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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ LPA 509/2013

WINNIE SAMPSON

.....Appellant

Through: Mr. M.C. Dhingra, Advocate.

Versus

THE LT. GOVERNOR OF DELHI & ORS.

....Respondents

Through: Ms. Avnish Ahlawat, Advocate for R-4
and R-5.

CORAM:

HON'BLE MS. JUSTICE HIMA KOHLI

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

ORDER

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02.05.2017

Rev. Pet. No. 168/2017 (by the petitioner for seeking review of the order dated 07.03.2017)

1. This Review Petition has been filed by the appellant seeking review of the order dated 07.03.2017, passed in LPA No. 509/2013. The appeal was dismissed by holding as under:-

"13.The record shows that the appellant had requested the respondent to sanction her a period of four years for obtaining the academic qualification i.e(BA & B.Ed.). At this juncture, we are of considered opinion that when the appellant was asked to complete the requisite two years diploma in N.T.T within a period of 2 years w.e.f 1.07.1995 she should have started the course with immediate effect that too in the training required of her to keep the post secured. Additionally, it is pertinent to state that the

appellant never challenged this Memorandum of September, 1995.

14. From perusal of the record it appears that the appellant was called upon to explain her illegal and unauthorized absence from duties from 20.09.1993, however owing to her non explanation and resumption to the duties her services was abandoned vide letter dated 24.12.1993.

15. Moreover, we find that in order to expect quality work from students, asking the appellant to pursue the diploma of two years would solely be for the welfare of the children and thus we are in consonance with the view taken by the learned Single Judge that there was no gross illegality in requiring the appellant to obtain two years NTT diploma.

16. There is no justifiable reason to interfere with the finding of the Learned Single Judge. Resultantly, the appeal being without any merit is dismissed. "

2. The appellant is seeking review of the order dated 07.03.2017, on the grounds that the core issue involved in the Appeal was not decided as the Assistant Teachers (Nursery) Recruitment Rules came into effect for the first time in the year 2011, with a prospective effect whereas, she was terminated from service in the year 1997; that no such qualification of possessing a two year Diploma was prevalent at the time she was appointed as an Assistant Teacher in the year 1987; and that no such Recruitment Rules existing in the year 1987, were placed on record by the respondents despite various orders of the Court.

3. To deal with the submissions made by the appellant, it is relevant to peruse the order dated 14.09.2016, passed in LPA 509/2013, which

reads as under:-

"The Government of NCT will file an affidavit putting on record the minimum eligibility requirement prescribed by the Affiliating Board for nursery teachers in the year 1987 and in case the Affiliating Board had not prescribed any minimum eligibility requirements, qualification, prescribed by the Appropriate Authority, as mentioned in Sub-Section (e) of Section 2 of the Delhi School Education Act, 1973. The said affidavit will be filed by the Government of NCT of Delhi within a period of 4 weeks. If required and necessary, the Govt. of NCT of Delhi will get in touch with the schools which were in operation and were having nursery classes in the year 1987, to get a copy of the applicable eligibility requirements."

4. A bare perusal of the above said order shows that the respondents were directed to file a specific affidavit with regard to the minimum eligibility requirement prescribed by the Affiliating Board for nursery teachers in the year 1987. Thereafter, pursuant to the directions of the Court issued vide order dated 14.09.2016, the respondents No. 1 to 3 had filed an affidavit placing on record, the Recruitment Rules to the post of Assistant Teacher (Nursery), issued vide Notification dated 25.09.1976. The Notification dated 25.09.1976 prescribed the essential and other qualifications for the said post as under:-

"Essential:

(1) Higher Secondary School Certificate or equivalent.

(ii) Nursery Teachers Training Certificate from a recognised Institution or equivalent."

5. It is evident that the Nursery Teachers Training Course which is for a period of two years, was prevalent since the year 1976 and therefore, would also apply to the case of the appellant, who was appointed as an Assistant Teacher on 29.04.1987 and was terminated from service on 01.07.1997.

6. Admittedly, in the present case, the appellant had only completed a one year Diploma course and that too in "Child Education" and had failed to obtain a two year Diploma course in "Nursery Teachers Training", being the requisite qualification, as directed by the School authorities. It is the Memorandum of September, 1995 by virtue of which, the School authorities had directed the appellant to obtain the two year Diploma course in "Nursery Teachers Training" within two years. It is also relevant to note that the validity of the said Memorandum of September, 1995 by which the appellant was aggrieved, was never challenged by her before the Court.

7. Moreover, the scope of a review application is fairly limited. We cannot re-hear the appeal that was dismissed on merits while, adjudicating all the issues involved therein. A review application cannot be treated as "an appeal in disguise". In the case of *Thungabhadra Industries Ltd. vs. Govt. of A.P.* reported as *AIR 1964 SC 1372*, the

scope of a review petition was delineated by the Supreme Court in the following words:-

“11. 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.”

8. In the case of ***Parsion Devi vs. Sumitri Devi*** reported as (1997) 8 SCC 715, the Apex Court had held as follows:-

“9. 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. 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 review under Order 47 Rule 1 CPC. In exercise of the jurisdiction under Order 47 Rule 1 CPC it is not permissible for an erroneous decision to be “reheard and corrected”. A review petition, it must be remembered has a limited purpose and cannot be allowed to be “an appeal in disguise.”

9. We are, therefore, of the view that none of the circumstances as contemplated under Order XLIV Rule 1 of the Civil Procedure Code have arisen in the present case, nor do the grounds raised in the review application entitle the appellant for a review. If the appellant is aggrieved by the order dated 07.03.2017, she is at the liberty to seek appropriate recourse in accordance with law.

10. Accordingly, in the light of the above, the review application is dismissed.

HIMA KOHLI, J

SANGITA DHINGRA SEHGAL, J

MAY 02, 2017
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