

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION

APPELLATE SIDE

RVW 3 of 2024

IA No: CAN/1/2024, CAN/2/2024

In

MAT 890 of 2022

With

CPAN 101 of 2024

The Director of Local Bodies, Government of West Bengal

-Vs.-

Dr. Saktilal Choudhury & Anr.

Before: The Hon'ble Justice Arijit Banerjee

&

The Hon'ble Justice Apurba Sinha Ray

For the petitioner : Mr. Alok Kumar Ghosh, Adv.

Mr. Subhrangsu Panda, Adv.

For the respondents : Mr. Saptarshi Roy, Adv.

Mr. Siddhartha Roy, Adv.

Ms. Kakali Das Chakraborty, Adv.

For the alleged : Mr. Susanta Pal, Adv.

contemnor nos. 1 and 3

Mr. Debdooti Datta, Adv.

CAV on : 16.01.2025

Judgment on : 07.02.2025

Arijit Banerjee, J.:-

1. This is an application for review of a judgment and order dated October 13, 2023, passed by this Bench, whereby an appeal being MAT 890 of 2022 was disposed of.

2. The brief background of this case is that the respondent no. 1/writ petitioner was temporarily appointed in the post of Resident Medical Officer (in short 'RMO') in Dum Dum Municipality by letter dated June 6, 1998, on probation, for a period of 6 months. He was placed in the scale of pay of Rs. 2200-4000/-. By a resolution dated December 29, 1998, the Municipality confirmed the writ petitioner's service as RMO with effect from December 1, 1998, in the scale of pay which he was enjoying.

3. The writ petitioner retired from service upon superannuation on August 31, 2015. His claim for pensionary benefits was negated by the State Authorities on the ground that he was not appointed in a sanctioned post. Prior approval of the State Government had not been obtained for his appointment.

4. The writ petitioner approached a learned Single Judge of this Court by filing WPA 4259 of 2016. The writ petition was allowed by the learned Judge by a judgment and order Dated November 10, 2016. That order was carried in appeal by the State respondents by filing MAT 588 of 2017. The Division Bench disposed of the appeal by a judgment and order dated November 27, 2017, setting aside the order of the learned Single Judge and remanding the matter for fresh hearing by the learned Single Judge having determination in the matter, after exchange of affidavits.

5. Upon remand, the learned Single Judge allowed the writ petition and directed “the respondent authorities to process the pension case of the petitioner and sanction his entire retiral dues which is admissible to him upon completing the necessary formalities and issue Pension Payment Order accordingly. While disposing of the pension case of the petitioner the concerned respondent authorities is also directed to issue post facto approval, if necessary, in favour of the petitioner and release the retiral dues including pension within a period of 12 (twelve) weeks from the date of communication of this order.”

6. Being aggrieved, the State of West Bengal preferred an appeal being MAT 890 of 2022. The appeal was disposed of by a judgment and order dated October 13, 2023, with the following observations:-

“30. In view of the aforesaid we must hold that the respondent no. 1 /writ petitioner was validly appointed by the Municipality in exercise of power under section 53(4) of the 1993 Act as that section stood prior to the 2002 amendment. Hence, neither prior sanction of the State Government for appointment of the writ petitioner was necessary nor can he be denied pensionary benefits. The question of the writ petitioner being appointed in a sanctioned vacant post also does not arise as the post in which he was appointed was one validly created by the Municipality in exercise of power conferred on it by the 1993 Act.

31. Accordingly, we agree with the conclusion reached by the learned Single Judge although we disagree with His Lordship’s reasoning. We therefore do not interfere with the order under

appeal. We affirm the operative portion of the order and direct the appellants to release the pensionary benefits of the respondent. No. 1/ writ petitioner in terms of the order of the learned Single Judge. However, we extend the time period to do so by 8 weeks from date.”

7. It is the said judgment and order dated October 13, 2023, which is under review in the present proceeding instituted by the Director of Local Bodies, Government of West Bengal (in short “the DLB”).

8. In course of argument, an issue arose as to whether or not this review application is maintainable at the instance of the DLB. This is because the DLB did not prefer appeal against the learned Single Judge’s order. The Division Bench order under review merely affirms the learned Single Judge’s order.

