

IN THE HIGH COURT OF ORISSA AT CUTTACK

RVWPET NO.132 OF 2022

(Application under Order 47 Rule-1 C.P.C. read with U/s.114 of the Code of Civil Procedure, 1908)

Sk. Hidayetulla Mahamad

... Petitioner

-versus-

State of Odisha and others

... Opposite Parties

Advocates appeared in the case through hybrid mode:

For Petitioner : Mr.B.P.Das, Advocate

-versus-

For Opp.Parties: Mr.Tarun Pattnaik
Addl.Standing Counsel
(S & M.E Deptt.)

CORAM:

JUSTICE SASHIKANTA MISHRA

JUDGMENT

08.12.2022.

Sashikanta Mishra,J. In the present application, the Petitioner seeks review of judgment dated 9th May, 2022 passed by this Court in W.P.C.(OAC) No.1203/2016.

2. The facts, relevant only for deciding the present review are as follows:-

The Petitioner had filed the aforementioned Writ Petition with prayer to quash the reject list of the candidates for the post of Hindi Teacher (Contractual) on the ground that the same is contrary to the guidelines of National Council for Teacher Education (NCTE) dated 12th November, 2014. The Petitioner had applied for the post of Hindi Teacher pursuant to advertisements dated 23th October, 2014 and 13th January, 2015 as per District wise vacancies. His candidature was rejected on the ground that he had not secured 50% marks in +3 examination. According to the Petitioner, he had passed an equivalent examination namely, Sastri from a recognized institution securing 54% marks and therefore, the same ought to have been taken into account. A counter was filed on behalf of the Opposite Parties justifying the rejection of the Petitioner's candidature to which, the Petitioner filed a rejoinder reiterating the fact that he had the requisite qualification. The Opposite Parties

filed a reply to the rejoinder mainly contending that the Petitioner having secured less than 50% marks in the Bachelor Degree examination is not qualified for appointment.

3. The matter was heard at length. After considering the pleadings, contentions and in particular the terms of the advertisement dated 27th October, 2014 under Clause-3(f) relating to educational qualification of the candidates, this Court held that the Petitioner having secured only 37% marks in B.A. examination, cannot be treated as qualified as per the advertisement notwithstanding the fact that he had secured 50% in the Sastri examination. The other grounds urged by the Petitioner were also not accepted by this Court. Consequently, the Writ Petition was dismissed as per judgment passed on 9th May, 2022.

4. The present application seeking review of the said judgment has been filed on two grounds namely:-

(i) The effect of the word 'or' occurring towards the last part of Clause 3(f) of the advertisement was not considered by this Court; and

(ii) As per corrigendum issued by the Government of Odisha, School and Mass Education Department vide Order No.387 dated 6th January, 2015, the Petitioner having secured 54% in the Sastri examination ought to have been treated as qualified.

5. Heard Mr. B.P.Das, learned counsel for the Petitioner and Mr. Tarun Pattnaik, learned Addl. Standing counsel for the School and Mass Education Department.

6. Mr. Das has invited attention of the Court to the advertisement dated 27th October, 2014 (Annexure-8 to the Writ Petition) particularly, clause 3(f) thereof to argue that the prescribed qualification can be either Bachelor's Degree with Hindi as one of the elective subjects with minimum 50% marks in aggregate with Rashtrabhasa Ratna or Sastri or Snataka on one

hand or an equivalent degree from a recognized institution with at least 50% marks in aggregate and Hindi Sikhyan Parangat. According to Mr. Das, while interpreting the language employed in Clause-3 (f), this Court has not considered the effect of the word 'or' between the two parts of the clause. Mr. Das has further referred to a corrigendum dated 6th January, 2015 issued by the Government in Department of School and Mass Education Department wherein certain paragraphs of the Resolution (Advertisement) dated 27th October, 2014 were modified to the effect that in case a candidate has passed more than one qualifying examination, the one in which he has secured higher marks will be considered while preparing the merit list. Since the Petitioner has secured 54% marks in the Sastri examination, which is a qualifying examination, such marks are to be taken into account while preparing the merit list.

7. Mr. Tarun Pattnaik, learned Addl. Standing Counsel, on the other hand, submits that the grounds

raised by the Petitioner are not valid to maintain the present review application as the same do not come within the scope and purview of Order 47, Rule 1 C.P.C. and therefore, this Court may not exercise such power in the instant case.

8. It would be proper at the outset to note that the power of review is available to a Court including the High Court in the manner prescribed under Order 47, Rule 1 of C.P.C., which reads as under:

“47(1). Application for review of judgment- (1) Any person considering himself aggrieved,-

(a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred,

(b) by a decree or order from which no appeal is allowed, or

(c) by a decision on a reference from a Court of Small Causes,

and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on

account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgment to the Court which passed the decree or made the order.

(2) A party who is not appealing from a decree or order may apply for a review of judgment notwithstanding the pendency of an appeal by some other party except where the ground of such appeal is common to the applicant and the appellant, or when, being respondent, he can present to the Appellate Court the case on which he applies for the review.”

