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RVW 29 of 2021

Milan Mondal & Ors.

Vs.

**The West Bengal Central School
Service Commission & Ors.**

With

RVW 32 of 2021

Lili Bera & Ors.

Vs.

**The West Bengal Central School
Service Commission & Ors.**

With

RVW 33 of 2021

Sanjit Das & Ors.

Vs.

**The West Bengal Central School
Service Commission & Ors.**

With

RVW 35 of 2021

Anuva Mal & Ors.

Vs.

**The West Bengal Central School
Service Commission & Ors.**

With

RVW 36 of 2021

Supriya Biswas & Ors.

Vs.

**The West Bengal Central School
Service Commission & Ors.**

With

RVW 37 of 2021

Abdus Sattar Miah & Ors.

Vs.

**The West Bengal Central School
Service Commission & Ors.**

With

RVW 38 of 2021

Chhabi Biswas & Ors.

Vs.

**The West Bengal Central School
Service Commission & Ors.**

With

RVW 39 of 2021

Sirajul Sarkar & Ors.

Vs.

**The West Bengal Central School
Service Commission & Ors.**

With

RVW 40 of 2021

Susmita Das & Ors.

Vs.

**The West Bengal Central School
Service Commission & Ors.**

With

RVW 41 of 2021

Jaba Mahato & Anr.

Vs.

**The West Bengal Central School
Service Commission & Ors.**

With

RVW 42 of 2021

Atashi Mondal & Anr.

Vs.

**The West Bengal Central School
Service Commission & Ors.**

With

RVW 43 of 2021

Sujala Das & Anr.

Vs.

**The West Bengal Central School
Service Commission & Ors.**

With

RVW 44 of 2021

Ashrulekha Jantyya & Ors.

Vs.

**The West Bengal Central School
Service Commission & Ors.**

With

RVW 45 of 2021

Paramita Naskar & Ors.

Vs.

**The West Bengal Central School
Service Commission & Ors.**

With

RVW 46 of 2021**Chhanda Mondal & Ors.****Vs.****The West Bengal Central School
Service Commission & Ors.**

Mr. Kamalesh Bhattacharya
 Mr. Aninda Bhattacharyya
 ... For the Appellants

Dr. Chapales Bandyopadhyay
 Ms. Anandamoyee Dutta
 ... For the WBCSSC

These applications for review of the judgment and order dated 12th January, 2021 are taken up for consideration. The questions raised in all the review applications are identical and accordingly these applications for review are disposed of by this common judgment.

On 19th March, 2021 a group of matters were reviewed against our judgment and order dated 12th January, 2021 and the same were considered and rejected on the ground that the applicants have failed to make out any ground for review of our judgment and order dated 12th January, 2021.

In the earlier group of matters the review applicants raised four grounds for the review, namely,

- 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,
- ii) illegalities and irregularities in the recruitment process,

- iii) acceptance of the opinion of the expert committee by us or in the order under review disregarding certain observations made by the learned trial Judge with regard to the preparation of the panel and
- iv) the observation of the Audit Department with regard to the manner of preparation of panel.

In addition thereto some of the review applicants have contended that the appointments should be made under Rule 12(8) of the 2007 Recruitment Rules and not de hors such rules.

In the instant review petitions grounds are almost identical with cosmetic changes, namely, error has been committed by us in not appreciating that as per Rule 12(8) of 2007 Recruitment Rules once Regional Commission prepared the merit list followed by counselling subsequent preparation of panel in exercise of power under 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 and this aspect of the matter was not considered by us. The finding of this bench held that in 2014 the panel was published was erroneous.

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.

The aforesaid ground is in the nature of an argument. It is not a mistake or an error on the face of the record.

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 or 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. The law does not permit it. 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 but cannot be a ground for review.

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”. The wrong appreciation of fact as misinterpretation of a statute or law cannot be a ground for review.

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 consideration of the relevant papers, 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.

In the judgment under review we have exhaustively dealt with the West Bengal School Service Commission (Selection to the post of Teachers) Rules of 2007 (shortly “Recruitment Rules”). We have considered Rule 12 and more particularly, Rule 12(7), Rule 12(8) and Rule 12(10) of the Recruitments Rules. This would be evident when we recorded the submission of Mr. Bikash Ranjan Bhattacharyya, learned senior advocate, representing one of the parties. Prior thereto the recruitment process was analysed by us. We have accepted the summary of the disputes between the parties, as summarised by the learned single judge. We have held that the said summary of facts to be quite accurate. The preparation of panel was gone into and held to be valid. We have specifically said that none of the writ petitioners to the learned single Judge were able to demonstrate any specific case of any individual who ought not to be selected or empanelled or in the waiting list concerned. We accepted the submission made on behalf of the learned Advocate General and learned counsel representing the SSC before us in justification for empanelment of 29,575 candidates. We have also recorded that not a single instance of unfairness, vis-à-vis the appellants could not be demonstrated before us and in this regard we agreed with the submission made by Dr. Sutunu Patra. We have categorically held in our judgment that the justification for not filling up the vacancies by the State and the School Service Commission are being accepted. We did not interfere with the discretion of the authority as we did not find

that there is any lack of bona fide exercise of power in not filling up the remaining seats. We have further recorded that the writ petitioners/appellants could not substantiate their claim on malafide or discrimination or illegality with regard to the candidates who were so far selected. All the candidates were given liberty to scrutinize the list and to find out if there has been any irregularity. We have also given our reason why the audit report does not advance the case of the petitioners/appellants.

In view of the aforesaid discussion, all the applications for review and the connected applications are 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.)

