

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Civil Review No.4 of 2014
In
Civil Writ Jurisdiction Case No. 18467 of 2012**

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1. The State of Bihar through the Principal Secretary, Education Department, Government of Bihar, Patna.
 2. The Director, Primary and Adult Education, Government of Bihar, Patna.
 3. The District Programme Officer, Establishment, Lakhisarai.
 4. The District Education Officer, Lakhisarai.

.... Petitioners

Versus

Subodh Kumar Sharma, aged about 40 Years, S/O Late Hari Kishore Sharma, resident of Village + P.O. Walipur, P.S. Pipariya, District Lakhisarai, at present posted as Assistant Teacher in Girls Primary School, Balgudar, P.S. & District Lakhisarai.

.... Respondents

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Appearance :

For the Petitioners : Mr. Zaki Haider, Advocate.

For the Respondent : Mr.

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CORAM: HONOURABLE MR. JUSTICE SUDHIR SINGH
ORAL ORDER

5 04-04-2018 This application has been filed by the State of Bihar, seeking review of the order dated 06.08.2013, passed in C.W.J.C. No. 18467 of 2012, by which the Court while disposing of the writ petition directed the District Programme Officer (Establishment), Lakhisarai, to issue a revised order dating back grant of Matric Trained Pay Scale to the petitioner (respondent herein) from the month of June, 2011 instead of 16.01.2012 with a further direction as to complete the said exercise within a period of three months from the date of receipt of the order and also to make payment of



any consequential benefit which might have arisen to the petitioner, in the next one month thenceforth.

This Court would like to take note of the facts which promoted the Court to pass the order dated 06.08.2013, sought to be reviewed herein. In the writ proceeding, a counter affidavit was filed on behalf of the District Programme Officer (Establishment), Lakhisarai, contending therein in paragraph no. 6 that the writ petitioner obtained Diploma in Primary Education (DPE) from Indira Gandhi National Open University (hereinafter referred to as IGNOU), in the year 2011, which was equivalent to the Matric Trained Teacher Certificate. In paragraph no.7 of the said counter affidavit, it was further contended that in light of the Government Resolution No.790 dated 29.07.2011, the untrained teachers were entitled to get Matric Trained Pay Scale w.e.f. the date of appearing in the training examination, subject to they might have qualified the examination in the second attempt. The writ petitioner appeared in the examination after taking admission in D.P.E. Course in IGNOU in the year 2007, and qualified the same in the year 2011 in second attempt, and in that view of the matter, Matric Trained Pay Scale was granted to him vide Memo No. 94 dated 16.01.2012.



Considering the aforesaid contention of the respondent, this Court while passing the order sought for review, held thus:

“In the considered opinion of this court if the petitioner was required to pass training examination as a part of fulfillment of the terms and conditions of his appointment on compassionate ground he would be entitled for payment of his salary in the Matric Trained Pay Scale from the date he has acquired such qualification i.e. in the month of June, 2011 as mentioned in the certificate issued to the petitioner.”

The present application has been filed by the State of Bihar for review of the said order dated 06.08.2013, setting out a third case, which was neither the case of the writ petitioner nor the case of the respondent before the Court completely on a new ground that promotion in Matric Trained Pay Scale to the writ petitioner was wrong and was granted illegally by the then District Programme Officer (Establishment), Lakhisarai, as the petitioner had not completed two years basic training course from the recognized Institution rather he obtained such training certificate from IGNOU. Such plea of the Review Petition is based on a decision of the Director (Primary Education), Department of Education, Government of Bihar, contained in Memo No. 900 dated 26.06.2013 to the effect that the training certificate granted



by the IGNOU is not a valid certificate for grant of promotion in Matric Trained Pay-Scale as the National Council of Technical Education (NCTE) has not granted recognition to the IGNOU for imparting Basic Teachers Training Course. The letter of the Director, Primary Education has already been brought on record vide Annexure-1 to the review application which being issued earlier to the order under review dated 06.08.2013. Thus, in sum and substance the main ground as being urged for review of the order is that the training certificate issued to the petitioner by the IGNOU is not a valid certificate for grant of promotion in the Matric Trained Pay-Scale and the promotion in Matric Trained Pay-Scale was granted to the petitioner with the condition that if in future any adverse order/direction of the State Government would be received in respect of the validity of such 'training course' in that case the order of promotion shall be deemed vacated and the payment made towards Matric Trained Pay Scale shall be recovered.

