



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

MISC. CIVIL APPLICATION NO. 381 OF 2023 (REVIEW)
IN
WRIT PETITION NO. 4321 OF 2018 (D)

Sadashiv Sattidin Gupta,
At Vaishali Nagar,
Housing Board Colony,
(Post) Ambedkar Marg, Nagpur,
Tahsil and Dist. Nagpur 440017 (M.S.)

.... **APPLICANT**

// **VERSUS** //

- 1) **The Director (Personnel),**
Western Coalfields Limited,
Head Quarter, Coal Estate
Civil Lines, Nagpur,
Dist. Nagpur-440001 (M.S.).
- 2) **The Chief General Manager,**
Western Coalfields Limited,
Nagpur Area Office,
(Post) Jaripatka, Nagpur,
Dist. Nagpur-440014 (M.S.).
- 3) **The Sub Area Manager,**
Western Coalfields Limited
Silewara Sub Area,
At & (Post) Silewara, Tahsil Saoner,
Dist. Nagpur-441109 (M.S.).

.... **RESPONDENTS**

Mr. Sadashiv Gupta, Applicant-in-person.
Mr. O. A. Ghare, Advocate for the Respondent.

CORAM : SMT. M.S. JAWALKAR, J.

DATE ON RESERVING THE JUDGMENT : 23.04.2025

DATE ON PRONOUNCING THE JUDGMENT : 09.06.2025

JUDGMENT :

1. **Rule.** Rule made returnable forthwith. Heard finally with the consent of Applicant-in-person and the learned Counsel appearing for the Respondents.

2. The applicant has claimed for review of the order dated 24.01.2020, passed by the Single Judge of this Court, by which, the order dated 05.05.2018 passed by the Labour Court in Application (IDA) No.31/2014, was quashed and set aside.

3. The applicant was appointed by the petitioners/respondents as a Steno/Personal Assistant on 09.01.1974. The order was issued by petitioner No. 3 Sub-area Manager, WCL, Silewara Sub-area. Applicant was placed in the pay scale of Rs. 305-15-395-20-575. He claims to have been regularized on a post available to a Senior Stenographer in the higher grade pay scale. He was posted in grade-C and he contended before the Labour Court that as the management misplaced his service record, he was continued in grade-C, instead of grade-B. If the service book was available, the management

would have posted him in grade-B, which is a higher grade pay scale of a Senior Stenographer.

4. Initially, the applicant was posted in grade-D in 1975 and after completion of 240 days, he acquired the right to be posted in grade-B. It was specifically contended in the claim before the Labour Court that he was regularized as a Junior Stenographer grade-C and was continued when he superannuated on 31.3.2014. The management should have posted him in grade-B and his grade pay scale should have been increased to Rs. 510-27-726-32-854. The Labour Court, therefore, calculate the difference of his pay scale in between grade-C and grade-B from 9.1.1974 till 2014 and direct the management to make such payments. The respondents/petitioners establishment filed its written statement and submitted that the applicant was initially appointed on the post of 'Mine Majdoor', Category-1 on 9.1.1974, in the pay scale of Rs. 5.00-0.10-6-00. The Applicant was thereafter, regularized and promoted as per the rules and was paid wages for the post that he had occupied. Promotion as Personal Assistant T&S grade-B, was not granted by the management due to non-fulfillment of a requisite grade test, which was mandatory. He was time and again, called upon to

appear for the grade test on several occasions but he absented on each occasion. The applicant has been granted up-gradation in pay after every eight years as per the scheme of Service Linked Up-gradation/Promotion as per the National Coal Wage Agreement.

5. The applicant had approached the Assistant Commissioner, Labour (Central) at Nagpur (for short the “ACL Central”) by moving an application under section 33(C)(2) of the Industrial Dispute Act, 1947 (for short the “ID Act”) in the year 2014. The ACL Central issued him a communication dated 05.01.2015, stating that since his application is filed under section 33(C)2, the ACL Central did not have jurisdiction and he should approach the Labour cum Industrial Court for an appropriate remedy. The ACL Central had advised the applicant to approach the Labour cum Industrial Court.

6. The respondent management pursued its objection to the maintainability of the proceedings vide application Exh.C-2. As the said application was pending, the respondent management approached this Court in Writ Petition No. 7754/2017. By order dated 10.01.2018, this Court permitted the respondent/petitioner

to withdraw Exh. C-2 and directed the Labour Court to decide the issue of maintainability along with all other issues.

