

2025:PHHC:018827-DB

LPA-2165-2023 (O&M)
Date of Decision: 07.02.2025

Managing Director, The Meham Co-Operative Mills ...Appellant

Vs.

Wazir Chand and others ...Respondents

**CORAM: HON'BLE MR. JUSTICE SANJEEV PRAKASH SHARMA
HON'BLE MRS. JUSTICE MEENAKSHI I. MEHTA**

Present: Mr. S.K. Verma, Advocate for the appellant.

Mr. Sandeep Thakan, Advocate for respondent No.1.

SANJEEV PRAKASH SHARMA, J. (Oral)

1. The Managing Director, the Meham Cooperative Mills Ltd. assails the judgment passed by the learned Single Judge dated 29.03.2023 in CWP-6185-2019 and review order dated 06.11.2023, whereby the writ petition preferred by the respondent No.1 was allowed and the review application filed by the appellant was dismissed.

2. At the outset, learned counsel for the appellant submits that the services of the writ petitioner were regularized by the sugar mills and he was placed in the regular pay scale vide order dated 26.11.2005. However, the writ petitioner was not satisfied. The learned Single Judge has passed the order dated 29.03.2023, directing the appellant to consider the case of the writ petitioner relying on the judgment passed by this Court in **CWP-5710-2911, titled as Pawan Kumar and another v. State of Haryana and**

others, for regularizing him from the date his juniors were regularized with all consequential benefits.

The appellant preferred an LPA No.818/2023, before this Court and the Division Bench disposed it of on 03.07.2023, with liberty to file appropriate application before the learned Single Judge for seeking recall/review. Accordingly, the appellant filed RA-CW-278/2023 and 301/2023, which were dismissed as withdrawn on 17.08.2023 and 19.09.2023 with liberty to file fresh with better particulars.

The appellant again filed a review application No.RA-CW-368-2023, which has been dismissed by the learned Single Judge on 06.11.2023. The orders are accordingly impugned in the present appeal.

3. Learned counsel for the appellant submits that it is a case of clear abuse and misuse of the process of law and respondent No.1 cannot take advantage of the orders passed by the learned Single Judge as he has intentionally and deliberately concealed facts from the Court. The respondent No.1 did not even mention in the writ petition that he had filed a civil suit No.511 of 2011, before the learned Civil Judge (Junior Division), Meham, which was decreed against him on 20.01.2001. The plaint preferred by respondent No.1 seeking declaration and permanent injunction for directing the present appellant (defendant in the civil suit) to regularize his services w.e.f 31.07.1996 i.e. the date junior persons to him have been regularized. The suit was dismissed with a specific finding that the persons who had been regularized were in fact appointed by a Selection Committee after advertisement and interview and the plaintiff (respondent No.1) could not be said to be similarly situated. The appeal against the said judgment of the civil

court was also preferred, wherein a compromise was arrived at and following order was passed:-

“In view of the statements made by the parties and their counsel in this appeal, this appeal is disposed of as compromised. It is directed that respondent would consider the case of the regularization of the appellant keeping in view his seniority as well as any vacancy arising out in future for the post of Cane Kamdar. Parties would bear their own costs in this appeal. Decree sheet be drawn accordingly and file be consigned.

Announced: 13.02.2022

R.S. Madan,
District Judge, Rohtak. ”

4. Concealing aforesaid facts, he preferred the writ petition seeking regularization w.e.f. 20.03.1993. It was also stated by the appellant that letters have been issued to the respondents on 28.02.1996 and again on 16.03.2000, offering him regular appointment on the permanent post of Chowkidar/Security Guard respectively in the light of regularization policy of the Sugar Federation, Haryana dated 20.03.1993, but he did not accept the said offer. This fact was also not disclosed before the learned Single Judge. The persons mentioned at Sr. No.7 to 28, shown in letter dated 16.06.2016, were also not junior to the writ petitioner.

5. In the light of the aforesaid facts we asked learned counsel appearing for the writ petitioner to inform us the reasons as to why the aforesaid facts as noticed above, were not brought to the knowledge of the learned Single Judge and why there has been a concealment of facts. It was also informed to him that taking into consideration the aforesaid facts and finding that there has been deliberate and willful concealment, we may

propose to pass certain severe orders against the writ petitioner, however, we refrain from passing an order and simply adjourned the case on 05.02.2024 for today.

Today, learned counsel for respondent No.1 vehemently argued that the facts as noticed above, would have no relevance as earlier the writ petitioner had only asked for regularization w.e.f. 31.07.1997 while now he is asking for regularization w.e.f. 20.03.1993. It was also stated that the writ petitioner is a poor person.

