THE HIGH COURT OF MADHYA PRADESH : JABALPUR

(Division Bench)

Heard through Video Conferencing

Writ Appeal No.2103/2019

Dr. Devendra Gautam ... Appellant

versus

The State of Madhya Pradesh and others ...Respondents

Appearance:

Shri Akash Choudhary, learned counsel for the appellant.

Shri Naman Nagrath, learned Senior Counsel with Shri Jubin Prasad and Shri Pramod Kumar Sahu, learned counsel for the respondent No.5.

CORAM :

Hon'ble Shri Justice Sanjay Yadav, Acting Chief Justice

Hon'ble Shri Justice Vijay Kumar Shukla, Judge

Date of decision : **19.11.2020**

O R D E R

Per Sanjay Yadav, Acting Chief Justice :-

This appeal under Section 2(1) of the Madhya Pradesh Uchcha Nyayalaya (Khand Nyayapeeth Ko Appeal) Adhiniyam, 2005,

principally arises from the order dated 15.11.2019 passed in Review Petition No.1438/2019; whereby learned Single Judge while setting aside its order dated 26.09.2019 passed in Writ Petition No.16709/2018, allowed the writ petition.

2. The controversy in Writ Petition was in respect of the charge of the post of Principal, Janta Mahavidyalaya, Rewa. Exception was taken to orders dated 26.12.2017, 28.12.2017 and 30.06.2018. That, by order dated 26.12.2017, representation preferred by the respondent No.5 Dr. Ram Manoj Dwivedi, Assistant Professor (Sanskrit), for correction of seniority, was turned down. That, by order dated 28.12.2017, present appellant was given the charge of Principal of said college. Whereas, by order dated 30.06.2018, the representation preferred by respondent No.5 in furtherance to direction dated 28.02.2018 in Writ Petition No.228/2018 for grant of charge of the post of Principal of said college, was rejected. Evident it is from the order dated 30.06.2018 that the representation was rejected for the following reasons :

> ''(1) याचिका क्रमांक 4215/97 के निर्णय दिनांक 25.03.2010 के तारतम्य में नियुक्ति उक्त दिनांक 19.10.84 से वेतन एवं वेतनमान संबंधी लाभ प्रदान किये गये है इसको डॉ.द्विवेदी द्वारा भी अपने अभ्यावेदन में मान्य किया गया है। निर्णय में इनकी प्रथम नियुक्ति

06.08.83 मान्य करने के संबंधी कोई निर्देश नहीं है बल्कि 19.10.84 को मान्य किया गया है। अतः इनकी सेवा में प्रारंभिक नियुक्ति दिनांक 19.10.84 मान्य है जिसका वित्तीय व्यय पूर्वानुसार संस्था द्वारा वहन किया जावेगा, परन्तु 1.9.87 के पूर्व संस्था के व्यय पर परिवीक्षा पर की गई सेवायें (19.10.84 से 31.08.87) का नियमन किया जाना उचित प्रतीत नहीं होता है। अतः अनुदान मान्य होने के दिनांक 1.9.87 से नियमित नियुक्ति मानते हुये तदानुसार आदेश क्रमांक/273/498/आउशि/अनु.ब/18 दिनांक 12.2.18 द्वारा दिनांक 1.9.87 से 24.9.98 तक की सेवाओं का नियमन यथावत रखा जाता है और अभ्यावेदन अमान्य किया जाता है।

(2) यद्यपि डॉ. द्विवेदी की म.प्र. अशासकीय शिक्षण संस्था (अध्यापक तथा अन्य कर्मचारियों) की भर्ती नियम 1979 की कण्डिका–4(क) के संविलयन द्वारा नियुक्ति सुदर्शन महावि. लालगांव से जनता महाविद्यालय, रीवा में की गई थी और उक्त कण्डिका के प्रावधानानुसार खण्ड (क) के अधीन भर्ती की पद्धति की पूर्वोकता यथास्थिति खण्ड (ख), (ग) एवं (घ) में विनिर्दिष्ठ की गई भर्ती की अन्य पद्धतियों से ऊपर होगी। तथापि संविलियन के फलस्वरूप वरिष्ठता निर्धारण के संबंध में क्रमांक/एफ–3–4/08/3/एक दिनांक 31.5.08 में प्रावधान स्पष्ट है। इसकी कण्डिका–2(1),(2) के तहत कार्यालयीन आदेश क्रमांक/382/79/न्या/अनुब/16 दिनांक 22.2.17 द्वारा वरिष्ठता संविलियन दिनांक को महाविद्यालय में कार्यरत शिक्षकों के नीचे क्रम में निर्धारित की गई है जो यथोचित है। अतः उक्त आदेश दिनांक 22.2.17 एवं उसके अनुक्रम मे डॉ. द्विवेदी द्वारा प्रस्तुत अभ्यावेदन 22.3.17 को अमान्य करने संबंधी जारी आदेश क्रमांक/4249/498/आउशि अनुब/17 दिनांक 26.12.17 को यथावत रखते हुये अभ्यावेदन अमान्य किया जाता है।

