

CM No. 9353 of 2017 in
RA No. 354 of 2017 in
CWP 5979 of 2014

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

CM No. 9353 of 2017 in
RA No. 354 of 2017 in
CWP No. 5979 of 2014 (O&M)
Date of decision: December 13, 2017

Sandeep Sharma

...Petitioner

Versus

Punjabi University, Patiala and another

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. Gurinder Pal Singh, Advocate
for the applicant/petitioner.

Mr. Ajaivir Singh, Advocate,
for the non-applicants/respondents.

JAISHREE THAKUR, J.

CMA No. 9353 of 2017

1. This is an application that has been filed under Section 5 of the Limitation Act read with Article 226 of the Constitution of India for condonation of delay of 65 days in filing the present review application.

2. It is contended that the petitioner/applicant herein had suffered a major accident in August 2015 and had become disabled. Consequent to the accident, he had suffered head injuries as a result of which he was unable to move without assistance or even talk properly. He only came to know about the fact of the decision in the writ petition when the University

case had been dismissed by the High Court. Since there were holidays in the High Court, the petitioner made arrangements for filing of the present application for review of the order dated 06.04.2017. It is contended that the delay in the filing of the present review application is neither deliberate nor the result of negligence and, therefore, it is prayed that the delay in filing of the said review application may be condoned.

3. A joint reply has been filed to the said application as well as to the application filed under Order 47 Rules 1 and 2 of the Code of Civil Procedure.

4. Learned counsel appearing on behalf of the non-applicant/ Punjabi University submits that no tangible grounds have been made out in the application for condonation of delay and prays for the dismissal of the same.

5. I have heard the counsel for the parties and have perused the application so filed. The pleadings of the applicant-petitioner, are that he was made aware of the judgment only when the University did not allow him to mark his attendance, has not been controverted. There is no specific denial that the petitioner herein had suffered major injury in an accident which resulted in him being physically challenged. Therefore, in view of the above averments made, this court is inclined to condone the delay in filing of the review application.

6. The delay condoned.

Review Application No. 354 Of 2017
in CWP 5979 Of 2014.

1. A review application has been preferred seeking to review/recall judgment dated 06.04.2017 passed in Civil Writ Petition No. 5979 of 2014 by which order the writ petition stood dismissed.

2. The instant writ petition had initially been filed seeking issuance of a writ order or direction, especially in the nature of Certiorari to quash order dated 06.03.2014, by which the University had decided to relieve the petitioner from service after 31.03.2014. It was contended that the petitioner was appointed as Junior Engineer (Civil) on ad hoc basis w.e.f. 12.03.2010 and was aggrieved by the order impugned where a decision had been taken to relieve him on expiry of his contract period on the joining of a regularly selected candidate. It was contended that the posts of Junior Engineers (Civil) were still lying vacant and also persons recruited on ad hoc basis, subsequent to the petitioner in the year 2012, are being retained without following the principle of 'last come first go'.

3. The writ petition was contested by counsel for the petitioner as well as the University, and after arguments had been addressed the writ petition was dismissed, holding that the appointment of the petitioner was on ad hoc basis till such time as a regularly selected candidate was appointed and, therefore, there would be no infirmity in the order relieving him from his services. The argument raised by the counsel for the petitioner that certain persons were adjusted on ad hoc basis against the vacancies and, therefore, the petitioner, who had been working prior in time, should also be retained and his services regularised was found not sustainable. It was held that *“that services of these ad hoc Junior Engineers are being continued as*

per the orders of the Hon'ble High Court. Moreover, no orders could be passed by this court on the basis of 'last come, first go', as there is nothing on the record to establish when these persons were appointed and the terms of their appointment. In any case, no orders could be passed in their absence, since they are not parties before this court. Even otherwise, the categorical stand of the respondents that no vacancies exist, has not been controverted."

4. Learned counsel for the applicant argues that during the pendency of the writ petition, the University had issued certain orders on 15.12.2016, by which order services of Junior engineers (ad hoc) were being designated as Non-Project Work Charge Engineers w.e.f. 01.04.2012. The name of the petitioner was reflected in the said office order and on the next date itself i.e 16.12.2016 an office order was issued in which the University had decided to regularise the services of Sh. Sandeep Sharma (the writ petitioner) as Non-Project Work Charge Junior Engineer (Civil) on completion of 5 years of service w.e.f. 01.04.2012. In view of the office order dated 15.12.2017 by which he had been designated as Non-Project Work Charge Engineer, the petitioner had furnished an affidavit to the University that he would take back his writ petition for regularization. In this background, it is urged that the order dated 06.04.2017 passed in the writ petition be recalled and the writ petition dismissed as having been rendered infructuous.