6. We have considered the submissions and pleadings of the case placed before us.

7. A perusal of order passed by the learned Single Judge reveals that while deciding the case on 29.03.2023, the fact regarding taking up of the case by the writ petitioner for regularization before the Civil Court and the compromise arrived at between the parties before the Civil Court was not noticed. In the review application, the learned Single Judge noticed the said aspect but held that this cannot be allowed to be taken up in review as it would amount to setting up a new case.

8. We find that one of the scope available for reviewing the order is whether a fact remains unnoticed by the Court which goes to the root of the case. And where there is a concealment of facts are brought to the knowledge of the Court, in our opinion, the power of review ought to be exercised, as the proceedings taken before this Court under Article 226 of the Constitution of India are based on equity and law. We find that if someone has attempted to withhold the information from the Court and in this manner filed a false affidavit, he/she would not be eligible to get an order on the anvil of equity

and justice. Such person has to be dealt with strictly by this Court even if he has some right created on the basis of parity, the same are not required to be extended to him as he is a person who deliberately conceals information from the Court with a view to obtain order. Such person is to be dealt with strictly and no benefit can be extended to him. At the same time, we also notice that if any concealment is done during period of service, departmental proceedings can also be initiated against the concerned individual.

9. The scope of review has been recently reiterated by the Hon'ble Supreme Court in the case of **Sanjay Kumar Agarwal vs. State Tax Officer (1) and another**, 2024(2) SCC 362, relying on earlier judgments and held as under:-

“15. It is very pertinent to note that recently the Constitution Bench in Beghar Foundation vs. Justice K.S. Puttaswamy (Retired) and Others , held that even the change in law or subsequent decision/ judgment of co-ordinate Bench or larger Bench by itself cannot be regarded as a ground for review.

16. The gist of the afore-stated decisions is that: -

16.1 A judgment is open to review inter alia if there is a mistake or an error apparent on the face of the record.

16.2 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.

16.3 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.

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

16.5 A Review Petition has a limited purpose and cannot be allowed to be “an appeal in disguise.”

16.6. Under the guise of review, the petitioner cannot be permitted to reagitate and reargue the questions which have already been addressed and decided.

16.7 An error on the face of record must be such an error which, mere looking at the record should strike and it should not require any long-drawn process of reasoning on the points where there may conceivably be two opinions.

16.8 Even the change in law or subsequent decision/ judgment of a co-ordinate or larger Bench by itself cannot be regarded as a ground for review.”

10. In view of above, if we examine the facts of the present case, we find that the writ petitioner had preferred a civil suit wherein he lost and he thereafter filed an appeal before the learned District Judge, Rohtak, wherein a compromise was arrived at between the parties with the assurance as recorded by the learned District Judge that his case would be considered for regularization keeping in view his seniority as well as any vacancy arising out in future for the post of Cane Kamdar. The order was passed on 13.02.2002 and he was regularized in 26.11.2005.

11. All these facts were withheld from the learned Single Judge, resulting in an order passed by the learned Single Judge directing to consider his case from 20.03.1993, which virtually results in setting aside the compromise decree arrived at before the District Judge, Rohtak on 13.02.2002. The order passed by the learned Single Judge, therefore, cannot be sustained. After the Division Bench observed noticing the concealment and directed for filing of review, the learned Single Judge has refused the

review. We, therefore, are pained to set aside the order passed in review too holding that the ground was clearly made out by the appellant for review.

12. Accordingly, the appeal deserves to be allowed. We now, however, would like to deal with the conduct of the writ petitioner. It is apparent that he is a smart litigant who has attempted to hoodwink the Court by concealing facts which were in his full knowledge but there has been a deliberate concealment of facts on his part. He is working on a post with the appellant and is amenable to departmental proceedings. Considering his misconduct as above, we direct the appellant to initiate appropriate proceedings against the writ petitioner who has filed apparently a false affidavit concealing facts from the Court. Compliance report of the same be furnished before this Court.

13. In view of the above discussion and findings, the appeal is allowed. The order passed by the learned Single Judge dated 29.03.2023 is set aside. Cost, if any, deposited shall be refunded to the appellant.

14. All pending misc. application(s) also stand disposed of.

(SANJEEV PRAKASH SHARMA)
JUDGE

(MEENAKSHI I. MEHTA)
JUDGE

07.02.2025
rajesh

1. Whether speaking/reasoned?	:	Yes/No
2. Whether reportable?	:	Yes/No