(3) डॉ. द्विवेदी की नियुक्ति दिनांक के आधार पर वरिष्ठ है, इनकी वरिष्ठता संविलियन दिनांक के आधार पर कनिष्ठ है और इनके विरूद्ध

विभिन्न माध्यमों से प्राप्त शिकायतों की जांच कुलसचिव, अवधेश प्रताप सिंह वि.वि. रीवा के पास जांच हेतु विचाराधीन है जिनमें निर्णय होना शेष है। प्रभारी प्राचार्य का प्रभार सौपानें से जांच प्रभावित हो सकती है । ऐसी स्थिति में प्रभारी प्राचार्य का प्रभार सौंपा जाना उचित न होने के कारण आदेश क्रमांक/4253/498/आउशि/अनुब/17 दिनांक 26.12.17 द्वारा की गई कार्यवाही यथोचित है और इसे यथावत रखते हुये अभ्यावेदन अमान्य किया जाता है।''

3. Learned Single Judge vide order dated 26.09.2019 in Writ Petition No.16709/2018 (Dr. Ram Manoj Dwivedi vs the State of M.P. and others) negatived the challenge on the following findings :

> "11. The moot question involved in this case is as to whether, the petitioner can be given the charge of the post of Principal being the senior most teacher or his claim can be refused considering the alleged enquiries and the charges pending against him?
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> 12. After hearing the arguments advanced by the learned counsel for the parties as well as on a bare perusal of the record available, I am of the opinion that it is an undisputed fact that the petitioner has been granted seniority by the respondent/Authorities vide letter dated 18.06.2015 (Annexure-P/14) w.e.f. his first date of appointment i.e. 06.08.1983 even a seniority list published in the year 2017 (Annexure- P/25) in which, the date of appointment of the petitioner was shown w.e.f. 06.08.1983. Vide letter dated 06.03.2018 (Annexure-P/34), the Registrar of the University has clarified that in the gradation list of the Assistant Professors published by the University, the petitioner has been placed at serial No.24 in which, he was shown to have been appointed on 06.08.1983. Nobody has disputed this fact that from the

date of appointment or from the date of seniority granted to the petitioner, he is senior to respondent No.5. However, respondent No.5 has objected that the seniority is not the criteria for granting additional charge of the higher post i.e. Principal of the College, on the contrary he has submitted that on account of pending enquiries against the petitioner, he has been deprived from the charge of the post of Principal. Although, in a reply of official respondent No.5, nowhere it is mentioned that the petitioner is not being given the charge of the post as he is facing some enquiries relating to financial irregularities. From the record available and even reply filed by the respondents, they failed to produce any material before this Court as to what enquiries are pending against the petitioner and not only this, the petitioner has also sought information from the respondents to apprise him as to what enquiries are pending against him and what allegations were being enquired about but neither it was supplied to the petitioner nor it was produced before this Court. Although, from the documents available, it reflects that there were no enquiries pending against the petitioner. Even though, the petitioner failed to prove that holding the charge of the post of Principal is his statutory or constitutional right merely, because he is the senior most person available in the College. It is a trite law that no mandamus can be issued unless any legal, vested, statutory or constitutional right of the petitioner is infringed. It is also a settled principle of law that the High Court in writ jurisdiction cannot enforce any executive instructions. Even in the case of Rakesh Kumar Verma (supra), the Division Bench of this Court has observed as under:-

"In the absence of regularly promoted Principal, the State Government is required to make a working arrangement. In such working arrangement, if a Principal of another College has been given charge, the appellant who is only an Assistant Professor, cannot claim that he

> has any vested right for being given charge of the Principal of the College. Learned Single Judge has rightly taken into consideration the Supreme Court judgment reported as AIR 1993 SC 2273 [State of Haryana Vs. S.M. Sharma and others] as well as judgment of this court reported as 2016 (3) MPLJ 152 [Dr. V.B. Singh Baghel Vs. State of MP and others]. We do not find any error in the order passed by the learned Single Judge which may warrant interference in the present intra court appeal."
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> 13. In view of the above, I do not find any substance in the contention raised by the learned counsel for the petitioner. Resultantly, the petition filed by the petition being without any substance, is hereby dismissed."

