

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Review Petition No. 04 of 2016**

Jeet Ram Yadav, S/o Murit Ram Yadav, aged about 48 years, R/o village & Post Lakhali, Tah. Champa, PS Saragaon, Distt. Janjgir Champa (CG).

---- Petitioner**Versus**

State of CG through Executive Engineer, Bango Canal Division No.6, Nandelibhatha, Shakti Distt. Janjgir Champat (CG).

---- Respondent

Application for review of order dated 04.12.2015 passed in
WP(L) No. 6039 of 2010.

(By Circulation in Chamber)
Order**12/02/2016**

1. The matter is considered in chamber under the provisions of Rule 90(2) of the High Court of Chhattisgarh Rules, 2007.
2. The instant review petition has been filed seeking review of the order dated 04.12.2015 passed by this court in Writ Petition (L) No. 6039 of 2010.
3. The brief facts of the case relevant for adjudication of this case is that, the State had filed the writ petition challenging the award of Labour Court dated 31.03.2010 whereby the Labour Court treating the discontinuance of service of the Respondent-workmen as illegal termination, granted relief of reinstatement in service without back-wages. The contention of the State before this court in writ petition was that the Labour Court has wrongly

passed the award of reinstatement, inasmuch as, there were many lacunas which have not been properly appreciated and discussed by the Labour Court while deciding the case in a mechanical manner treating it to be a simple case of illegal termination.

4. This court while deciding the writ petition had taken note of various grounds and finally reached to the conclusion upholding the findings of the Labour Court to the extent that the discontinuance of services of the workmen by the State was without following the mandatory provisions of Chapter-V of the Industrial Disputes Act, therefore, the same amounts to illegal termination. However relying upon a series of decisions passed by the Supreme Court pronounced in the recent times modified the award of reinstatement with payment of compensation in lieu of reinstatement.
5. It is this order which is being sought to be reviewed . The sole ground taken by the review petitioner in this review petition is that the State Govt. during the course of argument had misleded the court by making a statement that the respondent-workmen was out of employment which is not correct and rather the fact is that after the award of Labour Court, in compliance of Section 17-B of the Industrial Disputes Act the workmen has been taken back in employment and is still working. Therefore, the order passed by this court on 04.12.2015 deserves to be recalled and the writ petition itself needs re-hearing. Except for this ground, the petitioner has not raised any other grounds seeking review of the order.
6. At this juncture, a perusal of order dated 04.12.2015 would clearly reflect that the contention of the State counsel with regard to workmen being out of employment and not resumed his duties even after the order in this regard by the State U/s 17 B is concerned, the same was only one of the grounds on

the basis of which the order was passed by this court. Even if the said submission of the State counsel is ignored for a moment, even then the order of this court is passed on on other strong grounds like lapse on the part of the respondent in raising the industrial dispute at the first instance itself as noticed by this court in judgment paragraph-11. Further, the fact that the respondent was a daily-wage worker and as such he would not have any vested right on any posts and that relief of reinstatement would not be automatic in the given factual background even though termination order of employee may be contrary to law. The order passed by this court was based upon the recent judicial pronouncements of the Supreme Court and primarily the status of the respondent-workmen of being daily-wage worker coupled with the fact that he had raised the industrial dispute itself inordinately late i.e. after about 13 years. Therefore, even if the ground urged by the petitioner is taken into consideration, even then it would not materially affect the merits of the case in any manner as the ground raised by the petitioner/State was not the sole ground on the basis of which this court has decided the writ petition.

7. In addition, the material which the review petitioner now wants to show i.e. Annexure A/2 was not available with the writ petition when the same was being decided by this court. Even otherwise, the review petitioner has stated in his pleading itself that he has been taken back in employment pursuant to Section 17-B of the Industrial Disputes Act, as such, the compliance of provisions of Section 17-B of Industrial Disputes Act pending the writ petition of the State before this court would not create indefeasible right in favour of the workmen.
8. The review petitioner, by way of review application, is trying for re-hearing of

the entire matter based on certain documents which was not produced or relied upon at the time of hearing of original writ petition itself. It is well settled law that fresh grounds and plea cannot be permitted to be raised in the course of review jurisdiction. Moreover, a perusal of order passed in writ petition would reflect that it has been passed with due appreciation and consideration of facts submitted by the parties and as such it cannot be said that there was any error apparent on the face of record. Review jurisdiction is not an Appeal in disguise. It does not permit re-hearing of matter on merits.

9. Re-appreciation of the facts of the case on the basis of fresh materials which were not there along with the writ petition and passing of fresh order by exercising the review petition is not permissible under law. 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. 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. The jurisdiction under review does not permit an erroneous decision to be reheard and corrected. The mistake apparent on record means that the mistake which is self evident, needs no search and satres at its face.
10. Principle of law to entertain review petition is well settled in catena of decisions one of latest being 2012(7)SCC 200 (Haryana State Industrial Development Corporation Limited vs. Mawasi and Others). Similar view has also been taken by the Supreme Court in cases of *Smt. Meera Bhanja vs. Smt. Nirmala Kumari Choudhary*¹, *Lily Thomas, etc. vs. Union of India and*

¹ AIR 1995 SC 455

*others*², *Ajit Kumar Rath vs. State of Orissa and others*³, *Government of T.N. and others vs. M. Ananchu Asari and others*⁴ and *Kerla State Electricity Board vs. Hitech Electrothermics & Hydropower Ltd. and others*⁵.

11. Thus, applying the above well settled principles of law to the facts of the present case, there is no ground available for review of the order dated 04.12.2015. Under the garb of the review petition, the petitioner seeks an opportunity to argue the entire case afresh which would amount to converting the review petition into an appeal and the same is not sustainable in law.

12. As a result and in view of the foregoing, this review application is dismissed.

No order as to costs.

Sd/-
(P.Sam Koshy)
JUDGE

inder

2 AIR 2000 SC 1650
3 AIR 2000 SC 85
4 2005 (2) SCC 332
5 2005 (6) SCC 651