

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**CIVIL REVIEW No.75 of 2019**

**In**  
**Letters Patent Appeal No.603 of 2011**

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Tarannum Ara, daughter of Razi Quama, Resident of Village-Dhamaul, P.S.-  
Kurtha, District-Arwal.

... .. Petitioner-Appellant-Petitioner  
Versus

1. The State of Bihar
2. The Secretary, Primary and Secondary Education, Government of Bihar, Patna.
3. The Secretary, Human Resource Department, Government of Bihar, Patna.
4. The District Magistrate, Arwal.
5. The District Superintendent of Education, Arwal.
6. The District Education Appellate Tribunal, Arwal.
7. The Block Development Officer, Arwal.
8. Panchayat Secretary, Dhamaul Gram Panchayat, Arwal
9. Mukhiya, Gram Panchayat, Kurtha, Arwal.
10. Nagmani Kumari, Wife of Ram Janam Singh, resident of Dhamaul, P.S.-  
Kurtha, District- Arwal.

... .. Respondents-Opposite Parties

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**Appearance :**

For the Petitioner : Mr. Binay Kumar, Advocate  
For the Opposite Party : Mr. Shashi Shekhar Tiwary, AC to AAG-15

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**CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH**

**And**

**HONOURABLE MR. JUSTICE ANIL KUMAR SINHA**

**ORAL JUDGMENT**

**(Per: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH)**

**Date : 14-11-2019**

Heard learned counsel for the petitioner and  
  
learned counsel for the State.

2. In CWJC No.12634 of 2009, the learned single  
  
Judge while disposing of the writ petition preferred by the  
  
petitioner had held that the private respondent Nagmani Kumari  
  
was entitled to be taken back in service on the post of Panchayat



Shiksha Mitra, which was subsequently converted to the post of Panchayat/Block Teacher, but if the petitioner was appointed on a post other than the post of private respondent, Nagmani Kumari then the authorities will not be influenced by the order of the District Teachers Appointment Appellate Authority dated 27.08.2009 in Case No.10 of 2008-2009 and take an independent decision in respect of service of the petitioner.

3. In the order under review dated 28.07.2011, this Court while affirming the observation made by the learned single Judge indicated that if similarly affected teachers like the petitioner have been given protection by adjustment against other vacancy similar treatment should be given to the petitioner.

4. The petitioner was satisfied with the order passed by the Division Bench. He did not challenge the order dated 28.07.2011 for over eight years. The order, thus, attained finality. However, he has filed the instant review application on 28.02.2019 solely on the ground that the order passed by the learned single Judge in writ petition as also the order passed by the Division Bench in the intra-court appeal are bad in view of the subsequent Full Bench judgment of this Court in the case of **Kalpna Rani vs. State of Bihar and Ors**, since reported in



**2014(2) PLJR 665.**

5. Learned counsel appearing for the petitioner submitted that the order passed in the intra-court appeal as also in the writ petition is erroneous in law. He contended that the Division Bench upheld the order dated 20.01.2011 passed in CWJC No.12634 of 2009 in contravention of the provision of law contained in Rule 20 of the Bihar Panchayat Primary Teacher (Selection & Service Condition) Rules, 2006 whereby all earlier resolutions, orders, directions issued in respect of employment of Panchayat Shiksha Mitra were repealed. Consequently, the posts of Panchayat Shiksha Mitra stood abolished. Thereafter, no person can be employed as Panchayat Shiksha Mitra; nor could there be a deemed employment as Panchayat Shiksha Mitra; nor could there be a deemed absorption in the service as Panchayat Shikshak by operation of Rule 20(iii) of the said rule in view of the ratio laid down by the Full Bench of this Court in case of **Kalpana Rani (supra)**.

6. We have given our thoughtful consideration to the submissions made by the petitioner at the Bar.

7. In our opinion, the present application is beyond the purview of the provision of Order 47 Rule 1 of the Code of Civil Procedure (for short 'CPC').



