

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL REVIEW No.4 of 2022

In
Civil Writ Jurisdiction Case No.22468 of 2019

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1. The Bihar Staff Selection Commission through its Chairman, Veterinary College, Patna, Bihar.
 2. The Chairman, Bihar Staff Selection Commission, Veterinary College, Patna, Bihar.
 3. The Secretary, Bihar Staff Selection Commission, Veterinary College, Patna, Bihar.

... .. Petitioner/s

Versus

1. Santosh Kumar Tiwari Son of Shri Ram Pratap Tiwari, resident of Village - Socharitola, Dariyapur, P.S. Parwalpur, District- Nalanda, Pin - 803114, Bihar.
2. Jitendra Kumar, Son of Shri Surendra Singh, resident of Village - Kichni, P.O. and P.S.- Harnaut, District - Nalanda, Pin - 803110, Bihar.
3. Ashwani Kumar Thakur, Son of Shri Ganesh Thakur, resident of Village - Raghuwarpur, P.O. Chakhabib, P.S.- Dalsinghsarai, District - Samastipur, Pin - 848114, Bihar - 4.
4. Santosh Kumar, Son of Shri - Krishna Kant Pandey, resident of Village - Ratanpura, P.O. Dariyapur, P.S. - Islampur, Block Islampur, District - Nalanda, Bihar.
5. Binay Kumar, Son of Shri Upendra Prasad, resident of Village - Gopalpur, P.O. Maghra, P.S. - Deep Nagar, District - Nalanda, Bihar.
6. Sunil Kumar Son of Shri Sikanbdar Yadav, resident of Village - Bishanpur, Ward No. 10, P.O. Kharagpur, P.S.- Sonbarsa Kachhahri, District - Saharsan, Pin - 852106, Bihar.
7. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
8. The Chief Secretary, Government of Bihar, Patna.

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr.Satyabir Bharti, Sr. Adv. Mr. Abhishek Anand Ms. Kanupriya
For the Opposite Party/s :		Ms. Divya Verma, AC to AAG 3

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA

JUDGMENT AND ORDER

C.A.V.

Date : 14-10-2025



The present review application has been filed by the Bihar Staff Selection Commission (herein after referred to as 'the Commission') seeking review of the order, dated 01.09.2021, passed in CWJC No. 22468 of 2019, by which this Court directed the Commission to permit the writ petitioners to appear in the interview on the basis of submission made by both the parties.

2. This Court, after recording the submission of learned Counsel for the writ petitioners and the Commission, in CWJC No. 22468 of 2019, disposed the writ petition by order, dated 01.09.2021, recorded that the names of the writ petitioners were included in the list of successful candidates and the Commission would certainly allow them to appear in the interview. Accordingly, this Court directed the Commission to allow the writ petitioners to appear in the interview, as and when the date of the interview is decided by the Commission.

3. The short facts involved in the writ petition is that the Commission published an advertisement, inviting applications for filling up 466 vacant posts of drivers in various offices and departments of the Government of Bihar. As per the terms of the advertisement, the process of selection was to be completed in the following manner :-



(i) The candidates were required to appear in a written test of 75 marks;

(ii) Marks were to be awarded for work experience as driver in any Government office on contractual appointment, duly certified by the competent authority. For every completed year of such experience, five marks were to be awarded, subject to a maximum of 25 marks;

(iii) On the basis of marks obtained in the written test and the marks awarded for experience, a combined merit list of 100 marks were to be prepared;

(iv) From this list, the candidates equal to 2.5 times of the vacancies in each category were to be shortlisted for the next stage;

(v) Shortlisted candidates were to be called for a proficiency test relating to driving test (50 marks) and General knowledge of Vehicles (50 marks). The proficiency test carry total 100 marks.

(vi) On the basis of marks obtained in the proficiency test, a final merit list was to be prepared and based on that merit list, the Commission would send recommendation to the concerned department and offices.



