

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Review No.107 of 2018

IN

LPA 177 of 2012

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1. Tuntun Kumar Singh son of Sri Kameshwar Singh resident of village - Sikti Bhikham, Via - Sadhawara, P.S. - Mashrak, District - Saran.
 2. Anoj Kumar Yadav son of Sri Manager Prasad Yadav resident of village - Muslimpur, Post Baniyapur, District - Saran.
 3. Ankur Kumar son of Sri Bhavwan Sah resident of village - Baniyapur Tola Parsa, Post - Baniyapur, District - Saran.
 4. Chandrashekhar Kumar Singh son of Sri Kamla Prasad Singh resident of village - Chintasanganj, Post - Rahampur, District - Saran.
 5. Dhananjay Kumar Singh son of Sri Bhukhnandan Singh resident of village - Dharampura, post - Manjhi, District Saran.
 6. Abhay Kumar son of Sri Dudhnath Singh resident of village - Bisentola, Doriganj, District Saran.
 7. Prabhav Kumar son of Sri Mritunjay Singh resident of village - Daftarpur, Doriganj, District Saran.
 8. Abhishek Kumar son of Sri Akshay Singh resident of village and post - Majhanura, District - Saran.
 9. Manoj Kumar Singh son of Late Nand Kishore Singh resident of village - Ramdanchak, P.O. - Dighwara, District - Saran.
 10. Mukesh Kumar Singh son of Sri Rajendra Singh resident of village - Chapiyan, P.O. - Baniyapur, District - Saran.
 11. Shashikant Singh son of Sri Arvind Singh resident of village and P.O. - Dumari Add Doriganj, District - Saran.
 12. Mukesh Kumar Singh son of Sri Paras Nath Singh resident of village - Badheya, Post - Chhitrawalia Ekma, District - Saran.
 13. Sanjay Kumar Prasad son of Sri Mandali Prasad resident of village - Sadha, Chapra, District Saran.
 14. Pappu Kumar Bharti son of Sri Ramdas Bharti resident of village and Post - Sakari Bharti Tola, P.O. - Jalapur, District - Saran.
 15. Subodh Kumar Singh son of Sri Visheshwar Singh resident of village and Post - Parauna, District - Saran.
 16. Prem Prakash son of Sri Laxman Prasad resident of village - Ramnagar Chhawani, Bhagwan Bazar, District - Saran.
 17. Bhanu Prakash son of Sri Dalan Prasad Yadav resident of Mohalla - Ramnagar Chhawani, P.O. - Bhagwan Bazar, District - Saran.
 18. Shailesh Kumar son of Sri Laxman Prasad resident of Mohalla - Ramnagar Chhawani, P.O. - Bhagwan Bazar, District - Saran.
 19. Shailendra Kumar Singh son of Sri Mukhram Singh resident of village - Maripur Kala, P.S. - Manjhi, District - Saran.
 20. Nand Kishor Singh son of Sri Chintamani Singh resident of village - Ghani Chapra, P.O. Manjhi, District - Saran.
 21. Rajesh Kumar Singh son of Sri Brahma Singh resident of village - Majhbaliya, P.O. Majlispur, P.O. - Jalapur, District - Saran.
 22. Surya Prakash Singh son of Sri Birendra Kumar resident of village - Ghani Chapra, P.S. - Manjhi, District - Saran.
 23. Awadh Kishore Singh son of Sri Jagnarayan Singh resident of village and post - Soniya, P.S. - Daudnagar, District - Saran.
 24. Shailesh Kumar Singh son of Sri Baidhnath Singh resident of village - Pilau,



- P.S. - Daudpur, District - Saran.
25. Kundan Kumar Singh son of Sri Rajnarayan Singh resident of village - Ramkaula, P.O. Kamta, P.S. - Baniyapur, District - Saran.
26. Mithilesh Kumar Singh son of Sri Baidhnath Singh resident of village - Maripur Kala, District - Saran.
27. Vinesh Kumar Singh son of Sri Udayshankar Singh resident of village - Mukhanpur, District - Saran.
28. Ranjeet Kumar Singh son of Sri Visheshwar Prasad Singh resident of village and P.O. Katsa, District - Saran.
29. Amit Kumar Singh son of Sri Nand Prakash Singh resident of village - Rampatti, P.S. - Manjhi District - Saran.
30. Niranjan Kumar Srivastava son of Sri Chandrika Prasad Srivastava resident of village - Harkapkari Satjora, District - Saran.

