

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL REVIEW No.562 of 2018

In
Letters Patent Appeal No.2268 of 2016

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Ravindra Ram, Son of Ram Lakhan Ram, resident of Bigaha, P.O.- Bigaha,
P.S.- Manjhi, District- Saran.

... .. Petitioner/s

Versus

1. The State of Bihar
2. The Principal Secretary, Panchayat Raj, Government of Bihar, Patna.
3. The Secretary, Panchayati Raj Department, Bihar, Patna.
4. District Magistrate, Chapra.
5. The District Panchayat Raj Officer, Saran, Chapra.
6. The Block Development Officer, Manjhi Block, District- Saran.
7. The Sarpanch, Bhajanna Nachap Panchayat Raj, Block- Manjhi, District- Saran.
8. Dhananjay Kumar, Son of Amar Ram, R/o Village Post- Bigaha, P.S. Manjhi, District- Saran.

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Awadhesh Kumar Mishra, Advocate
For the Opposite Party/s : Mr. Pushkar Narayan Shahi, AAG- 6

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY

ORAL ORDER

(Per: HONOURABLE THE CHIEF JUSTICE)

6 13-12-2019

Ref. I.A. No. 1 of 2019.

Interlocutory application no. 01 of 2019 has been filed
for condonation of delay of 9 months and 26 days in filing the
review petition.

The delay in filing review petition in the aforesaid
interlocutory application has not explained. The statement for
condonation of delay is only formality, which is quoted herein



below:

“1. That, this petition is being filed with a prayer to condone the delay of 11 months & 2 days in filing of the present Civil Review Petition.

2. That the petitioner has not filed any such limitation petition earlier in this matter.

3. That the petitioner has been facing acute financial crisis being out of service since long and he has no source of income for his livelihood this is why after waiting for a long time any how he managed some small amount for filing of the present Review petition then he could be able to file the same on 12.12.2018.

4. That the reason of delay is poverty of the petitioner which is natural phenomena and unavoidable circumstances.

5. That the petitioner has got a very good case on merit this is why a liberal view may kindly be taken in condoning the delay, otherwise the petitioner would suffer irreparable loss and injury.

6. That there has not been any deliberate laches on the part of the petitioner hence a liberal view may be taken in condoning the delay.”

Additionally on scrutiny, we do not find merit in the review petition.

The instant review petition has been filed by the



petitioner against the judgment dated 17.01.2018, passed in L.P.A. No. 2268 of 2016.

L.P.A. No. 2268 of 2016 was dismissed by the learned Division Bench after consideration of various aspects of the matter. The Division Bench discussed the detailed facts and the advisory issued by the respondents on 05.10.2007 and thereafter dismissed the L.P.A. upholding the decision of the learned Single Judge. The relevant part of the discussions is quoted herein below:

“Writ Application of the private-respondent no. 8, who was the petitioner, came to be allowed by the Learned Single Judge, vide order dated 16.08.2016. The Learned Single Judge allowed the writ application for the reason that the private-respondent figured in the panel at Sr. No. 2, but instead of appointing him, in absence of non-joining of person at Sr. No. 1, the present appellant, who was private-respondent no. 8 in the writ application, came to be accommodated by the Gram Panchayat. This decision of the Gram Panchayat came to be revisited and the private-respondent / the writ petitioner came to be appointed since he was at Sr. No. 2. Subsequently, on the basis of a communication based on certain judicial directions, issued by the writ courts, a copy of which is Annexure – 17 to the writ and is dated 05.07.2010, the Gram Panchayat again chanced upon the opportunity to



remove the writ petitioner and reappoint the present appellant, misreading the Advisory that since the appointment of the writ petitioner was made on 23.08.2010, which is after the cut-off date on 31.01.2008, the decision of the Gram Panchayat to appoint the private-respondent no. 8 was set aside.

The Learned Single Judge has dealt with the matter and explained the Advisory of the Secretary of Panchayati Raj Department, dated 05.07.2010 by explaining it that the exercise for appointment on the post of Secretary, Gram Kuchahary was already completed prior to the cut-off date, which is 31.01.2008, as the merit panel was prepared on 22.10.2007 itself, the appointment thereafter was required to be made of the person by merit position and since the person at Sr. No. 1 chose not to join, private-respondent No. 8 at Sr. No. 2 ought to have been appointed, but instead of doing so, the present appellant at Sr. No. 3 came to be accommodated.

