

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL REVIEW No.123 of 2021

In
Civil Writ Jurisdiction Case No.8106 of 2021

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Amar Dev Pandey, S/o Shri Radhey Shyam Pandey, resident of Village
Hasanpura, P.O.-Nasirpur P.S.-Gazipur District - Uttar Pradesh, Pin Code -
232339.

... .. Petitioner

Versus

1. The State of Bihar through the Principal Secretary, General Administration
Department, Bihar, Patna.
2. Secretary, Law Department, Bihar, Patna.
3. Bihar Public Service Commission, Patna through its Secretary.
4. Chairman, Bihar Public Service Commission, Patna.
5. Secretary, Bihar Public Service Commission, Patna.
6. Joint Secretary-cum-Collector of Examinations, Bihar Public Service
Commission, Patna.

... .. Opposite Parties

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Appearance :

For the Petitioner : Ms. Manisha Pandey, Advocate
For the Opposite Party : None

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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 : 11-08-2021

By the present application, the petitioner seeks
review of the order of the Division Bench dated 23.03.2021
passed in CWJC No.8106 of 2021 by which the writ petition of
the petitioner has been dismissed.

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

(a) The Bihar Public Service Commission issued

Advertisement No.4 of 2020 on 09.03.2020



inviting applications from eligible candidates for participating in the 31st Bihar Judicial Services (Preliminary) Competitive Examination for consideration of their cases for appointment against a total number of 221 seats of Civil Judge (Junior Division) in different categories as indicated under the said advertisement.

(b) Clause-4(ka) of the aforesaid Advertisement No.4 of 2020 dated 09.03.2020 prescribed that in terms of the provisions contained under notification dated 08.05.2008 bearing Notification No.4923 issued by the Personnel and Administrative Reforms Department of the State Government, in the event of submission of application by a large number of candidates, a Preliminary Tests in the form of Multiple Objective Choice Test would be conducted by the Commission and candidates equal to ten times the number of vacancies would be allowed to participate in the Main Examination.

(c) The petitioner being eligible in all respects, amongst other persons, submitted his application



form in the prescribed manner for participating in the process of selection pursuant to the aforesaid 31st Bihar Judicial Services (Preliminary) Competitive Examination in furtherance of Advertisement No.4 of 2020.

(d) Thereafter, the petitioner participated in the 31st Bihar Judicial Services (Preliminary) Competitive Examination, Patna on 06.12.2020 which comprised of Multiple Choice Objective Test in the subjects of General Studies and Law.

(e) After the examination, the answer key was published by the Bihar Public Service Commission in relation to the questions that had been asked, inter alia, in the subject of Law.

(f) Subsequently, the result of the candidates who had participated in the 31st Bihar Judicial Services (Preliminary) Competitive Examination was published. The petitioner was shown to have secured a total of 162 marks in the said examination including the subjects of General Studies and Law whereas 164 was the cut-off marks for the candidates belonging to the



Unreserved Category.

(g) Since the petitioner belongs to the Unreserved Category, he failed to qualify in the said Preliminary Test by a margin of 2 marks.

(h) The case of the petitioner is that after the result of the 31st Bihar Judicial Services (Preliminary) Competitive Examination was published, he analyzed the answer key published by the Commission. According to him, insofar as question nos. 58, 126 and 133 of Set-D of the question booklet were concerned, marks had been awarded to the candidates while treating incorrect options to be the correct answers of the said questions, as a result of which, he has been subjected to extreme detriments, as he has been ousted from the zone of the consideration by a minuscule margin of two marks only.

(i) Being aggrieved by the aforesaid result of the Preliminary Competitive Examination, the petitioner filed a writ petition before this Court vide CWJC No.8106 of 2021 seeking the following reliefs:-



“(i) Issuance of a direction, order or writ, including writ in the nature of mandamus commanding the concerned respondent authorities under the Bihar Public Service Commission, Patna (hereinafter referred to as “the Commission”) to take steps towards making necessary changes in the answer key prepared by the Commission pursuant to 31st Bihar Judicial Services (Preliminary) Competitive Examination in so far as question no. 58, 126 and 133 of Set-D of the said examination are concerned;

(ii) Issuance of a direction, order or writ, including writ in the nature of mandamus commanding the concerned respondent authorities to redraw the list of successful candidates for enabling them to participate in the Main Examination pursuant to advertisement no.04/2020 with respect to the 31st Bihar Judicial Services (Preliminary) Competitive Examination after making necessary correction in the answer key and devaluation of the performance of the candidates on the basis of the said correction;



(iii) Issuance of a direction, order or writ, including writ in the nature of mandamus commanding the concerned respondent authorities to take steps towards allowing the petitioner to participate in Main Examination as he has been wrongly declared to be unsuccessful on account of marks having been awarded in favour of the candidates on the basis of erroneous answer key prepared with respect to the aforesaid questions no.58, 126 and 133 of Set-D asked in the 31st Bihar Judicial Services (Preliminary) Competitive Examination pursuant to advertisement no.04/2020 issued by the Commission;

(iv) Issuance of an *ad interim* direction upon the concerned respondent authorities to refrain from taking further steps with respect to conducting the Main Examination in furtherance of advertisement no.04/2021 regarding the 31st Bihar Judicial Services (Preliminary) Competitive Examination for consideration of cases of candidates for appointment against the posts of Civil Judge (Junior Division) within the State of



Bihar;

(v) Any other relief that the petitioner may be found to be entitled to in the facts and circumstances of the present case.”