8. The petitioner, in the present case, is seeking rehearing of the case in the garb of a review application.

9. It is well settled that a review proceeding can not be equated with the original hearing of the case. A review proceeding has to be strictly confined to the ambit and scope of Order 47 Rule 1 of the CPC.

10. Taking into consideration the pleadings of the parties, this Court had disposed of the Letters Patent Appeal upholding the order passed by the learned single Judge.

11. It is settled principles of law that simply because a party is not satisfied with the judgment of a court or there was possibility to take another view on the facts and law involved in the case or any subsequent case of the larger Bench took a different view of the matter, by itself, can not be a ground to review a judgment or order. The power of review may be exercised for correction of a mistake or an error apparent on the face of the record. It can not be treated as an appeal in disguise. An error, which is not evident, has to be detected by the process of reasoning, can not be said to be an error apparent on the face of the record.

12. In **Satyanarayan Laxminarayan Hedge vs. Millikarjun Bhavanappa Tirumale** reported in AIR 1960 SC



**137**, the Supreme Court, in paragraph 17, made following observations in connection with an error apparent on the face of the record :-

“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...”

13. In **Sow Chandra Kante and Another vs. Sheikh Habib**, reported in **(1975) 1 SCC 674**, the Supreme Court observed as under:-

“A review of a judgment is a serious step and reluctant resort to it is proper only where a glaring omission or patent mistake or like grave error has crept in earlier by judicial fallibility. A mere repetition, through different Counsel, of old and overruled arguments, a second trip over ineffectually covered ground or minor



mistakes of inconsequential import are obviously insufficient...”

14. In **Col. Avtar Singh Sekhon v. Union of India**, reported in **(1980) Supp SCC 562**, the Supreme Court held, in paragraph 12, as under :-

“12. A review is not a routine procedure. Here we resolved to hear Shri Kapil at length to remove any feeling that the party has been hurt without being heard. But we cannot review our earlier order unless satisfied that material error, manifest on the face of the order, undermines its soundness or results in miscarriage of justice. In *Sow Chandra Kante v. Sheikh Habib*, (1975) 1 SCC 674, this Court observed :-

“A review of a judgment is a serious step and reluctant resort to it is proper only where a glaring omission or patent mistake or like grave error has crept in earlier by judicial fallibility.... The present stage is not a virgin ground but review of an earlier order which has the normal feature of finality.”

15. The scope of Order XLVII Rule 1 CPC, dealing with review of a judgment, has been succinctly stated by the Supreme Court, in **Parsion Devi v. Sumitri Devi**, reported in **(1997) 8 SCC 715**, in paragraph 7, held as under :-



“7. It is well settled that review proceedings have to be strictly confined to the ambit and scope of Order 47 Rule 1 CPC. In *Thungabhadra Industries Ltd. v. Govt. of A.P. (1964) 5 SCR 174* this Court opined:-

“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.”

16. This principle was reiterated by the Supreme Court in **Lily Thomas and Others vs. Union of India and Others**, reported in **(2000) 6 SCC 224**, wherein it has been observed that the power of review can be exercised for correction of a mistake, but not to substitute a view. The review cannot be treated like “an appeal in disguise”.

17. In the light of the settled legal decision as discussed above and having gone through present review application, we find that no error apparent on the face of record has been brought out by the review petitioner warranting review of the order dated 28.07.2011 passed by this Court in LPA No.603 of 2011.

18. A perusal of the review application would make it evident that the same is nothing, but an appeal in disguise, which has been preferred after more than eight years on the ground that in a subsequent judgment a Full Bench of this Court has taken a different view of the matter.

19. We are of the considered opinion that the review application is devoid of any merit and is beyond the



ambit and scope of Order 47 Rule 1 of the CPC and also an attempt on the part of the petitioner to have rehearing of the matter on merits.

20. Accordingly, the application is dismissed.

21. However, there shall be no order as to costs.

**(Ashwani Kumar Singh, J.)**

**( Anil Kumar Sinha, J.)**

Sanjeet/-

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