

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Review Petition No. 85 of 2016**

Ravindra Kumar S/o Rajkishore Prasad, Aged About 40 Years
Assistant Grade III, On Daily Wages, R/o Baigin Dabhar, Rampur,
Korba, Tehsil & District Korba (Chhattisgarh)

---- Petitioner

Versus

1. State Of Chhattisgarh Through Secretary, Revenue Deptt. Mantralaya, Dks Bhawan, Raipur, Now Mahanadi Bhawan, Naya Raipur, District Raipur (Chhattisgarh)
2. Collector, Korba, District Korba (Chhattisgarh)
3. Sub Divisional Officer, Korba, District- Korba (Chhattisgarh)
4. Tehsildar, Kartala, District- Korba (Chhattisgarh)
5. Suresh Jaiswal, S/o Late Sant Lal Jaiswal, Assistant Grade II, Collectorate Korba Finance Deptt. P. O. & P. S. Korba, District Korba (Chhattisgarh)
6. Shri B. R. Thakur, Tehsildar At Present Working At Pankhajur, P. O. & P. S. Pankhajur, District Kanker (Chhattisgarh)

---- Respondents

For Petitioner : Mr. Rajeev Shrivastava, Advocate
For Respondent-State: Mr. Anupam Dubey, Dy. Government Advocate
For Respondent No.5: Mr. Rajendra Tripathi, Advocate

Hon'ble Shri Justice P. Sam Koshy**Order on Board****24.06.2016**

1. Re-appreciation of the facts of the case 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 stares at its face.

2. Present Review Petition has been filed seeking review of the order dated 04.11.2015 passed by this Court in W.P.(S) No. 4916/2012. The said order was subjected to test before this Court by Writ Appeal No. 663/2015 which was later dismissed reserving rights of the Petitioner to prefer review petition before this Court. Accordingly, the present Review Petition has been filed.

3. Learned Counsel for the Petitioner submits that the order dated 04.11.2015 shows that the services of the Petitioner has been discontinued w.e.f. October, 2012, whereas the fact is that there is no clear termination order against the Petitioner, rather it was a case where the Respondent No. 6 had forbidden the Petitioner from serving the Respondent and therefore it can not be construed as termination from service while granting the relief of regularization of service as well as taking back the Petitioner in service being relief sought for in the Writ Petition.

4. According to the Petitioner the findings of the Court of the services of the Petitioner being already terminated is an error apparent on face of record and it needs to be recalled. He strongly relies on principles of the Supreme Court reported in **(2009) 5 SCC 368 (Bharat Sanchar Nigam Limited & Others Vs. Abhishek Shukla & Another)**.

Referring the said judgment he submits that averment made by the Petitioner in Writ Petition (S) 4916 of 2012 categorically in absence of any specific denial by the Respondent in their reply and the higher officials also recommending for regularization, but this Court construing it as discontinuance/termination of service in respect of the Petitioner is not proper.

5. Upon hearing the Petitioner and on perusal of the pleadings in Writ Petition it would clearly reflect that the substantive relief as has been sought by the Petitioner is for regularization in service which for ready reference para 10.1 is reproduced as under: -

“10.1 That, this Hon'ble Court may kindly be pleased to issue a suitable writ/order/direction to the respondents authorities to consider the case of the Petitioner with regard to the regularization strictly in pursuance of the circular dated 05.03.2008.”

6. The ancillary relief which the Petitioner has sought in the Writ Petition is for a direction to the Respondents to allow the Petitioner to work as Assistant Grade-III. For ready reference relief clause No. 10.2 is reproduced below:-

“10.2 It is therefore prayed that this Hon'ble Court may kindly be pleased to direct the respondents to allow the petitioner to work as Assistant Grade-III.”

7. A perusal of the Writ Petition would categorically show the entire contentions and averments made by the Petitioner is that vacancy is available with the Respondent establishment of the post of Assistant Grade-III, recommendations has also been made by the higher

authorities of the department in the case of the Petitioner for regularization in the light of the circular of the State Government dated 05.03.2008. But, in the Writ Petition in Para No. 9.6 the Petitioner has candidly accepted the fact that he is not in service since 27.09.2012, and the same is also reflected from the order dated 04.11.2015 passed by this Court in the Writ Petition wherein the Petitioner himself has admitted the fact that his service has been discontinued from October, 2012, are sufficient evidence to show that the Petitioner was not in service on 04.11.2015 when the Writ Petition was disposed. If on the date, the Writ Petition was being disposed, the Petitioner was not in the service with the Respondent, the order passed under such circumstances is not an illegal order and the question of granting relief of regularization does not arise. Further, from the pleadings of the Writ Petition it would reflect that the Writ Petition was not oriented challenging discontinuation/termination of the service with the Respondent but rather was a claim specifically for grant of regularization with an ancillary relief of direction to the Respondent to allow the Petitioner to work as Assistant Grade-III.

8. The Review Petition for recalling the Petition can only be entertained if an error of facts or law is apparent on the face of the record, but in the instant case there is no such error to have been committed by the Court in the disposal of the Writ Petition dated 04.11.2015.

9. There being a categorical averment made by the Petitioner of being discontinued from the service since October, 2012, the question

of regularization with the establishment without challenging action of discontinuation/termination and the relief of reinstatement in the favour of the Petitioner can not be sustained.

10. Thus, applying the settled principles of law on Review to the facts of the present case, there is no ground available for review of the order dated 04.11.2015. Under the garb of the review petition, the Petitioners seek 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.

11. Accordingly, in the opinion of this Court no good ground made out for review of the order, as such, the Review Petition stands dismissed.

Sd/-

(P. Sam Koshy)
JUDGE