4. The respondent No.5 thereafter, sought review of the order dated 26.09.2019 vide Review Petition No.1438/2019 on the ground that learned Single Judge glossed over the aspect of malice. It was urged that order dated 30.06.2018 was also challenged on the ground of malice.

5. Learned Single Judge taking note of settled principle of law that the scope of review is very limited and the order can be reviewed only when mistake is apparent on the face of record, went on to observe that "In the original petition, the petitioner has made allegations against the respondents-authorities saying that they are somehow trying to harm, dislodge and humiliate the petitioner. In the order passed by this Court, it has also been observed that the

petitioner was undisputedly granted seniority treating his appointment w.e.f. 06.08.1993 and was placed at serial No.24 and as such he was the senior most person in the institution and also senior to respondent No.5. It was also incorrectly alleged that there were pending enquiries against the petitioner, therefore, he cannot be given the charge of the Principal. It is also observed by this Court in the order dated 26.09.2019 that the respondents failed to produce any material before the Court showing as to what enquiries were pending against the petitioner, but on the contrary it is observed that there was no enquiry pending against the petitioner and the authorities are unnecessarily trying to make out a case against the petitioner to deprive him to get the charge on the post of Principal. Thus, it is apparent that the action of the respondents/authorities suffers not only with malice in fact but also with malice in law". It further observed that "the petitioner in this petition has alleged specific allegation of malice against the-then incumbent /Additional Director, Higher Education Department, Rewa Division, Rewa. In this regard, he has also filed a document i.e. a letter dated 18.09.2017 (Annexure P/32) but that has not been considered. According to the said letter dated 18.09.2017, the petitioner has

made specific allegation against the said officer saying that he should be kept away from the enquiries conducted against the petitioner because he had filed several contempt cases against him and pending before the High Court, Jabalpur. Since there was no reply to that allegation and this Court has not considered that aspect, now it is required to look into that and taking note of the law laid down by this Court carving out an exception for holding the charge of the higher post, normal rule would not be applicable if the order is malicious in nature". Learned Single Judge further observed that "This Court has also not considered the aspect that present case is not a case of holding the temporary charge of higher post lying vacant and therefore seniority can be ignored but here in this case the post of Principal has not been filled-up since 1998 as no regular appointment has been made, therefore, the seniority of the petitioner cannot be ignored as there was no other impediment in giving the charge on the post of Principal to the petitioner. The State Government has also framed the policies on so many occasions that the officiating charge of the higher post should be given to the senior most person unless there is any impediment to give the charge of the said post. In the Higher Education Department also,

the instructions have been issued that the seniority is paramount consideration for giving officiating charge of the higher post". Consequently, learned Single Judge reversed its order of 26.09.2019 and allowed the writ petition holding that :

> "Accordingly, the order passed by this Court needs to be modified to the extent that the petitioner cannot be denied to hold the charge of the Principal merely because he is senior most Professor available in the College since action of the respondent suffers from malice keeping the petitioner away by making frivolous attempts to hold the charge of the post of Principal, his valuable right in pursuance to the instructions issued by the State Government / Higher Education Department cannot be ignored at this stage. Thus, keeping other observations intact, as observed in the order dated 26.09.2019 which is sought to be reviewed, the same is modified to the extent that the petitioner being the senior most teacher is otherwise entitled to hold the officiating charge of the Principal of the College because the action of the authorities denying his claim is not bona fide but that suffers from malice".