4. In light of the aforesaid basic facts, learned Counsel for the review petitioner argued that a written test of 75 marks was conducted for all candidates seeking appointment to the post of driver. After the written test, shortlisting of candidates was done, who attained the minimum qualifying marks in the written test in terms of Memo No. 2374, dated 16.06.2007. Thereafter, 654 candidates, including the petitioners, who qualified in the written test and claimed to be working experience in government departments and offices were asked to submit their experience certificates in the prescribed format, so that they could be awarded marks on the basis of their experience. In the next stage, the marks obtained in the written test (maximum 75) and experience (maximum 25) were added and it is on this basis that 1745 candidates, including the present petitioners, were found qualified up to this stage, having secured minimum qualifying marks. The list of 1745 candidates has been annexed as Annexure 8 to the supplementary affidavit of the writ petition.

5. Thereafter, from the pool of 1745 candidates, 1075 candidates, which is equivalent to 2.5 times the vacancies, category-wise, were shortlisted for the proficiency test in driving and general knowledge of vehicles, carrying 100 marks. The petitioners, however, did not qualify at this stage as they failed to



secure the cutoff marks in their respective categories and did not come within the 1075 candidates.

6. The category-wise cut-off marks for shortlisting were as follows:

- (i) General : 55 marks;
- (ii) Backward Class : 49.50 marks;
- (iii) Most Backward Class: 35 marks;
- (iv) Scheduled Caste: 32 marks; and
- (v) Scheduled Tribe: 32.5 marks.

7. The petitioner nos. 1, 4 and 5, having Roll Nos. 147138, 131452 and 131390, respectively, all belonging to General Category, had secured 50, 45.75, and 47 marks respectively; whereas, the cut-off marks for General Category was 55 marks. Likewise, the petitioner nos. 2, 3 and 6, having Roll Nos. 142262, 143741 and 134344, respectively, who belong to the Backward Class category, had secured 43.5, 44, and 42.75 marks respectively; whereas the cut-off marks prescribed for the Backward Class category was 49.5 mark.

8. Accordingly, the submission is that judgment under review, dated 01.09.2021, was passed on the basis of an erroneous and incorrect submission that the writ petitioners have been declared as successful candidates in the written examination, as



such, they were entitled to appear in the interview. This submission placed before this Court was factually incorrect.

9. The correct fact is that the writ petitioners had merely obtained the pass marks in accordance with Memo No. 2345, dated 16.07.2007, issued by the State Government in the final score of 100 marks, i.e., 75 marks for the written examination and up to 25 marks for experience. The writ petitioners were among 1745 candidates who had qualified at this stage.

10. From 1745 candidates, only 1075 candidates, equivalent to 2.5 times the total number of vacancies in each category, were to be selected for the next stage of selection, i.e., the proficiency test of driving and general knowledge of vehicles. The writ petitioners, on merit, qualified only up to the stage of being among the 1745 candidates and could not be selected in the list of 1075 candidates shortlisted for the next stage.

11. Learned Counsel for the review petitioner submits that the entire selection process has since been completed and the same has been conducted in a fair manner and the impugned order came to be passed on account of an inadvertent misrepresentation made before this Court. No vested right or interest has accrued in favour of the original writ petitioners pursuant to the said order. The present case constitutes a fit ground for exercise of this



Court's review jurisdiction inasmuch as there exist an error apparent on the face of the record.

12. In support of this submission, reliance has been placed on the decision of the Hon'ble Supreme Court, in the case of **Sunil Vasudeva v. Sundar Gupta**, reported in **(2019) 17 SCC 385**, **Central Bank of India v. SC/ST Employees Welfare Assn.**, reported in **(2016) 13 SCC 135**, as well as the Full Bench decision of this Court, in the case of **High Court of Judicature at Patna v. K.K. Chaubey**, reported in **2015 (4) PLJR 328**.

13. Learned Counsel for the review petitioner has also apprised this Court that the writ petitioners of CWJC No. 22468 of 2019 had preferred a contempt petition before this Court, bearing MJC No. 1379 of 2022, which, however, was subsequently permitted to be withdrawn vide order dated 13.03.2024.

14. I have heard learned Senior Counsel for the review petitioner and learned Counsel for the State and have gone through the materials available on record.

15. Despite valid service of notice, no one appears on behalf of the respondent nos. 1 to 6.

16. The Short question involved in this review petition is whether the order, dated 01.09.2021, allowing the writ petitioners to appear in an interview, can be reviewed/modified or not.



17. From perusal of the order under review, it appears that the said order was passed primarily on the basis of the submissions advanced by learned Counsel appearing for the writ petitioners as well as learned Counsel appearing for the Commission.

