P&A) Rules, 1987. Moreover, Hon’ble High Court has already set aside the order dated 4.1.2007 passed by the Chief Administrator, Housing Board, Haryana and order dated 14.3.2008 passed by the Appellate Authority and in view of the judgment of Hon’ble High Court, I set aside the order under reference and the appeal succeeds to the extent that Shri Gian Chand will be treated on duty for the period 8.1.2007 to 17.3.2008 as he cannot be punished for non-compliance of a non-existent order which had already been set aside by the Hon’ble High Court vide order dated 15.01.2009 in CWP No. 19152 of 2008.”

09. The Rules, no doubt, have no provision for review of orders passed by the Punishing Authorities and/or the Appellate Authorities but the Hon’ble Supreme Court in **Vinod Kumar v. State of Haryana and others, 2013(16)**

SCC 293, has held that “if wrong and illegal acts, applying the aforesaid parameters of judicial review can be set aside by the courts, obviously the same mischief can be undone by the administrative authorities themselves by reviewing such an order if found to be ultra vires. Of course, it is to be done after following the principles of natural justice.” However, as aforesaid, there being no provision in the Rules to regulate the review jurisdiction of the administrative authorities, such a power has, necessarily, to abide the principles of Section 114 and Order XLVII of the Code of Civil Procedure, 1908 (for short, ‘CPC’).

10. Section 114, CPC, provides for a substantive power of review by a Court. Section 114, CPC, although does not prescribe any limit on the power of the Court but such limitations have been provided for in Order XLVII, Rule 1, CPC, which reads as under:

"Application for review of judgment.-(1) Any person considering himself aggrieved,

(a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred,

(b) by a decree or order from which no appeal is allowed, or

(c) by a decision on a reference from a Court of Small Causes, and who, from 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 decree was passed or order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgment to the Court which passed the decree or made the order."

11. In order to appreciate the scope of a review, Section 114, CPC, has to be read, but this section does not even adumbrate the ambit of interference expected of the Court since it merely states that it "may make such order thereon as it thinks fit." The parameters are prescribed in Order XLVII, CPC, which permit a party to the lis to press for a rehearing "on account of some mistake or error apparent on the face of the records, or for any other sufficient reason". The former part of the rule deals with a situation attributable to the applicant, and the latter to a jural action which is manifestly incorrect or on which two conclusions are not possible. Neither of them postulates a rehearing of the dispute because a party had not highlighted all the aspects of the case or could perhaps have argued them more forcefully and/or cited binding precedents to the Court and thereby enjoy a favourable verdict. This is amply evident from the explanation in Rule 1 of the Order XLVII, CPC, which states that the fact that the decision on a question of law on which the judgment of the Court is based has been reversed or modified by the subsequent decision of a superior Court in any other case, shall not be a ground for the review of such judgment. Where the order in question is appealable the aggrieved party has adequate and efficacious remedy and the Court should exercise the power to review its order with the greatest circumspection. Hon'ble Supreme Court and this Court, on numerous occasions, have deliberated upon the issue of scope of review proceedings, arriving at the conclusion that review proceedings are not by way of an appeal and have to be strictly confined to the scope and ambit of Order XLVII, Rule 1, CPC.

12. Hon'ble Supreme Court in ***Thungabhadra Industries Ltd. (in all the Appeals) v. The Government of Andhra Pradesh represented by the Deputy Commissioner of Commercial Taxes, Anantapur, AIR 1964 1372***, held as follows:

"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. 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."

13. In ***Meera Bhanja v. Smt. Nirmala Kumari Choudary, 1995(1) RRR 499: AIR 1995 Supreme Court 455*** it was held that :

*"It is well settled 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, CPC. In connection with the limitation of the powers of the Court under Order 47, Rule 1, while dealing with similar jurisdiction available to the High Court while seeking to review the orders under Article 226 of the Constitution of India, this Court, in the case of **Aribam Tuleshwar Sharma v. Aribam Pishak Sharma** speaking through Chinnappa Reddy, J. has made the following pertinent observations :*

*It is true as observed by the Court in **Shivdeo Singh Vs. State of Punjab**, there is nothing in Article 226 of the Constitution to preclude the High Court from exercising the power of review which inheres in every Court of plenary jurisdiction to prevent miscarriage of justice or to correct grave and palpable errors committed by it. But, there are definitive limits to the exercise of the power of review. The power of review may be exercised on the discovery of new and important matter of evidence which, after the exercise of due diligence was not within the knowledge of the person seeking the review or could not be produced by him at the*

time when the order was made; it may be exercised where some mistake or error apparent on the face of the record is found, it may also be exercised on any analogous ground. But, it may not be exercised on the ground that the decision was erroneous on merits. That would be in the province of a court of appeal. A power of review is not to be confused with appellate power which may enable an appellate Court to correct all manner of error committed by the subordinate Court."

14. A perusal of the Order XLVII, Rule 1, CPC, shows that review of a judgment or an order could be sought : (a) from the discovery of new and important matters or evidence which after the exercise of due diligence was not within the knowledge of the applicant; (b) such important matter or evidence could not be produced by the applicant at the time when the decree was passed or order made; and (c) on account of some mistake or error apparent on the face of record or any other sufficient reason.

