

**IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
Appellate Side**

Present:

The Hon'ble Justice Shekhar B. Saraf

R.V.W 208 of 2019

C.A.N. 1 of 2019 (old No. CAN 9619 of 2019)

C.A.N. 2 of 2019 (old No. CAN 12518 of 2019)

In

W.P.A. 30178 of 2014

With

C.P.A.N. 892 of 2019

STATE OF WEST BENGAL & ORS.

VERSUS

GOPAL CHANDRA PRAMANIK

For the Applicant/Petitioner : Mr. Pantu Deb Roy, Adv.
Mr. Tapas Kumar Mandal, Adv.

For the Respondent/Writ Petitioner : Mr. Kallol Basu, Adv.
Mr. S. Sarkar, Adv.
Mr. S.S. Halder, Adv.

Last Heard on : September 21, 2022

Judgment on : November 03, 2022

Shekhar B. Saraf, J.:

1. The present review petition by the State of West Bengal (hereinafter referred to as the “applicant”) arises from the order dated March 12, 2019 passed by Justice Protik Prakash Banerjee in W.P. 30178 (W) of 2014.
2. The factual matrix of the present case is laid down below :
 - a. The respondent in the present review i.e., Gopal Chandra Pramanik (hereinafter referred to as the “writ petitioner”) was engaged as a contractual employee from February 23, 2006 as a Group – ‘D’ staff in the office of the District Magistrate, South 24 Parganas, Alipore Court Chamber, Gopal Nagar Road, Kolkata – 700027. His appointment was in a regular vacancy wherein he was appointed against Smt. Laxmi Das who retired in the month of August, 2002. All formalities including sponsoring of name by Employment Exchange, written test and interview, police and medical verification were duly followed and observed as is done in the case of regular appointments.
 - b. The Finance Department, Government of West Bengal published a Memorandum being No. 8305-F dated September 25, 2005 stating that the state government has been following the policy wherein the employees who were initially recruited on contract basis following the norms, rules and methods as applicable to the

relevant posts, may, if still continuing in contract service, be brought under regular establishment subject to the principles as contained in the memorandum against regular vacancies in which they have been initially appointed with the approval of Appointments Committee of the Cabinet ('ACC'). The consultation with the Finance Department was made necessary in such cases.

- c. In this connection, pursuant to an office order dated July 18, 2008 by the Deputy Secretary, Panchayat and Rural Development Department, Government of West Bengal the concerned department was asked to furnish the names of eligible contractually appointed employees. The Project Director, DRD Cell informed by enclosing a chart in a prescribed proforma being Memo No. XIX/84-07/843 PZP/DRDC dated July 25, 2008 wherein the name of the writ petitioner is stated. Thereafter, several efforts were made by writ petitioner in order to get his appointment regularised and correspondences were exchanged between the parties.
- d. The writ petitioner then moved a writ application under Article 226 of the Constitution of India being W.P. No 118(W) of 2012 and on August 19, 2013, the Court directed the concerned authorities to consider his case regarding regularization afresh and to pass a reasoned order setting aside all the grievances/pleas raised by the state.

- e. On February 28, 2014 the aforesaid order was taken up for consideration by the Principal Secretary, Panchayat and Rural Development Department, Government of West Bengal and the claim of writ petitioner was rejected on the grounds that there was no existence of District Rural Development Agency ('DRDA') separately as all the DRDAs were merged with the respective Zilla Parishad with effect from April 1, 2000 vide memo no. 1138/PN dated March 22, 2000. Therefore, any candidate engaged in District Rural Development Cell ('DRDC') after April 1, 2000 is treated as a contractual worker of the concerned Zilla Parishad.
- f. Aggrieved from the above mentioned order, the writ petitioner then moved an application under Article 226 of the Constitution of India before this Court being. W.P. No 30178(W) of 2014 praying for being given appointment permanently as stated in the guidance of DRDC Administration and as per guidance in memorandums being Nos. 8305-F dated September 27, 2005 and 642-F dated January 24, 2006.
- g. The said writ petition was heard by the Court on March 12th, 2019. Despite repeated directions, no affidavit – in – opposition was filed by the applicant herein. After hearing the learned advocate on behalf of the respondent herein, the writ petition was disposed of ex parte allowing the prayer of the writ petitioner for appointment on permanent basis with effect from the date of

affirmation of the writ petition being November 12, 2014. The salary, however, was to be paid prospectively with effect from the date of the respondent's joining. The order clarified that the fixation of salary was to be on the basis of the appointment with effect from November 12, 2014 but no arrears were to be paid.

