

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Review No.6 of 2016

IN

LPA 958 of 2013

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1. Manoj Kumar Singh son of Shri Ram Niranjana Singh Lecturer, Deptt. of Civil Engineering, Government Polytechnic, Bhagalpur R/o Satish Sarkar Lane, Masakchak, P.O. & P.S. - Adampur, District - Bhagalpur.
 2. Arun Kumar Singh son of Late Ram Bilash Singh, Lecturer, Deptt. of Civil Engineering, Govt. Polytechnic, Bhagalpur R/o Village & P.O. - Kirihi, Via - Karath, District - Rohtas at Sasaram, At present - Kamla Niketan, Bari Khanjarpur (Near Bar Ganchh Chowk), P.O. - Main Post Office, P.S. - Barari, District - Bhagalpur.
 3. Chakradhar Prasad son of Shri Thakur Prasad, Lecturer, Deptt. of Civil Engineering, Government Polytechnic, Bhagalpur R/o - Shivaji Nagar, Habibpur, P.O. - Mirjanhat, P.S. - Habibpur, District - Bhagalpur.
 4. Dr. Saryug Mandal son of Late Jamuna Mandal, Lecturer (Contract), Deptt. of Mathematics, Government Polytechnic, Bhagalpur R/o - Mohalla, P.O. & P.S. - Barari, District - Bhagalpur.
 5. Subodh Kumar Choudhary 'Anuj' son of Shri Navin Chandra Choudhary C/o Late Kamla Kant Yadav, Sikendarpur (Near Dinehwar Dham), P.O. - Mirjanhat, P.S. - Mojahidpur, District - Bhagalpur.
 6. Binay Kumar Choudhary son of Shri Ambika Prasad Choudhary, Lecturer (Contract), Deptt. of Civil Engineering, Government Polytechnic, Bhagalpur R/o - Pipradhi, P.O. - Morama, P.S. Rajoun, District - Banka.
 7. Rajendra Pandit son of Shri Jiwalal Pandit, Lecturer (Contract), Deptt. of Humanity English, Bhagalpur College of Engineering, Bhagalpur R/o Barnwal Villa, Nawab Colony, P.O. & P.S. - Tilkamanjhi, District - Bhagalpur.
 8. Manoj Kumar Rajak son of Late Bhikho Rajak, Lecturer (Contract), Deptt. of Electrical Engineering, Bhagalpur College of Engineering, Bhagalpur. R/o Village & P.O. - Lattipur, P.S. - Bihpur, District - Bhagalpur.
 9. Dr. Yogendra Prasad Mandal son of Late Shashi Bhusan Mandal, Lecturer (Contract), Deptt. of Mechanical Engineering, Bhagalpur College of Engineering, Bhagalpur R/o A.L. Bhawan (Near Budhiya Hospital), Kabirpur Road, P.O. & P.S. - Nathnagar, District - Bhagalpur.

.... Petitioner/s

Versus

1. The State of Bihar through the Secretary, Department of Science and Technology, Bihar, Patna.
2. The Director, Department of Science and Technology, Bihar, Patna.
3. The Principal, Bhagalpur College of Engineering, Bhagalpur.
4. The Chairman, Government Polytechnic, Bhagalpur.
5. The Chairman, Bihar Public Service Commission, Bailey Road, Patna.
6. The Secretary, Bihar Public Service Commission, Bailey Road, Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Purushottam Kumar Jha, Adv.

For the Respondent/s : Mr. Anil Kumar, Adv.

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CORAM: HONOURABLE THE ACTING CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

CAV JUDGMENT

(Per: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH)

Date: 22-06-2016

By the present application, under Order XLVII Rule 1 and Section 151 of the Code of Civil Procedure (for short 'CPC'), the appellants (in the Letters Patent Appeal) seek review of the order of the Division Bench, dated 3rd July, 2014, passed in L.P.A. No. 958 of 2013, by which, the Letters Patent Appeal of the petitioners has been disposed of as withdrawn.

2. Shorn of details, brief facts, necessary for disposal of this application, are as follows :-

- (a) The petitioners, who have worked as part-time lecturers/contractual basis lecturers in the Government Engineering Colleges/Government Polytechnic Colleges, had filed writ application, bearing C.W.J.C. No. 2315 of 2011, interalia, for grant of weightage point for the experience they had gained while working as part-time lecturer and/or contractual lecturer in the Government

Engineering Colleges/Government Polytechnic Colleges.