.... Petitioner/s

Versus

1. The State of Bihar.
2. The Agriculture Produce Commissioner, Department of Agriculture, Government of Bihar, Patna.
3. The Additional Secretary, Department of Agriculture, Government of Bihar, Patna.
4. The Joint Agriculture Secretary, Saran Division, Chapra.
5. The District Agriculture Officer, Saran, Chapra.
6. The District Agriculture Officer-cum-Member Secretary, Selection Committee, Saran, Chapra.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Nawal Kishor Singh

For the Respondent/s : Mr. Sarvesh Kumar Singh - AAG-13

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
and
HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH)

Date: 25-07-2018

This application under Order 47 Rule 1 of the Civil Procedure Code has been filed by the petitioners for review of the order dated 31.07.2013 passed by this Court in LPA No. 177 of 2012 by which the appeal under Clause 10 of the Letters Patent preferred by the State of Bihar against the order dated 25.08.2011 passed by the



learned Single Judge in CWJC No. 3178 of 2011 was allowed and the order passed by the learned Single Judge was set aside and consequently the writ petition was dismissed.

2. The review application is hopelessly barred by limitation of four years, seven months and sixteen days vide I.A. No. 4829 of 2018, the petitioners have prayed for condoning the delay caused in filing the review application.

3. We have heard the petitioners on merits as well as on the point of delay in filing the review application.

4. On the point of delay in filing the review application learned counsel for the petitioners submitted that the Letters Patent Appeal preferred by the State of Bihar was allowed by this Court on 31.07.2013. Being aggrieved, the petitioners and others preferred a special leave petition before the Supreme Court, which was dismissed on 27.01.2014. Thereafter, the petitioners gathered certain new facts, which could not be brought to the notice of the Court when the Letters Patent Appeal was filed. Since the posts of *Kisan Salahkar* were also not filled up, they filed a writ petition, vide CWJC No. 13962 of 2017 before this Court, which was disposed of on 13.02.2018 giving liberty to the petitioners for filing review application for review of the order dated 31.07.2013 passed in LPA No. 177 of 2012. Since there are large number of petitioners, some time was consumed in consultation



and co-ordination with all the petitioners and certain time was also consumed in procedural paraphernalia like consultation with the lawyer and taking legal opinion. In the light of the aforesaid submissions, it has been contended that the delay of four years, seven months and sixteen days caused in filling the review application by the petitioners is neither intentional nor deliberate. It is urged that if the delay caused in filing the review application is not condoned, the petitioners would suffer irreparable injury, which cannot be compensated in other terms.

5. On merits, learned counsel for the petitioners submitted that the Division Bench failed to appreciate that if the condition of 45 days training in continuation or 45 days composite training was not prescribed in the advertisement then it could not be said subsequently after the advertisement that a composite training of 45 days was required in law. He pleaded that the Division Bench also failed to appreciate that if the composite training of 45 days or training of 45 days in continuation was not conducted then it cannot be said that the training was not complete. According to him, the Division Bench ought to have appreciated that the petitioners were given training firstly for 30 days and then after advertisement for 15 days, which also concluded before the last date of application i.e. before 15.05.2010 and, thus, there was no reason to cancel the appointment



of the petitioners to the post of *Kisan Salahkar* under the *Kisan Salahkar* Project. He urged that the posts occupied by the petitioners are still vacant and this fact could be gathered by the petitioners only after disposal of the Letters Patent Appeal.

