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HIGH COURT OF CHHATTISGARH, BILASPUR**Review Petition No.165 of 2019**

(Arising out of order dated 26.06.2019 passed in Writ Petition (S) No.4279 of 2018 by the learned Division Bench)

Rakesh Kumar Jangde S/o Late Uttam Kumar Jangde Aged About 26 Years Unemployeed, R/o Near Agrawal Rice Mill, Village Abhanpur, Police Station Abhanpur, District- Raipur, Chhattisgarh.

---- **Petitioner**

Versus

1. South East Central Railway Through General Manager, S.E.C. Railway, Bilaspur Zone, G.M. Office, Bilaspur- 495004
2. The Divisional Railway Manager S.E.C. Railway, DRM Office, Bilaspur, Chhattisgarh.- 495004
3. The Divisional Personnel Office S.E.C. Railway, Divisional Office, Personnel Branch, Bilaspur, District- Bilaspur, Chhattisgarh.- 495004

---- **Respondents**

For Petitioner:	Shri B.P. Rao, Advocate
For Respondents:	Shri H.S. Ahluwalia, Standing Counsel

Hon'ble Shri P. R. Ramachandra Menon, Chief Justice
and Hon'ble Shri Sanjay K. Agrawal, Judge

Order on Board

Sanjay K. Agrawal, J.

23.09.2019

1. This review petition has been filed by the review Petitioner seeking review of order dated 26-6-2019 passed in W.P.(S)No.4279/2018, by which, the writ petition filed by the Railways / Respondents has been allowed and the order passed by the Central Administrative Tribunal, Jabalpur Bench, Circuit Sitting at Bilaspur (hereinafter referred to as the 'Tribunal') directing consideration of the application of the Petitioner herein for compassionate appointment has been set aside and his application has been rejected. Review of the order dated 26-

6-2019 has been sought principally on the ground that there is an error apparent on the face of record on account of suppression of two material documents warranting review of the above-mentioned order.

2. Shri B.P. Rao, learned counsel appearing for the review Petitioner, would submit that the Railways have issued two circulars, one on 28.07.2000, in which, the General Manager of the Railways has been empowered to consider the cases for compassionate appointment up to 20 years old from the date of death of the railway employee and secondly, issued another circular on 31.05.2011, in which, the General Manager has been empowered to consider the time barred cases of compassionate appointment which are up to twenty-five years old from the date of death/medical unfitness of the ex-employees subject to the conditions mentioned therein, which would show that the case of the Petitioner is not barred by delay and laches in claiming compassionate appointment. He would further submit that the Railways / Respondents herein, while filing the writ petition did not deliberately bring to the notice of this Court the two circulars and the application of the review Petitioner was rejected on the ground of delay and laches in making application for compassionate appointment, by this Court and the order passed by the learned Tribunal in favour of the review Petitioner directing consideration of his case for compassionate appointment has been set aside by allowing the writ petition filed by the Railways. He would finally submit that suppression of two material documents from consideration by the Railways by not filing the same before this Court amounts to suppression of material fact, which is an error apparent on the face of the record and which deserves to be corrected by recalling and

reviewing the order under review and restoring the writ petition for hearing afresh.

3. Shri H.S. Ahluwalia, learned Standing Counsel for the Railways, would submit that he has sought instructions from Respondents No.1 and 2 and has received instructions to the effect that these circulars are in force and valid. He would also submit that these two circulars dated 28.07.2000 and 31.05.2011 were not brought to his notice at the time of filing the original writ petition, therefore, they could not be brought on record.
4. We have heard learned counsel appearing for the parties, considered their rival contentions raised herein and went through the record with utmost circumspection.
5. The Original Application filed by the review Petitioner for consideration of his case for compassionate appointment was considered by the Tribunal and after consideration, the Tribunal directed the Respondents herein to consider his case for compassionate appointment in accordance with law and the Rules in force. That order directing consideration of the Petitioner's case was challenged by the Railways / Respondents herein before this Court by filing the above-mentioned writ petition under Article 226 of the Constitution of India. This Court, by order dated 26.06.2019 allowed the writ petition filed by the Railways mainly on the ground that there is unreasonable delay in claiming compassionate appointment while negating the issue relating to his entitlement to claim compassionate appointment on the ground that he (review Petitioner) is the child of the deceased railway servant out of his second marriage.
6. Now, in this review petition, the two questions that arise for

consideration are, as to whether the order passed in a writ petition under Article 226 / 227 of the Constitution of India can be reviewed by this Court in exercise of power and jurisdiction under Order 47 Rule 1 of the CPC and whether the suppression of two material documents i.e. circular dated 28-7-2000 (Annexure RA-2) and circular dated 31-5-2011 (Annexure RA-4) would amount to an error apparent on the face of record warranting exercise of review jurisdiction?

