



**In The High Court for the States of Punjab and Haryana
At Chandigarh**

RA-LP-61-2024 in
LPA-670-2024 (O&M)
Date of Decision:- 17.01.2025

Dhirender Singh and others ... Applicants

Versus

State of Punjab and others ... Respondents

**CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL
HON'BLE MS. JUSTICE LAPITA BANERJI**

Present:- Mr. Baljeet Singh Sidhu, Advocate,
for the applicants/appellants No.6 to 8, 13, 17, 18, 20 & 23.

Mr. Prabhdeep Singh Dhaliwal, AAG, Punjab.

Mr. Ranjit Singh Kalra, Advocate with
Ms. Mona Yadav, Advocate for caveator.

GURVINDER SINGH GILL, J. (Oral)

The instant review application has been filed on behalf of Manjit Singh and eight other applicants who are appellants No. 2, 6, 7, 8, 13, 17, 18, 20 & 23 in LPA No.670-2024 and who were originally arrayed as private respondents in CWP No.18522 of 2023 & CWP No.19528 of 2023, seeking review of order dated 14.05.2024 passed in the aforesaid LPA.

The matter pertains to recruitment of 168 Physical Education Masters/Mistress through an advertisement dated 08.01.2022 wherein



eligibility condition of passing Punjab State Teacher Eligibility Test-II (PSET-II) was prescribed. Subsequently, during the course of recruitment process, the State Government issued a corrigendum dated 26.8.2023 changing the criteria and deleted the condition of passing Punjab State Teacher Eligibility Test-II (PSET-II) for the purpose of selection of Physical Education Masters/Mistress and appointments were proposed to be made even from amongst the candidates who had not passed the said test.

Two writ petitions bearing No.CWP No.18522 of 2023 & CWP No.19528 of 2023 were filed challenging the aforesaid action of the authorities. The single Bench while deciding the aforesaid writ petitions held that requirement of passing TET as laid down in the advertisement originally cannot be said in any manner to be illegal or unjustified and accordingly allowed the writ petitions holding therein that the corrigendum dated 26.8.2023 was illegal. The relevant extract from the judgment of single Bench is reproduced herein under:-

“20. It is, thus, held that the conditions of the advertisement cannot be said to be *de hors* the rules. The appointing authority can add additional qualification more than which has been laid down by the NCTE in its regulations for appointing teachers in their department. Hence, the requirement of passing PSTET-II laid down in the advertisement originally cannot be said in any manner to be illegal or unjustified. The corrigendum-cum-public notice dated 26.08.2023 issued after the declaration of the final result is declared an attempt to change the rule after the game has already been played, and therefore, has to be held illegal in view of the law settled by Hon’ble the Supreme Court in **Sivanandan C. T.** (supra), **K. Manjusree vs State of Andhra Pradesh** 2008 (3) SCC 512 and subsequent judgments



Dr. Abhishek Vyas, Lalit Kishore including the judgment of Hon'ble the Supreme Court in **Government of NCT Delhi and others vs Pradeep Kumar and others** 2019 (10) SCC 120, judgments of this Court in CWP No. 26795 of 2016 - **Shikha Rani and another vs State of Haryana and others** decided on 25.10.2017, **Rekha vs State of Haryana** 2018 (1) SCT 529, **Suman vs State of Haryana and others** 2018 (3) SCT 649 and **Arvinder Singh and others vs State of Punjab and others** 2022 (2) PLR 135. The corrigendum-cum-public notice dated 26.08.2023 would, therefore, be held inoperative and only those candidates who are eligible in terms of the original advertisement shall be entitled to be appointed on the post of Physical Education Teachers.”

The private respondents who had not passed the TET filed the LPA challenging the judgment of single Bench. However, the LPA was dismissed by passing a detailed order.

This Court has gone through the judgment of single Bench and also the judgment passed in LPA wherein all the relevant issues particularly as regards validity of prescribed qualification of passing TET has been found to be justified whereas changing the qualification midway the recruitment process, in fact after the written test has been conducted, was found to be illegal and contrary in ratio of various judgments of Hon'ble the Apex Court passed in ***Madan Lal and others Vs. State of Jammu & Kashmir and others, (1995) 3 SCC 486; K.A. Nagamani Vs. Indian Airlines and others (2009) 5 SCC 515; Manish Kumar Shahi Vs. State of Bihar and others, (2010) 12 SCC 576; Madras Institute of Development Studies and another Vs. Sivasubramaniyan and others, (2016) 1 SCC 454***



and Ashok Kumar and another Vs. State of Bihar and others, (2017) 4 SCC 357.

The principles as regards the scope and extent of review jurisdiction of the court, have been summarized by the Hon'ble Supreme Court in Kamlesh Verma v. Mayawati and others 2013 (8) SCC 320 and were reiterated by this Court as well, in the case of Columbia Holdings Pvt Ltd and others v. State of Haryana and others RA-CW-357 of 2015. The principles set out as regards scope and extent of review jurisdiction in various judicial precedents may be summarized as follows:-

A. Exercise of review jurisdiction is called for only in cases where one of the following grounds exists:

(i) When there is discovery of new and important matter or evidence, subject to the fulfillment of the following conditions:-

- a. new matter/evidence discovered is of such nature which could change the judgment.
- b. such new matter/evidence was not within the knowledge of the party seeking review
- c. same could not be produced before court even after due diligence

(ii) When mistake or error apparent on the face of the record.

