

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

REVP No. 105 of 2021

1. South Eastern Central Railways Through Chief Personnel Officer, Headquarter Personnel Department, 1st Floor, General Manager, Bilaspur, Chhattisgarh 495004., District : Bilaspur, Chhattisgarh
2. Director, Estt. (N) - li, Railway Board, Rail Bhawan, New Delhi 110001.
3. General Manager (P), South East Central Railway, Bilaspur, Chhattisgarh - 495004.
4. Chief Personnel Officer, S E C Railway, Bilaspur, Chhattisgarh 495004.
5. Divisional Personnel Officer, Sec Railway, Raipur, Chhattisgarh 490042.
6. Sr. Personnel Officer (Hrd), Headquarter Personnel Department, 1st Floor, General Manager, Bilaspur Chhattisgarh 495004.

---- Petitioners

Versus

P. Gopal Naidu Krishna S/o Late Shri P. Prakash Naidu, Aged About 30 Years R/o House No. 2, Om Vihar, Rawatpura Colony, Mathpurena, District Raipur Chhattisgarh. Mob. 9303005063., District : Raipur, Chhattisgarh

---- Respondent

For Petitioners : Mr. R. K. Gupta, Advocate

For Respondent : Ms. Surya Kawalkar Dangi, Advocate

**D.B. : Hon'ble Shri Justice P. Sam Koshy &
Hon'ble Shri Justice Parth Prateem Sahu**

Order

17/12/2021

Per Parth Prateem Sahu, J.

1. Petitioners by this petition have sought review of order dated 18.02.2021

whereby the writ petition filed by the petitioners challenging the order passed by Central Administrative Tribunal, Jabalpur Bench, Circuit Sitting at Bilaspur in Original Application No.203/01125/2018 came to be dismissed.

2. Shri R.K. Gupta, learned counsel for petitioners would submit that there is error apparent on the face of record in the impugned order in assuming that cancellation of candidature of respondent is due to change in recruitment Rules, whereas the cancellation of candidature of respondent is on the ground of violation of Rules relating to eligibility qualification from Bharat Scouts & Guides. Under the Rules and organisation of Bharat Scouts & Guides, there is prohibition in becoming members of two State Associations of any of the candidates and by way of 69th Meeting of National Council on 24.11.2019 in para-7.41, it was made clear that no member can be enrolled as member of two State Association at same time. The main ground raised by petitioners in writ petition with respect to ineligibility of private respondent has not been considered.
3. Learned counsel for respondent would submit that the grounds raised by petitioners in this review petition were raised in writ petition, argued and also considered by this Court in impugned order. Petitioners in the garb of review petition are making attempt to re-argue the entire case afresh which is not permissible in review jurisdiction. The Review Petition cannot be heard as an appeal.
4. We have heard learned counsel for petitioners and also perused the impugned order along with the records of writ petition. Perusal of impugned order would show that this Court in para-7 has considered the

reply submitted by petitioners before the Central Administrative Tribunal in Original Application. In para-9, submission of counsel for petitioners before High Court in writ petition is also recorded wherein counsel for petitioners has made similar submissions of the bar under Rule 9 of the Rules for participating/representing of a candidate under two States and the relevant clause of advertisement. After considering the submissions of learned counsel for respective parties, this Court has decided the writ petition and dismissed the same after threadbare analysis of grounds raised and submissions advanced, from para-11 onwards of the impugned order. In para-15 of the impugned order, this Court has specifically considered Clause 9 (b) of the Rules and have decided in favour of the private respondent which reads as under:-

“15. To a pointed query raised by this Court as to whether any question was included in the application form to be answered by the candidates as to whether they were members of more than one State Association or had they participated / represented in more than one State in any events without 'prior sanction', the learned counsel fairly conceded the position in the 'negative'. Since Clause 9(b) of the Rules as referred above only places a 'rider', preventing such participation without 'prior sanction', we asked the learned counsel if they had collected any material from any corner, as to whether such participation was with a 'prior sanction' or not, to have the answer given by the Applicant (more so, since the candidature was cancelled without

affording an opportunity of hearing), the learned counsel conceded that no information was called for and no opportunity was given in this regard.”

5. In view of the finding record in the impugned order, submission of learned counsel for review petitioners is not sustainable that the ground raised by petitioners in their writ petition has not been considered and decided and it is hereby repelled. Perusal of the grounds raised in the review petition would show that petitioners want re-hearing of writ petition afresh on merits which is not permissible in exercise of review jurisdiction. Scope of review under Order 47 Rule 1 of CPC is very limited. Even the order passed in writ jurisdiction if sought to be reviewed is to be considered strictly under the provisions of Order 41 Rule 1 of CPC, review petition cannot be heard as an appeal. Petitioners under the review jurisdiction will not be permitted to re-agitate the grounds which have already been raised and decided. Order under review can be interfered with only when there is error apparent on the face of record.

6. Hon'ble Supreme Court in the case of **Parsion Devi and Ors. Vs. Sumitri Devi & Ors.** reported in (1997) 8 SCC 715 has held as under:-

“10..... 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 only can be corrected by exercise of the review jurisdiction. While passing the impugned order, Sharma, J. found the order in Civil Revision dated 25.4.1989 as an *erroneous* decision, though without saying so in so many words. Indeed, while passing the impugned order

Sharma, J. did record that there was a mistake or an error apparent on the face of the record which was not of such a nature, "which had to be detected by a long drawn process of reasons" and proceeded to set at naught the order of Gupta, J..”

7. In the case of **Surendra Kumar Vakil & Ors. Vs. Chief Executive Officer, MP and Ors.**, reported in (2004) 10 SCC 126, Hon'ble Supreme Court has held thus:-

“10.....A point that has been heard and decided cannot form a ground for review even if assuming that the view taken in the judgment under review is erroneous.”

8. In the case of **Asharfi Devi (dead) through LRs Vs. State of Uttar Pradesh and Ors.** reported in (2019) 5 SCC 86, it was held thus:

“18. It is a settled law that every error whether factual or legal cannot be made subject matter of review under Order 47 Rule 1 of the Code though it can be made subject matter of appeal arising out of such order. In other words, in order to attract the provisions of Order 47 Rule 1 of the Code, the error/mistake must be apparent on the face of the record of the case.”

9. In the case of **Shanti Conductors Pvt. Ltd. Vs. Assam State Electricity Board & Ors.** reported in (2020) 2 SCC 677, it was held:-

“25. The scope of review has been reiterated by this Court from time to time. It is sufficient to refer the judgment of this Court in Parsion Devi and Others Vs. Sumitri Devi and

Others, (1997) 8 SCC 715, wherein in paragraph 9 following has been laid down:

“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”.”

10. In view of the grounds taken by the petitioners in this review petition and submissions made by learned counsel for petitioners as discussed above, if considered in the light of aforementioned precedents of Hon'ble Supreme Court, we do not find any error apparent on the face of record.

11. Review petition being sans merits is liable to be dismissed and is hereby dismissed.

Sd/-
(P. Sam Koshy)
Judge

Sd/-
(Parth Prateem Sahu)
Judge