15. In **Aribam Tuleshwar Sharma v. Aribam Pishak Sharma, AIR 1979 3 SCC 389**, Hon'ble Supreme Court held that there are definite limits to the exercise of power of review. In that case, an application under Order XLVII, Rule 1 read with Section 151 of the CPC was filed which was allowed and the order passed by the judicial Commissioner was set aside and the writ petition was dismissed. On an appeal, Hon'ble Supreme Court held as under :

*"It is true as observed by this Court in **Shivdeo Singh v. State of Punjab, (AIR 1963 Supreme Court 1909)** there is nothing in Article 226 of the Constitution to preclude a High Court from exercising the power of review which inheres in every Court of plenary jurisdiction to prevent miscarriage of justice or to correct grave and palpable errors committed by it. But, there are definitive limits to the exercise of the power of review. The power of review may be exercised on the discovery of new and important matter or evidence which, after the exercise of due diligence was*

not within the knowledge of the person seeking the review or could not be produced by him at the time when the order was made, it may be exercised where some mistake or error apparent on the face of the record is found; it may also be exercised on any analogous ground. But, it may not be exercised on the ground that the decision was erroneous on merits. That would be the province of a Court of appeal. A power of review is not to be confused with appellate power which may enable an appellate Court to correct all manner of errors committed by the Subordinate Court."

16. The judgment in Aribam's case (supra) has been followed in the case of Smt. Meera Bhanja (supra). In that case, it has been reiterated that an error apparent on the face of the record for acquiring jurisdiction to review must be such an error which may strike one on a mere looking at the record and would not require any long drawn process of reasoning. The following observations in connection with an error apparent on the face of the record in the case of **satyanarayan Laxminarayan Hegde v. Mallikarjun Bhavanappa Tirumale, AIR 1960 Supreme Court 137**, were also noted :

" 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."

17. It is also pertinent to mention the observations of Hon'ble Supreme Court in the case of **Parsion Devi v. Sumiri Devi, 1997(4) RCR(Civil) 458 : (1997) 8 SCC 715**. Relying upon the judgments in the cases of Aribam's (supra) and Smt. Meera Bhanja (supra) it was observed as under :

"Under Order 47, Rule 1, Civil Procedure Code 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 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, Civil Procedure Code 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."

18. Hon'ble Supreme Court in **N. Anantha Reddy v. Anshu Kathuria, 2013(15) Scale 534**, ruled as under

"6. A careful look at the impugned order would show that the High Court had a fresh look at the question whether the Appellant could be impleaded in the suit filed by Respondent No. 1 and, in the light of the view which it took, it recalled its earlier order dated 08.06.2011. The course followed by the High Court is clearly flawed. The High Court exceeded its review jurisdiction by reconsidering the merits of the order dated 08.06.2011. The review jurisdiction is extremely limited and unless there is mistake apparent on the face of the record, the order/judgment does not call for review. The mistake apparent on record means that the mistake is self evident, needs no search and stares at its face. Surely, review jurisdiction is not an appeal in disguise. The review does not permit rehearing of the matter on merits."

19. In **Union of India v. Sandur Manganese & Iron Ores Ltd., 2013(8) SCC 337: 2013(6) Scale 257**, Hon'ble Supreme Court has ruled as under:

*"23. It has been time and again held that the power of review jurisdiction can be exercised for the correction of a mistake and not to substitute a view. In **Parsion Devi & Ors. v. Sumitri Devi & Ors., 1997(4) R.C.R.(Civil) 458 : (1997) 8 SCC 715**, this Court held as under :-*

"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 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 I 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."

20. It, thus, comes out that a judgment/order may be open to review if there is a mistake or an error apparent on the face of the record. 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 exercise of the power of review. 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 characterized 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 rectification of patent error. A clear case of error apparent on the face of the record would be made out only if 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. For exercising review jurisdiction, as can be seen from principles of law stated earlier, two conditions must be fulfilled namely (1) the mistake should be apparent on the face of the record, and (2) it should result in miscarriage of justice. Attainment of both of these conditions is essential for reviewing a decision passed earlier by the same Court/authority. If only one of these two conditions is fulfilled, the Court/authority will not have any jurisdiction to review its own judgment/order.

21. Reverting to the case in hand, to reach the conclusion that the period of absence from duty of respondent Gian Chand and the earlier order dated 29.07.2010 (Annexure P2) was unsustainable, the Appellate Authority, as is evident from the order dated 14.02.2011 (Annexure P1), had to minutely examine the pleadings of the parties and to hear in detail the submissions made on their behalf. Therefore, it cannot be said to be a case of an error apparent on record.

22. Not only this, it is conceded on behalf of respondent Gian Chand that he remained absent from duty during the period from 08.01.2007 to 17.03.2008 without leave or permission of the competent authority. In such a situation order dated 09.09.2009 (Annexure P3) treating the period of absence as leave of the kind due, as upheld by the Appellate Authority, vide order dated 29.07.2010 (Annexure P2) holding that the period of absence from duty would be treated as leave of the kind due and respondent-Gian Chand would not be entitled to be paid anything except whatever has already been paid to him for the period from 8.1.2007 to 17.3.2008, cannot be said to be unreasonable or bad in law and, as such, order dated 29.07.2010 (Annexure P2) cannot be taken to have resulted in miscarriage of justice.

23. From the above, it is manifestly clear that order dated 14.02.2011 (Annexure P1) does not fulfill either of the two conditions namely (1) the mistake should be apparent on the face of the record, and (2) it should result in miscarriage of justice, justifying exercise of review jurisdiction by the Appellate Authority. Therefore, this order and order dated 27.03.2014 passed

by the learned Single Judge by overlooking the settled position of law, cannot be allowed to sustain and are hereby set aside. As a consequence order dated 29.07.2010 (Annexure P2) holding that the period of absence from duty would be treated as leave of the kind due and respondent-Gian Chand would not be entitled to be paid anything except whatever has already been paid to him for the period from 8.1.2007 to 17.3.2008, stands revived.

24. In the result, the appeal succeeds and is allowed in the aforesaid terms. However, in the facts and circumstances of the case, parties are left to bear their own costs.

[SATISH KUMAR MITTAL]
JUDGE

[MAHAVIR S. CHAUHAN]
JUDGE

September 15, 2015
adhibari