

Item No.- 212
24.01.2025
Rohan
Court No. 8

**In the High Court at Calcutta
Civil Appellate Jurisdiction
Appellate Side**

**RVW 325 OF 2024
with
I.A. No.: CAN 1 of 2024**

**Raj Kumar Bhattacharyya
Versus
The State of West Bengal & Ors.**

**Mr. Kallol Basu,
Mr. Suman Banerjee**

... for the appellant

1. The extensive argument was advanced before the Single Bench on the issue of appointment of the appellant without following the mandate of the statutory notifications/Government orders and the Single Bench repelling the contention of the appellant, did not find any justification or legally sustainable point in this regard.
2. The appellant challenged the said order of the Single Bench in an Intra-Court appeal being FMA 12 of 2023 and an argument was advanced that the order of the Single Bench is per se illegal as the college conducted the examination by making an advertisement and, therefore, the judgment of the Single Bench is per se illegal.
3. The Division Bench while disposing of the said Mandamus Appeal on 29th August, 2024 observed that the college initiated a selection process and conducted the examination on a particular date and thereafter, issued the letter of appointment which would appear to have been issued in his favour as the appellant joined the said post on the very next date. Since there was some dispute on the entire process of selection

undertaken by the college, the salary was not paid to the appellant which constrained him to approach the Writ Court.

4. It was noticed by the Division Bench that the college which conducted the examination for filling up the post of a clerk, did not follow the mandates of the statutory rules and had acted whimsically. It was further observed that the college should follow the conditions and/or impositions made in the Government order dated 9th September, 2008 and 19th November, 2007 with regard to the reservation policy and apart from the wide publication, the college must also approach to the concerned employment exchange so that the candidates, whose names are sponsored therefrom, may also be given an opportunity to participate in the said recruitment process.
5. In the backdrop of the aforesaid arguments and the facts discerned from the record, it was found that the action of the college was in contravention to the aforesaid recruitment Rules and the Government Orders issued in this regard and, therefore, it does not create an unfettered right into the successful candidates to get such appointment duly approved by the authorities.
6. The instant Review Application is taken out by a new set of lawyers engaged by the appellant on the specific ground that the Division Bench, at the time of disposing of the appeal, did not notice that the college had put the advertisement in the website of the Employment Bank in terms of the mandate and, therefore, the order is *per se* illegal as the error is apparent on the face of the record. It is sought to be contended before us that if there is any mistake committed by the Court or by the appearing counsel, such mistake cannot act as a deterrent on the part of

the litigant and in an appropriate case, the Court should review its own order.

7. In support of the aforesaid contention, reliance is placed upon the judgment of the Hon'ble Supreme Court rendered in ***Commissioner of Central Excise, Mumbai II vs. CEAT Limited Mumbai*** reported in ***(2005) 5 SCC 741***.
8. We are reminded of the enlightening observations rendered by the Hon'ble Apex Court in ***Tamil Nadu Electricity Board and another vs. Raju Reddiar and another*** reported in ***AIR 1997 SC 1005***, wherein, the Hon'ble Apex Court deprecated the practice of filing the review by engaging a new set of lawyers, who neither appeared in the main matter, nor made any argument. We are not unmindful of the proposition of law that the act of the Court shall not prejudice the litigant. We are also conscious of the proposition of law that different parameters are required in relation to substantive review and the procedural review. In former case, the Court may review its order provided the grounds enumerated under Order XLVII Rule 1 of the Code of Civil Procedure is evidently pleaded and found to be substantiated by cogent materials. The mistake in the order may render such order erroneous which is capable of being rectified and/or corrected by a higher forum. The review is restricted to a situation where the order is based on a patent error. What was latent shall not be permitted to be patent by engaging a wiser mind and making the pleading in this regard. The error must be such which does not require any roving enquiry nor the voluminous documents or papers are required to be assimilated and/or considered but must be on the face of the record. We are also not unmindful that the discovery of new and important document which was not within the

knowledge of the appellant despite the due diligence was subsequently detected, may be one of the factor for entertaining the review application. It is not a case of such nature. According to the counsel for the appellant, there is a reflection of the advertisement made in the Employment Bank in the writ petition as well as the stay application.

9. There is no fetter on the part of the litigant to abandon any part of the claims. If the argument is advanced on a point which has nexus with the aforesaid fact and decided by the Court, the reference thereof cannot come within the purview of the error apparent on the face of the record. The party may abandon the part of the claim or at the time of the argument may squeeze the consideration on a particular point and if the same is decided, it does not invite the notion of an error apparent on the face of the record. More particularly, when a new set of counsels are engaged and they intended to argue the matter from a different angle that had those arguments being advanced, the decision might have been diametrically opposite. Such records should not be permitted to be taken in a garb of the review jurisdiction as the Court is not supposed to rehear and/or revisit the case on merit.
10. The review jurisdiction is never meant for rewriting of the judgment from a different angle but must be restricted solely on the basis of an error apparent on the face of the record.
11. Though we appreciate the endeavour of the counsel appearing for the appellant, but in view of the law as enunciated above, we could not persuade ourselves that this is a fit case for review of the order dated 29th August, 2024.

12. The application for review being **RVW 325 of 2024** is thus, **dismissed**.
13. Application, if any, is also disposed of.
14. Urgent certified copy of this order, if applied for, be given to the parties within three days upon compliance with all requisite formalities.

(HARISH TANDON, J)

(PRASENJIT BISWAS, J)