

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Suvra Ghosh

&

The Hon'ble Justice Rai Chattopadhyay

**RVW 7 of 2024
CAN 1 of 2024
IN
FMA 1175 of 2019
CAN 1 of 2024**

Shahla Khokhar

vs.

The State Bank of Mysore & Ors.

For the Review Applicant : Mr. Ziaul Islam,

**For the Opposite Party : Ms. S. Roy Chaudhuri,
: Mrs. S. Pal
: Ms. T. Paul,
: Ms. S. Paul.**

Heard on : 09/01/2025

Judgment on : 07/02/2025

Rai Chattopadhyay, J. :-

- 1.** The applicant/appellant/writ petitioner, has sought review of the order of the Hon'ble Division Bench dated October 18, 2023, in appeal No. FMA 1175 of 2019.
- 2.** In the appeal as above, a judgment of the Hon'ble Single Bench in the writ petition, being W.P.No.8579(w) of 2017, dated May 5, 2017, was challenged. The Hon'ble Single Bench previously dismissed the said writ petition. The Hon'ble Division Bench in

the order dated October 18, 2023 found the decision of the Hon'ble Single Bench to be proper, after due consideration of the factual background of the case and thus refused to interfere with the order of the Hon'ble Single Bench. Thus, the appeal as above was dismissed by the Hon'ble Division Bench, vide its order dated October 18, 2023.

3. The applicant has pleaded that there has been gross and manifest error apparent on the face of the order of the Hon'ble Division Bench dated October 18, 2023, for which this Court may invoke its power of review of its own order and interfere into the same.
4. Mr. Ziaul Islam, learned counsel for the applicant has submitted firstly that the Court has been erroneous in holding that the applicant/writ petitioner/appellant has not produced any material to show that she duly informed the respondent about her resuming the duty and also that no material has been produced by her to substantiate the fact stated by her that she was physically prevented from joining. The applicant says that on March 8, 2017, when she was prevented physically from joining in duty, the said fact was immediately communicated to the respondents via email as well as handwritten letters by registered post. Letters were also sent on the subsequent date that is March 9, 2017. It is submitted further that in spite of the said documents being made part of the writ petition as well as the appeal, the Court has erroneously ignored to consider the same.
5. It has further been submitted that the Court held erroneously that after rejection of medical leave of the applicant and the prayer for reimbursement of the medical bills on March 15, 2014, the applicant chose not to join duty. The applicant has submitted that since subsequently on April 18, 2015, the bank authorities

directed her to submit leave letters with medical reports, the incident which happened on March 15, 2014, lost its relevance. It is submitted that the Court in the order as above has also failed to consider that subsequently on June 10, 2015, the respondent bank authorities responded to the applicant, though in a negative manner, that is, by declining her prayer for transfer. Furthermore, the respondent bank authority issued notice dated February 21, 2017, directing the applicant to join duty within ten days. It is stated that even after receipt of the said notice by the applicant, she maintained continuous communication with the respondent bank authorities.

- 6.** The applicant has further submitted that the notice dated February 21, 2017, is also otherwise bad in law and in contravention of the provisions of the 'State Bank of Mysore (Officers') Service Regulations 1079', in so far as the Regulation 40 (3) thereof has provided that a notice of 30 days would be required to be given calling upon the absentee employee to join duty.
- 7.** Therefore, according to the applicant there has been continuous communication between the applicant and the respondent bank. In such view of the matter, it is submitted that the finding of the Hon'ble Courts that since from 2014 (or 2011, as held by the Hon'ble Division Bench) the applicant has absented herself from the duties in the respondent bank and as such there has been an unexplained, long and unauthorised absence by her — has rendered the orders of the Court erroneous. It is submitted that dismissal of the writ petition as well as the appeal on the self same ground, would render the said orders as vitiated due to error apparent on the face of the order.
- 8.** The applicant has stated further that the Court has held wrongly that no material has been placed by the applicant before the

Court to deny her long absence from February 4, 2011. It is stated that instead, the documents placed before the Hon'ble Single Bench as well as the Hon'ble Division Bench would show that time and again, repeatedly the applicant has communicated with the respondent bank regarding her inability to join duty for various reasons including physical unfitness or birth of the child, for whom there would be no other caregiver than the applicant. It is submitted that the Courts have failed to apply their minds as to the explanation given by the applicant regarding her absence from duty.