(iii) When there exists "any other sufficient reason", which is interpreted as analogous to the aforesaid two grounds.

B. The review jurisdiction is not exercisable on following grounds:-

(i) Only a "patent error" and not a "mere wrong decision" can be said to be an error apparent on the face of record.

(ii) Review is not maintainable unless the material error, manifest on the face of the order, undermines its soundness or results in miscarriage of justice.



- (iii) The error apparent on the face of the record should not be an error which has to be fished out and searched.
- (iv) If a matter is required to be first reheard and then corrected, it would be an appeal under the guise of review
- (v) A repetition of old and overruled argument is not enough to reopen concluded adjudications.
- (vi) The power of review is to be exercised for "correction of mistake" and not for "substitution of view". Substitution of view would be the province of an appellate court.
- (vii) Merely because a document which was forming part of the record was not considered at the time of deciding the case cannot be categorized as a mistake or error apparent on the face of record.
- (viii) A review is by no means an appeal in disguise whereby an erroneous decision is re-heard and corrected but lies only for patent error.
- (ix) The mere possibility of two views on the subject cannot be a ground for review.
- (x) The appreciation of evidence on record is fully within the domain of the appellate court, it cannot be permitted to be advanced in the review petition.
- (xi) Review is not maintainable when the same relief sought at the time of arguing the main matter had been negatived.
- (xii) Failure to argue a point at the time of hearing of the matter by the court, is also not a ground for seeking review as it would be a case where the existing material was overlooked by counsel and not a case of excusable misfortune or mistake.



Justice Krishna Iyer, in Northern India caterers (India) Ltd. v. Lt. Governor of Delhi 1980 (2) SCC 167, while highlighting the limited scope of review of judgement observed as under:

"A plea for review, unless the first judicial view is manifestly distorted, is like asking for the moon".

In "**Shri Ram Sahu (dead) through legal representatives and others v. Vinod Kumar Rawat and others**" reported in (2021) 13 Supreme Court Cases 1, the Hon'ble Apex Court considered the scope and ambit of the Court's power to review under Section 114 read with Order 47 Rule 1 of the CPC and held that the power to review was not an inherent power of the Court. It must be conferred by law either specifically or by necessary implication. A review cannot be an appeal in disguise. A re-hearing of the matter is impermissible in law. It is beyond doubt or dispute that the review Court does not sit in appeal over its own order. It only constitutes an *exception to the general Rule* that once a judgment is signed and pronounced it should not be altered.

Under Order 47 Rule 1 CPC, the Court can review its decision on the following grounds:

"1. Application for review of judgment:-

1 Any person considering himself aggrieved-

- a By a decree or order from which an appeal is allowed, but from which no appeal has been preferred,*
- b By a decree or order from which no appeal is allowed, or*
- c By a decision on reference from a Court of small causes, and who from the discovery of new and important matter or evidence which, after the exercise of due diligence was not within his knowledge or could not be produced by him at the time when the decree was passed or order*



made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgment to the Court which passed the decree or made the order.

- 2 *A party who is not appealing from a decree or order may apply for a review of judgment notwithstanding the pendency of an appeal by some other party except where the ground of such appeal is common to the applicant and the appellant, or when being respondent he can present to the appellate court the case on which he applies for the review.”*

The expression “*any other sufficient reason*” has to be interpreted in the light of other specific grounds. An erroneous decision/order cannot be corrected in the guise of exercise of power of review.

The principles culled out in “***Gopal Singh v. State Cadre Forest Officers Assn.***” reported in (2007) 9 SCC 369, are reproduced herein below:

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- (i) *The power of the Tribunal to review its order/decision under Section 22(3)(f) of the Act is akin/analogous to the power of a civil Court under Section 114 read with Order 47 Rule 1 CPC.*
- (ii) *The Tribunal can review its decision on either of the grounds enumerated in Order 47 Rule 1 and not otherwise.*
- (iii) *The expression "any other sufficient reason" appearing in Order 47 Rule 1 has to be interpreted in the light of other specified grounds.*
- (iv) *An error which is not self-evident and which can be discovered by a long process of reasoning, cannot be treated as an error apparent on the face of record justifying exercise of power under Section 22(3)(f).*
- (v) *An erroneous order/decision cannot be corrected in the guise of exercise of power of review.*
- (vi) *A decision/order cannot be reviewed under Section 22(3)(f) on the basis of subsequent decision/judgment of a coordinate or larger Bench of the Tribunal or of a superior Court.*
- (vii) *While considering an application for review, the Tribunal must confine its adjudication with reference to material which was available at*



the time of initial decision. The happening of some subsequent event or development cannot be taken note of for declaring the initial order/ decision as vitiated by an error apparent.

