

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Review Petition No. 129 of 2016**

Deepak Kumar Rajwade S/o Late Shri Mohar Say, Aged About 22 Years R/o Village- Taraju, Post- Jamgala, Tahsil And P.S. Lakhanpur, District- Surguja, Chhattisgarh

---- **Petitioner****Versus**

1. State Of Chhattisgarh Through Secretary, Social & Welfare Department Of Panchayat, Mantralay, New Raipur, Raipur, Chhattisgarh(Non-Applicant No.1)
2. The Collector, Surguja, Chhattisgarh(Non-Applicant No.2)
3. The Director, Social Welfare & Panchayat Department, Ambikapur District- Surguja, Chhattisgarh(Non-Applicant No.3)

-----**Respondents****Single Bench: Hon'ble Shri P. Sam Koshy, J**Application for review of order dated 18.12.2015**(By Circulation In Chamber)**

Order
(06.09.2016)

1. The instant Review Petition has been preferred by the Petitioner seeking review of the order dated 18.12.2015 passed by this Court in W.P.(S) No.5344/2012.

2. The facts relevant for the adjudication of the present case are that the father of the present Petitioner working in the office of Janpad Panchayat, Udaypur, Distt. Surguja died in harness on 25.7.2006. After the death of the deceased/employee, the present Petitioner for the first time, sought compassionate employment vide application dated 14.5.2010 i.e. after a period of about more than 4 years. The Respondents rejected the claim

application as the same had been filed beyond the time limit fixed under the scheme for compassionate appointment.

3. The said rejection order was subjected to challenge in Writ Petition and this Court, vide its order dated 18.12.2015, has rejected the same.

4. While rejecting the claim of the Petitioner, this Court had taken into consideration the fact that since the Petitioner was a minor, his mother who was a lady ought to have applied for compassionate appointment, which she did not do. Since the mother did not seek for compassionate appointment, an inference was drawn that they had sufficient means to survive and sustain. Further, there was a specific period of limitation prescribed under the said scheme and the Petitioner having not moved an application within the time limit prescribed under the scheme, he had no right to claim for compassionate appointment subsequently. Lastly, this Court had relied upon the decision of the Supreme Court in the case of **(2012) 13 SCC 412** (*Chief Commissioner, Central Excise and Customs, Lucknow and other vs. Prabhat Singh*).

5. The judgment of this Court dismissing the Writ Petition was assailed in Writ Appeal i.e. W.A. No.5/16. In this Writ Appeal, it is reflected that the Petitioner herein had voluntarily withdrawn the appeal only on the ground that the Petitioner could not bring the judgment of the Supreme Court to the notice of this Court while the Writ Petition was being decided and accordingly, the Writ Appeal got dismissed as withdrawn leading to the filing of the present Review Petition.

6. It is well settled that review proceedings have to be strictly confined to the ambit and scope of Order 47 Rule 1 of CPC.

7. A review is by no means an appeal in disguise but lies only for patent error.

8. Under the garb of a review application, the Applicant cannot be allowed to reargue his case.

9. The review jurisdiction is extremely limited and unless there is mistake apparent on the face of record, the Order/judgment does not call for review. The mistake apparent on record means that the mistake which 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. 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.

10. 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. The jurisdiction under review does not permit an erroneous decision to be reheard and corrected. Review Petition cannot be allowed to be an appeal in disguise.

11. In the instant case, the only ground on which the review has been sought is the judgment of the Supreme Court in the case of **(2015) 7 Supreme Court Cases 412** (*Canara Bank and Another vs. M. Mahesh Kumar and other connected Appeals*). Admittedly, from a bare perusal of the order passed in the Writ Appeal itself, it is evidently clear that the said judgment was not cited by the Petitioner before this Court at the time of hearing of the Writ Petition and as such it cannot be the ground for reviewing of an order only on that count. The judgment passed by the Supreme Court in a case which has not been cited during the course of arguments particularly when it is the same counsel who has also argued the matter finally before the Writ Court as well as before the Appellate Court cannot be a

ground for review. This Court is of opinion that since the review of the order which has been sought for is itself based upon a decision of the Supreme Court and if at all the Petitioner was of the view that the judgment passed by this Court while deciding W.P.(S) No.5344/2012 was erroneous or is contrary to the judgment laid down by the Supreme Court in the case of Canara Bank and Another Vs. Mahesh Kumar (supra), then the only recourse available was to challenge the said order passed by this Court. Only because the Counsel for the Petitioner subsequently finds the judgment of the Supreme Court which according to him is favourable to the facts of the Petitioner in the instant case when the Writ Petition itself has already been decided finally, cannot be a ground for review or for that matter recalling of an order.

12. The law so far as the review is concerned, it is always an error apparent on the face of record which has crept in and by no stretch of imagination can the power of a review be exercised by a Court for rehearing the matter afresh. In the garb of a Review Petition, the Petitioner cannot be permitted to argue the entire case afresh as the same would amount to converting the Review Petition into an Appeal. Further, from the pleading of the Review Petition also, there is no ground raised by the Petitioner of there being any error apparent on the face of record on the part of the Court in the passing of the judgment, neither is there any pleading wherein it is alleged that there were certain factual discrepancies while deciding the Writ Petition. In the opinion of this Court, it is only under these circumstances can a review lie. In the instant case, the Petitioner has not been able to point out any manifest much less an error on the face of record to have been committed in the course of deciding the Writ Petition (S) No.5344/2012.

13. Since the Petitioner has failed to point out any infirmity or an error on the face of the record in the factual matrix of the case, this Court is of the

opinion that instant Review Petition is not sustainable and the same deserves to be and is accordingly dismissed. No order as to costs.

Sd/-

(P. Sam Koshy)

JUDGE

Priya