

IN THE HIGH COURT OF ORISSA AT CUTTACK

RVWPET (RPC) No.60 of 2019

In the matter of an application under Rule 22(F) of the Administrative Tribunal Act, 1985 read with Rule-1, Order-47 of the Code of Civil Procedure, 1908.

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State of Odisha & Others

Petitioners

-versus-

Manjushree Muduli & Others

Opposite Parties

For Petitioner : M/s.R.N.Mishra &
M.K.Balabantaray.

State Counsel

For Opp. Parties : B.S.Tripathy-1.

PRESENT:

THE HONBLE JUSTICE BIRAJA PRASANNA SATAPATHY

Date of Hearing:05.08.2022 and Date of Judgment:06.09.2022

Biraja Prasanna Satapathy, J.

1. This matter is taken up through Hybrid Mode.
2. This Review Petition has been filed by the State of Odisha seeking review of the judgment passed by the learned Tribunal in its judgment dated 29.06.2017 in O.A. No.2482(C) / 2015.
3. Heard Mr. R.N.Mishra, learned Addl. Government

Advocate for the State and Mr. B.S.Tripathy-1, learned counsel appearing on behalf of Private Opposite Party Nos.1 to 4.

4. Mr. Mishra, learned Addl. Government Advocate for the State submitted that learned Tribunal when vide its judgment dated 29.06.2017 in O.A. No.2482(C) /2015 when directed the State-Opposite Parties to issue formal order of regular appointment in favour of the Opposite Parties, the same was challenged before this Court in W.P.(C) No.6983 of 2019. This Court vide order dated 11.04.2019 though was not inclined to set aside the order passed by the learned Tribunal, but considering the grounds taken in the writ petition, observed that it will be open for the Petitioners to raise all such contentions before the learned Tribunal by way of a review petition.

5. Mr. Mishra, accordingly submitted that in pursuance of the said order passed by this Court on 11.04.2019, the present review petition was filed before the learned Tribunal on 24.06.2019.

6. It is submitted that learned Tribunal vide its judgment dated 29.06.2017 when held the Opposite Parties entitled to get the same benefit as was granted to the applicants in O.A. No.2172(C) / 2015 and batch of cases disposed of by the learned Tribunal on 17.05.2017 and accordingly directed for regularization of the Opposite Parties, the matter was challenged before this Court and pursuant to the order passed by this Court on 11.04.2019, the present review petition has been filed.

7. It is submitted that the Opposite Parties are not similarly situated as like the applicants in O.A. No.2172 (C)/2015 and accordingly they are not entitled to get the benefit as has been extended in favour of the applicants in the said batch of cases.

8. It is also submitted that since the Petitioners were illegally appointed without facing due process of selection and without compliance of the provision of the ORV Act, the Petitioners are not entitled to get the benefit of regularization in view of the judgment of the Hon'ble Apex Court in the case of **State of U.P. vrs. Niraj Awasthi and Others** reported in **(2006) SCC -667**.

9. It is also submitted that the claim of the Opposite Parties for their absorption is not coming within the stipulation contained in the resolution issued by the G.A. Department on 17.09.2013 and subsequent resolution issued on 16.01.2014.

10. It is also submitted that the claim of the Petitioners are to be considered in accordance with the provisions of Odisha Group-C & Group-D Posts (Contractual Appointment) Rules, 2013. But learned Tribunal without considering the claim of the Opposite Parties in the light of the said rules allowed the claim in the light of the judgment passed by the learned Tribunal on 17.06.2017 in O.A. No.2172(C) / 2015 and batch. Accordingly, it is submitted that in view of the liberty granted by this Court in its order dated 11.04.2019, this is a fit case for review of the judgment dated 29.06.2017 passed by the learned Tribunal.

11. Mr. B.S. Tripathy-1, learned counsel for the Opposite Parties/ applicants in O.A. No.2482(C)/2015 on the other made his submission basing on the stand taken in their objection.

