

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL REVIEW No.27 of 2017

In
Letters Patent Appeal No.1083 of 2016

-
-
1. The Bihar Public Service Commission
 2. The Chairman, Bihar Public Service Commission, Bailey Road, Patna
 3. The Secretary, Bihar Public Service Commission, Bailey Road, Patna
 4. The Additional Secretary - Cum - Examination Controller, Bihar Public Service Commission, Bailey Ro

... .. Petitioners

Versus

1. Dr. Renu Singh Wife of Niranjana Kumar Singh, resident of village - Bisartalab, Near IMA Hall, P.S. Civil Line, District - Gaya
2. The State of Bihar through the Principal Secretary, Health Department, Government of Bihar, Patna
3. Mini Kumari, through the Bihar Public Service Commission, Bailey Road, Patna

... .. Opposite Parties

Appearance :

For the Petitioners	:	Mr. Lalit Kishore, Advocate General Mr. Satyabir Bharti, Advocate
For the Respondent State:		Mr. Braj Bhushan Mishra, AC to AAG- 9
For the Respondent No. 1:		Mr. Bindyachal Singh, Advocate Mr. Mayank Shekhar, Advocate

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
and
HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH)

Date : 21-08-2019

By common judgment and order, dated 04.10.2016, four appeals, under the Letters Patent of this Court, viz., L.P.A. Nos. 651 of 2016, 1019 of 2016, 1083 of 2016 and 1139 of 2016, were allowed by a Division Bench of this Court. Whereas the judgment in respect of rest of the appellants has been accepted and directions



implemented, the Bihar Public Service Commission is seeking a review of the said judgment and order by filing the present review application only to the extent the same relates to respondent No. 1, who was the appellant in L.P.A. No. 1083 of 2016.

2. We note, at the very outset, that, indisputably, cases of the appellants, which came to be adjudicated upon by the judgment and order under review, were identical, with no distinguishing feature at all. Paragraph 9 of the review application, is being reproduced hereinbelow to indicate that even the petitioner, Bihar Public Service Commission, while seeking review of the judgment and order, only in respect of Respondent No.1, has admitted that the respondent was similarly situated to other appellants of the appeals decided by common judgment and order:-

“9. That as such the candidature of the writ petitioner- Respondent No.1 and similarly situated candidates who had failed to submit the requisite certificate for verification, in original, was rejected in pursuance to the meeting of the Commission held on 30th September, 2015 and the final result was published on 12.10.2015 and recommendation was sent by the Commission on 28.12.2015, wherein the following number of candidates were recommended for appointment to the post of General Medical Officer in accordance with the reservation policy and the available vacancy. A perusal of the recommendation so sent would reveal that all the vacancies in the general category was filled up.

i) General - 995



ii) SC	-	283
iii) EBC	-	325
iv) BC	-	254”

3. Evidently, thus, the judgment and order, though has been accepted in respect of other appellants, the Bihar Public Service Commission has elected to seek review of the judgment only against respondent No.1.

4. We have heard Mr. Lalit Kishore, learned Advocate General, Bihar, appearing for the Bihar Public Service Commission and Mr. Bindhyachal Singh, learned counsel representing respondent No.1

5. An application has been filed, giving rise to I.A. No. 3933 of 2017, for condonation of delay of 86 days in filing the review application. The delay has been explained in paragraphs 2 to 5 of the application and we are satisfied that the delay is unintentional and the review petitioner had sufficient cause for not making the review application within time.

6. I.A. No. 3933 of 2017 is accordingly allowed.

7. Delay in filing of review application stands condoned.

8. Before we deal with the grounds taken for seeking review of the judgment and order dated 04.10.2016, we need to give short narration of undisputed facts, which have been taken note of in the judgment and order under review :



"7. The facts of the case are that the Health Department of the State Government of Bihar sent a requisition to the Commission for making recommendations for appointments against total of 2301 posts of General Medical Officers. Pursuant to the said requisition, the Commission came out with an advertisement, inviting applications for filling up the said 2301 posts of General Medical Officers. The advertisement disclosed the eligibility criteria in terms of the educational qualification and age, etc. Clause 5 of the said advertisement stipulated that the selection shall be made on the basis of marks allotted against educational qualification, work experience and interview taken together and the merit list shall be prepared on the basis of total marks scored by a candidate against the said three heads. Distribution of marks against educational qualification and interview was mentioned in the advertisement itself, which was as follows: -

"A. Education Qualifications (for Advertisement No.15.2014):

M.B.B.S. Degree from any recognized University.