(j) The said writ petition filed on behalf of the petitioner was dismissed by a Division Bench of this Court vide order dated 23.03.2021 on the ground that the petitioner did not object to the tentative answer keys for the objective type examination published on the Commission's website within the stipulated time to file objections and. hence, he is debarred from raising objection about the correctness of the answer keys. The Division Bench was also of the view that the Court sitting in writ jurisdiction exercising the power of judicial review, would not go into the correctness or otherwise of the opinion of Experts Body unless it is shown to be perverse.

(k) Aggrieved by the dismissal of his writ petition, the petitioner challenged the order dated 23.03.2021 passed in CWJC No. 8106 of 2021 before the Supreme Court vide Special Leave to



Appeal (c) No.5481 of 2021. However, vide order dated 06.04.2021, the Special Leave Petition was disposed of as withdrawn by the Supreme Court.

(1) In view of the aforesaid order dated 06.04.2021 passed by the Supreme Court, the petitioner, Amar Dev Pandey, has filed the present review petition.

3. We have heard Ms. Manisha Pandey, learned counsel for the petitioner. She submitted that while dismissing the writ petition this Court failed to consider that despite the earnest will to raise objection, the petitioner was prevented from doing so because of the Pandemic situations prevailing at that time. She contended that the petitioner was prevented from taking notice of publication of the answer key on the website of the Bihar Public Service Commission because of the connectivity issue in the village area where he was staying during the Covid-19 Pandemic. She contended that the Commission, for the reasons best known to it, did not insert in the advertisement no.4/2020 the note to publish the answer key on its website just after the examination was over. According to her, the Commission was duty bound to make candidates know of the publication of the answer key so as to enable them to raise objections, if any, within the stipulated time. She argued



that time bound opportunity of raising objection without prior notice is a serious mistake on Commission's part. In support of her submissions, she has relied on a judgment dated 04.10.2016 passed by a Division Bench of this Court in ***Letters Patent Appeal No.1235 of 2016 (Ashutosh Kumar Jha and Ors. v. The State of Bihar and Ors.)***.

4. We find from the pleadings of the petitioner in para 3 and 4 of the review application that after the 31st Bihar Judicial Services (Preliminary) Competitive Examination was held on 06.12.2020, the Commission uploaded the answer key on its website on 19.12.2020 and the objection was to be raised by 30th December, 2020. Thus, a clear ten days time was given to the candidates to file claims and objections, if any, to the Bihar Public Service Commission.

5. The petitioner, admittedly, failed to file any claim or objection in respect of the tentative answer keys uploaded on the website of the Commission. He filed the writ petition before the High Court on 20th March, 2021, i.e. exactly three months after the uploading of the tentative answer keys on the website of the Commission. The plea raised by the petitioner that he was prevented from raising objection in time, as he was living in a remote village, where there was connectivity issue,



was considered by the Division Bench while deciding the writ petition. However, it did not accept plea of the petitioner. It took a view that since the petitioner failed to raise objection in terms of the notice published on the website of the Commission, the objection raised by him after the publication of the final result of the preliminary tests cannot be allowed for the reason that the Court sitting in writ jurisdiction exercising the power of judicial review cannot go into the correctness or otherwise of the opinion of Experts Body and it is not required to act as an appellate body over such decision taken by the Expert Body unless it appears to be perverse. Apparently, the petitioner is trying to reagitate the same issue before this Court in the garb of a review application.

6. It is well settled that a review proceeding cannot be equated with the original hearing of the case. A party is not entitled to seek review of a judgment merely for the purpose of re-hearing and fresh decision of the case. Review of an earlier order cannot be done unless the Court is satisfied that the material error, manifest on the face of the order, undermines its soundness or results in miscarriage of justice. The petitioner has not been able to even remotely show us any material error, manifest on the face of the order.



7. In ***Col. Avtar Singh Sekhon v. Union of India, [1980 Supp SCC 562]***, the Supreme Court held as under :-

*“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)*

“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.”

8. 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]*** as under:-

“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.”

9. The error, which is evident and has to be dictated by a process of reasoning, can hardly be said to be an error apparent on the face of the record.

10. In the case of ***Satyanarayan Laxminarayan Hegde v. Millikarjun Bhavanappa Tirumale*** [AIR 1960 SC 137], the Supreme Court made 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. 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.”

11. 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.

12. In the light of the settled legal position, as discussed above, having 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 23.03.2021. A perusal of the review



application would make it evident that the same is nothing, but an appeal in disguise.

13. 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.

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

(Ashwani Kumar Singh, J.)

(Partha Sarthy, J.)

sanjeet/-

AFR/NAFR	AFR
CAV DATE	NA
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