

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Miscellaneous Jurisdiction Case No.2551 of 2018**

**In**  
**CIVIL REVIEW No.240 of 2017**

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Devendra Prasad Singh, Son of Late Sadhu Saran Mahto, Resident of Village  
+ P.O.- Billo, P.S.- Ramgarh Chowk, District- Lakhisarai.

... .. Petitioner

Versus

1. The State of Bihar.
2. The District Education Officer, Lakhisarai, District-Lakhisarai.
3. The District Programme Officer, Madhyamik Shiksha-cum-Departmental Enquiry Officer, Lakhisarai, District-Lakhisarai.

... .. Opposite Parties

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**Appearance :**

For the Petitioner : Mr. Praveen Kumar, Advocate

For the Opposite Parties : Mr. Ashutosh Ranjan Pandey, AAG-15

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

**and**

**HONOURABLE MR. JUSTICE PARTHA SARTHY**

**ORAL JUDGMENT**

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

**Date : 07-01-2020**

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

2. This application has been filed by the petitioner  
for restoration of Civil Review No.240 of 2017 to its original  
file, which was dismissed due to non-compliance of the  
preemptory order dated 29.11.2017 passed by this Court.

3. It is submitted by the learned counsel for the  
petitioner that by way of filing an Interlocutory Application  
No.9377 of 2017 on 20.12.2017, the order dated 29.11.2017  
passed by the court except one, all the defects were removed



within time.

4. He contended that the only defect, which could not be removed due to inadvertence within time was that of making correction of the provision of law under which the review application was filed. He prayed that the same may be ignored and the review petition be restored.

5. Learned counsel for the State does not oppose the prayer for restoration of the review application. The defect in respect of the provision of law is ignored.

6. Regard being had to the facts and circumstances of the case, the application is allowed.

7. Civil Review No.240 of 2017 is restored to its original file. Ignoring the defect in respect of correction to the provision under which the review application has been filed.

**CIVIL REVIEW No.240 of 2017**

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Heard learned counsel for the petitioner and



learned counsel for the State.

2. The instant application has been filed by the petitioner for review of the order dated 08.05.2017 passed by the Division Bench in LPA No.1072 of 2014 whereby the order dated 30.04.2014 passed by the learned single Judge in CWJC No.2683 of 2014 has been upheld.

3. Learned counsel appearing for the petitioner submitted that the order passed by the Division Bench in LPA No.1072 of 2014 is bad in law. He contended that the Division Bench ought to have held that the learned single Judge could not have compelled the petitioner to produce the original certificates, which form basis for getting employment under the State. He has further contended that the learned single Judge had grossly erred in law. He wanted to go to the root of the matter as the allegation against the petitioner was that he had got employment on the basis of forged testimonials.

4. According to him, while exercising power under Article 226 of the Constitution of India, it is not open for the writ court to act as an appellate authority over the order of removal passed in a departmental proceeding. Hence, the Division Bench ought to have held the order passed by the writ court to be without jurisdiction. He contended that since the



order passed by the Division Bench in Letters Patent Appeal is erroneous, the same is required to be reviewed and the Appeal is required to be reheard on merit.

5. On the other hand, learned counsel appearing for the State submitted that since the scope of review of judgment is limited even if the judgment is erroneous, the application for review cannot be allowed. According to him, in the review application the petitioner cannot argue on merit in order to show that the judgment under review is bad in law.

6. It is well settled that the review proceeding have to be strictly confined to the ambit of scope of Order XLVII Rule 1 of the Code of Civil Procedure. A review proceeding cannot be equated with the original hearing of the case for the purpose of fresh decision of the case.

7. A review of a judgment or a final order may be allowed on three grounds, namely, (i) discovery of new and important matter or evidence which, after the exercise of due diligence, was not within the applicant's knowledge or could not be produced by him at the time when the decree was passed; (ii) some mistake or error apparent on the face of the record; and, (iii) for any other sufficient reason.

8. In **Col. Avtar Singh Sekhon v. Union of India**,



[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”.

9. 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** [(1997) 8 SCC 715], in paragraph 7 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 (SCR at p. 186) 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 characterized 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.”

10. The error, which is not evident and has to be traced by a process of reasoning, can hardly be said to be an error apparent on the face of the record.

11. In the case of **Satyanarayan Laxminarayan Hegde v. Millikarjun Bhavanappa Tirumale** [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.”

12. In **Lily Thomas v. Union of India, [(2000)6 SCC 224]**, the principle was reiterated by the Supreme Court with a caution that in exercise of power of review, the Court may correct the mistake but not to substitute the view. The mere possibility of two views on the subject is not a ground for review.

13. In the light of the settled legal position as discussed above, having heard the petitioner and gone through the present review application, we find that no error apparent on the face of the record has been brought out by the review



petitioner warranting review of the order dated 08.05.2017 passed in L.P.A. No. 1072 of 2014. A perusal of the review application would make it evident that the same is nothing, but an appeal in disguise.

14. Thus, we are of the opinion that in the application, under consideration, the petitioner has failed to establish that there was an error or a mistake apparent on the face of the record or there was such other material available with the petitioner, which, if not taken into consideration, would cause miscarriage of justice.

15. In view of the above discussion, the present review application is dismissed.

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

**(Partha Sarthy, J.)**

Sanjeet/-

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