12. Mr. B.S. Tripathy-1 raised a preliminary objection that since the present Review Petition is filed in terms of the provisions contained under Section 22(3)(f) of the Administrative Tribunal Act, 1985 (in short Act), it should have been filed within the period of 30 days from the date of order i.e. 29.06.2017. But the present Review Petition even though was filed on 24.06.2019, but no application for condonation of delay was filed along with the Review Petition.

13. Mr. B.S. Tripathy-1 further submitted that even after the order passed by this Court on 11.04.2019, the present Review Petition was never filed within the prescribed period of limitation as provided under Section 22(3) (f) of the Act.

14. Mr. B.S. Tripathy-1 in support of his aforesaid contention relied on the decision of the Hon'ble Apex Court reported in the case of **K. Ajit Babu & Others vs. Union of India** reported in **AIR 1997 SC-3277**, the Hon'ble Apex Court in Para-4 of the judgment held as follows:-

"4. Section 22(3)(f) of the Act empowers the Tribunal to review its decisions. Rule 17 of the Central Administrative Tribunal (Procedure and Rules) (hereinafter referred to as "the Rules") provides that no application for review shall be entertained unless it is filed within 30 days from the date of receipt of the copy of the order sought to be reviewed. Ordinarily, right of review is available only to those who are party to a case. However, even if we give wider meaning to the expression "a person feeling aggrieved" occurring in Section 22 of the Act whether such person aggrieved can seek review by opening the whole case decided by the Tribunal. The right of review is not a right of appeal where all questions decided are open to

challenge. The right of review is possible only on limited grounds, mentioned in Order 47 of these Code of Civil Procedure. Although strictly speaking the Order 47 of the Code of Civil Procedure may not be applicable to the tribunals but the principles contained therein surely have to extended. Otherwise there being no limitation on the power of review it would be an appeal and there would be no certainty of finality of a decision. Besides that, the right of review is available if such an application is filed within the period of limitation. The decision given by the Tribunal, unless reviewed or appealed against, attains finality. If such a power to review is permitted, no decision is final, as the decision would be subject to review at any time at the instance of party feeling adversely affected by the said decision. A party in whose favour a decision has been given cannot monitor the case for all times to come. Public policy demands that there should been to law suits and if the view of the tribunal is accepted the proceedings in a case will never come to an end. We, therefore, find that a right of review is available to the aggrieved persons on restricted ground mentioned in Order 47 of the Code of Civil Procedure if filed within the period of limitation”.

15. Mr. B.S. Tripathy-1, further submitted that since no application for condonation of delay was filed along with application for review, the present Review Petition is also not entertainable in view of the decision in the case of **R.C. Choudhury vs. M/s. Prestige Finance & Chit Fund** reported in **AIR 1996 Delhi-382** and in the case of **Madhukar Daso Deshpande vs. Anant Neelkantha Deshpande** reported in **AIR 1984 Karnatak-40**.

16. Mr. B.S. Tripathy-1 also submitted that the Hon'ble Apex Court in the case of Smt. **Meera Bhanja vs. Smt. Nirmala Kumari Choudhury** reported in **AIR 1995 SC 455**, while carving out power of Review held that the Review Court ought not to have resorted to re-appreciation of evidence by sitting in Appeal. The Hon'ble Apex Court in Para-8 & 12 of the said judgment held as follows:-

“8. It is well-settled that the 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, C.P.C. In

connection with, the limitation of the powers of the Court under Order 47, Rule 1, while dealing with similar jurisdiction available to the High Court while seeking to review the orders under Article 226 of the Constitution of India, this Court, in the case of *Aribam Tuleshwar Sharma v. Aribam Pishak Sharma and Ors.*, speaking through Chinnappa Reddy, J., has made the following pertinent observations : It is true 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 mis-carriage 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 person 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 of errors committed by the Subordinate Court”.

