

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Review No.484 of 2016

IN

Civil Writ Jurisdiction Case No. 16541 of 2009

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Ali Imam S/o Late Saiyal Abdul Waheed Resident Of Akbar House, Dariyapur
Road, Sabzibagh, P.S.- Pirbahore, Distt.- Patna

.... Petitioner- Petitioner

Versus

1. The Govt. of Bihar through the Commissioner Cum Secretary, Human Resources Development Department, Patna
2. The Director, Research and Training, Human Resources Development Department, Govt. of Bihar, Patna.
3. The Director, Administration-cum-Deputy Secretary, Human Resources Development, Department, Govt. of Bihar, Patna
4. The Commissioner cum-Secretary, Department of Finance, Govt. of Bihar, Patna
5. The Accountant General of Bihar, Patna
6. The Deputy Secretary ,Human Resources Development Department, Govt. of Bihar, Patna

.... Respondents- Opposite Parties

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Appearance :

For the Petitioner/s : Mr. Rajendra Prasad Singh, Sr. Advocaate
Mr. Rajeev Kumar Singh, APP
For the Respondent/s : Mr. Ashutosh Ranjan Pandey- AAG15

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT
Date: 25-01-2018

By the present application preferred under Article 226
of the Constitution of India, the petitioner seeks review of the
judgment dated 11.12.2015 passed by this Court in CWJC No.
16541 of 2009 by which the writ petition was dismissed finding no
merit in the claim of the petitioner.



2. The writ petition had been filed by the petitioner for quashing the letter dated 09.06.2009 issued by the Director Administration-cum-Deputy Secretary, Human Resources Development Department, Government of Bihar by which his claim for pension and other pensionary benefits had been rejected and for further consequential direction.

3. It would be pertinent to note here that being aggrieved by the order passed by the learned Single Judge in CWJC No. 16541 of 2009, the petitioner filed an *intra* court appeal before this Court vide LPA No. 123 of 2016, which was withdrawn on 06.09.2016 with liberty to file review application and also to take recourse to such provisions of law as may be permissible. Thereafter, the instant review application has been filed before this Court.

4. In course of argument, Mr. Rajendra Prasad Singh, learned Senior Advocate for the petitioner submitted that the learned Single Judge failed to appreciate that the petitioner was working on the post of Assistant Director (Training) from August, 1982 in Deepayatan, which though receiving funds from the State Government as well as the Central Government, was otherwise a voluntary institution. On 12.09.1992, an advertisement was published by the Human Resources Development Department,



Government of Bihar from eligible candidates for selection on the posts of Principals for District Institutes of Education and Training (for short 'DIET') in different districts in the pay-scale of Rs.3700-Rs.5000/- per month along with other allowances as per rules. The petitioner having all requisite qualification and eligibility criteria applied for the said post with all requisites documents. He was issued interview letter for participation in the interview and after interview vide Memo No. 186 dated 05.05.1993 issued by the Additional Secretary, Govt. of Bihar, Patna, he was selected for the post of Principal DIET, Bikram, Patna for three years. Thereafter, he joined on the post on 18.05.1993 and started working to the satisfaction of authorities concerned and payment was made regularly to him on monthly basis. Vide Letter No. 407 dated 07.09.1994, the Deepayatan terminated his lien and his service was also terminated, as he could not join within the specified period of lien with effect from the date of issuance of said letter dated 07.09.1994. He submitted that though the petitioner was initially appointed on the post of Principal of DIET for three years, but time to time extension of his service was given and finally he retired from service from the said post on 31.12.2017 after attaining the age of 60 years and at the time of retirement, his pay-scale was Rs.12000/- to Rs.16500/- with other allowances and he was getting



gross salary of Rs.34998/- per month. He submitted that after retirement from service, the petitioner filled up form for fixation of pension and other retirement benefits such as leave encashment, provident fund, compulsory group insurance and full pension with gratuity before authorities concerned, but no action was taken by the respondents and, thus, he was left with no option but to file CWJC No. 4332 of 2009 for a direction to the respondents to pay pension and other retiral benefits. In CWJC No. 4332 of 2009, a direction was given to respondent no. 3 to dispose of the representation filed by the petitioner by a reasoned order in accordance with law. He submitted that as the claim of the petitioner was rejected by respondent no. 3 vide order dated 09.06.2009, he filed CWJC No. 16541 of 2009 before this Court, but the same was also dismissed.

5. Mr. R. P. Singh, learned Senior Advocate submitted that the learned Single Judge failed to appreciate that the petitioner had become full-fledged employee of the Government. He also failed to appreciate that the case of the petitioner was not one of the deputation simplicitor, as in terms of appointment letter dated 05.05.1993, he was appointed to the said post for three years on deputation, but he was continued on the same post for more than 14 years by giving him extension from time to time. The effort of the



petitioner in the present review application is to show that the learned Single Judge erred in law in dismissing the writ petition.

6. Having heard learned Senior Advocate for the petitioner and perused the record, I find that the entire effort of the petitioner in the present review application is to reopen the case for fresh hearing and fresh decision on merits.

7. It is well settled that a review proceeding cannot be equated with the original hearing of the case. The petitioner is not entitled to seek review of a judgment merely on the basis of rehearing, as review of an earlier order cannot be made, unless the court is satisfied that an error or mistake apparent on the face of the order undermines its soundness or results in miscarriage of justice.

8. It is also well settled that review proceedings have to be strictly confined to the ambit and scope of Order 47 Rule I CPC. **In Thungabhadra Industries Ltd. vs. The Government of Andhra Pradesh [(1965) 5 SCR 174 at 186]** this Court opined:

“What, however, we are not 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.”

9. In **Satyanarayan Laxminarayan Hegde vs Millikarjun Bhavanappa [AIR 1960 SC 137]**, the Supreme Court observed :-

“17. ...An error which has to be established by a long drawn process of reasoning on points where there may conceivably be two opinions can hardly be said to be an error apparent on the face of the record. As the above discussion of the rival contentions show the alleged error in the present case is far from self evident and if it can be established, it has to be established by lengthy and complicated arguments. We do not think such an error can be cured by a writ of certiorari according to the rule governing the powers of the superior court to issue such a writ. ...”

10. In **Lily Thomas, Etc. Etc. vs Union Of India & Ors.**



[(2000) 6 SCC 224], the principle was reiterated by the Supreme Court with a caution that in exercise of power of review the court may correct the mistake but not to substitute a view. The mere possibility of two views on the same subject is not a ground for review.

11. In the light of the settled legal position, as discussed above, having gone through the present review application, I find that no error apparent on the face of record has been brought by the petitioner warranting review of the order dated 11.12.2015. A perusal of the review application would make it evident that the same is nothing but an appeal in disguise. Thus, I am of the opinion that in the application, under consideration, the petitioner has failed to establish that there was an error or mistake apparent on the face of record or there was such other material, which, if not taken into consideration would cause miscarriage of justice.

12. In view of above discussions, the present review application is dismissed.

(Ashwani Kumar Singh, J.)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	29.01.2018
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