

22 - 28
19.03.2021
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**RVW 19 of 2021
with
IA No. CAN 1 of 2021**

Binita Mitra nee Roy

- Versus -

State of West Bengal & Ors.

With

**RVW 22 of 2021
with**

IA No. CAN 1 of 2021

Rajib Halder and Ors.

- Versus -

State of West Bengal & Ors.

With

**RVW 23 of 2021
With
IA No. CAN 1 of 2021**

Md. Motlubbar Rahaman & Ors.

- Versus -

State of West Bengal & Ors.

With

**RVW 24 of 2021
With
IA No. CAN 1 of 2021**

Achinta Kumar Biswas & Ors.

- Versus -

State of West Bengal & Ors.

With

**RVW 25 of 2021
With
IA No. CAN 1 of 2021**

Amjed Ali Gazi & Ors.

- Versus -

State of West Bengal & Ors.

With

**RVW 26 of 2021
With
IA No. CAN 1 of 2021**

Mrinmay Barman & Ors.

- Versus -

State of West Bengal & Ors.

With

**RVW 28 of 2021
With
IA No. CAN 1 of 2021**

Sayed Sultan Ali

- Versus -

State of West Bengal & Ors.

(Through Video Conference)

Ms. Usha Maity

.....For the applicant (in RVW 19/21)

Mr. Akashdeep Mukherjee

.....For the applicants (in RVW 22/21,
RVW 23/21, RVW 24/21, RVW 25/21,
RVW 26/21)

Ms. Saloni Bhattacharya

.....For the applicant (in RVW 28/21)

Mr. Joytosh Majumder, Ld. G.P.

Ms. Kakoli Samajpati

Mr. Sayan Ganguly

.....For the State (in RVW 24/21
& RVW 25/21)

Mr. Bhaskar Prasad Vaisya

Mr. Ranjan Saha

.....For the State (in RVW 22/21
& RVW 26/21)

Dr. Chapales Bandyopadhyay

Ms. Anandamayee Dutta

.....For the respondent nos. 4, 5 & 6
(in RVW 22/21, RVW 23/20,
RVW 24/21, RVW 25/21 &
RVW 26/21)

Re : RVW 19 of 2021

There are applications for review of the judgment and order dated 12th January, 2021. A group of matters

involving common questions of law and fact was decided by the aforesaid order.

The rights of the first petitioner are similar to the rights of the other appellants whose case we have decided on 12th January, 2021. In fact, the appeal and the stay petition filed by the first petitioner were not initially appearing in the list, but subsequently since the issues involved in the appeal was conclusively decided by us on 12th January, 2021, the appeal of the present applicant was also disposed of in terms of our order dated 12th January, 2021.

The review applications are based on four grounds. To sum up, the grounds are (i) non-consideration of an affidavit filed by the Joint Secretary, School Education Department before the Hon'ble Supreme Court with regard to the requisite qualification of the teachers eligible for appointment, paragraphs 16 to 27 of the supplementary affidavit filed by the present applicant demonstrating discrepancies, (ii) illegalities and irregularities in the recruitment process, (iii) acceptance of the opinion of the expert committee by us in the order under review disregarding certain observations made by the learned trial Judge with regard to the preparation of the panel and (iv) non consideration of the observation of the Audit Department with regard to the manner of preparation of the panel.

In addition to the aforesaid, it is contended that the Division Bench has wrongly recorded that the appellants have argued that once the Regional Commission prepared the merit list followed by counselling, the contention of the Commission that it had published a panel in exercise of its power of Rule 12(10) is insignificant and the legitimate right of the petitioners to seek appointment on the basis of the merit list prepared under Rule 12(8) of the Recruitment Rules cannot be denied.

In the order under review, we have relied upon Rule 12 of the West Bengal School Service Commission (Selection to the Post of Teachers) Rules, 2007 and summarized the factual aspect keeping in mind the relevance of Rule 12. We have also relied upon the affidavit of the Commission affirmed on 25th March, 2020 to the supplementary affidavit filed by the appellant on 19th February, 2020 while similar discrepancies were considered and addressed by the Commission. On consideration of Rule 12(8) and Rule 12(10) and on a satisfaction being recorded that in the facts and circumstances of the case, we do not find any illegality in the decision of the expert body for not filling up remaining vacancies, we dismissed the appeal.

On consideration of the materials on records, we recorded that the writ petitioners/appellants could not substantiate any malafide or discrimination or illegality with regard to the candidates who were so far selected. We

have also recorded that all the candidates had the opportunity to scrutinize the list and to find out if there have been any irregularity but none of them were able to show any illegality as discrepancy in respect of the candidates so far selected. The reliance upon the audit report does not advance the case of the petitioner as they have participated in the selection process and just because they are unsuccessful now at this stage they cannot rely upon such report to substantiate their claim.

These findings are now sought to be reopened and reargued on merits under the guise of review. It is well settled that under the garb of review re-hearing of appeal cannot be claimed. Otherwise, it would be an endless process. As rightly pointed out by Dr. Bandyopadhyay, learned advocate appearing for the respondents 4, 5 and 6 that the grounds are in the nature of argument based on facts dealt with by us. The conclusion arrived at by us on merits may not be to the satisfaction of the applicant.

The power of the Court to review its decision is well-settled. If any reference is required to be made, one can safely refer to Aribam Tuleshwar Sharma Vs. Aribam Pishak Sharma reported in 1979 (4) SCC 389. In the said decision it is stated:

“It is true as observed by this Court in Shivdeo Singh Vs. State of Punjab reported in 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 power 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 or errors committed by the subordinate court.”

The said decision was subsequently considered in Meera Bhanja Vs. Nirmala Kumari Choudhury case reported in 1995 (1) SCC 170 in which Their Lordships held, while entertaining a review only on the ground of error apparent on the face of the record, it has to be kept in mind 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 of two opinions. We may also usefully refer to the observations of the Hon'ble Supreme Court in case of Satyanarayan Laxminarayan Hegde V. Mallikarjun Bhavanappa Tirumale reported in 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.”

It is also well-settled that mistake or error apparent on the face of the record has to be self-evident and does not require a process of reasoning and the same is clearly distinct from erroneous decision as has been held in *Parsion Devi & Ors.* reported in 1997 (8) SCC 715. In the said decision, the Hon’ble Supreme Court was considering the phrase “mistake or error apparent on the face of record”. It was held, 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”. There is a clear distinction between an erroneous decision and an error apparent on the face of the record. While the first can be corrected by the higher forum, the latter can only be corrected by exercise of the review jurisdiction. A review petition has a limited purpose and cannot be allowed to be “an appeal in disguise”.

In the instant case, we do not find that there is any error apparent on the face of the record or any mistake committed by us. The basis of the review seems to erroneous interpretation and/or appreciation of the

relevant documents and Rules relied upon by the applicants. We have in our judgment dealt with the issues relevant for the purpose of deciding the appeal. In view of the fact that there is no error apparent on the face of record, we are unable to allow this application for review.

The applications for review are, accordingly dismissed.

There shall, however, be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be given to the parties on the usual undertakings.

(Saugata Bhattacharyya, J.)

(Soumen Sen, J.)