Post Graduation Degree holders in any subject of Medical Science or Higher Degree holders and Doctors appointment on Contract/Regular Basis in any Govt. Hospital in Bihar would be given weightage for their work experience.

There would be 100 marks for educational qualifications, work experience and interview. Division of 100 marks would be as follows:

Marks for M.B.B.S. : 50 Marks

Post Graduation or Higher Degree : 10 Marks

**For work experience on Contract/
Regular in Govt. Hospitals : 25 Marks**

(5 marks for every complete on year & maximum 25 marks)

Interview : 15 Marks"

8. It is evident from the said advertisement, which has been brought on record by way of Annexures to the present



proceedings, that apart from educational qualification and work experience, interview was the only process through which the selection was intended to be made.

9. Clause 8(ii) of the said advertisement has gained significance, for the purpose of the present adjudication, because of the stand taken on behalf of the Commission before the writ Court and before us in appeal, as well, which reads thus:

xxx xxx xxx

10. Clause 8 (ii) of the said Advertisement, when translated into English, read thus:

“(ii) Enclose self-attested copies of Matriculation Certificate, Certificate of M.B.B.S degree and mark-sheet of examinations conducted every year, certificate of Internship Training, work experience certificate issued by the concerned controlling Officer (which should clearly mention period of work), permanent Registration certificate, Caste certificate (with certificate with creamy layer for candidates belonging to Most Backward class/Backward class) and in the case of disability claim, certificate issued in respect thereof by the competent authority, as enclosure with the prescribed application form.

Such candidates who have obtained MBBS degree from any foreign University and whose mark-sheet contains remarks such as Good/Satisfactory/ Excellent-el etc, in place of marks, shall have to enclose with his/her application the formula to change said remarks, into marks after obtaining it from his/her University, otherwise their applications shall be rejected”.

11. The said Clause made it mandatory for the applicants to enclose self attested copies of matriculation certificate, M.B.B.S. degree certificate, mark-sheets of all the



examinations, work experience certificate issued by the concerned Controlling authority disclosing explicitly the period of work, permanent registration certificate, caste certificate and certificate of disability, if applicable. The appellants had submitted their applications. In course of time, they were issued interview letters requiring them to appear for the interview on the respective dates and time as specified in the interview letter. Paragraph 2 of the interview letter required the candidates to bring, in original, along with two photo copies of age, the certificate and documents, viz:-

(i) Matriculation certificate,

(ii) Certificate in support of M.B.B.S. degree from a recognized University along with mark-sheet of each year of M.B.B.S. course,

(iii) In case of P.G. degree holders, relevant P.G. degree certificate,

(iv) Certificate of permanent registration of Medical Council of India or Medical Registration Council of any State,

(v) Work experience certificate issued by the Controlling authority, for such applicants, who were appointed on permanent/contract basis as doctors in a Government Hospitals of the State Government.

12. Paragraph 5 of the interview letter required that in case a candidate failed to submit certificates, in original, in support of his/her qualification, he shall not be allowed to be interviewed. Clause 5 also required that original of only such certificates shall be accepted at the interview, photo copies whereof had been enclosed along with the application form.”

9. The main ground, which has been taken, seeking view of the judgment and order is that it is based on false statement and suppression of facts made by respondent No.1. There are six grounds taken in the review application, which are as under :-



- “i) For that it is an admitted case wherein the writ petitioner had concealed vital facts and had made false statement on the basis of which the appeal came to be allowed and therefore on the aforesaid ground alone, the impugned judgment is fit to be reviewed.**
- ii) For that the writ petitioner-respondent No.1 herein having indulged in suppression/falsehood and abuse of the process of the Court, the writ petition and the appeal is fit to be dismissed and the impugned judgment passed in L.P.A. No. 1083 of 2016 is fit to be recalled.**
- iii) For that since prerogative writs are meant for doing substantial justice and therefore it is of utmost necessity that the person approaching the writ court must come with clean hands without concealing or suppressing anything and since the petitioner has indulged in misleading this Hon’ble Court by making false statement, the writ petition and the appeal is fit to be dismissed at the threshold and the judgment and order under appeal may kindly be recalled.**
- iv) For that it is writ large that the writ petitioner had not complied with the requirements of advertisement and the interview letter wherein she was required to get her original certificate verified, she is not entitled for the reliefs which has been granted by the judgment and order under review.**
- v) For that since the Commission had already sent recommendation for all the 995 posts in the General category, there is no vacancy left on which recommendation can be sent by the Commission in the General category coupled with the fact that since the presumption of having submitted the original certificate at the time of interview stands rebutted, the judgment and order under review is fit to be recalled.**
- vi) For that since the impugned directions passed in the judgment and order under review, is based upon false**