By no interpretation or understanding can the appointment of the writ petitioner be said to be beyond the cut-off date, i.e., 31.01.2008, because the appointment which rightly belonged to the private-respondent no. 8 of the appeal, was snatched away from him by an illegal appointment made of the present appellant and it was only a rectification of that arbitrary decision, which was done in the year 2010. Therefore, it cannot be treated to be a case of appointment, post 31.01.2008 and the Advisory, so issued.



Counsel for the appellant submits that because the private-respondent / petitioner was holding Madhyama degree, that was the reason for the Panchayat to ignore his claim. However, it is evident that the Madhyama is equivalent to matriculation and the same could not be created as a bar for consideration. The series of orders / decisions, which have been passed by the writ court, has taken note of such facts and, therefore, the Advisory came to be issued on 05.10.2007.

In fact a reading of the Advisory would indicate that all such persons, who were holder of Madhyama degree, were required to be appointed by removing a person, if already appointed, if his case was not considered, because of the Madhyama degree.

The present case, in fact, is covered by the Advisory in the sense that the petitioner / respondent no. 8 had a right for appointment to the post of Secretary, Gram Kachahary, which was wrongly denied to him and the same Advisory cannot be misread to restore the present appellant on the ground that a direction was issued to remove and appoint, but not to interfere with the earlier appointments already made prior to 31.01.2008. The context of the Advisory in our opinion also has been wrongly read and used to get rid of the services of the private-respondent.

The Learned Single Judge has committed no error in allowing the writ application.

Appeal has no merit. It is dismissed.”



Learned counsel appearing on behalf of the review petitioner submits that the learned Single Judge in C.W.J.C. No.269 of 2011 as well as the L.P.A. Court in L.P.A. No. 2268 of 2016 has committed error in ignoring the fact that the respondent-writ petitioner was holding Madhyama degree and not matriculation. It is to be seen that Madhyama degree is equivalent to Matriculation and conscious decision to that effect was taken by the respondent way back on 11.01.1999. In fact, large number of the writ petitions involving the issue of qualification of Madhyama, as equivalent to Matriculation, was considered and allowed in favour of Madhyama degree holder.

In the present case, specific issue was raised by the review petitioner in L.P.A. No. 2268 of 2016 that respondent no.8 was not holding the Matriculation certificate, but Madhyama degree and as such not eligible, but this argument was considered and rejected by the Division Bench.

In the present review petition, the review petitioner wants second round of hearing on the same issue. The scope of review is not akin to appeal. The Apex Court has occasion to summarize the principle applicable in a review application in the case of **Sasi (Dead) Through Legal Representative Vs. Aravindakshan Nair and others**, reported in (2017) 4 SCC



692. Para 5 to 9 of the aforesaid judgment are quoted herein below:

5. 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 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.

6. 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 provision are satisfied.

7. In *Thungabhadra Industries Ltd. v. Govt. of A.P.*³, 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 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.*"

(emphasis supplied)

8. In *Parsion Devi v. Sumitri Devi*^[4], the Court after referring to *Thungabhadra Industries Ltd. (supra)*, *Meera Bhanja v. Nirmala Kumari*



Choudhury[5] and Aribam Tuleshwar Sharma v. Aribam Pishak Sharma[6], held thus:- (Parsion Devi v. Sumitri Devi[4], 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 CPC. In exercise of the jurisdiction under Order 47 Rule 1 CPC 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.

Considering the parameters laid down by the Apex Court in the case of **Sasi** (supra), the Court is of the considered view that the present review petition filed by the review petitioner is practically an attempt to seek second round of hearing on merit.

As discussed herein above, the issue raised in the present review petition was specifically decided by the L.P.A. Court in L.P.A. No. 2268 of 2016 and in view of the scope of



review, we are of the considered view that the present review petition does not merit any consideration, more so, the review petition was filed after a delay of 9 months and 26 days.

Accordingly, the review petition is also dismissed on account of delay as well as on merit. However, there shall be no order as to costs.

(Sanjay Karol, CJ)

(Anil Kumar Upadhyay, J)

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