- h. Being aggrieved from the said order dated March 12th, 2019 the present review petition being R.V.W 2018 of 2019 was filed by the applicant.
 - i. A contempt of court application being CPAN No. 892 of 2019 has also been filed by the writ petitioner against Dr. P. Ulaganathan, District Magistrate, South 24 Parganas and Swati Bandyopadhyay Additional District Magistrate, South 24 Parganas for 'wilfully, deliberately and contumaciously' violating the order dated March 12th, 2019 mentioned in the aforementioned writ petition.
3. Mr. Pantu Deb Roy, counsel appearing on behalf of the applicant has made the following arguments:
 - a. The counsel argues that the Court failed to consider the circular of West Bengal Panchayat and Rural Development Department being Ref No. 2801(19)RD(DRDC)/IE-4/2001 dated May 2, 2003. As per Clause – B of the said circular, the category of Group-C and D posts (except Chowkidar / Night Guard) are filled up only on contract basis after following the respective requirement rules of

DRDC/ MRDA/ CRDA & others. The counsel also argues that that the Court also failed to consider the requirement process of the writ petitioner vide the said circular and that the applicant had, only after following the said circular, initiated selection process for filling up the vacant post.

- b. The counsel contends that the Court failed to appreciate the memorandum vide No. 8305-F dated September 26, 2006 wherein the State Government has been following the policy of filling up non-PSC/non-promotional posts on contract basis generally for one year initially with the approval of the ACC for each individual case. The counsel further contends that the Court failed to consider/appreciate the memorandums vide No. 9008-F(P) Kolkata, No. 1107 dated September 16, 2011, No. 1107-F(P) Howrah dated February 25, 2016 issued by the Finance Department, Audit Branch, Government of West Bengal. He states that the contractual appointment of such employees is being renewed from time to time.
- c. The counsel argues that the Court failed to appreciate the fact that the writ petitioner had been selected in Group- D post wherein the said selection process and appointment letter was issued by the Executive Officer, South 24 Parganas Zilla Parishad on contractual basis for a period of one year only. He continues to argue that the Court failed to appreciate that agreement dated February 23, 2016

between the DRDC, South 24 Parganas Zilla Parishad and the petitioner wherein there is no question of absorbing the petitioner permanently in the said post.

- d. The counsel states that the Court disposed of the writ petition without giving him any chance to file the affidavit-in-opposition and construct and bring forth the detailed facts of the case.
 - e. Lastly, the counsel states that prior to receiving the said impugned order of this Court, the Election Commission of India issued a notification for 2019 General Elections. That all the officers including the applicant was engaged in the said election process and had also taken steps in pursuance of the said order dated March 12, 2019. The counsel argues that mainly due to the above reason, the filing of the review petition was delayed for 136 days and subsequently, the matter was heard by this Court wherein the applicant was granted leave for filling application under Section 5 of Limitation Act.
4. Mr. Kalol Basu, counsel appearing on behalf of the respondent/ writ petitioner has made the following arguments:
- a. The counsel states that the order dated March 12th, 2019 of this Court has not been given effect to till date by the applicants.

- b. He argues that the writ petition was moved after serving notices on all the respondents and that the applicant herein neither prepared for filing the appeal or review against the order dated March 12, 2019 with any urgency, and the applicant did not take any steps immediately even after receiving the copy of the order which has been stated to have been received by him on April 18, 2019.

- c. The counsel states that in the contention of the applicant regarding the delay in filing the present review petition, they have not disclosed any of the details of the officers who had been engaged in the election process, or for how many days they had been engaged for the said purpose; and without any explanation for the number of days that these officers had been engaged for election duty, and exactly how many days had been purportedly lost in the process. Therefore, the counsel says the bald statement of applicants has no sanctity in the eye of law and cannot be taken into consideration.