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- (b) It was the case of the petitioners in the writ application that in the year 2009, after a very long gap of several years, the Respondent No.1 published advertisements, dated 8th March, 2009 and 3rd April, 2009, under the seal of Respondent No.6 for regular appointment in the Government Engineering Colleges, Government Polytechnic Colleges and Government Women Polytechnic Colleges.
- (c) Since the petitioners possessed requisite qualification as per the terms of the said advertisement, they applied for their selection as regular/permanent lecturers in the Government Engineering/ Polytechnic Colleges.
- (d) Since there was no provision for grant of weightage points for past experience, the petitioners preferred the aforesaid writ application claiming that they were entitled to get weightage marks before interview for their academic/teaching experiences earned while working in Government Engineering/

Polytechnic Colleges.

- (e) The said writ application was disposed of by the learned single Judge vide order, dated 14th September, 2012. The operative part of the order passed by the learned single Judge reads as under :-

“The submission of the petitioners is that after expiry of the contract, the State Government may again fill up the post by the persons on contract, if the State Government does it so then the past service rendered by the petitioners shall be taken into account for renewal of their contract.

The Writ petition is disposed of.”

- (f) Being aggrieved by the aforesaid order, dated 14th September, 2012, passed by the learned single Judge in C.W.J.C. No. 2315 of 2011, the petitioners preferred Letters Patent Appeal, being L.P.A. No. 958 of 2013.
- (g) On 3rd July, 2014, the learned counsel appearing for the petitioners prayed for withdrawal of the appeal, stating before the Court that in view of withdrawal of the impugned advertisement, dated 8th March, 2009, the cause of action does not survive. On such submission, having been made by the learned counsel for the petitioners, the Division

Bench granted leave to withdraw the Letters Patent Appeal and disposed of the appeal as withdrawn. The operative part of the aforesaid order, dated 3rd July, 2014, passed by the Division Bench, reads as under :-

“Learned counsel Mr. Chitranjan Sinha appears for the appellants. He states that in view of the withdrawal of the impugned advertisement dated 8th March 2009, the cause of action does not survive. He, therefore, seeks leave to withdraw this Appeal.

Leave is granted.

Appeal is disposed of as withdrawn.”

3. We have heard Mr. Purushottam Kumar Jha, learned counsel for the petitioners and perused the record.

4. In course of arguments, Mr. Jha has contended that during pendency of the memo of appeal, upon statement made by the counsel for the respondents, it came to the knowledge of the petitioners that the State authorities have withdrawn the impugned advertisements itself. In view of the withdrawal of the impugned advertisement, dated 8th March, 2009, abovementioned memo of appeal, being L.P.A. No. 958 of 2013, was withdrawn, as the cause of action did not survive on the date of 3rd July, 2014. He has further contended that as soon as L.P.A. No. 958 of 2013 was withdrawn by order, dated 3rd July, 2014, the State authorities have made



appointment of 11 persons, vide notification, dated 26th August, 2014 from the same panel, which was prepared in pursuance of the impugned advertisement, dated 8th March, 2009. Thus, the ploy of the State authorities in temporarily withdrawing the impugned advertisement, dated 8th March, 2009, was only to get rid of the legal proceeding before this Court.

5. Mr. Jha has submitted that the petitioners have lately come to know about the appointment being made from the said panel and, therefore, the review application has been preferred before this Court.

6. Having heard learned counsel for the petitioners and perused the record, we find that the ground taken by the petitioners to seek review of the order passed by the Division Bench is not tenable in the eyes of law.

7. As noted above, the prayer of the petitioners in the original writ application was for giving weightage for their experience as part-time/contractual lecturer at the time of short-listing the candidates and interview to be conducted by the Bihar Public Service Commission (for short 'BPSC') for appointment to the post of lecturer in the Government Engineering Colleges/Government Polytechnic Colleges and Government Women Polytechnic Colleges under Science and Technology

Department, Government of Bihar. There was neither any challenge to the panel prepared pursuant to the advertisement made by the BPSC nor to the appointment of the candidates selected by the BPSC pursuant to the advertisement, dated 8th March, 2009.

8. In our opinion, in case the petitioners are aggrieved in any manner by the appointment of any candidate pursuant to the advertisement, dated 8th March, 2009, made by the BPSC, the same may give a fresh cause of action to the petitioners. They may challenge such selection or appointment by filing a fresh writ application, but the same cannot be made a ground for seeking review of the order passed by the Division Bench, whereby the petitioners were allowed to withdraw their Letters Patent Appeal.

9. By now it is well settled that 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.

10. 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.”

11. 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 3rd July, 2014, whereby the petitioners were permitted to withdraw their Letters Patent Appeal.

12. Thus, we are of the opinion that in the application, under consideration, the petitioners have 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 petitioners, which, if not

taken into consideration, would cause miscarriage of justice.

13. 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/NAFR	NAFR
CAV DATE	26.02.2016
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