

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

(1) **RA-CR No.63-CII of 2018 in
COCP No.2241 of 2015**

Balwinder Singh **..Applicant-Petitioner**

Versus

Smt. Seema Brar and another **..Respondents**

(2) **RA-CR No.62-CII of 2018 in
COCP No.143 of 2016**

Satya Pal **..Applicant-Petitioner**

Versus

Smt. Ashima Brar and another **..Respondents**

(3) **RA-CR No.64-CII of 2018 in
COCP No.2664 of 2015**

Sunil Kumar **..Applicant-Petitioner**

Versus

Smt. Ashima Brar and another **..Respondents**

Date of decision: 28.11.2018

CORAM: HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present: Ms. Sangita Dhanda, Advocate
for the applicant-petitioner.

Mr. Deepak Sabherwal, Advocate
for the respondents.

Daya Chaudhary, J.

By this order of mine, aforesaid three review applications shall be disposed of as the same have been filed for recalling of order dated 19.02.2018. However, the facts are being extracted from RA-CR No.63-CII of 2018 in COCP No.2241 of 2015 titled as Balwinder Singh vs. Smt. Seema Brar and another.

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The present review application has been filed under Order 47 Rule 1 read with Section 152 of the Civil Procedure Code for recalling of order dated 19.02.2018 passed in COCP No.2241 of 2015.

As per case of the applicant-petitioner, the respondents had issued an advertisement in March 1992 for selection of Assistant Lineman. Pursuant thereto, the petitioner had applied in the general category. The petitioner is Saini by caste. At that point of time the inclusion of the said caste in the backward class of general category candidates was under reconsideration as is evident from letter dated 12.09.1991. The petitioner was selected and appointed. The selection process was challenged by the unsuccessful candidates and was quashed vide judgment dated 29.11.1995. Consequently, fresh advertisement was issued in March 1996. The selected candidates were permitted to participate in the said selection process but their candidature was to be considered on the basis of their original applications. However, by then, Ahir/Saini caste was included in the category of backward classes vide notification dated 07.06.1995. The petitioner obtained his caste certificate and appeared in the interview with the said certificate. Since he was selected candidate, he did not fill up fresh application form and in the application form submitted in the year 1992, he was shown as general category candidate. The result was declared in the year 1997 and the petitioner was declared not selected. The petitioner was considered in the general category and not in the BC category, despite his caste certificate, having been produced at the time of the interview. In the result so declared, candidates belonging to the reserved category who

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secured higher marks were appointed against the reserved category seats and this action was challenged before this Court. The writ petition was allowed and it was directed that the candidates belonging to reserved category but higher in merit should be adjusted against general category seats. Vide letter dated 07.01.2014, backward class candidates who had appeared in the selection process of the year 1992 were invited to apply. The claim of the petitioner was rejected on the ground that he had applied as general category candidate and he was not entitled to be considered under the backward class category. This according to learned counsel for the petitioner is illegal as the petitioner was wrongly considered in General Category whereas his caste was subsequently declared as backward class vide notification dated 07.06.1995 (Anenxure P-9) and certificate was submitted at the time of interview.

Learned counsel for the applicant-petitioner submits that the contempt petition was dismissed on the ground that the applicant-petitioner did not produce his caste certificate in the year 2009 whereas he had already produced his caste certificate in the year 1997 at the time of interview. Learned counsel further submits that it was not required subsequently to submit the caste certificate again in the year 2009 as it was supplied at the time of interview. Learned counsel also submits that the category of the applicant-petitioner was declared as Backward vide notification issued in the year 1995, thereafter there was no occasion for him to apply again. The applicant-petitioner neither applied afresh nor changed his category as mentioned in the previous application form. The category of the applicant-

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petitioner was reflected in the attendance sheet for the interview and he appeared in the written test and interview without filling up the form in the year 1997 as per directions issued by this Court. The caste certificate of the applicant-petitioner was accepted for the first time in the interview and his category was mentioned as BC-B but he was wrongly considered in General Category and his candidature was wrongly rejected being in General Category. Learned counsel also submits that this fact was escaped from the notice of this Court whereas it was appended as Annexure P-12. At the end, learned counsel for the applicant-petitioner submits that order dated 19.02.2018 deserves to be modified/recalled in the interest of justice. Learned counsel for the applicant-petitioner has also relied upon judgments rendered by Hon'ble the Apex Court in ***Promotee Telecom Engineers Forum and others vs. D.S. Mathur, Secretary, Department of Telecommunications, 2008(11) SCC 579, Indian Charge Chrome Ltd. and another vs. Union of India and others, (2005) 4 Supreme Court Cases 67 and Gulam Abbas and others vs. Mulla Abdul Kadar (dead) through his executors, 1970(3) Supreme Court Cases 643.***