7. It is true that in view of the Explanation appended to Section 141 of the CPC with effect from 1-2-1977, the provisions of Order 47 of the CPC relating to review are not applicable to the proceeding before the High Court under Article 226 of the Constitution of India. However, the Constitution Bench of the Supreme Court in the matter of **Shivdeo Singh v. State of Punjab**¹, negating the contention of the appellant therein that the High Court had no power of review of the order passed in a writ petition under Article 226 of the Constitution of India, held that it is sufficient to say that there is nothing in Article 226 of the Constitution to preclude a High Court from exercising the power of review which inheres in every Court of plenary jurisdiction to prevent miscarriage of justice or to correct grave and palpable errors constituted by it. Thus, as held by Their Lordships of the Supreme Court, though Order 47 of the CPC is not attracted to the writ jurisdiction of the High Court under Article 226 of the Constitution of India to review its order, yet, the review jurisdiction can be exercised to prevent miscarriage of justice or to correct grave and palpable errors committed by it (High Court).

8. The principles of law enunciated by Their Lordships in **Shivdeo Singh**

¹ AIR 1963 SC 1909

(supra) was followed with approval by Their Lordships of the Supreme Court in the matter of A.T. Sharma v. A.P. Sharma² in which Their Lordships reiterated the existence of inherent powers of the High Court to review its earlier decision in exercise of inherent powers further clarifying the legal position and it was held as under: -

“It is true there is nothing in Article 226 of the Constitution to preclude the High Court from exercising the power of review which inheres in every court of plenary jurisdiction to prevent miscarriage of justice or to correct grave and palpable errors committed by it, but there are definitive limits to the exercise of the power of review. The power of review may be exercised on the discovery of new and important matter of evidence, which after the exercise of due diligence was not within the knowledge of the person seeking the review or could not be produced by him at the time when the order was made; it may be exercised where some mistake or error apparent on the face of the record is found; it may be exercised on any analogous ground. But, it may not be exercised on the ground that the decision was erroneous on merits. That would be the Province of a court of appeal. A power of review is not to be confused with appellate power which may enable an appellate court to correct all manner of errors committed by the subordinate Court.”

9. Similarly, in the matter of Northern India Caterers (India) Ltd. v. Lt. Governor of Delhi³, Their Lordships of the Supreme Court held that “But whatever the nature of the proceedings, it is beyond dispute that a review proceeding cannot be equated with the original hearing of the case and the finality of the judgment delivered by the Court will not be reconsidered except 'where a glaring omission or patent mistake or like grave error has crept in earlier by judicial fallibility' “.
10. In the matter of M.M. Thomas v. State of Kerala and another⁴, the Supreme Court has held that the High Court as a court of record, as envisaged in Article 215 of the Constitution, must have inherent

² AIR 1979 SC 1047

³ AIR 1980 SC 674

⁴ (2000) 1 SCC 666

powers to correct the records. A court of record envelops all such powers whose acts and proceedings are to be enrolled in a perpetual memorial and testimony. A court of record is undoubtedly a superior court which is itself competent to determine the scope of its jurisdiction. The High Court, as a court of record, has a duty to itself to keep all its record correctly and in accordance with law. Hence, if any apparent error is noticed by the High Court in respect of any orders passed by it the High Court has not only power, but a duty to correct it. The High Court's power in that regard is plenary.