- d. The counsel contends that no explanation has been given as to why the concerned District Magistrate, South 24 Parganas took more than a month to forward the matter to the Additional District Magistrate and South 24 Parganas Zilla Parishad for taking the necessary action pertaining to filling of an appeal / review against the said order. The delay of more than one month in merely

forward the matter, speaks of the lack of bona fide merit or efforts on the part of the applicants.

- e. The counsel argues that the Memorandum of Review and the stay application has been prepared on September 6, 2019. However, the same have been filed only on September 9, 2019 that is even after a period of more than three days after affirmation. The counsel then argues that the review application was however served on the writ petitioner much later only on November 22, 2019 when the contempt was taken up for hearing. The counsel states that the present review application is without any explanation for the delay and the application should be dismissed on this ground alone for misleading this Court.
- f. The counsel strongly denies the fact that the applicants were diligent and careful in respect of the present matter wherein the delay was not beyond control of the applicants. He argues that no explanation has been disclosed in the review by the applicants as to any misguidance by the procedure adopted by Court and/or such grounds, despite having been granted the liberty by the Court.
- g. Lastly, the counsel contends that the application in its present form and narration is not maintainable, and the applicants have

disregarded the Court's directives of pleading the reasons for delay in arraying the writ petitioner as a respondent.

Observations & Analysis

5. I have heard the counsel appearing for the respective parties and perused the materials on record.
6. In the interest of justice, I would straight away proceed to decide this review application on merits without going into the question of condonation of delay in filing of the same. That being the case, it would be apt to discuss the jurisdiction of this Court to review its own judgment.
7. '*Too err is human*' is one of the oldest proverbs that has existed in the English language. And judges, too are human. For this very reason and to prevent miscarriage of justice by correcting grave errors committed by it, being a court of record under Article 215 of the Indian Constitution, power of review is inherent in the High Court. However, such power is not limitless for else it would defeat the very purpose for which it exists. The Court must exercise extreme caution and diligence while exercising its review powers for it is only in very limited category of cases that such power can be used.

8. A perusal of Order 47 Rule 1 of the Civil Procedure Code, 1908 shows that review of a judgment or an order could be sought on the following grounds:

- (a) From the discovery of new and important matters or evidence which after the exercise of due diligence was not within the knowledge of the applicant;
- (b) Such important matter or evidence could not be produced by the applicant at the time when the decree was passed or order made; and
- (c) On account of some mistake or error apparent on the face of the record or any other sufficient reason.

[See **Haridas Das -v- Usha Rani Banik (Smt) and Ors.** reported in **(2006) 4 SCC 78**, para15]

9. At this juncture, this Court feels necessary to refer to the case of **Sow Chandra Kante and Anr. -v- Sheikh Habib** reported in **(1975) 1 SCC 674** wherein the apex court, while emphasizing on the ground for review, has observed that in the guise of review re-hearing of the matter is not permissible. The court held :

“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.”

10. The Supreme Court in the case of **Aribam Tuleshwar Sharma -v- Aribam Pishak Sharma** reported in **(1979) 4 SCC 389** held that review proceedings are not by way of an appeal and have to be strictly confined to the scope and ambit of Order 47 Rule 1 of the Civil Procedure Code, 1908. The review jurisdiction cannot simply be exercised on the grounds that the decision was erroneous based on merits as that would be for a court of appeal to adjudicate. A power of review is not to be confused with appellate power which may enable an appellate court to correct all manners of errors committed by the subordinate court.

11. In **Parsion Devi and Ors. -v- Sumitri Devi and Ors.** reported in **(1997) 8 SCC 715**, the apex court held that in exercise of the jurisdiction under Order 47 Rule 1 of the Civil Procedure Code, 1908, it is not permissible for an erroneous decision to be “reheard and corrected”. There is 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 review jurisdiction as a review petition has a limited purpose.

12. Further, the Supreme Court in the recent case of **S. Madhusudan Reddy -v- Narayana Reddy** reported in **2022 SCC OnLine SC 1034** reaffirmed the grounds on which a review petition would be maintainable under the provisions of the Civil Procedure Code, 1908. The relevant paragraphs have been extracted below:-

“18. A glance at the aforesaid provisions makes it clear that a review application would be maintainable on (i) discovery of new and important matters or evidence which, after exercise of due diligence, were not within the knowledge of the applicant or could not be produced by him when the decree was passed or the order made; (ii) on account of some mistake or error apparent on the face of the record; or (iii) for any other sufficient reason.