- 9.** According to the applicant, in view of the above facts and circumstances the Courts could not have come to a finding that the petitioner wilfully and voluntarily absented herself without any communication and willingness shown to resume her duties in the respondent bank for a prolonged period of time. Also, for the reason as above neither the writ petition nor the appeal as mentioned above, would have been dismissed, had the respective Courts considered the materials on record, in its proper perspective and given adequate weightage to the same. Hence it is submitted that the prayer of the applicant for review of the order of the Hon'ble Division Bench, as above may be allowed, thereby directing the respondent bank authorities to allow the petitioner to join duty with full back wages.
- 10.** The Respondent bank authorities have raised serious objections as to the contentions and prayers of the applicant, as mentioned above.
- 11.** Ms. Roy Chaudhuri has represented the bank. She has specifically submitted about the limited scope within which this Court exercises its power to review its own judgment. She has iterated that it is only if there is apparent, gross and manifest

error on the face of the order, requiring interference by the Court into the same order which has been passed by it earlier. Otherwise, review of an order of the Court would not be maintainable, she says. She has further stated that in the guise of review petition the arguments of the case cannot be reopened. She has said further that in a review petition application of mind on the merits of the case afresh by the Court would not be permissible as per the settled position of law. As to when a review petition would not be maintainable, Ms. Roy Choudhuri has relied on a judgment of the Hon'ble Supreme Court, reported in **(2013) 8 SCC 320 [Kamlesh Verma vs Mayawati and Others]**. The following portion thereof would be profitable to be mentioned :

“20.2. When the review will not be maintainable:

(i) A repetition of old and overruled argument is not enough to reopen concluded adjudications.

(ii) Minor mistakes of inconsequential import.

(iii) Review proceedings cannot be equated with the original hearing of the case.

(iv) Review is not maintainable unless the material error, manifest on the face of the order, undermines its soundness or results in miscarriage of justice.

(v) A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected but lies only for patent error.

(vi) The mere possibility of two views on the subject cannot be a ground for review.

(vii) The error apparent on the face of the record should not be an error which has to be fished out and searched.

(viii) The appreciation of evidence on record is fully within the domain of the appellate court, it cannot be permitted to be advanced in the review petition.

(ix) Review is not maintainable when the same relief sought at the time of arguing the main matter had been negatived.”

12. She has further said that the power of review is not an inherent power but must be conferred by law either specifically or by necessary implication. In this regard she has referred to the judgment of the Hon'ble Supreme Court, in the case of **Lily Thomas and Others vs Union of India and Others** reported in **(2000) 6 SCC 224** and said that in the said case the Supreme Court has held that review is not an appeal in disguise.

13. The other judgment referred to by the respondent bank is **Arun Dev Upadhyay vs Integrated Sales Service Limited & Another** reported in **(2023) 8 SCC 11**, in which the Supreme Court has deliberated on and decided the scope of the provision under Order 47 Rule 1 of the Civil Procedure Code in the following words:

“31. Another case which may be briefly dealt with is Parsion Devi v. Sumitri Devi [Parsion Devi v. Sumitri Devi, (1997) 8 SCC 715] , where, this Court ruled that 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. It also observed that a review petition cannot be allowed to be treated as an appeal in disguise.

32. A series of decisions may also be referred to wherein, it has been held that power to review may not be exercised on the ground that decision was erroneous on merits as the same would be the domain of the court of appeal.

Power of review should not be confused with appellate powers as the appellate power can correct all manners of errors committed by the subordinate courts. The following judgments may be referred:

(1) Shivdev Singh v. State of Punjab [Shivdev Singh v. State of Punjab, 1961 SCC OnLine SC 29: AIR 1963 SC 1909]

(2) Aribam Tuleshwar Sharma v. Aribam Pishak Sharma [Aribam Tuleshwar Sharma v. Aribam Pishak Sharma, (1979) 4 SCC 389 : AIR 1979 SC 1047]

(3) Meera Bhanja v. Nirmala Kumari Choudhury [Meera Bhanja v. Nirmala Kumari Choudhury, (1995) 1 SCC 170]

(4) Uma Nath Pandey v. State of U.P. [Uma Nath Pandey v. State of U.P., (2009) 12 SCC 40: (2010) 1 SCC (Cri) 501]"

14. As to when a review of the order of the Court would be maintainable, the law is now well settled in this regard. The power of review of a Court is not an inherent power but should be conferred by law, either specifically or by necessary implication, as has been held in **Lily Thomas's case (supra)**. Order 47 Rule 1 of the Code of Civil Procedure provides for exercise of the power of review of a Court in case of an error or mistake apparent on the face of the record. Also, that in case of an erroneous decision on merit, the Court's power of review should not be espoused as that would amount to usurping the power of the appellate Court.
15. In the case of **Shri Ram Sahoo (died) through legal representation and other Vs. B.K. Rayat reported in 2021 13 SCC page No. 1**, the High Court has held that an error which is not evident and which can be discovered only by a long process of reasoning, cannot be treated as an error apparent on the face on the record, justifying exercise

of review power. It has been held that an order/decision of the Court cannot be corrected in the guise of exercise of review power.

