

Versus

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| 1. The Union of India through the Secretary,
Ministry of Railways, New Delhi | | |
| 2. The General Manager, Eastern Central Railway,
Hazipur, Bihar | | |
| 3. The Divisional Railway Manager, Eastern Central
Railway, Dhanbad. | | |
| 4. The Senior Divisional Personnel Officer, Eastern
Central Railway, Hazipur, Bihar. | --- --- | Respondents |

For the Petitioner : Mr. Akshay Kumar Mahto, Advocate
Mr. Saibal Mitra, Advocate
For the Respondents : Mr. Abhishek Kumar Dubey, Advocate

2. The order dated 16th August, 2017 passed in W.P.(S) No. 1328 of 2016 of which review has been sought reads as under :

Applicant/writ petitioner is aggrieved by rejection of the claim for appointment of one Lalji Rajwar said to be his son by East Central Railways under LARSGESS Scheme (Liberalized Active Retirement Scheme for Guaranteed Employment for Safety Staff). Under the LARSGESS Scheme dated 13th October, 2010, an employee of Railways could seek voluntary retirement on completion of 20 years of qualifying service and being in the age group of 50-57 years. In lieu whereof, ward of such an employee between 18 to 30 years of age with proportionate relaxation of 3-5 years for OBC/SC/ST, was to be provided employment. The voluntary retirement offered by the applicant was accepted by virtue of retirement notice dated 24th September, 2012, whereunder he would cease to be in Railway service on 30th September, 2012. However, as per the applicant's case when his son Lalji Rajwar was not being appointed to a suitable post even after appearing in the written exam, he approached the learned Central Administrative Tribunal, Patna Bench at Ranchi in O.A. No. 051/00100/2014. Learned C.A.T was pleased to dispose of the O.A with a direction to the respondent no. 3, Senior Divisional Personnel Officer, Eastern Central Railway, Dhanbad to pass a reasoned and speaking order on his representation within a period of 3 months vide order dated 21st May, 2014. The representation of the petitioner has been rejected by order dated 20th January, 2015 (Annexure-6) on the ground that name of father of Sri Lalji Rajwar in the educational certificate (matriculation certificate) did not match with that of the employee Ganju Rajwar. The name of the

father as reflected in his matriculation certificate is Kashi Nath Rajwar. Matriculation certificate is enclosed to the counter affidavit of respondent-Railways as Annexure-D. Though the applicant was advised orally and through official letters for getting his son's educational certificates corrected in the name of father as Ganju Rajwar, despite ample opportunity and time he failed to respond to it. The educational certificate of Lalji Rajwar being totally different with that of service book, he could not be offered appointment in lieu of voluntary retirement of Sri Ganju Rajwar.

The applicant being aggrieved again approached Central Administrative Tribunal, Patna Bench, Ranchi in O.A. No.051/00176/2015 (R). Learned C.A.T has also found no reason to interfere in the decision of respondent while rejecting original application vide order impugned dated 15th September, 2015 (Annexure-9).

Learned counsel for the petitioner has relied upon Clause-8 of the Scheme (Annexure-1), as per which the act of voluntary retirement and appointment of the ward had to take place simultaneously. The candidate, Lalji Rajwar also faced written test for being considered for such appointment where no such lacuna was pointed out. The applicant has been made to voluntary retire without appointment of his son Lalji Rajwar in lieu thereof. The respondents have relegated from their Promise.

Counsel for the petitioner has relied upon other certificate such as that of Mukhiya adduced in support of his claim that the father's name of Lalji Rajwar is Ganju Rajwar.

We have considered the submission of learned counsel for the parties and gone through the relevant material on record including the impugned orders as well.

It is not in dispute that the candidate Lalji Rajwar has studied up to graduation. Matriculation certificate of Lalji Rajwar enclosed as Annexure-D shows his father's name as Kashi Nath Rajwar. The whole claim of the applicant, therefore, falls in the realm of disputed questions of fact. Refusal of appointment of Lalji Rajwar by the Respondent-Railways on such disputed questions of fact relating to the identity of father of the candidate, therefore, cannot be said to be suffering from any illegality or arbitrariness.

Counsel for Respondent-Railways has supported their stand reflected in the impugned order and also through the counter affidavit brought on record in the present petition.

Having rendered our anxious consideration to the plea raised by the applicant/writ petitioner, we are also not convinced that in state of such disputed identity of the father of the candidate, Lalji Rajwar, the Railways could be directed to issue appointment to the said person in lieu of the voluntary retirement of applicant, Ganju Rajwar. We, therefore, do not find any reason to interfere in the decision of the respondent railways and the order passed by learned C.A.T. Accordingly, the instant petition is dismissed."

3. Learned counsel for the petitioner has again sought to argue the case on merits while seeking a review of the order passed by the writ court. However, review is permissible on the grounds as are laid down in Order XLVII of the Code of Civil Procedure. The principles enshrined there are also followed in general even in writ proceedings. Re-argument on merits is not permissible in

review jurisdiction. Learned counsel for the petitioner has not been able to show any error apparent on the face of the record or that any new document or fact have come to the knowledge which could not be discovered earlier despite due diligence exercised by the applicant. The plea of the applicant for appointment of one Lalji Rajwar, said to be his son, under LARSGESS Scheme (Liberalized Active Retirement Scheme for Guaranteed Employment for Safety Staff) has been rejected by the respondent-Railways on the ground that the name of father of Sri Lalji Rajwar in the educational certificate (matriculation certificate) did not match with that of the employee Ganju Rajwar. The name of the father as reflected in his matriculation certificate is Kashi Nath Rajwar. Though the applicant was advised orally and through official letters for getting his son's educational certificate corrected in the name of father as Ganju Rajwar, despite ample opportunity and time, he failed to respond to it. The educational certificate of Lalji Rajwar being totally different with that of service book, he could not be offered appointment in lieu of voluntary retirement of Sri Ganju Rajwar. The learned C.A.T did not find any error in the order of rejection and dismissed the O.A. The writ court also held that in state of such disputed identity of the father of the candidate, Lalji Rajwar, the Railways could not be directed to issue appointment to the said person in lieu of the voluntary retirement of the applicant, Ganju Rajwar and accordingly refused to interfere in the impugned decision.

4. Learned counsel for the review petitioner, however, submits that the learned C.A.T. has foreclosed all options for the applicant or his son Lalji Rajwar in seeking correction in the father's name by making categorical observation at para-2 of the impugned order. The learned Tribunal has in fact held that only clerical and inadvertent mistakes can be corrected but whole father's name cannot be replaced or corrected, which is chronologically mentioned in the school admission registers. Learned counsel for the applicant submits that the applicant Ganju Rajwar was also known as Kashi Nath Rajwar. On account of the observations of the learned C.A.T, the applicant is precluded from seeking a declaratory relief also from the competent court of civil jurisdiction. We find substance in this submission of learned counsel for the review petitioner.

5. Learned counsel for the Railways has also not been able to dispute that the observations of the learned C.A.T. would completely foreclose any option for the aggrieved persons/applicant to seek a declaration from the competent court of civil jurisdiction.

6. In such circumstances, though we are not satisfied that any grounds of review have been made out on the part of the petitioner, but we feel that the observations made by the learned C.A.T at para-2 of the order dated 15th September, 2015 passed in O.A. No.051/00176/2015(R) should not come in the way of the applicant/petitioner herein in approaching the competent court of civil jurisdiction for appropriate declaration in that regard, if permissible in law.

7. With these observations, this review petition is disposed of.

(Aparesh Kumar Singh, J.)

(B.B. Mangalmurti, J.)