12. In our view the aforesaid approach of the Division Bench dealing with the review proceedings clearly shows that it has over-stepped its jurisdiction under Order 47, Rule 1, C.P.C. by merely styling the reasoning adopted by the earlier Division Bench as suffering from a patent error. It would not become a patent error or error apparent in view of the settled legal position indicated by us earlier. In substance, the review Bench has re-appreciated the entire evidence, sat almost as Court of appeal and has reversed the findings reached by the earlier Division Bench. Even if the earlier Division Bench findings regarding C.S. Plot No. 74 were found to be erroneous, it would be no ground for reviewing the same, as that would be the function of an appellate court. learned Counsel for the respondent was not in a position to point out how the reasoning adopted and conclusion reached by the Review Bench can be supported within the narrow and limited scope of Order 47, Rule 1, C.P.C. Right or wrong, the earlier Division Bench judgment had become final so far as the High Court was concerned. It would not have been reviewed by re-considering the entire evidence with a view to finding out the alleged apparent error for justifying the invocation of review powers. Only on that short ground, therefore, this appeal is required to be allowed. The final decision dated 8th July, 1986 of the Division Bench dismissing the appeal from appellate decree No. 569 of 1973 insofar as C.S. Plot No. 74 is concerned as

well as the review judgment dated 5th September, 1984. in connection with the very same plot, i.e. C.S. Plot No. 74, are set aside and the earlier judgment of the High Court dated 3rd August, 1978 allowing the Second Appeal regarding suit plot No. 74 is restored. The appeal is accordingly allowed. In the facts and circumstances of the case, there will be no order as to costs”.

Mr.B.S.Tripathy-1, learned counsel for the Opposite Parties accordingly submitted that since the present review petition has been filed by the Petitioners beyond the prescribed period of limitation as provided under Section 22(3)(f) of the Act in view of the decision of the Hon’ble Apex Court reported in **AIR 1997 SC-3277**, the Review Petition is not at all entertainable.

17. It is further submitted that basing on the direction issued by the Finance Department on 17.04.2003 under Annexure-B to the objection, IDCOL Software Ltd., which is a Government Agency issued two select list on 23.07.2005 and 15.09.2006 respectively. In the first select list issued on 23.07.2005, the names of the applicants in O.A. No.2172(C)/2015 and batch were recommended and in the second select list issued on 15.09.2006 the name of the present Opposite Parties along with other were recommended for their appointment on contractual basis.

18. It is submitted that in the second select list issued on 15.09.2006, the name of the opposite parties find place at Sl.No.30, 25, 27 & 28 respectively.

19. It is submitted that names of the applicants in O.A. No.2172(C)/ 2015 and batch were reflected in the first select list issued by the self same IDCOL Software Ltd., and learned Tribunal vide its judgment dated 17.06.2017 allowed the claim for regularization. The present Opposite

Parties being similarly situated, similar order was passed by the learned Tribunal in its judgment dated 29.06.2017.

20. It is further submitted that the order passed by the learned Tribunal on 17.06.2017 in O.A. No.2172(C)/2015 and batch was also challenged by the State before this Court in W.P.(C) No.6661/2018. This Court vide order dated 10.05.2018 when dismissed the said writ petition by upholding the order passed by the learned Tribunal on 17.05.2017, the State approached the Hon'ble Apex Court in SLP(C) No.18642/2018.

21. It is submitted that the Hon'ble Apex Court vide order dated 06.08.2018 also dismissed the said SLP. It is also submitted that after dismissal of the matter by the Hon'ble Apex Court by confirming the order passed by the learned Tribunal on 17.05.2017, the applicants in O.A. No.2172(C)/2015 and batch were regularized vide order dated 29.10.2018 and 15.11.2018.

22. Mr. B.S. Tripathy-1, learned counsel for the Opposite Parties further submitted that not only the applicants in the first select list issued on 23.07.2005 were regularized pursuant to the order passed by the learned Tribunal on 17.05.2017, but also some of the applicants whose name find place in the second select list issued on 15.09.2006, also approached the learned Tribunal and pursuant to the order passed by the learned Tribunal in O.A. No.2238(C)/2015 and 2240(C)/2015 they were also regularized. The applicants in the said O.A. No.2238(C)/2015 and 2240(C)/2015 were placed at Sl.No.2 and 3 of the second select list published on 15.09.2006.