6. The order is being assailed on the ground of it being based on perverse findings. Taking us through the pleadings in Writ Petition No.16709/2018, it is contended on behalf of the appellant that it is not only that the persons/official concerned against whom the allegations were allegedly made were made parties, there was no specific allegations of malafide. It is urged that initially learned

Single Judge vide order dated 27.07.2018 passed an interim order on the first date of hearing directing the Authorities to give the charge of Principal of Janta Mahavidyalaya to respondent No.5; however, the said order was challenged by the appellant in Writ Appeal No.999/2018, wherein, following order came to be passed on 08.08.2018 :

> "The challenge in the present appeal is to an order passed by the learned Single Bench on 27.07.2018 in W.P. No.16709/2018 whereby, the authorities were directed not to allow appellant to act as the Principal of Janta Mahavidyalaya, Rewa and further directed to reconsider the decision in respect of giving additional charge of the Principal of Janta Mahavidyalaya, Rewa taking note of the seniority of the writ petitioner and the present appellant.
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> Learned counsel for the writ petitioner submits that the writ petitioner was given the officiating charge but the same was taken from him under the guise of some inquiry pending and the charge of the post of Principal entrusted to the present appellant. Learned counsel for the writ petitioner relies upon a communication dated 06.03.2018 (Annexure P-34) to contend that inquiry stands concluded and that he has been exonerated.
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> We find the contention of the writ petitioner to be incorrect. The document Annexure P-34 dated 06.03.2018 is an inter-departmental communication from the Registrar of Awadhesh Pratap Singh University, Rewa to the Commissioner, Higher Education, State of Madhya Pradesh. In fact, a detailed order Annexure P-3 has been passed on 30.06.2018 by the Commissioner on behalf of the State Government that the writ petitioner is not the senior most and that the complaints against the writ

petitioner are pending consideration before the Vice Chancellor of the University. Therefore, entrustment of the responsibilities of the officiating Principal will affect the fair conduct of the inquiry pending against him.

In view of the said finding recorded by the Commissioner in its order dated 30.06.2018, we find that the learned Single Bench has erred in law in passing an order directing the authorities not to allow the present appellant to act as the Principal of the College. Still further, by virtue of an interim order, the writ petitioner has been granted the relief claimed in the writ petition itself. By virtue of an interim order, the relief claimed in the writ petition cannot be granted.

Consequently, the order passed by the learned Single Bench on 27.07.2018 is set aside. Let the writ petition be decided on merit in accordance with law."

7. It is further contended that the respondent No.5 has never impleaded any of the Authorities as *eu-nomine* party in the writ petition; therefore, no ground of malice could have been raised by respondent No.5 and without impleading the Authorities as party by name. It is urged that the Authorities were not given due opportunity to explain the malice as alleged by respondent No.5 therefore, the finding recorded by learned Single Judge that the Authorities have acted malafidely is unfounded and deserves to be set aside. It is also contended that State Government as well as the appellant by filing reply in the writ petition have categorically stated that as per the Rules of 1979, the respondent No.5 is entitled to claim seniority for

the purpose of grant of charge of Principal only from the date he was absorbed in Janta Mahavidalaya i.e. w.e.f. 25.09.1998. Therefore, the appellant being senior to the respondent No.5/writ petitioner, the charge was rightly given to the appellant. It is submitted that the seniority list issued by the College was never questioned by respondent No.5 nor it was set aside by learned Single Judge. On these contentions, the appellant seeks indulgence.

8. Respondent No.5, on his turn, has supported the impugned order. It is contended that even if the respective officers were not parties in person which, in fact, were not required to, in case where there is malice in law. It is urged that there were ample material documents on record to establish malice in law which escaped the attention of learned Single Judge while deciding Writ Petition No.16709/2018; when brought to notice vide review petition; the material documents were considered in right perspective. It is urged that learned Single Judge did not err in law as would warrant any indulgence.

9. Considered rival submissions and perused the entire record.

10. The scope of review is well established by catena of decisions. In **Satyanarayan Laxminarayan Hegde vs Millikarjun Bhavanappa Tirumale AIR 1960 SC 137**, it is held : "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." Further, in **Aribam Tuleshwar Sharma vs Aribam Pishak Sharma AIR 1979 SC 1047**, it is held : "3. .. The power of review may be exercised on the discovery of new and important matter or evidence which, after the exercise of due digilence 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 also 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."