6. On the other hand, learned counsel for the State submitted that the application filed by the petitioners lacks merit both on the ground of limitation as well as merit. He contended that no justifiable cause has been shown by the petitioners for condoning the inordinate delay in filing the review application. He argued that the grounds on which the review of the order passed in the Letters Patent Appeal has been sought for are beyond the principles enunciated under Order 47 Rule 1 of the CPC. The submission advanced by the learned counsel for the petitioners are mainly on the question of the fact. He urged that no mistake or error apparent on the face of the record has been shown by the petitioners and thus, the instant application is fit to be rejected on merits also

7. We have heard learned counsel for the parties and carefully perused the record.

8. The facts of the case, in brief, are that on 10th April 2010 the State Government had published an advertisement calling upon eligible candidates for selection and appointment to the post of *Kisan Salahkar* under the *Kisan Salahkar* Project sanctioned by the State



Government. According to the terms and conditions mentioned in the said advertisement, the candidates were required to give undertaking to be engaged full time in farming. The graduates in Agricultural Science and the candidates possessing Intermediate Science in Agriculture were given preference. In absence of such candidates, farmers possessing certificate of Intermediate Science and 45 days training of *Kisan Salahkar* from Rajendra Agriculture University or from the institutions under the Rajendra Agriculture University were eligible to apply for appointment of *Kisan Salahkar*. The application form also contained a statement to be made by every candidate to the effect that he has taken 45 days training from the Agricultural University or Agricultural Science Centers.

9. Pursuant to the said advertisement, the petitioners had applied for appointment as *Kisan Salahkar*. They produced certificate of 30 days training taken by them in 2009 and 15 days training taken by them in 2010. On the basis of the said qualification, they were selected and empanelled in the merit list. However, on receipt of certain complaints their credentials were re-examined. The Agricultural Production Commissioner was of the view that two separate training one of 30 days and another of 15 days taken by the petitioners do not fulfill the requirement of 45 days training specified in the advertisement. Pursuant to the said opinion, the selection of the



petitioners was cancelled under order dated 09th January 2011 made by the District Agriculture Officer, Saran. The said order was challenged by the petitioners before this Court in CWJC No. 3178 of 2011.

10. The learned Single Judge allowed the writ petition taking a view that there being no specification in the advertisement for one composite training for 45 days, the eligibility/requirement could not have been improved later on after the selections were made. The learned Single Judge, therefore, directed the State Government to allow the petitioners to join the duty.

11. Being aggrieved by the order passed by the learned Single Judge, an intra-court appeal vide LPA No. 177 of 2012 was filed by the State. After hearing the parties, this Court, vide order dated 31.07.2013, allowed the appeal and set aside the order dated 25.07.2011 made by the learned Single Judge in CWJC No. 3178 of 2011 and dismissed the aforesaid writ petition. The operative part of the order passed by this Court in the Letters Patent Appeal reads as under:-

“We are afraid, we are unable to agree with the learned Single Judge. The advertisement specifically provided for 45 days training that should necessarily mean a 45 days’ composite training. There cannot be split training as has been shown by the writ petitioners.



Besides, the timing and the period of the second part of training makes us suspicious. Indisputably, each of the writ petitioners had undergone 30 days' training in the year 2009. The additional 15 days' training appears to have been organized by the Rajendra Agriculture University for the period from 29th April 2010 to 13th May 2010. The certificate to that effect has been issued by the Programme Coordinator. Under the advertisement, the first date for making application was 20th April 2010 and the last date for making application was 15th May 2010.

Admittedly, on the date of advertisement, none of the writ petitioners was qualified for appointment as 'Kisan Salahkar' as none of them had undergone 45 days' training. The additional 15 days' training seems to have been organized to suit the requirement under the advertisement. Thus, the writ petitioners were just in time to apply pursuant to the advertisement dated 10th April 2010. The coincidence is not palatable to us. We have our own doubts about the aforesaid 15 days' training. However, in absence of any material on record, we would not hold that the said training was not genuine or the certificates issued are not genuine.