Learned counsel for the respondents has opposed the submissions made by learned counsel for the applicant-petitioner on the ground that no interference is required as contempt petition was dismissed by passing a detailed speaking order and by mentioning as to how the case of the applicant-petitioner was considered in General Category and not in BC-B Category. No caste certificate was submitted at the time of interview. Even he did not submit any representation in pursuance of Public Notice

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dated 29.05.2009. After considering the representations and verification of documents, the merit was published category wise. The case of the petitioner was considered and rejected as per directions issued in the writ petition and rejection order has been challenged by the petitioner. Learned counsel for the respondents has also relied upon judgment rendered by Hon'ble the Apex Court in ***Jhareswar Prasad Paul vs. Tarak Nath Ganguly, 2002(2) RCR (Criminal) 835.***

Heard arguments of learned counsel for the applicant-petitioner as well as counsel for the respondents.

The applicant-petitioner filed CWP No.12605 of 2014, which was disposed of vide order dated 11.12.2014 with the direction to the petitioner to approach the respondents within a period of 30 days from the date of passing of the order by making an appropriate representation and the same was to be considered and decided in accordance with law within a period of three months from the date of receipt of representation of the petitioner. In pursuance of said directions, the petitioner made representation dated 05.01.2015 to the respondent authorities and order dated 15.05.2015 was passed. It was mentioned in the order that the applicant-petitioner obtained 71 marks in General Category and he was not considered in BC-B Category. It was also mentioned that in the year 1997, the applicant-petitioner applied in BC-B Category but the selection carried out in pursuance of advertisement was quashed by this Court vide order dated 29.11.1995, which was upheld by Hon'ble the Apex Court vide judgment dated 18.02.1997. Thereafter, fresh advertisement was issued. It

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was also mentioned in the advertisement that candidates, who had applied earlier, were not required to apply as per fresh advertisement in terms of order dated 18.02.1997 passed by Hon'ble the Apex Court. The applicant-petitioner was considered in General Category and could not be selected being lower in merit in General Category.

Thereafter, the applicant-petitioner filed contempt petition before this Court for consideration of his candidature in BC-B Category as he obtained 71 marks in General Category and the marks secured by him were more than the last candidate in BC-B Category selected for that post. The contempt petition was dismissed vide order dated 19.02.2018 on the ground that there was no document on the file to show that the certificate was submitted by the petitioner and was accepted by the respondents. It was also observed that the disputed question of fact cannot be decided in the contempt petition as it is a matter of evidence. A speaking order was passed in pursuance of order dated 11.12.2014 passed in CWP No.12605 of 2014. In case, the petitioner was aggrieved by said order, he was at liberty to avail the appropriate remedy to challenge the order but no such remedy was availed. Subsequently, the present review application has been filed only on the ground that there was a mistake apparent on record as document (Annexure P-12) was already available with the respondents but inadvertently, it was not considered.

The claim of the applicant-petitioner was rejected by taking into consideration all the documents available on the file including Annexure P-12 and by passing a detailed speaking order. A liberty was also

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given to the petitioner to challenge the order in pursuance of order passed on the representation made by the petitioner. The applicant-petitioner has already availed the remedy.

Review does not mean rehearing of the case as all the efforts have been made by learned counsel for the applicant-petitioner to show as to how the case of the applicant-petitioner was to be considered in BC-B Category and not in General Category. The issue has already been argued at length and the stand taken by the applicant-petitioner was not accepted. It cannot be said to be a case of mistake apparent on record and moreover, a speaking order has also been challenged.

