

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**CIVIL REVIEW No.136 of 2021**

**In**

**Letters Patent Appeal No.8 of 2019**

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Raghawendra Jha, Male, aged about 63 years, Son of Late Mahendra Jha,  
Resident of Village-Khojpura, P.O.-Babu Barhi, District-Madhubani.

... .. Petitioner/s

Versus

1. The State of Bihar
2. The Secretary, Department of Health, Government of Bihar, Patna.
3. The Joint Secretary, Department of Health, Government of Bihar, Patna.
4. The Under Secretary, Department of Health, Government of Bihar, Patna.
5. The Collector, Samastipur.
6. The Civil Surgeon, Samastipur.
7. The Medical Officer-in-Charge, Primary Health Centre, Rosera, District-Samastipur cum Drawing and Disbursing Officer, Additional Primary Health Centre, Kameshwar Nagar, District-Samastipur.

... .. Opposite Party/s

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**Appearance :**

For the Petitioner/s : Mr. Sanjay Kumar Jha, Advocate  
For the Opposite Party/s : Mr. AG

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**CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI**

**and**

**HONOURABLE MR. JUSTICE RAMESH CHAND**

**MALVIYA**

**ORAL JUDGMENT**

**(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)**

**Date : 30-01-2024**

The present Civil Review application has been filed in assailing the order dated 18.02.2021 passed in Letters Patent Appeal No. 08 of 2019 arising out of CWJC No. 8282 of 2017.

2. In brief, the appellant was a Medical Officer of the Health Department, Government of Bihar. On 27<sup>th</sup> March, 2001, he was transferred from Additional Primary Health Centre,



Harsingpur, Benipur, Darbhanga to Additional Primary Health Centre, Kameshwar Nagar, Samastipur, he has taken charge on 09<sup>th</sup> May, 2001. Thereafter he remained unauthorized absent. In this regard, preliminary enquiry report was submitted by S.D.O., Rosera. Thereafter, show cause notice was issued on 25<sup>th</sup> November, 2003. The Review petitioner's explanation was not satisfied by the Disciplinary Authority and in the result, enquiry was initiated under Rule 17 of the Bihar CCA Rules, 2005. Such enquiry was an *ex-parte*. In other words, review petitioner failed to participate in the Departmental Enquiry. Notice was issued through daily newspaper, namely, 'Prabhat Khabar' on 25<sup>th</sup> November, 2010. Thereafter, he was dismissed from service on 07<sup>th</sup> September, 2016. These issues have been taken note of by the Co-ordinate Bench. *Prima facie*, there is no error apparent on the face of the record.

3. Learned counsel for the review petitioner submitted that the petitioner has not been heard and he has not been issued with any show cause notice in the Departmental Enquiry. In the Departmental Enquiry, certain records were required to be examined in respect of remaining unauthorized absent. The same is not forthcoming from the Inquiry records including the dismissal order. It was not appreciated by the Co-ordinate Bench,



hence the review petition. The aforementioned contentions are nothing but re-agitating grounds in the Letters Patent Appeal. Scope of review petition under Order 47 Rule 7 is limited to the extent, what is error apparent on the face of the record committed by the Letters Patent Appeal Bench. Learned counsel for the review petitioner submitted that Co-ordinate Bench has not taken note of records relating to non-compliance of issuance of show cause notice and certain records. In so far as service of show cause notice is concerned, we find that Co-ordinate Bench has taken note of service of notice through daily newspaper, i.e., 'Prabhat Khabar' dated 25<sup>th</sup> November, 2010. It is to be noted here that remaining unauthorized absence is from the year 2002, enquiry was concluded on 07.09.2016. In the meanwhile, the appellant has not made any efforts to participate in the process of enquiry and so also in apprising the Disciplinary Authority about his absence. Review petitioner being Medical Officer and the State had suffered for almost eight years due to his unauthorized absent. In fact, large number of patients have suffered without service or lack of service and medical facilities to be provided to such of those patients etc. In other words, Medical Officer service would be a part and parcel of essential services.



4. Having regard to the conduct of the review petitioner, he is not entitled to seek review the order of the Letters Patent Appeal Bench dated 18.02.2021 passed in Letters Patent Appeal No. 08 of 2019.

5. At this stage, it is necessary to take note of recent Hon'ble Supreme Court decision in respect of entertaining Civil Review petition by various Courts.

In the case of **Sanjay Kumar Agarwal vs. State Tax Officer (1) & Anr.** reported in **2023 SCC Online SC1406**, in the aforesaid decision eight points have been formulated and they are as under:

*“16. The gist of the afore-stated decisions is that:—*

*(i) A judgment is open to review inter alia if there is a mistake or an error apparent on the face of the record.*

*(ii) A judgment pronounced by the Court is final, and departure from that principle is justified only when circumstances of a substantial and compelling character make it necessary to do so.*

*(iii) 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 record justifying the court to exercise its power of review.*

*(iv) In exercise of the jurisdiction under Order 47 Rule 1 CPC, it is not permissible for an erroneous decision to be “reheard and corrected.”*



*(v) A Review Petition has a limited purpose and cannot be allowed to be “an appeal in disguise.”*

*(vi) Under the guise of review, the petitioner cannot be permitted to reagitate and reargue the questions which have already been addressed and decided.*

*(vii) An error on the face of record must be such an error which, mere looking at the record should strike and it should not require any long-drawn process of reasoning on the points where there may conceivably be two opinions.*

*(viii) Even the change in law or subsequent decision/judgment of a co- ordinate or larger Bench by itself cannot be regarded as a ground for review.”*

6. In the light of the above principles laid down by the Hon’ble Supreme Court, review petitioner has not made out a case, accordingly, Civil Review petition stands dismissed.

**(P. B. Bajanthri, J)**

**(Ramesh Chand Malviya, J)**

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