Further, as recorded hereinabove, the appointments were to be made for the year 2010-11. The appointment as 'Kisan Salahkar' was not meant to be the employment under the State Government. It was supposed to be a service; each such 'Kishan Salahkar'



was offered a monthly honorarium of Rs. 2,500/-.

Neither the selection conferred a right to appointment upon the writ petitioners; nor did they have the right to continue to serve as 'Kisan Salahkar' after the year 2010-11. It at all the writ petitioners had any right to appointment, that too stood extinguished by efflux of time. The writ petitioners cannot now claim a right to appointment as 'Kisan Salahkar' pursuant to the advertisement dated 10th April 2010 and their selection on the basis of the split training. We reiterate that 45 days' training referred to in the advertisement must be 45 days' composite training. The split training received by the writ petitioners, one for 30 days in 2009 and another for 15 days in 2010 would not answer the requirement under the advertisement. The writ petitioners were, therefore, rightly held to be ineligible for honorary appointment as 'Kisan Salahkar'.

In our opinion, the learned Single Judge has erred in holding that the writ petitioners had a right to employment pursuant to the advertisement dated 10th April 2010 and the ensuing recruitment.

For the aforesaid reasons, the Appeal is allowed. The impugned order 25th August 2011 made by the learned Single judge in CWJC No. 3178 of 2011 is set aside. CWJC No. 3178 of 2011 is dismissed.

Interlocutory Applications stand disposed of."

12. While arguing this case on merits, learned counsel for the petitioners has tried to persuade us that there is error apparent on the



face of record and since the post, in question, is still vacant, it is discovery of a new fact.

13. However, after hearing the parties and, upon examination of the record, we find that the petitioners by rearguing the case on merit are trying to establish that the judgment in the Letters Patent Appeal is based on incorrect appreciation of facts and law.

14. It is well settled position in law that a review proceeding cannot be equated with the original hearing of the case. Review of an earlier order cannot be done unless the Court is satisfied that the material error, manifest on the face of the order, resulted in miscarriage of justice.

15. A review petition is ordinarily restricted to the confines of the principles enunciated under Order 47 Rule 1 of the CPC. Order 47 Rule 1 of the CPC provides for a review only on three grounds, namely,

- (i) Discovery of a new evidence which after exercise of due diligence was not in the knowledge of the petitioner or could not be produced by him before the court when the order was being passed;
- (ii) Some mistake or error apparent on the face of the record;
and
- (iii) Any other sufficient reason.



16. In the present case, nothing has been brought to the notice of this Court by the petitioners that they discovered a new and important matter or evidence, after exercise of due diligence, which was not within their knowledge or could not be produced by them at the time when the intra-court appeal was heard. The petitioners have also not shown anything to us, which would establish that the order under review was made on account of some mistake or error apparent on the face of the record. The petitioners have also not been able to show any other sufficient reason justifying review of the order. All the facts urged before us were considered by this Court while passing the order in the Letters Patent Appeal. Apparently, the petitioners intend for a re-hearing of the matter in the garb of review and that too after dismissal of special leave petition by the Supreme Court. The fact that on earlier occasion the Court passed a wrong judgment would not mean that it was an error apparent on this face of the record.

17. In exercise of power of review, the Court cannot substitute its view on re-appreciation of facts and law.

18. In the light of settled legal position, having gone through the present review application, we are of the view that the same is nothing, but an appeal in disguise.

19. In view of the above discussion, the present review application is dismissed on merits as well as on the ground of



inordinate and unexplained delay caused in filing the application.

(Ashwani Kumar Singh, J)

(Chakradhari Sharan Singh, J)

Pradeep/Sneha

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	04-08-2018
Transmission Date	