11. In **Meera Bhanja vs Nirmala Kumari Choudhury (1995) 1 SCC 170**, it is held :

> "8. It is well settled that the review proceedings are not by way of an appeal and have to be strictly confined to the scope and ambit of Order 47, Rule 1, CPC. In connection with the limitation of the powers of the court under Order 47, Rule 1, while dealing with similar jurisdiction available to the High Court while seeking to review the orders under Article 226 of the Constitution of India, this Court, in the case of Aribam Tuleshwar Sharma v. Aribam Pishak Sharma [(1979) 4 SCC 389 : AIR 1979 SC 1047] , speaking through Chinnappa Reddy, J., has made the following pertinent observations:
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> "It is true as observed by this Court in Shivdeo Singh v. State of Punjab [AIR 1963 SC 1909], 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 or 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 also 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. Now it is also to be kept in view that in the impugned judgment, the Division Bench of the High Court has clearly observed that they were entertaining the review petition only on the ground of error apparent on the face of the record and not on any other ground. So far as that aspect is concerned, it has to be kept in view that an error apparent on the face of record must be such an error which must strike one on mere looking at the record and would not require any long-drawn process of reasoning on points where there may conceivably be two opinions. We may usefully refer to the observations of this Court in the case of Satyanarayan Laxminarayan Hegde v. Mallikarjun Bhavanappa Tirumale [AIR 1960 SC 137] wherein, K.C. Das Gupta, J., speaking for the Court has made the following observations in connection with an error apparent on the face of the record:

> 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. Where an alleged error is far from self-evident and if it can be established, it has to be established, by lengthy and complicated arguments, such an error cannot 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 vs Union of India (2000) 6 SCC 224**, it is held :

52. The dictionary meaning of the word "review" is "the act of looking, offer something again with a view to correction or improvement". It cannot be denied that the review is the creation of a statute. This Court in Patel Narshi Thakershi v. Pradyumansinghji Arjunsinghji (1971)

3 SCC 844 held that the power of review is not an inherent power. It must be conferred by law either specifically or by necessary implication. The review is also not an appeal in disguise. It cannot be denied that justice is a virtue which transcends all barriers and the rules or procedures or technicalities of law cannot stand in the way of administration of justice. Law has to bend before justice. 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 a miscarriage of justice nothing would preclude the Court from rectifying the error. This Court in S. Nagaraj v. State of Karnataka [1993 Supp (4) SCC 595] held:

"19. Review literally and even judicially means re-examination or reconsideration. Basic philosophy inherent in it is the universal acceptance of human fallibility. Yet in the realm of law the courts and even the statutes lean strongly in favour of finality of decision legally and properly made. Exceptions both statutorily and judicially have been carved out to correct accidental mistakes or miscarriage of justice. Even when there was no statutory provision and no rules were framed by the highest court indicating the circumstances in which it could rectify its order the courts culled out such power to avoid abuse of process or miscarriage of justice. In Raja Prithwi Chand Lal Choudhury v. Sukhraj Rai [AIR 1941 FC 1] the Court observed that even though no rules had been framed permitting the highest court to review its order yet it was available on the limited and narrow ground developed by the Privy Council and the House of Lords. The Court approved the principle laid down by the Privy Council in Rajunder Narain Rae v. Bijai Govind Singh [(1836) 1 Moo PC 117] that an order made by the Court was final and could not be altered:

'… nevertheless, if by misprision in embodying the judgments, errors have been introduced, these courts possess, by common law, the same power which the courts of record and statute have of rectifying the mistakes which have crept in…. The House of Lords exercises a similar power of rectifying mistakes made in drawing up its own judgments, and this Court must possess the same authority. The Lords have however gone a step further, and have corrected mistakes introduced through inadvertence in the details of judgments; or have supplied manifest defects in order to enable the decrees to be enforced, or have added explanatory matter, or have reconciled inconsistencies.'

Basis for exercise of the power was stated in the same decision as under:

'It is impossible to doubt that the indulgence extended in such cases is mainly owing to the natural desire prevailing to prevent irremediable injustice being done by a court of last resort, where by some accident, without any blame, the party has not been heard and an order has been inadvertently made as if the party had been heard.'