18. It was submitted on behalf of the writ petitioners that in view of the statement made in paragraph 10 of the supplementary affidavit filed in the writ petition, the names of the petitioners appeared in the merit list of 654 successful candidates and that they were, therefore, called for interview.

19. On the other hand, learned Counsel for the Commission also submitted, referring to Annexure 8 to the supplementary affidavit, that the names of the writ petitioners were included in the list of successful candidates and that the Commission would certainly allow them to appear in the interview. It was in view of these concurrent submissions that the order, dated 01.09.2021, came to be passed.

20. The case of the review petitioner-Commission is that the order under review came to be passed on account of an erroneous and incorrect submission, which has resulted in an error apparent on the face of the record. In the counter affidavit filed by the Commission and the supplementary affidavit filed by the writ



petitioners, all necessary facts, which have been brought in the review petition, were on record.

21. Before proceeding further, it would be apt to refer to some of the decisions of the Hon'ble Supreme Court.

22. In the case of **Kamlesh Verma v. Mayawati**, reported in **(2013) 8 SCC 320**, the Supreme Court has held that the jurisdiction and scope of review is not that of an appeal and it can be entertained only if there is an error apparent on the face of the record. A mere repetition through different counsel, of old and overruled arguments, a second trip over ineffectually covered grounds or minor mistakes of inconsequential import are obviously insufficient. It further held that 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.

23. In a recent decision, the Supreme Court, in the case of **Malleeswari v. K. Suguna**, reported in **2025 SCC OnLine SC 1927**, held, in paragraphs 17 and 18, as follows: -

“**17.** Having noticed the distinction between the power of review and appellate power, we restate the power and scope of review jurisdiction. Review grounds are summed up as follows:

17.1 The ground of discovery of new and important matter or evidence is a ground available if it



is demonstrated that, despite the exercise of due diligence, this evidence was not within their knowledge or could not be produced by the party at the time, the original decree or order was passed.

17.2 Mistake or error apparent on the face of the record may be invoked if there is something more than a mere error, and it must be the one which is manifest on the face of the record.⁸ Such an error is a patent error and not a mere wrong decision.⁹ An error which has to be established by a long-drawn process of reasoning on points where there may conceivably be two opinions can hardly be said to be an error apparent on the face of the record.

17.3 Lastly, the phrase ‘for any other sufficient reason’ means a reason that is sufficient on grounds at least analogous to those specified in the other two categories.

18. Courts ought not mix up or overlap one jurisdiction with another jurisdiction. Having noted the appellate and review jurisdiction of the Court, we will apply these principles to the impugned order to determine whether the High Court was within its power of review jurisdiction or had exceeded it by reversing the findings, as if the High Court were sitting in appeal against the order dated 23.09.2022. We appreciate the above tabulated summary of the view taken in the impugned order while doing so.”

24. Coming back to the facts of the present case, the correct factual position, as pointed out, is that pursuant to the



advertisement for filling up 466 posts of drivers in various departments and offices of the State, the process of selection comprised firstly of a written examination, having 75 marks. In addition, candidates working on contractual basis as drivers in the departments and offices of the State were entitled to 5 marks per completed year of experience, subject to a maximum of 25 marks, on production of the requisite certificate. On this basis, a combined score, out of 100, was to be prepared. The candidates, equal to 2.5 times of the vacancies in each category were thereafter to be called for the next stage of selection, i.e., proficiency test comprising of driving test having 50 marks and general knowledge of vehicles of 50 marks.

25. In accordance with this scheme, 654 candidates, including writ petitioners who had obtained minimum qualifying marks in the written examination and claimed to be having worked as drivers on contractual basis, were required to submit their experience certificates so that marks for experience could be awarded to them. This fact would be evident from Memo No. 1856, dated 26.07.2019 (Annexure 3). This list of 654 candidates was not the final merit list of successful candidates, but merely a list of the candidates, who were required to submit their experience certificates.



26. Furthermore, after evaluation of experience certificates, marks obtained in written test and marks for the experience were added and altogether 1745 candidates were found to have secured the minimum qualifying marks and out of 1745 candidates, only 1075 candidates, equivalent to 2.5 times the advertised vacancies, were shortlisted category-wise for the proficiency test.