9. However, Mr. Ghosh, learned Senior Counsel representing the DLB argued that since the DLB was a party respondent in the appeal, it would have a right to challenge the judgment and order by which the appeal was disposed of, before the Hon’ble Supreme Court. If that be so, then he would also have a right to apply for review of the judgment and order. The fact that the review petitioner did not assail the order of the learned Single Judge by way of an independent appeal, would not disentitle him to maintain this review application.

10. Learned Senior Counsel relied on the observations of the Hon’ble Supreme Court at paragraphs 88 to 90 of the judgment in the case of ***Board of Control for Cricket in India v. Netaji Cricket Club & Ors., reported at (2005) 4 SCC 741***, in support of his submission that a review

application is maintainable if there is a mistake on the part of the Court or if there exists sufficient reason therefor. What would constitute sufficient reason would depend on the facts and circumstances of the case. The words ‘sufficient reasons’ in Order 47 Rule 1 of the Code of Civil Procedure are wide enough to include a misconception of fact or law by a Court or even an advocate. An application for review may be necessitated by way of invoking the doctrine of “*actus curiae neminem gravabit*”.

11. We do not deem it necessary to decide the aforesaid issue in the present proceedings. We proceed on the basis that the DLB has the locus standi to file the present review petition.

12. The moot point is, whether or not the review application is maintainable on merits.

13. On merits, learned Senior Counsel for the review petitioner submitted that the West Bengal Municipal (Employee’s Death-cum-Retirement Benefits) Rules, 2003 and in particular Rule 1(3) thereof, stands in the way of granting pension to an employee who was not appointed in a vacant post with the prior sanction of the State Government.

14. We heard learned Advocate for the review petitioner at length. There are 11 grounds of review enumerated in the memorandum of review.

15. Naturally, Mr. Ghosh could not advance arguments beyond the scope of the grounds of review. All such grounds however pertain to the merits of the case. The memorandum of review is more in the nature of a memorandum of appeal. The grounds taken in the memorandum of review do not demonstrate that there is any error apparent on the face of the judgment and order under review. Having gone through the said judgment

and order, we do not find any error apparent on the face of the record as would warrant exercise of review jurisdiction under Order 47 Rule 1 of the Code of Civil Procedure.

16. The scope of review petition has been discussed in several decisions in the Hon'ble Supreme Court. In the case of ***State of West Bengal & Ors. v. Kamal Sengupta & Anr., reported at (2008) 8 SCC 612*** in paragraph 22 of the reported judgment, the Supreme Court observed as follows:-

“22. The term “mistake or error apparent” by its very connotation signifies an error which is evident per se from the record of the case and does not require detailed examination, scrutiny and elucidation either of the facts or the legal position. If an error is not self-evident and detection thereof requires long debate and process of reasoning, it cannot be treated as an error apparent on the face of the record for the purpose of Order 47 Rule 1 CPC or Section 22(3)(f) of the Act. To put it differently an order or decision or judgment cannot be corrected merely because it is erroneous in law or on the ground that a different view could have been taken by the Court/tribunal on a point of fact or law. In any case, while exercising the power of review, the Court/tribunal concerned cannot sit in appeal over its judgment/decision.”

17. In the said decision at paragraphs 25 to 30, the Hon'ble Supreme Court discussed its earlier decisions wherefrom, inter alia, the following points emerge:-

- (i) That a decision is erroneous in law is no ground for ordering review. If the Court has decided a point and decided it erroneously,

the error could not be one apparent on the face of the record or even analogous to it.

(ii) The words “any other sufficient reason” must mean a reason sufficient on grounds at least analogous to those specified in Rule 1 of Order 47 of CPC.

(iii) A review is by no means an appeal in disguise whereby an erroneous decision can be corrected.

(iv) An error which is not self-evident and has to be detected by a process of reasoning, cannot 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.

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

(vi) 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 only by a higher forum, the latter can be corrected by exercise of the review jurisdiction. A review petition has a limited purpose and cannot be allowed to be “an appeal in disguise”.

(vii) Order 47 Rule 1 CPC does not postulate a rehearing of the dispute on the ground that a party had not highlighted all the aspects of the case or could perhaps have argued them more forcefully and/or cited binding precedents to the Court and thereby enjoyed a favourable verdict.

