

08.02.2023

Court : 04
Item : PB-06
Matter : RVW
Status : DISMISSED
Transcriber: nandy

RVW 21 of 2022

with

CAN 1 of 2022

&

CAN 2 of 2022

Debdas Rajak & Ors.

Vs.

Government of West Bengal & Ors.

Mr. Rama Prasad Sarkar, Advocate

.....for the Petitioner

Mr. Biswabrata Basu Mallick, Advocate

Mr. Sayan Ganguly, Advocate

.....for the Contemnors

CAN 1 of 2022

The petitioner filed this application presuming that the instant review application has been filed beyond the statutory period provided therefor. On an earlier occasion, we noticed a discrepancy in the said application so far as it relates to the quantum of delay and directed supplementary affidavit to be filed.

In the supplementary affidavit, the petitioner says that there was 11 days delay in filing the instant application. After noticing the report of the Stamp Reporter appended to the reverse page of the Memo of Review, we find that there is no delay in filing the instant review application.

The application being **CAN 1 of 2022** is thus **disposed of**.

The instant review application is aimed against an order dated 22.12.2021 passed in WPST (112 & 114 & 164) of 2014 whereby and whereunder the writ-petition challenging the order of the Tribunal was declined to be interfered with as the allegations contained therein could not be substantiated by corroborative evidence.

This Court observed that though the allegations of nepotism and favoritism has been pleaded in the writ-petition but the same could not be substantiated by cogent material disclosed therein.

The review application is filed solely on the premise that the moment the Court noticed the allegations of nepotism and/or favoritism, it ought not to have closed the chapter but should have activated the investigating process to unearth the truth. It is no doubt true that in a government service, equal opportunity to all eligible candidates is the hallmark of the Constitution of India adopted by the people of this country and the authorities cannot discriminate the citizens standing on equal pedestal or denying any right of a member in the public employment which is to be conducted in a fair and transparent manner. Any kind of favoritism and nepotism is always viewed jealously and the authorities are not immuned from being reprimanded or to be suitably dealt with.

There was a categorical finding recorded in the order dated December 22, 2021 that there was no material forthcoming in support of the bald allegation of nepotism and favoritism and, therefore, the Court cannot act on the *ipse dixit* of the pleading without any corroborative evidence produced in this regard. We are not unmindful of the settled proposition of law that the scope of review is very limited and to be exercised on the conditions enshrined under Order LXVII Rule 1 of the Code of Civil Procedure. The Court can review its order/judgment provided there is an error apparent on the face of the record or upon discovery of new and important documents/evidence which despite due diligence was not within the knowledge of the review applicants or for any other reason. The review jurisdiction is neither intended nor meant for re-visitation of the earlier

judgment which can be activated on the re-appreciation of the evidence or re-argument of the same point which has already been decided therein. The Court cannot rewrite the judgment solely on the ground that a review application has been filed but must confine its scrutiny within the limited compass envisaged under Order LXVII Rule 1 of the Code.

The expression “or any sufficient reason” appearing in the said provision has been interpreted judicially and it is held that such expression cannot stand independently but referable to other two incidences of the review i.e. error apparent on the face of the record and discovery of new and important documents which have a relevance in the context and was not within the knowledge of the applicant despite due diligence.

So far as the second ground of review is concerned, there is no case made out relating to the discovery of new and important documents nor an argument has been advanced in this regard. There is no ambiguity in our mind that the review application can be entertained provided there is a patent error. There is a distinction between a erroneous decision and/or a decision suffering an error apparent on the face of the record.

In the first case, the remedy lies by moving higher up and the review should not be entertained but in a later case, the Court can review its order provided it is satisfied that the order impugned suffers from a patent error. The error should not be such requiring to derive an inference or upon a roving enquiry over the voluminous documents as it cannot be regarded as an error on the face of the record.

We do not find any patent error to have been shown to us and, therefore, we decline to interfere with the order dated December 22, 2021.

The review application being **RVW 21 of 2022** and the connected application being **CAN 2 of 2022** is thus **dismissed**. No order as to costs.

(Harish Tandon, J.)

(Rabindranath Samanta, J.)