A supplementary counter affidavit has also been filed by the review petitioner having contention that for providing two years teacher training to the untrained teachers, a memorandum of understanding (MOU) was made between the State Government and IGNOU, accordingly, untrained teachers were admitted in the



said course i.e. Diploma in Primary Education (DPE). A three member review committee of the NCTE found certain shortcomings in the course of D.P.E. conducted by the IGNOU in the State of Bihar and accordingly, advised to revise the modules, and further advised in respect of those teachers who have already completed 2 years D.P.E. Course, shall undergo and complete six months enrichment course, thereafter only they shall be deemed to be trained by virtue of in-service training course. The said decision was communicated to the all concerned vide Letter No. 8511 dated 16.12.2013, issued by the State Project Director, Bihar Education Project. Thus, it has been submitted that mere completion of two years in-serving training course i.e. D.P.E. from the IGNOU does not make the petitioner entitled for grant of Matric Trained Pay Scale unless he does undergo and successfully complete six months enrichment course, therefore, benefit of trained pay scale granted to the petitioner was illegal and the order dated 06.08.2013 requires to be reviewed.

In my view, the provisions of the Code of Civil Procedure do not mutatis mutandis apply to writ proceedings under Article 226 of the Constitution of India, at the same time, the general principles of Code of Civil Procedure governing civil proceedings are relevant for exercising of writ jurisdiction by this



Court. Power of review is exception the normal principle of law that once a judgment is pronounced or order is made, the Court becomes functus officio and has no jurisdiction to alter it as engrafted under Rule 3 of Order XX of the Code of Civil Procedure. A review of a judgment is called for only where a glaring omission, patent mistake or like grave error has crept in earlier by judicial fallibility.

It is not in res-integra that power of review should not be equated with appellate power which enables an appellate court to correct all errors committed by the subordinate court. A review is not an appeal in disguise whereby an erroneous decision is reheard and corrected. It would be worth quoting the observation of Justice Pathak (as he then was) in the case of Northern India Caterers (India) Ltd. –VS- Lt. Governor of Delhi, reported in AIR 1980 SC 674:

“The normal principle is that a judgment pronounced by the court is final, and departure from that principle is justified only when circumstances of a substantial and compelling character make it necessary to do so..... whatever the nature of the proceeding, it is beyond dispute that a review proceeding cannot be equated with the original hearing of the case, and the finality of the judgment delivered by the court will not be



reconsidered except where a glaring omission of patent mistake or like grave error has crept in earlier by judicial fallibility.”

An application for review of the judgment may be made on any of the following grounds:-

- (i) Discovery by the applicant of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree or order was passed;
- (ii) On account of some mistake or error apparent on the face of the record;
- (iii) For any other sufficient reason which means sufficient reason analogous to those specified to in the provisions of order XLVII, Rule 1.

The Hon’ble Supreme Court in the case of SASI (DEAD) through Legal Representative -Vs- Aravindakshan Nair & Ors. reported in (2017) 4 SCC 692 held as under:-

“6. The grounds enumerated therein are specific. The principles of interference in exercise of review jurisdiction are well settled. The court passing the order is entitled to review the order, if any of the grounds specified in the aforesaid provisions are satisfied”.

7. In Thungabhadra Industries Ltd. –VS- State of A.P.,



the court while dealing with the scope of review had opined: (AIR p.1377, para 11)

“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 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 not be characterized 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.” (emphasis supplied).

8. In Parsion Devi –VS- Sumitri Devi, the court after referring to Thungabhadra Industries Ltd., Meera Bhanja v. Nirmala Kumari Choudhary and Aribam Tuleshwar Sharma v. Aribam Pishak Sharma, held thus: (Parsion Devi case, SCC, P 719, para 9).

“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 of review under Order 47 Rule 1 C.P.C. In exercise of the jurisdiction under Order 47 Rule 1 C.P.C. 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. The aforesaid authorities clearly spell out the nature, scope and ambit of power to be exercised. The error has to be self evident and is not to be found out by a process of reasoning. We have adverted to the aforesaid aspects only to highlight the nature of review proceedings.”

In the present case, the review has been sought for, on a ground which was never raised by the applicant (respondents therein) at the time of hearing of the writ petition. As the validity of two years in-service training course i.e. D.P.E. and its certificate, granted by the IGNOU was not the ‘matter in issue’ nor the ‘validity of promotion’ of the petitioner in the Matric Trained Pay-Scale. The ‘issue’ which appears to be decided vide order dated 06.08.2013 passed in CWJC No. 18467 of 2012, that



was limited to the date of grant of benefit of Matric Trained Pay-Scale to the petitioner, therefore by the said order the court directed the District Programme Officer (Establishment), Lakhisarai to issue a revised order dating back grant of Matric Trained Pay Scale to the petitioner from June 2011 instead of 16.01.2012.

In my considered opinion, the ground being taken as indicated above by the review petitioner is not an error or mistake apparent on the face of the record nor any discovery by the applicant of new and important matter or evidence, which after the exercise of due diligence, was not within his knowledge. Such plea as being taken by review applicant requires a fresh consideration which is not permissible under review jurisdiction, thus the order dated 06.08.2013 passed in CWJC No. 18467 of 2012 needs no review.

This review application is therefore, accordingly, dismissed.

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(Sudhir Singh, J)