20. In Parsion Devi v. Sumitri Devi, stating that an error that is not self-evident and the one that has to be detected by the process of reasoning, cannot be described as an error apparent on the face of the record for the Court to exercise the powers of review, this Court held as under:

7. 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. this Court opined:

11. 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 characterized 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.

8. Again, in *Meera Bhanja v. Nirmala Kumari Choudhury* while quoting with approval a passage from *Aribam Tuleshwar Sharma v. Aribam Pishak Sharma* this Court once again held that review proceedings are not by way of an appeal and have to be strictly confined to the scope and ambit of Order 47 Rule 1 CPC.

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 this 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'."

[emphasis added]

13. Given the limited scope of review as elucidated in the principles above, I am of the opinion that the contentions raised by the applicants in this

review application do not satisfy any of the aforementioned principles regarding review by the Court of its own judgment.

14. In the present case, the State has argued that the Court passed the impugned order dated March 12, 2019 ex parte and without hearing the applicants in the first place. However, it becomes apparently clear from perusing the said order that sufficient opportunity was given to the applicants to file their opposition, construct the arguments and present their case, but they chose not to do so and in the interest of justice, the Court adjudicated the matter ex-parte. A review petition cannot be used as a forum for presenting arguments which were never made in the writ petition.
15. The law on review is very clear wherein a party that files a review is required to show that there is discovery of new and important matter or evidence that was in spite of exercise of due diligence not within the knowledge or could not be produced due to cogent reasons by the party seeking a review. In this particular case, it is evident that there was failure on the part of applicants herein to produce their arguments and relevant documents at the time of hearing of the matter. Secondly, this review petition does not concern an error which is self-evident and the review sought clearly entails re-examination of facts and further process of reasoning which is not within the scope of a review petition.

16. I am of the opinion that an appeal cannot hide under the cloak of review and a Court while reviewing its judgment needs to keep in mind the principles which have been elucidated above. A review petition is not a ground for the applicant to put forth new arguments but rather the Court while exercising its review jurisdiction acts as a third umpire and it can only look into whether or not there has been an apparent error on the face of record. If this Court has to go look for that error by way of digging into the evidence, then that error would not be an error apparent on the face of record. A review petition cannot be converted into an opportunity for the applicants to present those arguments which they very well had the chance to do at the time when the original writ petition was taken up for hearing.

17. In the present context, one may recall the exquisite words of Justice Krishna Iyer in ***P.N. Eswara Iyer –v- The Registrar, Supreme Court of India*** reported in **1980 (2) SCR 889** wherein he laments and states :

“..... unchecked review has never been the rule. It must be supported by proper grounds. Otherwise, every disappointed litigant may avenge his defeat by a routine review adventure and thus obstruct the disposal of the 'virgin' dockets waiting in the long queue for preliminary screening or careful final hearing.....”

Justice Iyer went on to further state as follows:

“Even otherwise, frivolous motions for review would ignite the 'gambling' element in litigation with the finality of judgments even

by the highest court, being left in suspense. If, every vanquished party has a fling at 'review' lucky dip and if, perchance, notice were issued in some cases to the opponent the latter-and, of course, the former, -would be put to great expense and anxiety. The very solemnity of finality, so crucial to judicial justice, would be frustrated if such a game were to become popular.”

18. I am convinced that there exist no grounds which would compel this Court to exercise its review jurisdiction and interfere with the said order dated March 12, 2019. The present case does not fall within the limited boundary of review that has been laid down and therefore this Court is not inclined to exercise its review jurisdiction.
19. Accordingly, for the reasons discussed above, this review petition is dismissed and the interlocutory applications being CAN No. 1 of 2019 and CAN No. 2 of 2019 are disposed of.
20. As for the contempt application being CPAN No. 892 of 2019, for lack of determination, I am sending it out of my list with liberty to the parties for mentioning before the appropriate co-ordinate bench.
21. There shall be no order as to costs.

22. Urgent photostat certified copy of this order, if applied for, should be made available to the parties upon compliance with the requisite formalities.

(Shekhar B. Saraf, J.)