16. Similar proposition has been upheld by the Court in **State of Telangana and Others vs Mohd. Abdul Qasim (died) per legal representatives** reported in **2024 SCC OnLine SC 548**, that the decision, however erroneous can never be a factor for review, but can only be corrected in appeal.
17. Therefore, the power of review of the constitutional Court can neither be exercised for correction of mistake nor to substitute a different view. Such power can be exercised only within the limits of the statute, dealing with exercise of such power. The review cannot be treated as an appeal in disguise. The mere possibility of two views on the subject is not a ground for review. It is only for the error apparent on the face of the record, the Court would exercise the power of review.
18. The specific grievance of the applicant is that the entire facts relating to the applicant/petitioner, having time and again approached the respondent Bank requesting for the opportunity to join in the duty, even upon transfer, has never been paid any heed to by the said respondent bank – has missed the attention of the Court while delivering its order dated October 18, 2023. In this regard Ld. advocate for the applicant/writ petitioner has taken this Court to the various documents in the writ petition, as discussed above.
19. The Court in its order dated October 18, 2023 has discussed that the applicant did not join the duties even after receiving the bank's letter dated February 21, 2017, on February 28, 2017. The Court has discussed that the applicant/appellant has failed to produce any material supporting her claim that she was physically prevented from joining the duties, as

alleged. The Court has further discussed as early as on March 15, 2014 the appellant's prayer for medical leave was rejected by the Bank and in spite thereof, the appellant did not join the duties. The Court has also discussed that the respondent bank issued notice to the appellant/applicant official on February 21, 2017 directing her to join duties within 10 days to which there has not been any response by the applicant. The Court has further found that though the Hon'ble Single Bench has found the applicant to have absented from duties with effect from 2014 and dismissed her writ petition, on the basis of material available, the Hon'ble Division Bench in its order dated October 18, 2023 has held that the applicant absented herself from duty with effect from February 2011. The Court has further considered that for this absence there has not been any sufficient and cogent material produced by the said applicant/appellant to justify such absence. On such findings, the appeal of the present review applicant was dismissed by the Court.

- 20.** It is noticed that none of the letters and communications between parties have been disputed or denied by the applicant. The applicant has only tried to impress upon the Court that her requests before the respondent Bank authorities to allow her to join in duty by exonerating her from the unauthorised absence has never been considered by the respondent earlier. According to the applicant, there has been an error by the Court in not considering this aspect. Thus, non-consideration of the said facts has rendered the order dated October 18, 2023, erroneous on the face of it. It is stated that for this, the order of the Court dated October 18, 2023 should be reviewed and necessary direction be given allowing the writ petitioner to resume her services. Nonetheless, the writ petitioner/appellant would

have to satisfy the Court on the merit of her own case. So far as her case is concerned, indisputably, with effect from 4th February, 2011 the applicant has not joined the duties. She has not joined the duties in spite of rejection of her medical leave application as well as in spite of letter sent by the respondent bank authorities directing her to join the duties immediately. The facts as above, as substantiated by relevant documents, would suffice to find that the petitioner's prayer before the Hon'ble Single Bench or the Division Bench has only been unjust, unlawful and improper. The petitioner herself having blatantly violated service conditions, would not be eligible for resumption of duty. This matter have been duly considered by the Hon'ble Division Bench in its order dated October 18, 2023 and the order was delivered under due and proper consideration of the facts.

21. The Court finds that by filing the present review application the applicant has invited for consideration of the issues involved in her case, by this Court which however this Court in its review jurisdiction would not be eligible to exercise. It has been discussed earlier that the law settled in this regard should prompt the Court to intervene into the previous order of itself, only in case of any error apparent on the face of it. Reconsideration of the facts and circumstances leading to the order, in the guise of review requiring independent application of mind by the Court and independent decision thereby, would not be maintainable as the same would render this Court usurping the power of the Appellate Court.

22. Hence, on the discussion as above this Court finds the present review application by the applicant/writ petitioner, being No. RVW 7 of 2024 not to be maintainable, being

dehors the law and beyond scope of review jurisdiction of this Court. Hence the review application No. RVW 7 of 2024 is dismissed.

- 23.** Since no affidavit have been called for, the allegation made in the writ petition are deemed to have been denied by the respondent.
- 24.** Urgent certified website copy of this judgment, if applied for, be supplied to the parties upon compliance with all requisite formalities.

I Agree,

(Suvra Ghosh, J.)

(Rai Chattopadhyay, J.)

(P.A)