(viii) The power of review may not be exercised on the ground that the decision under review was erroneous on merits. That would be

the province of the Appellate Court. The power of review is not to be confused with appellate powers which may enable an Appellate Court to correct all manner of errors committed by the subordinate Court.

18. It is therefore established law that the jurisdiction to review an order can be exercised for correction of an error apparent on the face of the record and not to substitute a view. Review cannot be treated as an appeal in disguise. The mere possibility of two views on the concerned subject is not a ground for review. As pointed out by the Hon'ble Apex Court in the case of ***Lily Thomas v. Union of India, reported at AIR 2000 SC 1650***, an error contemplated in Order 47 Rule 1 CPC, must be such as is apparent on the face of the record and not an error which is to be fished out and searched. It must be a patent error and not merely a wrong decision.

19. In ***Parsion Devi v. Sumitri Devi reported at (1997) 8 SCC 715***, in paragraphs 9 and 10 of the reported judgment, the Hon'ble Supreme Court observed as follows:-

“9. 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 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 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 over-stepped the jurisdiction vested in the Court under Order 47 Rule 1 CPC. The observation of Sharma, J. that "accordingly", the order in question is reviewed and it is held that the decree in question is reviewed and it is held that the decree in question was of composite nature wherein both mandatory and prohibitory injunction were provided" and as such the case was covered by Article 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 later 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 Sharma, J. did record that there was a mistake or an error apparent on the face of the record which 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. and get it set aside but it was not open to them to seek a "review of the order". In this view of the matter, we are of the opinion that the impugned order of Sharma, J. cannot be sustained and accordingly accept this appeal and set aside the impugned order dated 6.3.1997."

20. In the case of ***Paramita Das v. Pranati Sarkar, reported at AIR 2004 CAL 22***, a Coordinate Bench of this Court echoed the same view that erroneous decisions cannot be re-heard and corrected by the Court in exercise of its jurisdiction under O. 47 r. 1 of the CPC. An erroneous decision cannot be categorized as an error apparent on the face of the record.

21. Keeping in mind the aforesaid principles of law, we have to hold that the petitioner has been unable to make out any ground for exercise of jurisdiction for review under Order 47 Rule 1 CPC. The petitioner is seeking to reopen the merits of the case by way of the instant application. If one peruses the grounds of review, one will immediately see that the petitioner is, in effect and substance, seeking to have the appeal re-heard on merits in the garb of a review application. This is not permissible in law.

22. The mechanism of review cannot be resorted to for correcting an erroneous decision which would be the exclusive domain of an Appellate Court. The observation of the Hon'ble Supreme Court in the case of ***Board of Control for Cricket in India & Another v. Netaji Cricket Club & Ors., (supra)***, relied upon by the petitioner, must be read in consonance with the

catena of other decisions of the Hon'ble Supreme Court referred to above. Any and every decision vitiated by misconception of law, cannot be the subject matter of review. Otherwise, all erroneous decisions of courts could be said to have been rendered under misconception of law and, therefore, reviewable. This would run contrary to the position of law established by a long line of Supreme Court decisions. If the petitioner is aggrieved by reason of the judgment and order under review whether on the ground that the same is erroneous in law or on merits or on any other ground, his remedy is to approach the higher forum.

23. We find no reason to review the judgment and order dated October 13, 2023. There is no error apparent on the face of the record nor any other ground which has been made out by the petitioner which would persuade us to review the said judgment and order.

24. RVW 3 of 2024 is accordingly dismissed along with the connected applications. There will be no order as to costs.

25. Urgent certified photocopy of this judgment and order, if applied for, be given to the parties upon compliance of necessary formalities.

I agree.

(Apurba Sinha Ray, J.)

(Arijit Banerjee, J.)

Later:-

After judgment is delivered, Mr. Ghosh, learned Senior Counsel for the review applicant requests that time period for releasing the pensionary benefits of the writ petitioner be extended by eight weeks from date.

Mr. Roy, learned Counsel appearing for the writ petitioner opposes such prayer saying that his client is suffering for a long time since October, 2023.

For the ends of justice, we extend the time period for compliance with the Court's order by six weeks from date.

In Re: CPAN 101 of 2024

Let the contempt application be listed after six weeks on 21.03.2025.

(Apurba Sinha Ray, J.)

(Arijit Banerjee, J.)