7. The contention of the applicant is that this Court had not given an opportunity of hearing to him. Thus, there is violation of Doctrine of “*Audi alteram partem*”, on this ground only, the impugned orders needs Review.

8. The applicant (Workman) has already rendered the Services of Forty (40) Years from the date of appointment i.e. 9.1.1974 till the Date of Retirement 31.3.2014, in the same post of Steno/PA.Grade-B, in the Basic pay Scale of Rs 305-15-395-20-575 (Revised in every Wage Board time to time) but the respondent management paid Lower Grade Salary/Wages to the applicant.

9. The Decretal amount of Rs 1,30,94,25/- is the Remuneration (Arrears of Salary/Wages) for 40 years of the Services of the applicant. The Learned Labour Court, Nagpur passed a Judgement on dated 05.05.2018, within the time schedule framed by this Court vide Order dated 10.01.2018. This Remuneration (Decretal amount) is the Legal/Fundamental Right of the applicant under Article 14, Article 19 & Article 21 of the

Constitution. The applicant cannot be deprived of his Legal/Fundamental Right of Salary/Wages, for which Services has already been rendered by him.

10. The learned Labour Court, Nagpur passed the Judgment dated 05.05.2018, after appreciation of various Documentary Evidence and Findings. The learned Single Judge of this Court reversed the findings of Labour Court on its own.

11. As against this, the respondent submitted that in addition to the repeated applications despite rejections and the aforementioned misled petition before the Division Bench, the applicant further filed a Writ Petition 7901/2019, further seeking reliefs in the controversy already seized before this Court in Writ Petition 6128/2017, it was rejected on 06.01.2020.

12. The respondent further submits that all the points raised in the present review application were considered by this Court while quashing the order impugned therein for want of jurisdiction and this Court was considerate to the applicant to grant liberty to approach the Conciliation Officer, despite there being lapse of time. The applicant has chosen not to avail the liberty granted by this Court, instead, has filed the present

application. The respondent submits that the conduct of the applicant is therefore not *bona fide* and the present review application on behalf of the applicant is liable to be rejected with exemplary costs.

13. The respondent further submitted that the applicant has audaciously raised a ground that this Court did not observe the principles of “*audi alteram partem*”, despite this, this Court noting the presence of the applicant as respondent, and considered his arguments in paragraph No.3 of the judgment. The applicant has further raised grounds which can be raised only in a challenge to the judgment and not in review. The respondent therefore, submits that the applicant has also raised the same by filing affidavits without leave of this Court. For all these reasons, the present application is not tenable in the eyes of law and deserves to be dismissed.

14. Heard applicant-in-person and learned Counsel for respondents at length. The applicant also placed on record certain Notes of Argument for review which are also considered.

15. The scope of review is very limited. If there is an error apparent on the face of record, then only review application can

be considered. In fact, vide order dated 22.03.2024, this Court directed the Registry to place the matter before the same Judge through Video Conferencing and inform the petitioner who is appearing in person by providing the link. However, the applicant on the ground of his hearing impairment, requested this Court to constitute a Bench for hearing on review. The applicant is seeking review of order dated 24.01.2020 passed by the Single Bench of this Court on the ground that the learned Single Judge has not appreciated the documents and ignored the same. Those documents itself proves that the applicant has pre-existing right for payment of remuneration for the services rendered by him in the higher post.

16. It is further contention of the applicant that this Court observed that the applicant moved an application under Section 33(C)(2) of the Industrial Dispute Act, 1947 (for short the “ID Act”), in fact, which deals with the cases of illegal termination, dismissal, discharge, retrenchment, etc. whereas the applicant has retired after completion of service period of superannuation on 01.04.2014. Therefore, there is no question of approaching the ACL (Central). It is further contention of the applicant that in the year 2014 he had applied to ACL (Central), but he was advised to

approach the Labour Court under Section 33(C)(2) of the ID Act for recovery of money from the management. Hence, the question of approaching the Assistant Commissioner, Labour does not arise. On the first place, it is apparently unsustainable ground that learned Single Judge has not granted opportunity of hearing, in fact, para 7 of the judgment contention of the applicant herein is recorded. It appears from the submission of respondent that promotion of Personal Assistant T&S, Grade-B was not granted by the management due to non fulfilment of requisite grade test, which was mandatory. Though he was time and again called upon to appear for the grade test on several occasions, the applicant absented on each occasion.