Rectification of an order thus stems from the fundamental principle that justice is above all. It is exercised to remove the error and not for disturbing finality. When the Constitution was framed the substantive power to rectify or recall the order passed by this Court was specifically provided by Article 137 of the Constitution. Our Constitution-makers who had the practical wisdom to visualise the efficacy of such provision expressly conferred the substantive power to review any judgment or order by Article 137 of the Constitution. And clause (c) of Article 145 permitted this Court to frame rules as to the conditions subject to which any judgment or order may be reviewed. In exercise of this power Order XL had been

framed empowering this Court to review an order in civil proceedings on grounds analogous to Order 47 Rule 1 of the Civil Procedure Code. The expression, 'for any other sufficient reason' in the clause has been given an expanded meaning and a decree or order passed under misapprehension of true state of circumstances has been held to be sufficient ground to exercise the power. Apart from Order XL Rule 1 of the Supreme Court Rules this Court has the inherent power to make such orders as may be necessary in the interest of justice or to prevent the abuse of process of court. The Court is thus not precluded from recalling or reviewing its own order if it is satisfied that it is necessary to do so for sake of justice."

The mere fact that two views on the same subject are possible is no ground to review the earlier judgment passed by a Bench of the same strength.

…

58. …. No such error has been pointed out by the learned counsel appearing for the parties seeking review of the judgment. The only arguments advanced were that the judgment interpreting Section 494 amounted to violation of some of the fundamental rights. No other sufficient cause has been shown for reviewing the judgment. The words "any other sufficient reason appearing in Order 47 Rule 1 CPC" must mean "a reason sufficient on grounds at least analogous to those specified in the rule" as was held in Chhajju Ram v. Neki [AIR 1922 PC 112] and approved by this Court in Moran Mar Basselios Catholicos v. Most Rev. Mar Poulose Athanasius AIR 1954 SC 526. Error apparent on the face of the proceedings is an error which is based on clear ignorance or disregard of the provisions of law. In T.C. Basappa v. T. Nagappa [AIR 1954 SC 440] this Court held that such error is an error which is a patent error and not a mere wrong decision. In Hari Vishnu Kamath v. Ahmad Ishaque [AIR 1955 SC 233] it was held:

"[I]t is essential that it should be something more than a mere error; it must be one which must be manifest on the face of the record. The real difficulty with reference to this matter, however, is not so much in the statement of the principle as in its application to the facts of a particular case. When does an error cease to be mere error, and become an error apparent on the face of the record? Learned counsel on either side were unable to suggest any clear-cut rule by which the boundary between the two classes of errors could be demarcated.

Mr Pathak for the first respondent contended on the strength of certain observations of Chagla, C.J. in — 'Batuk K. Vyas v. SuratBorough Municipality [AIR 1953 Bom 133]' that no error could be said to be apparent on the face of the record if it was not self-evident and if it required an examination or argument to establish it. This test might afford a satisfactory basis for decision in the majority of cases. But there must be cases in which even this test might break down, because judicial opinions also differ, and an error that might be considered by one Judge as self-evident might not be so considered by another. The fact is that what is an error apparent on the face of the record cannot be defined precisely or exhaustively, there being an element of indefiniteness inherent in its very nature, and it must be left to be determined judicially on the facts of each case."

Therefore, it can safely be held that the petitioners have not made out any case within the meaning of Article 137 read with Order XL of the Supreme Court Rules and Order 47 Rule 1 CPC for reviewing the judgment in Sarla Mudgal case [Sarla Mudgal, President, Kalyani v. Union of India, (1995) 3 SCC 635]. The petition is misconceived and bereft of any substance."

13. In **Union of India vs Sandur Manganese & Iron Ores Ltd., (2013) 8 SCC 337**, it is held :

> "23. It has been time and again held that the power of review jurisdiction can be exercised for the correction of a mistake and not to substitute a view. In Parsion Devi v. Sumitri Devi [(1997) 8 SCC 715], this Court held as under: (SCC p. 719, para 9)
>
> "9. Under Order 47 Rule 1 CPC a judgment may be open to review inter alia if there is a mistake or an error apparent on the face of the record. An error which is not self-evident and has to be detected by a process of reasoning, can hardly be said to be an error apparent on the face of the record justifying the court to exercise its power of review under Order 47 Rule 1 CPC. In exercise of the jurisdiction under Order 47 Rule 1 CPC it is not permissible for an erroneous decision to be 'reheard and corrected'. A review petition, it must be remembered has a limited purpose and cannot be allowed to be 'an appeal in disguise'."