The observations made in Para No.11 of **Jhareswar Prasad Paul's case (supra)** are relevant, which are as under: -

“11. The purpose of contempt jurisdiction is to uphold the majesty and dignity of the courts of law. Since the respect and authority commanded by the courts of law are the greatest guarantee to an ordinary citizen and the democratic fabric of society will suffer if respect for the judiciary is undermined. The Contempt of Courts Act, 1971 has been introduced under the statute for the purpose of securing the feeling of confidence of the people in general for true and proper administration of justice in the country. The power to punish for contempt of courts is a special power vested under the Constitution in the courts of record and also under the statute. The power is special and needs to be exercised with care and caution. It should be used sparingly by the courts on being satisfied regarding the true effect of contemptuous conduct. It is to be kept in mind that the

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court exercising the jurisdiction to punish for contempt does not function as an original or appellate court for determination of the disputes between the parties. The contempt jurisdiction should be confined to the question whether there has been any deliberate disobedience of the order of the court and if the conduct of the party who is alleged to have committed such disobedience is contumacious. The court exercising contempt jurisdiction is not entitled to enter into questions which have not been dealt with and decided in the judgment or order, violation of which is alleged by the applicant. The court has to consider the direction issued in the judgment or order and not to consider the question as to what the judgment or order should have contained. At the cost of repetition be it stated here that the court exercising contempt jurisdiction is primarily concerned with the question of contumacious conduct of the party, which alleged to have committed deliberate default in complying with the directions in the judgment or order. If the judgment or order does not contain any specific direction regarding a matter or if there is any ambiguity in the directions issued therein then it will be better to direct the parties to approach the court which disposed of the matter for clarification of the order instead of the court exercising contempt jurisdiction taking upon itself the power to decide the original proceeding in a manner not dealt with by the court passing the judgment or order. If this limitation is borne in mind then criticisms which are sometimes leveled against the courts exercising contempt of court jurisdiction "that it has exceeded its powers in granting substantive relief and issuing a direction regarding the same without proper

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adjudication of the dispute" in its entirety can be avoided. This will also avoid multiplicity of proceedings because the party which is prejudicially affected by the judgment or order passed in the contempt proceeding and granting relief and issuing fresh directions is likely to challenge that order and that may give rise to another round of litigation arising from a proceeding which is intended to maintain the majesty and image of courts."

Order 47 Rule 1 of the Code of Civil Procedure reads as

follows:-

"1. Application for review of judgment.- (1) Any person considering himself aggrieved -

(a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred.

(b) by a decree or order from which no appeal is allowed, or

(c) by a decision on a reference from a Court of Small Causes, and who, from the discovery 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 was passed or order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgment to the Court which passed the decree or made the order.

(2) A party who is not appealing from a decree or order may apply for a review of judgment notwithstanding the pendency of an appeal by some other party except where the ground of such appeal is common to the applicant

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and the appellant, or when, being respondent, he can present to the Appellate Court the case on which he applies for the review.

Explanation.- The fact that the decision on a question of law on which the judgment of the Court is based has been reversed or modified by the subsequent decision of a superior Court in any other case, shall not be a ground for the review of such judgment.

The grounds enumerated therein are specific. The principles for 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.

Under Order 47 Rule 1 CPC, a judgment/order may be reviewed in case there is mistake or 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 record justifying the Court to exercise its power to review under Order 47 Rule 1 CPC. It is not permissible in case, there is an erroneous decision for rehearing or any correction. A review petition has a limited purpose and cannot be allowed like an appeal or rehearing of the case. The error is to be self-evident and the same is not to be found by a process of reasoning. Review is not rehearing of the case and review cannot be confused with appellate power, which enables a superior Court to correct all errors committed by the subordinate Court as has been held in ***Parsion Devi and others vs. Sumitri Devi and others, 1997(4) RCR (Civil) 458, Lily Thomas and others vs. Union of India and others, 2000(3) RCR (Civil) 252*** and

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***Jain Studios Ltd. vs. Shin Satellite Public Co. Ltd., 2006(3) RCR (Civil)
601.***

Review is maintainable in case, there is discovery of new and important matter or evidence, which was not within the knowledge of the party or counsel in spite of due diligence or it could not be produced for any other reason. In case, there is a mistake or error on the face of record, the review is permissible. The mere possibility of two views on the subject cannot be a ground for review.

In the present case, no such ground has been made out for reviewing or recalling order dated 19.02.2018. Moreover, the applicant-petitioner has challenged the order passed by the respondents authority whereby, claim of the petitioner has been rejected. The said petition is still pending.

Accordingly, I find no ground to review or recall order dated 19.02.2018 and the review applications i.e. RA-CR No.63-CII of 2018 in COCP No.2241 of 2015, RA-CR No.62-CII of 2018 in COCP No.143 of 2016 and RA-CR No.64-CII of 2018 in COCP No.2664 of 2015 are hereby dismissed.

28.11.2018
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(DAYA CHAUDHARY)
JUDGE

Whether speaking/reasoned	Yes
Whether Reportable	Yes