IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Jurisdiction Case No.4333 of 2016
In
CIVIL REVIEW No.182 of 2014

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1. The State Of Bihar through the Finance Commissioner-cum-Secretary Finance Department Government of Bihar, Patna.
2. The Joint Secretary, Finance Department, Government of Bihar, Patna.
3. The Under Secretary, Finance Department (Treasury Section) Government of Bihar, Patna.
4. The Treasury Officer, Munger.
5. The District Magistrate-cum- Collector, Munger.

... ... Petitioner/s

Versus

Prabhat Shankar Poddar Son of Late Baleshwar Poddar, resident of Chandanbag, Near Bridge, Patna Road, P.S. Kashim Bazar, District Munger.

... ... Opposite Party/s

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Appearance :
For the Petitioner/s : Mr. Anjani Kumar, Sr. Advocate.
Mr. Sanjay Prasad, Advocate.
For the Opposite Party/s :

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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 Mr. Anjani Kumar, learned senior advocate appearing for the petitioners.

2. This application has been filed for restoration of Civil Review No. 182 of 2014 to its original file, which was dismissed for want of prosecution vide order dated 23.09.2015.

3. On perusal of the pleadings made in the restoration application and the submissions made at the bar, the application is allowed.

4. Civil Review No. 182/2014 is restored to its original file.

Civil Review No. 182 of 2014

1. The State Of Bihar through the Finance Commissioner-cum-Secretary Finance Department Government of Bihar, Patna.
2. The Joint Secretary, Finance Department, Government of Bihar, Patna.
3. The Under Secretary, Finance Department (Treasury Section) Government of Bihar, Patna.
4. The Treasury Officer, Munger.
5. The District Magistrate-cum- Collector, Munger.

…… Petitioners.

Versus

Prabhat Shankar Poddar Son of Late Baleshwar Poddar, resident of Chandanbag, Near Bridge, Patna Road, P.S. Kashim Bazar, District Munger.

….. Opposite Party.

This application under Section 114 of the Code of Civil Procedure has been filed by the petitioners for review of the order dated 05.12.2013 passed by this Court in L.P.A. No. 2006 of 2011 whereby the appeal has been dismissed in *limine*.

2. The brief facts of the case are as follows:

(a) The respondent was appointed as Treasury Clerk on compassionate ground in May 1988. At the time of appointment, he was allowed the scale of Rs. 1400-2600/- admissible to other

Treasury Clerk, who opted for Treasury Cadre in 1979. The aforesaid scale was revised in terms of the recommendations of the pay Revision Committee to Rs. 5000-8000/- with effect from 01.01.1996 but, the respondent and other Treasury Clerks were allowed the reduced scale of Rs. 4000-6000/- whereafter the Treasury Clerks including the respondent and others approached this Court vide C.W.J.C. No. 3063 of 1992 in which an interim order was passed directing payment of higher scale of Rs. 5000-8000/- to the respondent and others.

(b) Vide final order dated 26.07.2001, C.W.J.C. No. 3063 of 1992 was allowed quashing the different letters of the Finance Department whereunder Treasury Clerks were allowed the scale of Rs. 4000-6000/- with further direction to grant all the Treasury Clerks including those appointed after 1979 the scale of Rs. 5000-8000/-.

(c) Being aggrieved by the aforesaid final order dated 26.07.2001, the State of Bihar filed a Letters Patent Appeal vide L.P.A. No. 165 of

2002, which was admitted for hearing vide order dated 17.02.2004. Subsequently, vide order dated 27.04.2010, L.P.A. No. 165 of 2002 was dismissed.

(d) Being aggrieved by the order dated 27.04.2010, the State filed S.L.P. No. 1381 of 2011, before the Supreme Court, which was also dismissed vide order dated 12.05.2011.

(e) While the respondent was serving on the post of Assistant Accountant, Munger Treasury, the Treasury Officer issued an order Vide Memo No. 1619 dated 16.11.2006, whereby the scale payable to the respondent had been reduced to Rs. 4000-6000/- on the ground that he was appointed as Treasury Clerk on compassionate ground in May 1988 and had not opted for the Treasury cadre in 1979.