14. It is also a trite law that the malafide, whether of facts or law, has to be pleaded and proved, an inference cannot be drawn. In **State of Punjab vs V.K. Khanna (2001) 2 SCC 330**, it is held that:

> "25. … The expression "mala fide" has a definite significance in the legal phraseology and the same cannot possibly emanate out of fanciful imagination or even apprehensions but there must be existing definite evidence of bias and actions which cannot be attributed to be otherwise bona fide — actions not otherwise bona fide, however, by themselves would not amount to be mala fide

> unless the same is in accompaniment with some other factors which would depict a bad motive or intent on the part of the doer of the act."

15. In **Prabodh Sagar vs Punjab SEB, (2000) 5 SCC 630**, it is held that "mala fide" is not meaningless jargon and it has its proper connotation which can only be appreciated from the record of the case and besides averments, they must be supported by facts on record:

> "13. As noted above, the High Court has not highlighted this aspect of the matter, though the same was brought to the notice of the High Court, we do not know for what reasons, neither do we intend to delve into it but the fact remains that the comment of the learned advocate appearing for the Board during the course of hearing before this Court that the litigatious spirit of the petitioner has, in fact, brought into effect the exercise of jurisdiction of the writ court to a ludicrous extent. We do find some justification in the criticism of the learned advocate for the Board vis-à-vis the conduct of the appellant-petitioner herein. The petitioner has been, as noted above, from 1989 onwards engaged himself in the law courts rather than exerting himself in an effort to improve his capability as the employee of the Board so that the Board and the State obtain maximum benefit from out of the services of the appellant-petitioner but unfortunately his litigatious spirit prevailed upon him and as noticed above we do find some justification as regards the comment made by the learned advocate appearing for the Board. Mala fides have been alleged against the statutory Board (Punjab State Electricity Board) but the contextual facts negate such an allegation. Incidentally, be it noted that the expression "mala fide" is not meaningless jargon and it has its proper connotation. Malice or mala fides can only be appreciated

> from the records of the case in the facts of each case. There cannot possibly be any set guidelines in regard to the proof of mala fides. Mala fides, where it is alleged, depends upon its own facts and circumstances. We ourselves feel it expedient to record that the petitioner has become more of a liability than an asset and in the event of there being such a situation vis-à-vis an employee, the employer will be within his liberty to take appropriate steps including the cessation of relationship between the employer and the employee. The service conditions of the Board's employees also provide for voluntary (sic compulsory) retirement, a person of the nature of the petitioner, as more fully detailed hereinbefore, cannot possibly be given any redress against the order of the Board for voluntary retirement. There must be factual support pertaining to the allegations of mala fides, unfortunately there is none. Mere user of the word "mala fide" by the petitioner would not by itself make the petition entertainable. The Court must scan the factual aspect and come to its own conclusion i.e. exactly what the High Court has done and that is the reason why the narration has been noted in this judgment in extenso. Tampering of the annual confidential rolls has been alleged but there is no evidence in regard thereto or even to link up the two private respondents therewith. While it is true that the earlier relationship between an employer and employee or between the employees was that of mutual trust, confidence or welfare, presently the situation in general stands polluted and may be even one degree higher than the pollution of the environment, but that does not however clothe the court to come to a conclusion of mala fide without there being any basic evidence being made available to the court."

16. Furthermore, unless established that an order is made contrary to the object and purpose of the Act, an act done cannot be said to be malicious or malice in law. It is not when merely the petitioner thinks, but does not establish on facts, an inference of malice in law

can be drawn. In **Suraj Pal Sahu vs State of Maharashtra (1986) 4 SCC 378**, it is held:

> "25. An order is mala fide when there is malice in law although there is no malice in fact. The malice in law is to be inferred when an order is made contrary to the objects and purposes of the Act. Whether in any particular case this is so or not must depend upon the facts and circumstances of the case. ..."

17. In the case at hand, learned Single Judge having glossed over these aspects, erred in reversing a well considered order passed in Writ Petition No.16709/2018 which cannot be given the stamp of approval.

18. Consequently, order dated 15.11.2019 passed in Review Petition No.1438/2019 is set aside and the order dated 26.09.2019 passed in Writ Petition No.16709/2018 is restored.

19. The Appeal is **disposed of** finally in above terms. No costs.

(Sanjay Yadav)
Acting Chief Justice

(Vijay Kumar Shukla)
Judge

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