5. The review application is contested. Mr. Ajaivir Singh, learned counsel appearing on behalf of the University, vehemently contends that

there is no error apparent on the face of the record in order for the petitioner to invoke Order 47 Rules 1 & 2 of the Code of Civil Procedure read with Article 226 of the Constitution. It is contended that the writ petition has been rightly dismissed, holding that the services of the petitioner could not be regularised since he had been appointed on contract basis and it had been decided to relieve him of his services, to fill the post by regularly appointed candidates. It is also contended that the letter dated 16.12.2016 which had allowed regularisation to the petitioner on completion of 5 years service w.e.f. 01.04.2012 specifically mentioned that services shall be regularized only on completion of 5 years . *“However it is important to submit that the petitioner did not complete 5 years of work charge service on 31st March, 2017 since he availed leave without pay of 25 days and thus **this time period for completion of 5 years of work charge service was extended by 25 days during which the matter was decided by this Hon’ble court on 06.04.2017.**”* (As taken from the reply filed and emphasis supplied).

6. I have heard the learned counsel for the parties and have also gone through the pleadings and the documents attached with the review application.

7. The question that arises for consideration is, whether the review application should be dismissed in the light of the fact that the petitioner has not been able to point out any error in the judgement from the face of the record?

8. It is true that a review petition is maintainable only if it can be pointed out that there is an error or mistake apparent in the judgement on

the face of the record. Mistake apparent on record, means that the mistake is self-evident and stares on the face of it. The law regarding review is well-settled in judgements rendered in **N. Anantha Reddy vs. Anshu Kathuria and others (2013) 15 SCC 534; S Bagirathi Ammal vs. Palani Roman Catholic Mission (2009) 10 Supreme Court Cases 464; and Sasi (Dead) through Legal Representatives Versus Aravindakshan Nair and other (2017) 4 SCC 692.**

9. In **State of W.B. v. Kamal Sengupta, (2008) 8 SCC 612**, the Supreme Court considered the divergence of opinion among the High Courts on the question whether the subsequent contra judgment by the same or a superior court on a point of law can be treated as an error apparent on the face of the record for the purpose of review of an earlier judgment. While dealing with this issue it was also held as under :

“ 21. At this stage it is apposite to observe that where a review is sought on the ground of discovery of new matter or evidence, such matter or evidence must be relevant and must be of such a character that if the same had been produced, it might have altered the judgment. In other words, mere discovery of new or important matter or evidence is not sufficient ground for review ex debito justitiae. Not only this, the party seeking review has also to show that such additional matter or evidence was not within its knowledge and even after the exercise of due diligence, the same could not be produced before the court earlier.”

Placing reliance on the aforesaid, judgement dated 6.4.2017 is being reviewed.

10. If it had been brought to the notice of the court that the University had already taken a decision to regularise the services of the petitioner herein, in terms of the office order dated 16.12.2016, this court would **not** have dismissed the writ petition. The court would have permitted the petitioner to withdraw the writ petition in terms of the order dated 16.12.2016 and the affidavit filed. The argument advanced that the decision of the University to regularise the services of the petitioner could not be brought to the notice of the court at the time the writ was argued, as the petitioner had suffered an accident and had not contacted his lawyer, seems to be more than plausible. The fact that he had suffered an accident has not been controverted by the respondent University, either in its reply or in its arguments. After filing of the reply in the writ petition, the fact that the University had taken a decision to designate the petitioner as Non-Project Work Charge Junior Engineer w.e.f. 01.04.2012 and regularise the services of the petitioner on completion of 5 years of service, should have been brought to the notice of this court by the University itself. It should have also been brought to the notice of this court that the petitioner had already filed an affidavit that he would withdraw the writ petition from this court. It is expected of the University to have acted fairly, which has not been done in the instant case, since the record is with them. In fact, a reading of the reply would reflect that the services could not be regularised as on 31.3.2017, as he had availed of leave without pay for 25 days and his time

period for completion of 5 years of work charge service ***was extended by 25 days***. In case the writ had been taken up a month later the services of the petitioner stood regularised. It is only that the writ petition got decided in the meantime on 06.04.2017, that his services are sought to be dispensed with.

11. In the background of above noted facts, this is a fit case for this court to exercise power of review of the judgement dated 06.04.2017 rendered in Civil Writ Petition 5979 of 2014, dismissing the writ petition. Ordered accordingly.

12. After re-calling and reviewing the judgement dated 06.04.2017 in Civil Writ Petition No. 5979 of 2014 and taking note of the subsequent events as placed on the record after filing of the writ petition and the written statement the petitioner herein is permitted to withdraw his writ petition in terms of order dated 15.12.2016 and 16.12.2016 and the affidavit filed.

13. Writ petition stands disposed of in the terms as mentioned above.

December 13, 2017

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**(JAISHREE THAKUR)
JUDGE**

Whether speaking/reasoned

Yes

Whether reportable

No