statements and suppression made by the writ petitioner-respondent No.1 herein, the impugned judgment is fit to be reviewed.”

10. In paragraph 11 of the review application, it has been stated that respondent No.1 in her writ application had suppressed a very vital fact and had made false statement in paragraph 6, 9 and 10 of the writ application. She, according to the petitioner, suppressed the fact that she did not enclose photocopy of the matriculation certificate and instead she had enclosed marks sheet at the time of interview.

11. At this stage, it need to be usefully mentioned that the fact that the petitioner has educational qualification is not at all disputed. It is also not being disputed that petitioner holds a matriculation certificate issued by Bihar School Examination Board. The only dispute, which the Bihar Public Service Commission has been raising from the very beginning is that at the time of interview, the petitioner and other similarly situated persons had not furnished their original matriculation certificates.

12. This controversy, common in respect of all the appellants, has been taken note of extensively in paragraphs 12 to 18 of the judgment and order under review :

“12. Paragraph 5 of the interview letter required that in case a candidate failed to submit certificates, in original, in support of his/her qualification, he shall not be allowed to be



interviewed. Clause 5 also required that original of only such certificates shall be accepted at the interview, photo copies whereof had been enclosed along with the application form.

13. This is not in dispute that the appellants presented themselves for interview on the respective dates and time as mentioned in the interview letter and they were, in fact, interviewed by the Interview Board.

14. The centre of dispute between the stand of the appellants and the Commission lies here. According to the appellants, at the time of interview, they had submitted the documents, in original, as were required to be furnished in terms of Clause 2 of the advertisement. It is their specific case that because they had submitted testimonials in original, they were allowed to participate in the interview and that had they not produced the certificates, in original, as required under Clause 2 of the interview letter, they would not have been allowed to participate in interview. It is also their case that before or after they were interviewed, at no point of time, any undertaking was taken by the Commission from them to submit the certificates, in original, in future.

15. It is the plea of the Commission, on the other hand, that these appellants had not submitted their certificates, in original, at the time of interview and they were required to submit their testimonials, in original, though they had been allowed to be interviewed with an understanding that they would submit to the Commission original testimonials within a reasonable period of time.

16. It is the case of the Commission that the Commission came out with a notice, on 16.07.2015, mentioning therein that at the time of interview, some of the candidates had not submitted their certificates, in original, for verification and, on the basis of undertaking given by them, they were allowed time to submit their certificates, in original, in future. The Commission, through the said notice, dated 16.07.2015, required such candidates to submit their documents, in



original, in the office of the Commission on three different dates as mentioned in the said notice, viz, 22.07.2015, 23.07.2015 and 24.07.2015. Later on, the Commission came out with yet another notice, dated 20.08.2015, in the background of the fact that despite earlier notice, dated 16.07.2015, some of the candidates had yet not submitted their certificates, in original. Giving another opportunity through notice, dated 20.08.2015, such candidates, who had not submitted their certificates, in original, were required to submit the certificates hand to hand by 25.08.2015 in the office of the Commission. It was indicated in the said notice that with respect to such candidates, who do not submit their certificates, in original, in the light of the second notice, dated 20.08.2015, the Commission shall be free to take appropriate decision. The notice also mentioned that such candidates, who had got their certificates, in originals, verified by the Inquiry Team of the Commission and submitted the photo copies of their original certificates, were not required to get their certificates verified again.

17. Situated thus, it becomes abundantly clear that while it is the case of the Commission that despite these opportunities made available to these appellants, they did not submit their certificates, in original, for verification, which compelled the Commission to take decision of cancelling their candidature, the case of the appellants, on the other hand, is that they were not required to respond the two notices as the said notices were meant only for those who had not submitted their certificates, in original, for verification at the time of interview. As has been noticed above, it is the case of the appellants that they had already submitted their documents, in originals, and their photo copies as required in paragraph 2 of the interview letter, at the time of interview.

