

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:

**THE HON'BLE JUSTICE HARISH TANDON
&
THE HON'BLE JUSTICE MADHURESH PRASAD**

**RVW 27 of 2022
CAN 1 of 2022**

**The District Nodal Officer & Anr.
Vs.
Md. Azahar Hossain & Ors.**

**With
RVW 36 of 2023
With
CAN 1 of 2023**

**The District Nodal Officer, SSK MSK Cell, Howrah & Anr.
Vs.
Md. Azahar Hossain & Ors.**

Appearance:

For the Applicants : **Mr. Sardar Amzad Ali, Adv.
Ms. Mekhla Sinha, Adv.
Ms. Malabika Roy Dey, Adv.**

For the State : **Mr. Kamalesh Bhattacharyya, Adv.
Mr. R. L. Sardar, Adv.**

Judgment On : **22.04.2024**

Harish Tandon, J.:

The aforesaid two review applications are filed by the State respondent seeking review of the judgment and order dated 7th January, 2022 passed in

MAT 10 of 2021. Both the review applications contained the ground that the Court did not address the service rules or the Government guidelines relating to the Shiksha Samprasarak and Mukhya Shiksha Samprasarak in Madhyamik Shiksha Kendra (MSK) and, therefore, there is an error apparent on the face of the record.

The Counsels for the appellant vehemently submits that there was no occasion to interfere with the impugned order as there is no mechanism to reinstate the writ petitioner in the post of the Samprasarak.

A background of the case is required to be recapitulated before we proceed to decide the said application for review. Admittedly, the writ petitioner was appointed as Shiksha Samprasarak in MSK on 29th June, 2003 and was requested to act as a Mukhya Shiksha Samprasarak of the said MSK as the person who was holding the post of Mukhya Shiksha Samprasarak resigned from service in the year 2005. From time to time the Government extended the tenure of the writ petitioner to act as a Mukhya Shiksha Samprasarak and subsequently, a decision was taken by the executive officer, Domjur Panchayat Samiti on 27th October, 2014 that the writ petitioner should be exempted from discharging the duties as Samprasarak in charge as it has been entrusted to someone else.

Challenging the said decision of the executive officer, a writ petition was filed before this Court being WP no. 29431(W) of 2014 and the said order was set aside. The said order would reveal that the writ petitioner was permitted to continue as Samprasarak in charge, till such time, the order is passed by the appropriate authority. It is alleged by the petitioner that

despite the said order passed by the Court in the said writ petition, the petitioner was not permitted to take charge and the said incident was reported to the concerned police station. Subsequently, the representation was made to the executive officer but the petitioner was served with the show cause notice as to why his services as samprasarak in charge should not be terminated. Subsequently, the enquiry was conducted and an order was issued by the additional executive officer on 23rd July, 2015 indicating the service of the petitioner as Mukhya Samprasarak in charge has been terminated with effect from 1st August, 2015. Apropos the said order, the petitioner made a representation as he should be allowed to join as Samprasarak with further prayer for transfer in any other MSK.

The writ petition was filed challenging the said order by contending that he has been serving in the post of Mukhya Samprasarak in charge for nearly a decade and such service cannot be terminated abruptly without following the principles of natural justice. The aforesaid writ petition came to be disposed of on 21st December, 2018 with the categorical finding that the eligibility as to educational qualification of Mukhya Shiksha Samprasarak is conspicuously absent and therefore, the petitioner cannot claim to discharge the functions and duties of the Mukhya Shiksha Samprasarak in charge. While dismissing the writ petition, the Court observed that the service of the writ petitioner as Samprasarak has not been disturbed. The aforesaid observation was construed differently by the authorities for which the petitioner took out an application in the said disposed of writ petition i.e. WP 24182(W) of 2015. The Single Bench disposed of the said application holding

that the prayer so made therein constituted a fresh cause of action and the liberty was given to the writ petitioner to challenge the action of the authorities in not permitting the petitioner to join as Samprasarak. Consequent upon such liberty having granted the petitioner filed a writ petition no. 10523(W) of 2019 which was dismissed by the impugned order. The Single Bench held that neither all those orders conferred any right on the petitioner to continue with the post of a Samprasarak in the said MSK nor the petitioner has been able to make out any case on such entitlement and proceeded to dismiss the said writ petition.

While admitting the appeal against the said order, the Co-ordinate Division Bench observed that since the writ petitioner accepted the termination notice and decided not to function as Mukhya Samprasarak in charge, the State respondent shall take a decision as to whether the writ petitioner can be transferred as Samprasarak in any other MSK. On the returnable date, a plea was taken by the State respondent that there is no vacancy at present in the District of Howrah in any of the MSK where the writ petitioner could be accommodated. It was further submitted that there is no provision for transfer of the Shiksha Samprasark from one MSK to another which can only be done on the basis of the order of the Court. Subsequently, the direction was passed in the appeal commanding the concerned respondents to indicate the vacancy position in all the MSK in the District of Howrah. In compliance of the said direction, the affidavit was filed by the concerned respondent indicating that there is no vacancy in the MSK within the district of Howrah. An argument was further advanced that the

petitioner was terminated from the post of Samprasarak and, therefore, he cannot be permitted to continue with the services. While disposing the said appeal on the basis of the aforesaid stand so taken, this Court does not find that there is no vacancy in the MSK as it appears from the said affidavit that since last one decade there is no appointment of a Shiksha Samprasarak in the MSK. The Division Bench held that in view of such contradictory stand it is inconceivable that the petitioner cannot be accommodated in the said MSK and directed to create a supernumerary post so that the petitioner can discharge the duties as Shiksha Samprasarak.