(f) Being aggrieved by the said order dated 16.11.2006, the respondent preferred a writ petition before this Court vide C.W.J.C. No. 817 of 2007, which was allowed vide order dated 20.07.2011. The operative part of the order dated

20.07.2011 reads as under:

> "5. Having perused the impugned order dated 16.11.2006, Annexure-1 it is quite evident that scale payable to the petitioner has been reduced to Rs.4000-6000/- only on the ground that he was appointed as Treasury Clerk on compassionate ground in May 1988 and had not opted for Treasury Cadre in 1979. There is no dispute that petitioner was appointed as Treasury Clerk in the scale of Rs.1400-2600/- which was also being paid to other Treasury Clerks who opted for Treasury Cadre in 1979. In terms of the recommendation of the Pay Revision Committee the scale of Rs.1400-2600 was revised to Rs.4000-6000/-. Appointment having been made at a later date cannot be a ground for reducing the pay scale. This Court under orders dated 26.07.2001, Annexure-2 appreciating the fact that petitioner and others were appointed in the scale of Rs.1400-2600/- revised scale whereof is Rs.4000-6000/- quashed the different order/resolution reducing the scale to Rs.4000-6000/- with specific direction to allow the

petitioner and others the scale of Rs.5000-8000/-. While admitting L.P. A. No.165 of 2002 interim order dated 17.02.2004 was passed approving payment of salary to the petitioner in the higher scale of Rs.5000-8000/-, in my opinion, therefore, there was hardly any occasion for the State respondents under the impugned order dated 16.11.2006 and Finance Department letter dated 13.03.2007, Annexure-13 to again reduce the pay scale of the petitioner from 5000-8000/-to 4000-6000/-. Accordingly, the impugned order dated 16.11.2006, Annexure-1 as also the Finance Department letter no.1693 dated 13.03.2007, Annexure-13 is quashed with direction to the respondent authorities to grant the petitioner pay scale of Rs.5000-8000/- with effect from 1.1.1996 and the amount already recovered should also be refunded to him within a reasonable time.

"6. The writ application is, accordingly, allowed."

(g) Being aggrieved by the aforesaid order dated 20.07.2011 passed by the learned Single

Judge in C.W.J.C. No. 817 of 2007, the petitioners preferred L.P.A. No. 2006 of 2011 before this Court under Clause 10 of the Letters Patent. The said appeal under Clause 10 of the Letters Patent was dismissed in *limine* finding no merit in the appeal by the Division Bench.

(h) Thereafter, the petitioners filed the instant Civil Review application for reviewing the order dated 05.12.2013 passed in L.P.A. No. 2006 of 2011.

3. We have heard Mr. Anjani Kumar, learned senior advocate appearing for the petitioners.

4. In course of argument, he has submitted that so far as the case of the respondent is concerned, he is not amongst those, who were initially appointed as Lower Division Clerk in different cadres, and who had opted for Treasury Cadre of Clerks in 1979. In fact, he is one of those fifteen petitioners of C.W.J.C. No. 3063 of 1992, who were appointed on compassionate ground in different Treasuries after 1979 and onward and for whom, pay scale of Rs. 4000-6000/- was recommended by the Fitment Appellate Committee. He contended that the Division Bench while hearing the appeal failed to appreciate since the respondent was appointed Assistant Accountant in the year 1988 in the Treasury Office, Munger, there was no question for him to have opted for Treasury Cadre in 1979. The Division Bench also failed to appreciate that the Finance Department had allowed pay scale of Rs. 5000-8000/- only to those, who had opted for Treasury Cadre of Clerks in 1979. He contended that the Division Bench ought to have allowed the appeal and set aside the order passed by the learned Single Judge.

5. He has tried to draw our attention towards various Annexures to the review application in order to substantiate his argument that the order passed by the Division Bench in the Letters Patent Appeal was erroneous.

6. In our opinion, the illegality of an order cannot form basis for seeking review of an order.

7. 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.

8. 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.

9. 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 : (SCC p. 675, para 1)
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> "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".

10. 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 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."

11. 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.

12. In the case of ***Satyanarayan Laxminarayan Hegdevs 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."

13. 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.

14. In the light of the settled legal position as discussed above, having heard the petitioners 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 petitioners warranting review of the order dated 05.12.2013 passed in L.P.A. No. 2006 of 2011. A perusal of the review application would make it evident that the same is nothing, but an appeal in disguise.

15. 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.

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

(Ashwani Kumar Singh, J)

(Partha Sarthy, J)

rohit/-

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