18. It can be easily seen thus, which fact has already been noticed in a foregoing paragraph, that a dispute has been raised by the Commission that the appellants had not



submitted their certificates, in original, at the time of interview, whereas, it is the claim of the appellants that they had submitted the requisite certificates, in original, and, therefore, they were allowed to participate in the interview. This is also not in dispute that on the basis of their respective scores in the process of selection, the appellants would have been recommended by the Commission for appointments, had their candidatures not been cancelled on the ground as mentioned above.”

13. The Division Bench, in the judgment and order under review, thereafter proceeded to consider the rival cases of the parties, as can be noticed from paragraphs 24 to 36:

“24. We will analyze, at the outset, as to whether the two notices issued by the Commission on 16.07.2015, and 20.08.2015, published in the newspapers, can be held to be clear and effective notices to the appellants, which could have made them respond to the notices and filed their documents, if they had not filed.

25. On close scrutiny of the notice, dated 16.07.2015, it can be easily seen that the Commission was faced with a situation that some of the candidates, at the time of the interview, in question, had not submitted educational certificates, in original, experience certificate and certificate of not being a creamy layer. Such candidates were given extra time on the basis of “undertaking” given by them. The said notice, dated 16.07.2015, was issued, because the candidates, who were allowed time on the basis of undertaking given by them, had not deposited the certificates, in original. There is no mention in the said notice of either the roll numbers or the names of the candidates, who had been allowed time for submission of certificates, in original, on the basis of



undertaking given by them and despite the fact that such candidates had not submitted their documents, in original.

26. It is not the case of the Commission that these appellants had ever given any undertaking before they were allowed to participate in the interview for submission of their certificates, in original, within some extended period. Apparently thus, the appellants were allowed to participate in the interview without any objection or any undertaking taken from them.

27. We, now, come to the interview letter, paragraph 5 of which mentions that a candidate must bring with him, certificates, in original, at the time of interview and if they failed to do so, they would not be allowed to appear in the process of selection. The fact that the appellants were allowed to participate in the interview without any objection having been raised would raise a presumption that they had complied with the requirement of submission of certificates, in original, at the time of interview. Otherwise, they would not have been allowed to appear in the interview.

28. It would be beneficial to extract the contents of paragraph 5 of the interview letter, which read as follows:-

xxx xxx xxx

29. Paragraph 5 of the interview letter, when translated into English, reads thus:

“(5) A candidate shall not be allowed to appear in interview if he/she does not submit his/her intelligible certificate in respect of qualifications in original on the day of interview. Only those certificates related to qualifications shall be deemed valid which are mentioned in the original application form of candidates.”

30. Possibility that some of the candidates were allowed by the Commission to participate in the interview even without fulfilling the requirement of producing the certificates, in original, with an undertaking that they would submit those



certificates within a reasonable period of time cannot be ruled out. The Commission has, however, not been able to establish that undertakings were taken from these appellants also for submission of their certificates, in original, in future. Neither any chit of paper nor any kind of material has been produced before us to demonstrate that these appellants were told by the Commission, at the time of interview, that they were not having the certificates, in original, for the purpose of verification as contemplated in the interview letter. The only plea, which is being taken is that these appellants did not produce the documents, in original.

31. Further, if the Commission intended to inform by way of notice or otherwise, that documents, in original, were required to be submitted to the Enquiry Team of the Commission for the purpose of verification, it could have been specifically mentioned, in the notice, giving the roll numbers or names or both so that the candidates, who had not submitted their certificates, in original, could have submitted their certificates, in original, in response thereto and those, who had submitted and despite that their roll numbers/names were mentioned in the notice, they could have raised objection before the Commission against inclusion of their roll numbers/names in the notice.

32. The plea, taken by the appellants that they did not respond pursuant to the notices, because they were not knowing that they were also being considered as candidates, who had not submitted their certificates, in original, at the time of interview, cannot be altogether brushed aside.

33. If the Commission had allowed such candidates to participate in the interview, who had not made available their certificates, in original, for the purpose of verification by an Inquiry Team on the basis of some undertaking given by them to submit their documents within the period specified, in all fairness in the first notice itself, dated 16.07.2015, the Commission could have disclosed the names or roll numbers or



both of the candidates, who had failed to submit their certificates, in original, at the time of interview. Nothing could have prevented the Commission to act fairly by making known in the notice itself as to who were those candidates, who had given undertaking to submit their certificates, in original, in future and had not submitted.