(viii) Mere discovery of new or important matter or evidence is not sufficient ground for review. The party seeking review has also to show that such matter or evidence was not within its knowledge and even after the exercise of due diligence, the same could not be produced before the Court/Tribunal earlier."

In "**Aribam Tuleshwar Sharma v. Aribam Pishak Sharma**" reported in (1979) 4 SCC 389, it has been observed by Apex Court as under:

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3.... It is true as observed by this Court in Shivdev Singh v. State of Punjab 10, there is nothing in Article 226 of the Constitution to preclude a High Court from exercising the power of review which inheres in every court of plenary jurisdiction to prevent miscarriage of justice or to correct grave and palpable errors committed by it. But, there are definitive limits to the exercise of the power of review. The power of review may be exercised on the discovery of new and important matter or evidence which, after the exercise of due diligence was not within the knowledge of the person seeking the review or could not be produced by him at the time when the order was made; it may be exercised where some mistake or error apparent on the face of the record is found; it may also be exercised on any analogous ground. But, it may not be exercised on the ground that the decision was erroneous on merits. That would be the province of a court of appeal. A 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.

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In the recent judgment of Apex Court in "**Sanjay Kumar Agarwal v. State Tax Officer (1) and another**" reported in (2024) 2 Supreme Court Cases 362, it has again been reiterated that a party was not



entitled to seek a review merely for the purpose of re-hearing. The relevant extract thereof is reproduced herein below:

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10. *It is also well-settled that a party is not entitled to seek a review of a judgment delivered by this Court merely for the purpose of a rehearing and a fresh decision of the case. The normal principle is that a judgment pronounced by the Court is final, and departure from that principle is justified only when circumstances of a substantial and compelling character make it necessary to do so.*

11. In ***Parsion Devi v. Sumitri Devi***, this Court made very pivotal observations: (SCC p. 719, para 9)

"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 a limited purpose and cannot be allowed to be "an appeal in disguise". (emphasis supplied)

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Additionally, this Court finds that the present review application has been filed by an Advocate who was not the counsel at the time when LPA was argued. Such like practice of filing review application by a different counsel can hardly be appreciated.

The Apex Court in ***“Tamil Nadu Electricity Board and another v. N. Raju Reddiar and another”*** reported in (1997) 9 Supreme Court Cases 736 held that no review can be filed by an advocate on record



who was not a party in the main case. The relevant thereof is reproduced herein below:

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1. *It is a sad spectacle that a new practice unbecoming and not worthy of or conducive to the profession is cropping up. Mr. Mariaputham, Advocate-on-Record had filed vakalatnama for the petitioner-respondent when the special leave petition was filed. After the matter was disposed of, Mr V. Balachandran, Advocate had filed a petition for review. That was also dismissed by this Court on 24-4-1996. Yet another advocate, Mr S.U.K. Sagar, has now been engaged to file the present application styled as "application for clarification", on the specious plea that the order is not clear and unambiguous. When an appeal/special leave petition is dismissed, except in rare cases where error of law or fact is apparent on the record, no review can be filed; that too by the Advocate-on-Record who neither appeared nor was party in the main case. It is salutary to note that the court spends valuable tune in deciding a case. Review petition is not, and should not be, an attempt for hearing the matter again on merits. Unfortunately, it has become, in recent time, a practice to file such review petitions as a routine; that too, with change of counsel, without obtaining consent of the Advocate-on-Record at earlier stage. This is not conducive to healthy practice of the Bar which has the responsibility to maintain the salutary practice of profession. In Review Petition No. 2670 of 1996 in CA No. 1867 of 1992, a Bench of three Judges to which one of us, K. Ramaswamy, J., was a member, had held as under:*

"The record of the appeal indicates that Shri Sudarsh Menon was the Advocate-on-Record when the appeal was heard and decided on merits. The review petition has been filed by Shri Prabir Chowdhury who was neither an arguing counsel when the appeal was heard nor was he present at the time of arguments. It is unknown on what basis he has written the grounds in the review petition as if it is a rehearing of an appeal against our order. He did not confine to the scope of review. It would not be in the interest of the profession to permit such practice. That apart, he has not obtained 'No Objection Certificate' from the Advocate-on-Record in the appeal, in spite



of the fact that Registry had informed him of the requirement for doing so. Filing of the 'No Objection Certificate' would be the basis for him to come on record. Otherwise, the Advocate-on-Record is answerable to the Court. The failure to obtain the 'No Objection Certificate' from the erstwhile counsel has disentitled him to file the review petition. Even otherwise, the review petition has no merits. It is an attempt to reargue the matter on merits. On these grounds, we dismiss the review petition.

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No such patent error or any ground could be shown to this Court to justify exercise of review jurisdiction. Finding no merit in the review application, the same is hereby dismissed.

(GURVINDER SINGH GILL)
JUDGE

(LAPITA BANERJI)
JUDGE

17.01.2025
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