11. Recently, in the matter of Municipal Corporation of Greater Mumbai and another v. Pratibha Industries Limited and others⁵, R.F. Nariman, J. speaking for the Supreme Court noticing the earlier pronouncements including Shivdeo Singh (supra), held that constitutional courts (High Court), being courts of record under Article 215 of the Constitution of India, the jurisdiction to recall their own orders is inherent by virtue of the fact that they are superior courts of record.
12. Thus, from the principles of law flowing from the aforesaid authoritative pronouncements of the Supreme Court noticed herein (supra), it is quite vivid that though the provisions of the CPC under Order 47 Rule 1 are not applicable to review the order passed in the proceeding under Article 226 of the Constitution of India, yet, the High Court being court of record, power of review inheres in the court of plenary jurisdiction exercisable by this Court to prevent miscarriage of justice or to correct grave and palpable errors, but that power ought not be treated as unlimited or unabridged, but they are to be invoked

⁵ (2019) 3 SCC 203

on the grounds analogous to the grounds mentioned in Order 47 Rule 1 of the CPC, namely; (i) discovery of new and important matter or evidence which the party seeking the review could not produce at the time when the earlier order sought to be reviewed was made, despite exercise of due diligence, (ii) existence of some mistake or error apparent on the face of the record, and (iii) existence of any analogous ground.

13. Recently, in the matter of **Sasi (D) Through LRs. v. Aravindakshan Nair and others**⁶, the Supreme Court while dealing with the scope and ambit of the jurisdiction of review, held as under: -

“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.

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.”

14. Having examined the power and jurisdiction of this Court to review its order passed in a proceeding under Articles 226 and 227 of the Constitution of India and the scope and ambit of that jurisdiction, the question is, whether the suppression of these two material documents by the Respondents dated 28.07.2000 (Annexure RA-2) and 31.05.2011 (Annexure RA-4) prescribing the time within which the application for compassionate appointment of the deceased railway servant can be considered for compassionate appointment, would constitute “an error apparent on the face of record” warranting invocation of review jurisdiction?

⁶ (2017) 4 SCC 692

15. It is well settled law that jurisdiction of High Court under Article 226 of the Constitution of India is extraordinary, equitable and discretionary and a party who approaches this Court invoking the extraordinary jurisdiction of this Court, must come to this Court with clean hands.

16. In the matter of Udai Chand v. Shankar Lal and others⁷, Their Lordships of the Supreme Court revoked the order granting special leave and held that there was a mis-statement of a material fact and amounted to a serious misrepresentation.

17. In the matter of Rajabhai Abdul Rehman Munshi v. Vasudev Dhanjaibha Mody⁸, Their Lordships of the Supreme Court have held that where the court has to exercise its discretion, the discretion cannot be exercised in favour of the parties who have concealed the material facts from the notice of the court and that it is the duty of the parties to present before the court all those facts which are relevant for the court to exercise its discretion. It was observed as under: -

“11. ... A party who approaches the Court knowing or having reason to believe that if the true facts were brought to its notice this Court would not grant special leave, withholds that information and persuades this Court to grant leave to appeal is guilty of conduct forfeiting all claims to the exercise of discretion in this favour. It is his duty to state facts which may reasonably have a bearing on the exercise of the discretionary powers of this Court. Any attempt to withhold material information would result in revocation of the order, obtained from this Court. ...”

18. Similarly, in the matter of S.J.S. Business Enterprises (P) Ltd. v. State of Bihar⁹, Their Lordships of the Supreme Court observed as under: -

“As a general rule, suppression of a material fact by a litigant disqualifies such litigant from obtaining any relief.

⁷ (1978) 2 SCC 209

⁸ AIR 1964 SC 345

⁹ (2004) 7 SCC 166

This rule has been evolved out of the need of the Courts to deter a litigant from abusing the process of Court by deceiving it. But the suppressed fact must be a material one in the sense that had it not been suppressed it would have had an effect on the merits of the case.”

19.Reverting to the facts of the present case in light of the principles of law enunciated therein qua the suppression of material facts / documents, it is quite vivid that the Respondents / Railways approached this Court claiming that the application for compassionate appointment filed by the review Petitioner suffers from delay and laches, as the Petitioner's father died in harness on 10-11-1996 and the review Petitioner attained the age of majority on 13-4-2007 and accordingly, succession certificate was granted in their (he and other LRs) favour on 12-11-2009 by the succession court and he applied for compassionate appointment on 5-7-2011, which was ultimately considered and granted by the learned Tribunal on 11-4-2018, but this Court set-aside the order of the Tribunal at the instance of the Respondents herein accepting the ground of delay in moving the application holding that the Petitioner herein has moved the application (5-7-2011) for compassionate appointment after expiry of three years after the date of attaining the age of majority from 13-4-2007. The writ petition of the Railways / Respondents was allowed and the application for compassionate appointment of the review Petitioner was set-aside in consequence thereof.