17. This Court observed that Assistant Commissioner, Labour (Central) has not committed any error since the application filed by the applicant which was under Section 33(C)(2) of the ID Act and the Assistant Commissioner, Labour (Central) has no jurisdiction under the said provisions. The Assistant Commissioner of Labour (Central) would have jurisdiction under Section 33(C)(1) of the ID Act and not under Section 33(C)(2) of the ID Act. The Single Judge of this Court further observed that it is settled law that the Labour Court, under

Section 33(C)(2) can decide ancillary issues when it comes to calculating the unpaid amounts payable to an employee. The pre-existing right would indicate that such a right either flows from the service conditions of the employee or through certain orders issued to him or under a judgment or award delivered earlier in any particular proceeding. In the background of the fact that at no point of time the applicant was selected by the Departmental Promotion Committee so as to be granted in the position of Personal Assistant Grade-B. He did not pass the requisite test for any reason whatsoever which would disentitle him to higher grade pay-scale fixation equivalent to Personal Assistant Grade-B. This Court observed that the learned Labour Court has no jurisdiction to entertain the application under Section 33(C)(2) of the ID Act. This Court further observed that the judgment delivered is without jurisdiction and would be *non-est* and unsustainable. However, liberty was granted to the present applicant to approach the Assistant Commissioner, Labour (Central) by raising a dispute under Section 2(k) of the ID Act so that he could raise all issues before the appropriate authority/conciliation officer.

18. In support of his contention, the applicant-in-person relied on *Hari Vishnu Kamath Vs. Syed Ahmad Ishaque & Ors.*,

reported in **(1954) 2 SCC 881**, wherein the Hon'ble Apex Court held as under :

“3. The court issuing a writ of certiorari acts in exercise of a supervisory and not appellate jurisdiction. One consequence of this is that the Court will not review findings of fact reached by the inferior court or tribunal, even if they be erroneous. This is on the principle that a court which has jurisdiction over a subject-matter has jurisdiction to decide wrong as well as right, and when the legislature does not choose to confer a right of appeal against that decision, it would be defeating its purpose and policy, if a superior court were to rehear the case on the evidence, and substitute its own findings in certiorari. These propositions are well settled and are not in dispute.

4. The further question on which there has been some controversy is whether a writ can be issued, when the decision on the inferior court or tribunal is erroneous in law. A writ of certiorari could be issued to correct an error of law. But it is essential that it should be something more than a mere error; it must be one which must be manifest on the face of the record. But precisely or exhaustively, there being an element of indefiniteness inherent in its very nature, and it must be left to be determined judicially on the facts of each case.”

However, in the present matter the proceedings were not remanded to the learned Labour Court. It was observed by this Court that order passed is without jurisdiction. In the said

judgment on which reliance is placed by the applicant also held that no error can be said to be apparent on the face of record if it is not self-evident, and if it requires an examination or argument to establish it. This test may afford a satisfactory basis for decision in the majority of cases. The judgment, in fact, is in respect of conduct of election. Thus, I am of the considered opinion that there is no error on the face of record to review the order dated 24.01.2020, passed by this Court in Writ Petition No.4321/2018.

19. Though along with Notes of Argument, the applicant placed on record his service record, it is not shown how he is entitled for arrears. It is also one of the contentions of the applicant that as there was an application filed by him to vacate the interim relief, the said application has not been disposed of and this Court directly passed the impugned order. However, On perusal of various orders below Civil Application No.2470/2019, dated 23.09.2019 and similar order on Civil Application C.A.W. No. 106/2018, dated 06.02.2018, it appears that this Court rejected the application to vacate the interim relief passed in writ petition. However, the applicant keeps on filing such application without there being any satisfactory reason, it would not be

ground for review, specifically when the matter itself was taken up for final hearing.

20. As such, all aspects are considered by the Single Judge, of this Court, there is no error apparent on the face of record. There is no merit in the application, the application is liable to be dismissed. Hence, the Application stands **dismissed**. No order as to costs.

(SMT. M.S. JAWALKAR, J.)

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