

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL REVIEW No.192 of 2022

In
Civil Writ Jurisdiction Case No.4706 of 2018

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Nirmal Kumar Son of Late Suresh Kumar Sharma, Resident of Village-Shambhupur, P.O. Tishkhora, Via-Sadisopur, District-Patna, Principal, Bhagalpur, College of Engineering College, Bhagalpur (Now Retired).

... .. Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, Department of Science and Technology, Govt. of Bihar, Patna.
2. The Special Secretary, Department of Science and Technology, Govt. of Bihar, Patna.
3. The Finance Commissioner-cum-Secretary Department of Finance, Government of Bihar, Patna.
4. The Joint Secretary, Department of Science and Technology, Govt. of Bihar, Patna.
5. The Accountant General (A and E), Bihar Mahalekhakar Bhawan, Bir Chand Patel Path, Patna.

... .. Opposite Party/s

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Appearance :

For the Petitioner/s	:Mr.Kundan Kumar Sinha, Adv.
For the Opposite Party/s	:Mr. Pratik Kumar Sinha, Adv.
For the Accountant General	:M/s Prabhat Ranjan & Chandan Kumar, Adv.

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CORAM: HONOURABLE MR. JUSTICE SANJEEV PRAKASH SHARMA

ORAL ORDER

2 29-11-2022 The petitioner has preferred this review petition seeking review of the order passed by this Court dated 25.07.2022.

2. Learned counsel for the petitioner submits that the observations made by this Court in paragraph 4 of the judgment were not called for. Learned counsel for the petitioner submits that the benefit of grant of increment is available to persons and benefit of three increments is available to a person prior to



issuance of Gazette Notification, 2016, and the interpretation taken by this Court that the same is inadmissible at stage of Associate Professor and Professor is incorrect and contrary to the rule taken by the Delhi High Court. The learned counsel submits that the order therefore deserves to be reviewed.

3. Learned counsel for the petitioner relies on a judgment passed by the Supreme Court in State of West Bengal & Anr. Vrs. Kamal Sengupta & Anr. reported in **(2008) 8 SCC 612** to submit that the scope of review would also include/re-examine the view/opinion/interpretation taken by the Court earlier. Learned counsel relies on following paragraphs :

“21 : At this stage it is apposite to observe that where a review is sought on the ground of discovery of new matter or evidence, such matter or evidence must be relevant and must be of such a character that if the same had been produced, it might have altered the judgment. In other words, mere discovery of new or important matter or evidence is not sufficient ground for review ex debito justitiae. Not only this, the party seeking review has also to show that such additional matter or evidence was not within its knowledge and even after the exercise of due diligence, the same could not be produced before the Court earlier.

22 : The term 'mistake or error apparent' by its very connotation signifies an error which is evident per se from the record of the case and does not require detailed examination, scrutiny and elucidation either



of the facts or the legal position. If an error is not self-evident and detection thereof requires long debate and process of reasoning, it cannot be treated as an error apparent on the face of the record for the purpose of Order 47 Rule 1 CPC or [Section 22\(3\)\(f\)](#) of the Act. To put it differently an order or decision or judgment cannot be corrected merely because it is erroneous in law or on the ground that a different view could have been taken by the Court/Tribunal on a point of fact or law. In any case, while exercising the power of review, the concerned Court/Tribunal cannot sit in appeal over its judgment/decision.

4. I am afraid that the view taken by the Apex Court is otherwise. It specifically relies on an earlier judgment passed by the Supreme Court reported in **(1997) 8 SCC 715** (Parsion Devi And Ors. vs Sumitri Devi And Ors.) wherein the Apex Court held as under :

“28 : 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".



5. Thus, erroneous decisions and error apparent on the face of record are two different concepts and distinction has been drawn between the two. If an argument is taken in a review petition that the decision is incorrect and based on a wrong interpretation the review would not lie. The remedy lies elsewhere. In the case cited (supra) also the Apex Court held in paragraph 22, quoted above, that a decision or judgment can not be corrected merely because it is erroneous or that a different view can be taken.

6. The submissions of the learned counsel that a different view has already been taken by the Delhi High Court would not be a sufficient ground for reviewing the order passed by this Court.

The review petition is misconceived and is accordingly dismissed.

(Sanjeev Prakash Sharma, J)

Shamshad/-
Item No. 27

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