9. It is well settled that a review would be entertained only if there is an error apparent on the face of the record. Further, review lies only on the grounds mentioned in Order 47, Rule 1 of C.P.C. In the case of **M/s. Thungabhadra Industries Ltd. V. Government of Andhra Pradesh**; reported in AIR 1964 SC 1372, the Supreme Court held as follows;

“A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected, but lies only for patent error. We do not consider that this furnishes a suitable occasion for dealing with this difference exhaustively or for any great detail, but it would suffice for us to say where without any elaborate

argument one could point to the error and say here is a substantial point of law, which stares one in the face, and there could reasonably be no two opinions entertained about it, a clear case of error apparent on the face of the record would be made out.”

10. In the case of ***Subhash v. State of Maharashtra and another***; reported in AIR (2002) SC 2537, the Apex Court emphasized that the Court should not be misguided and should not lightly entertain the review application unless there are circumstances falling within the prescribed limits for that as the Courts and Tribunals should not proceed to re-examine the matter as if it was an original application before it for the reason that, it cannot be a scope for review.

11. In the case of ***Rajender Kumar and others v. Rambhai and others***; reported in AIR (2003) SC 2095, the Apex Court held that the first and foremost requirement of entertaining a review application is that the order, review of which is sought;

(a) suffers from any error apparent on the face of the record, and

(b) permitting the order to stand will lead to failure of justice.

12. It goes without saying that under the garb of review, a party cannot be permitted to reopen the case and to gain a full-fledged inning for making submissions, nor review lies merely on the ground that it may be possible for the Court to take a view contrary to what had been taken earlier. The above view was taken by the Apex Court in the case of **High Court of Madhya Pradesh v. Mahesh Prakash and others**; reported in AIR (1994) SC 2595: (1995) 1 SCC 203.

It was further held if a counsel has argued a case to his satisfaction and he had not raised the particular point for any reason whatsoever, it cannot be a ground of review. If a case has been decided after full consideration of arguments made by a counsel, he cannot be permitted, even in the garb of doing justice or substantial justice, to engage a Court again to decide the controversy already decided. It is also held

that in case the parties relying upon any matter or evidence discovered by it at a subsequent stage then it is for him to satisfy the Court that the said matter or evidence could not be discovered or produced at the initial stage though it had acted with due diligence. The expression 'discovery of new and important matter of evidence' contained in the provision of Order 47, Rule 1 of C.P.C. means, discovery of an evidence or any material, which may be adduced in evidence, but cannot take in its ambit an argument which could have been advanced by the counsel.

13. The contentions advanced by the parties are now to be considered in the back drop of the legal propositions referred in the preceding paragraphs.

The first ground urged by Mr.Das seeking review is non-consideration of the effect of the word 'or' between the first part and second part of Clause-3(f) of the advertisement dated 27th October, 2014. Firstly, this argument was never raised by the Petitioner during hearing of the Writ Petition and secondly, this Court,

in its judgment has already taken note of the entire provisions contained under Clause 3(f) of the advertisement and decided in a particular manner citing reasons. If the Petitioner feels aggrieved by such decision, he should approach the appropriate forum challenging the same, but in view of the position of law discussed earlier, he cannot be allowed to agitate the issue before the same Court in the form of review. It would amount to re-opening the case altogether, which obviously is not permitted in an application under review.

14. The second ground urged by Mr. Das is the so-called new material not brought to the notice of the Court at the time of hearing of the Writ Petition i.e., the corrigendum dated 6th January, 2015 whereby the terms of the advertisement dated 27th October, 2014 were modified. According to Mr. Das, if the corrigendum is taken into account the Petitioner would be eligible for selection. This argument is not tenable for the reason that the Petitioner has not whispered a

word as to why the said document was not produced before the Court at the time of filing of Writ Petition or even during hearing of the same.

Be it noted here that the Petitioner had originally approached the erstwhile Odisha Administrative Tribunal on 28th March, 2016 in O.A. No.1203 (C)/2016, which was transferred to this Court consequent upon abolition of the Tribunal and registered as the instant Writ Petition. The Writ Petition was finally heard on 23rd March, 2022, 30th March, 2022 and 6th April, 2022. The said document was never produced on the aforesaid dates of hearing.

The document in question i.e. the corrigendum was issued way back on 6th January, 2015. The Petitioner has not stated any reason whatsoever for not bringing it to the notice of this Court earlier. This is therefore, not a case where any new material which could not be produced earlier despite exercise of due diligence is bring produced. On the contrary, a document which had seen the light of the day since 6th

January, 2015, i.e. prior to filing of the Writ Petition (Original Application before the Tribunal) is being projected and relied upon by the Petitioner at this belated stage as a ruse to reopen the case yet again. Obviously, in view of the limits imposed by law as regards entertaining a review application as discussed hereinbefore, the grounds urged by the Petitioner cannot be considered.

15. For the foregoing reasons therefore, this Court finds no merit in the review application, which is therefore, dismissed.

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(Sashikanta Mishra)
Judge

Ashok Kumar Behera