23. It is also submitted that similarly situated selected candidates placed at Sl.Nos.4,10, 12,13,14,16,17,18,20 & 21 of the second select list were also appointed as contractual D.E.Os and when were regularized prospectively vide office order dated 01.02.2019, the same was challenged before this Court in W.P.(C) No.21104 of 2019. Pursuant to the order passed by this Court on 13.11.2019, the said selected candidates were regularized retrospectively w.e.f. 17.09.2013 basing on the decision passed in O.A No.2172(C)/2015 and batch.

24. Mr. B.S. Tripathy-1, learned counsel appearing for the Opposite Parties pursuant to the order passed by this Court on 14.07.2022 filed the documents, which included the order of regularization passed in favour of the applicants in O.A. No.2172(C)/2015 and batch as well as the order of the regularization issued in favour of the applicants in O.A. No.2228(C)/2015 and 2240(C)/2015.

25. Mr. B.S. Tripathy-1 also filed the orders issued on 01.12.2019 and subsequent orders passed by the Government on 24.09.2021 in terms of the order passed by this Court on 13.11.2019 in W.P.(C) No.21104 of 2019.

26. Mr.B.S. Tripathy-1 accordingly submitted that since similarly situated applicants recommended by IDCOL Software Ltd., in its first select list dated 23.07.2015 and in the second select list dated 15.09.2006 have been regularized pursuant to the order passed by the learned Tribunal in O.A. No.2172(C)/2015 and batch as well as O.A. No.2228(C)/2015 and 2240(C)/2015, no illegality has been committed by the learned Tribunal in directing the State to issue order of regularization in favour of the

present opposite parties / applicants in O.A. No.2482(C)/2015.

27. Accordingly, Mr. B.S. Tripathy-1, learned counsel for the Opposite Parties submitted that no case for review has been made out by the Review Petitioners and the Review Petition is liable to be dismissed on merit also.

28. Heard learned counsel for the Parties.

29. Perused the materials available on record. This Court after going through the same finds that the present Review Petition though was filed on 24.06.2019 seeking review of the judgment dated 29.06.2017, but no application for condonation of delay was filed along with Review Petition. Therefore, in view of the provision contained under Section 22(3)(f) of the Act and the decision in AIR 1997 SC-3277, the Review Petition having been filed beyond the prescribed period of limitation, it is not entertainable in the eye of law. When the question of limitation was raised by the learned counsel for the Opposite Parties, the Review Petitioner filed I.A. No.14 of 2022 on 29.04.2022 with a prayer to condone the delay in filing the review petition. This Court in view of the specific provision contained under Section 22(3)(f) of the Act and the decision of the Hon'ble Apex Court as cited (supra) is not inclined to condone the delay as prayed for in I.A. No.14/2022 and while rejecting the same accordingly held that the review petition is barred by limitation.

30. Further, since this Court finds that the present Opposite Parties are similarly situated as like the applicants in O.A. No.2172(C)/2015 and batch as well as the applicants in O.A. No.2228(C)/2015 and O.A. No.2240(C)/2015 as well as the applicants who were

regularized vide order dated 01.02.2019 and subsequently vide order dated 24.09.2021 pursuant to the order passed by this Court in W.P.(C) No.21104 of 2019, no case for review on merit is also made out by the review petitioners.

31. Therefore, in view of the discussions made hereinabove, the prayer for Review is purely mis-conceived and this Court is not inclined to entertain the same.

32. Accordingly, the Review Petition is dismissed. There shall be no order as to costs.

(Biraja Prasanna Satapathy)
Judge

Orissa High Court, Cuttack
Dated the 6th of September, 2022/Subrat