The present review applications are filed on the ground that the Division Bench failed to take into consideration the service rules and all the Government guidelines relating to the scheme pertaining to Shiksha Samprasarak and Mukhya Shiksha Samprasarak. It is further stated in the petition that service of the writ petitioner was in fact terminated from the post of Siksha Samprasarak.

The memorandum of review and the grounds incorporated therein leave no doubt in our mind that the review petitioners herein intended to reopen the factual issues which had been set at rest in the impugned order dated 07.01.2022. Interestingly, in RVW 27 of 2022 the instant petitioner contends that the writ petitioner was engaged permanently as Samprasarak and not Mukhya Samprasarak in charge. The record would further reveal that though initially the appointment of a Shiksha Samprasarak was for a specific period but was to continue till the prescribed age. The petitioner of the review application has also not disputed the stand of the Government in

this regard nor we find any such ground to have been taken in the review petition. What is gathered from the respective submissions of the parties that the petitioner of the review application intended to reopen the entire issue and invited the attention of the Court to revisit its order dated 07.01.2022.

The law relating to review is required to be recapitulated in order to ascertain whether the grounds taken in the review application come within the peripheral of Order 47 Rule 1 of the Code. Order 47 Rule 1 of the Code postulates that any person considering himself aggrieved by any order or a decree may apply for review of the order on three grounds namely, i) upon discovery of new and important matter or evidence which after exercise of due diligence was not within his knowledge or could not be produced by him at the time when the order was made; ii) On account of some mistake or error apparent on the face of the record; iii) or for any other sufficient reasons. Admittedly, the first ground is conspicuously absent for the simple reason that it is not a case of the petitioner of the review application that there is any discovery of new and important documents which despite due diligence could not be produced when the impugned order is passed. The review appears to be founded upon the other two grounds. There is no quarrel to the proposition that the Court can review its order if it contains an error apparent on the face of the record. The error must be of such nature which does not require any process of reasoning nor ascertainable on fishing out or on a roving search but must be self-evident. The error must be apparent on the face of the record and cannot be used as a tool for

revisitation and/or to reopen the case. The review jurisdiction cannot be converted as an appellate jurisdiction to reopen the issues at large and deciding the case afresh. An error apparent on the face of the record must be such which can be seen by one on a bare perusal of the record and not by establishing with the long run process of reasoning. The observation made by the Apex Court in ***Parsion Devi & Ors. vs. Sumitri Devi & Ors., reported in (1997) 8 SCC 715*** in this regard can be gainfully applied wherein, it is held:

“9. Under 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 under Order 47 Rule 1 CPC. In exercise of the jurisdiction under Order 47 Rule 1 CPC it is not permissible for an erroneous decision to be “reheard and corrected”. A review petition, it must be remembered has a limited purpose and cannot be allowed to be “an appeal in disguise”.

10. Considered in the light of this settled position we find that Sharma, J. clearly overstepped the jurisdiction vested in the Court under Order 47 Rule 1 CPC. The observations of Sharma, J. that “accordingly, the order in question is reviewed and it is held that the decree in question was of composite nature wherein both mandatory and prohibitory injunctions were provided” and as such the case was covered by Article 182 and not Article 181 cannot be said to fall within the scope of Order 47 Rule 1 CPC. There is a clear distinction between an erroneous decision and an error apparent on the face of the record. While the first can be corrected by the higher forum, the latter only can be corrected by exercise of the review jurisdiction. While passing the

impugned order, Sharma, J. found the order in Civil Revision dated 25-4-1989 as an erroneous decision, though without saying so in so many words. Indeed, while passing the impugned order did record that there was a mistake or an error apparent on the face of the record which was not of such a nature, "which had to be detected by a long-drawn process of reasons" and proceeded to set at naught the order of Gupta, J. However, mechanical use of statutorily sanctified phrases cannot detract from the real import of the order passed in exercise of the review jurisdiction. Recourse to review petition in the facts and circumstances of the case was not permissible. The aggrieved judgment-debtors could have approached the higher forum through appropriate proceedings to assail the order of Gupta, J. on the grounds detailed in the review petition. In this view of the matter, we are of the opinion that the impugned order of Sharma, J. cannot be sustained and we accordingly accept this appeal and set aside the impugned order dated 6-3-1997."

Taking the law as enunciated above, the point which was taken in the appeal was whether the petitioner whose service was terminated as Mukhya Samprasarak in charge shall lose the service of the Samprasarak. The Court interpreted the order passed in an earlier writ petition where it was held that the service as Samprasarak has not been disturbed though the claim of the writ petitioner to continue as Mukhya Samprasarak in charge was turned down. The expression Shiksha Samprasarak was construed in the judgment to mean Mukhya Samprasarak in charge which has been consistently held in all such proceedings and, therefore, we do not find that any case of error apparent on the face of the record have been made out in the instant review application. What is intended in the instant review application is that the court should reopen the issue and revisit the case on a factual matrix which

cannot be brought within the ambit of a review jurisdiction. Both the review applications *sans* merit and are accordingly dismissed.

No order as to costs.

Urgent Photostat certified copies of this judgment, if applied for, be made available to the parties subject to compliance with the requisites formalities.

(Harish Tandon, J.)

I agree.

(Madhuresh Prasad, J.)