20.The two circulars above-mentioned clearly empower the General Manager of the Railways to consider the cases of compassionate appointment up to 20-25 years old from the date of death of the concerned Railway servant subject to the conditions mentioned therein. The circular dated 28-7-2000 states that the General

Manager is also authorised to consider the request of compassionate appointment in respect of cases up to 20 years old, but that power has to be exercised by the General Manager personally and it has not to be delegated. The condition appended to this circular states that this power is exercisable in case of consideration of application submitted more than two years after the candidates become major. This circular is applicable to the case of the Petitioner herein, as he made the application after two years from attaining the age of majority. Thus, it cannot be held that the application filed by the Petitioner on 5-7-2011 (as his father / railway servant died on 10-11-1996) after attaining the age of majority and the succession certificate having been granted on 12-11-2009, suffers from delay and laches, as it comes within the two limits indicated in circulars dated 28-7-2000 & 31-5-2011. This is not the case where the review Petitioner's case is liable to be thrown on the ground of delay and laches in moving the application and he would be entitled for consideration for compassionate appointment, but the Railways while filing counter-affidavit either before the Central Administrative Tribunal or while filing writ petition before this Court did not put forth the correct facts, rather suppressed the two material documents leading to grant of writ petition rejecting the application of the review Petitioner for consideration of his case for appointment on compassionate basis. As such, the principles of law laid down in Udai Chand (supra) by the Supreme Court would squarely apply, as it is the case of suppression of material documents by the Respondents / Railway authorities. Suppression of these two documents by the Respondents / Railways before this Court constitutes "an error apparent on the face of record" warranting exercise of review

jurisdiction. Therefore, we deem it appropriate to invoke our review jurisdiction and review the order dated 26-6-2019 passed in W.P.(S) No.4279/2018 by recalling that order and it be listed for hearing and disposal in accordance with law. In light of the above-stated discussion, the review petition stands allowed.

21. Since the Respondents / Railways have suppressed the two material documents relating to consideration of application for compassionate appointment holding the field and obtained an order setting aside the order of the Tribunal from this Court and thereby this Court rejected the application for compassionate appointment filed by the Petitioner only on the ground of delay in making the application by order dated 26-6-2019 which we have reviewed by this order finding suppression of material documents by the Railways which amounted to an error apparent on the face of record, we deem it appropriate to award an exemplary cost of ₹ 25,000/- upon the Respondents / Railways out of which ₹ 12,500/- would be payable to the Petitioner through account payee cheque in his name and ₹ 12,500/- would be payable to the High Court Legal Services Committee within two weeks.

22. Before parting with record, we deem it appropriate to direct the General Manager, South East Central Railway to conduct an enquiry as to why and by which authority / authorities these two circulars dated 28-7-2000 and 31-5-2011 were not brought on record and thereby the Railways keep contesting the case taking stand contrary to its own circulars leading to imposition of cost and to take appropriate remedial measures.

Sd/-
(P.R. Ramachandra Menon)
Chief Justice

Sd/-
(Sanjay K. Agrawal)
Judge

HIGH COURT OF CHHATTISGARH, BILASPUR

Review Petition No.165 of 2019

Rakesh Kumar Jangde

Versus

South East Central Railway and others

Head Note

Suppression of material documents in a writ petition under Article 226 / 227 of the Constitution of India would amount to an error apparent on the face of record which can be corrected in the review jurisdiction.

भारतीय संविधान के अनुच्छेद 226 / 227 अंतर्गत प्रस्तुत रिट् याचिका में तथ्यगत अभिलेखों का छिपाया जाना, अभिलेख के मुख पर स्पष्ट परिलक्षित होने वाली त्रुटि होगी, जिसे पुनर्विलोकन क्षेत्राधिकार के अंतर्गत सुधारा जा सकता है।