34. By applying plain logic and reasonings, it can be easily understood that on the dates of interview of respective candidates, the Commission had allowed some of the candidates to be interviewed without their having submitted certificates, in original, on the basis of an undertaking that they would submit their documents, in original, in future. Further, it would be, ordinarily, presumed that such candidates, who were allowed to participate in the interview by the Commission without taking any undertaking from them, had fulfilled all the requirements laid down in paragraph 5 of the interview letter.

35. This Court does not mean to say that it is unexceptionable that someone might have been allowed to participate in the interview without fulfilling the requirements of paragraph 5 of the interview letter, but in that case, it was incumbent upon the Commission to have either communicated to the respective candidates individually and/or come out with a clear notice on the basis of which it could have been said that defaulting persons were made known of the lapse on their part in submitting their documents, in original, for verification.

36. Similar is the situation with second notice, dated 20.08.2015, issued by the Commission, and the present appellants were such defaulters inasmuch as the notice, dated 20.08.2015, also suffers from the same defect and vagueness.”

14. Paragraph 40 of the said judgment and order under review records the conclusive finding, which reads as under : -



“40. In the present case, what we have noticed is that the action of the respondents, which has the result of cancellation of candidature of the appellants from being considered for appointment to the post of General Medical Officers is based on a conclusion that they did not supply their testimonials, in original, for verification at the time of interview and they did not avail subsequent two opportunities granted to them for submission of their certificates, in original, before the Commission for the said purpose, cannot be regarded as unjust, unreasonable and unfair. As we have already observed, the two notices cannot be said to be adequate to establish that these appellants were found to have not submitted their documents, in original, at the time of interview. We have formed this opinion, because the notices do not contain any description of these appellants either by their roll numbers or their names. Secondly, there is nothing on record to suggest, rather we do not find any clear pleading on record of the Commission, that these appellants had given any undertaking before they were allowed to be interviewed that they would be furnishing their documents, in original, later on.”

15. Mr. Lalit Kishore, learned Advocate General, has attempted to persuade this Court that the Division Bench out of oversight missed to notice Annexure-2 of the writ application, which was the application filed by respondent No.1 against the advertisement for appointment as Medical Officer. According to him, the said application, filled up by respondent No.1, does not refer to the original matriculation certificate, though it refers to matriculation marks sheet and admit card. Had the said document



been considered by this Court, the result would have been different.

16. It is evident from the judgment and order under review that the controversy, which is being attempted to be raised in the present review application, has been precisely dealt with in the judgment and order under review.

17. It is settled principle that a review cannot be an appeal in disguise and power of review can be exercised if the Court finds that the error, pointed out in the review petition, was under a mistake and the earlier judgment would not have been passed but for erroneous assumption, which, in fact, did not exist and its perpetration shall result in miscarriage of justice [*Lily Thomas Vs. Union of India*, (2000) 6 SCC 224]. In case of *S. Nagraj vs. State of Karnataka*, reported in (1993) Suppl. 4 SCC 595, the Supreme Court has laid down that power of review is exercised to remove the error and not for disturbing finality. Power of review can be exercised for correction of mistake, but not to substantiate a view, lays down the Supreme Court in case of *Lily Thomas* (supra).

18. We do not find any error apparent on the face of the record, undermining soundness of the decision or causing miscarriage of justice. We do not find any glaring omission or



patent mistake in the judgment and order under review, which could have been a valid ground for maintaining the review application.

19. On the contrary, we are of the view that this review application lacks bonafide. It is not the case of the Bihar Public Service Commission that case of respondent No.1 is in any manner distinguishable from other appellants from whose appeals the judgment and order under review has been delivered. We find absolutely no merit in the present review application, which, in our opinion, deserves to be dismissed with appropriate cost.

20. The review application is accordingly dismissed with a cost of Rs.20,000/- (Twenty Thousand) to be paid by the Bihar Public Service Commission to respondent No.1 within two months from today.

(Ashwani Kumar Singh, J)

(Chakradhari Sharan Singh, J)

Pawan/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	22.08.2019
Transmission Date	N/A