27. Upon careful perusal of the list of 1745 candidates, this Court finds that the said list consists of 1745 candidates, who had merely secured the minimum qualifying marks. It cannot be construed as the final merit list of successful candidates eligible for the proficiency test and the writ petitioners did not qualify for this stage, as they failed to secure the required cut-off marks for appearing in the proficiency test

28. It is, therefore, evident that the reliance placed by this Court in the order under review upon the list of 1745 candidates, treating it as the list of successful candidates, was an error on the face of the record since this list merely reflect the number of candidates who had secured minimum qualifying marks and not those who had been declared successful for the next round.

29. Learned Counsel for the review petitioner has rightly submitted that the order under review was the result of incorrect



submission, which amounts to an error apparent on the face of the record. It is also pointed out that the entire selection process has since been concluded in a fair manner and no vested right or interest has accrued in favour of the writ petitioners by virtue of the order under review.

30. Learned Counsel for the review petitioner has also placed reliance on the decision of the Full Bench of this Court, in the case of **K. K. Choubey** (supra), and the Full Bench has summarized the principle of review in paragraph 30 of the decision, which is quoted herein below:-

“**30.** The law, on the subject of review, may, in the light of the discussions held, as a whole, be summarized thus:—

(i) Ordinarily, a court or a tribunal cannot review its order or decision if the statute does not confer on the court or the tribunal, as the case may be, the power to review its own order. This apart, whatever limitations are imposed by a statute, while conferring the power of review on a court or a tribunal, the court or the tribunal, as the case may be, must adhere to the limitations, which the relevant statute may impose on the exercise of such power. Section 114 CPC, which embodies the substantive power of review of a civil court, does not impose any limitations on the court's power to review its order or decision; yet the power of review even by a



civil court cannot be unguided and uncanalised, for, Order 47, Rule 1 circumscribes the court's power of review.

(ii) Though, at one point of time, it was considered to be a rule of universal application that review by a court of its order is not possible except on three prescribed grounds, namely, (i) discovery of new and important matter or evidence, which, after the exercise of due diligence, was not within the applicant's knowledge or could not be produced by him at the time, when the decree or order was passed, and (ii) mistake or error apparent on the face of the record, or (iii) any such sufficient ground, which is analogous to the two grounds aforementioned, the subsequent development of law, on the subject of review, has shown that the grounds referred to, namely, that any sufficient ground must be analogous to the two sufficient grounds aforementioned is no longer a rule of universal application.

(iii) One of the cases, which has helped in the expansion of the court's power to review its order is the case of **Lily Thomas** (supra) inasmuch as **Lily Thomas** (supra) ruled that ordinarily, the power of review, being a creature of statute, cannot be exercised as an inherent power, yet such technicalities of law may have to be bent, in an appropriate cases, for the purpose of correcting an order (sic— error?) committed by the court if such an error arises out of a presumption of fact, which



was non-existent, and when the court finds that its refusal to review its own error would cause, or has caused, grave miscarriage of justice.

(iv) It is essentially the principle behind the doctrine of “actus curiae neminem gravabit”, which has made the court hold, in **Municipal Board, Pratabgarh** (supra), that when a court corrects and rectifies an error, it restores the rule of law and not defeat it. Even **Rajesh D. Darbar v. Narasingrao Krishnaji Kulkarni**, reported in **(2003) 7 SCC 219**, recognizes that in an exceptional case, a court may have to review its order by invoking the doctrine of “actus curiae neminem gravabit”.

(Emphasis is added)

31. It is in this backdrop of the above facts and the law, this Court finds merit in the contention of learned Senior Counsel for the review petitioner that the order, dated 01.09.2021, passed in CWJC No. 22468 of 2019, cannot be allowed to stand in its original form.

32. Accordingly, the review application is allowed and the order, dated 01.09.2021, passed in CWJC No. 22468 of 2019, is modified to the extent that the writ petitioners of CWJC No. 22468 of 2019 shall not be entitled to appear in the interview as they did not secure the cut-off marks prescribed in their respective



categories and were not eligible to be included in the list of candidates shortlisted for the proficiency test.

33. There shall be no order as to costs.

(Anil Kumar Sinha, J.)

Prabhakar Anand/-

AFR/NAFR	AFR
CAV DATE	22-08-2025
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