

**2023 STPL(Web) 31 HP
HIGH COURT OF HIMACHAL PRADESH**

(HON'BLE MR. JUSTICE TARLOK SINGH CHAUHAN, AND HON'BLE MR. JUSTICE SATYEN VAIDYA,
JJ.)

SURENDER SINGH

Applicant

VERSUS

STATE OF H.P. & OTHERS

Respondents

BALBIR SINGH

Petitioner

VERSUS

STATE OF H.P. & OTHERS

Respondents

CMP(M) No. 411 of 2023 and CMP(M) No. 521 of 2023 in Review Petition No.69 of 2023 and Review Petition No.70 of 2023-Decided on 14-7-2023

Service Law

Service Law – Appointment – All the relevant questions had already been considered and decided. - Held: after having availed the remedy of filing Special Leave to Appeal before the Hon'ble Supreme Court and rejection thereof, the review petition on behalf of petitioner will not be maintainable. _

(Para 12, 15)

Advocate(s): For the applicant(s)/ Review Petitioner(s) : Mr. Hirdaya Ram, Advocate.

For the non-applicants/ Respondents :Mr. Anup Rattan, Advocate General, with Mr. I. N. Mehta, Sr. Addl. Advocate General, Mr. Ramakant Sharma, Ms. Sharmila Patial, Addl. Advocate Generals, Ms. Priyanka Chauhan, Dy. A.G. and Mr. Rajat Chauhan, Law Officer, for the respondents/State.

JUDGMENT

Satyen Vaidya, Judge-CMP(M) Nos. 411 of 2023 & 521 of 2023

1. Delay condoned. The applications stand disposed of. Review Petitions be registered. Review Petition Nos.69 of 2023 & 70 of 2023.

Heard.

2. Both these petitions have been heard and are being decided together as common questions of facts and law are involved.

3. The Government of Himachal Pradesh has framed and notified a policy “Part Time Multi Task Worker Policy, 2020” (for short “Policy”) for the appointment of Part Time Multi Task Workers in the Government Schools of Himachal Pradesh under Higher and Elementary Education Department. As per Clause 7 (iv) of the Policy, 8 (eight) marks are allocated for candidates whose families have donated land for school.

4. Petitioners herein were also applicants for the posts of Part Time Multi Task Workers in their respective areas. They remained unsuccessful as were not awarded any marks on account of being family members of land donors.

5. Initially, at the time of formulation of policy, the term “family” was not defined. Later, a clarification was issued on 24.05.2022 whereby the term “family” for the purposes of Clause 7 (iv) of the Policy, was restricted to mean only “Land Donor or His/Her Spouse and their Children”.

6. Admittedly, petitioners were neither the land owners themselves nor were falling in the category of spouse or children of the land donor. Petitioner Surender Singh had assailed the validity of Clause 7(iv) of the Policy as also his rejection by way of CWP No.4139 of 2022. His contention was rejected vide judgment passed by this Court on 28.06.2022. Petitioner Surender Singh assailed the above noted judgment passed by this Court by way of Special Leave Petition (Civil) Diary No(s). 33066 of 2022, but remained unsuccessful. His petition was dismissed by the Hon'ble Supreme Court vide order dated 28.02.2023 in following terms: “Delay condoned. We do not see any valid reason to interfere with the

impugned orders and hence, the special leave petitions are dismissed. Pending application(s), if any, shall stand disposed of.”

7. Petitioner Balbir Singh had also assailed the validity of Clause 7 (iv) of the Policy as also his rejection by way of CWP No.4169 of 2022 before this Court. His contention was also rejected by this Court vide judgment dated 29.06.2022.

8. In both the above noted cases, the amendment made in the definition of term “family” in the Policy vide Clause 7 (iv), was upheld.

9. The petitioners have sought the review of above noted judgments passed in CWP No. 4139 of 2022 and CWP No. 4169 of 2022 on the grounds that the restrictive meaning given to the term “family” in the Policy is arbitrary and discriminatory. It is submitted that the definition of “family” in the Himachal Pradesh Panchayati Raj Act, 1994 and the H. P. Tenancy and Land Reforms Act, 1972, which provides expansive meaning to the term “family” has not been considered. It is also submitted that in the same policy, the definition of “family”, for the persons living in extreme indigent condition is different with larger connotation, therefore, the term “family” for the purposes of Clause 7 (iv) of the Policy, cannot also be given a restrictive meaning. Reliance has also been placed on the judgment dated 06.03.2020 passed by a co-ordinate Bench of this Court in LPA No. 40 of 2019, titled Sudama Nand vs. State of H.P. and others, wherein, according to petitioners, the extended scope of term “family” was considered by placing reliance on the judgment passed by Hon’ble Supreme Court in K.V. Muthu vs. Angamuthu Ammal, reported in (1997) 2 SCC 53.

10. In order to justify the maintainability of the review petition after dismissal of SLP(Civil) No. 33066 of 2022 in the case of petitioner Surender Singh, learned counsel for the petitioner(s) has placed reliance on the judgment passed by the Hon’ble Supreme Court in the case of Civil Appeal No. 2432 of 2019 (arising out of SLP (C) No. 490 of 2012), titled Khoday Distilleries Ltd. vs. Sri Mahadeshwara Sahakara Sakkare Karkhane Ltd., decided on 01.03.2019.

11. To maintain a review petition, one has to satisfy the requirements of Section 114 and Order 47 Rule 1 of the Code of Civil Procedure, which reads as under:

“114. Review. – Subject as aforesaid, any person considering himself aggrieved –

(a) by a decree or order from which an appeal is allowed by this Code, but from which no appeal has been preferred.

(b) by a decree or order from which no appeal is allowed by this Code, or

(c) by a decision on a reference from a Court of Small Causes, may apply for a review of judgment to the Court which passed the decree or made the order, and the Court may make such order thereon as it thinks fit.”

“Order XLVII Rule

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 a 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 applied for the review. Explanation.- The fact that the decision on a question of law on which the judgment of the Court is based has been reversed or

modified by the subsequent decision of a superior Court in any other case, shall not be a ground for the review of such judgment.”

12. Thus, after having availed the remedy of filing Special Leave to Appeal before the Hon’ble Supreme Court and rejection thereof, the review petition on behalf of petitioner Surender Singh will not be maintainable. The judgment in *Khoday Distilleries Ltd. (supra)*, will not be helpful to petitioner Surender Singh for the reasons that it was passed in its peculiar facts where the review petition had been filed on the ground of suppression of material facts and commission of fraud on the Court. However, keeping the technicalities apart, the review petition of petitioner Surender Singh is also being considered on merits alongwith the review petition filed by petitioner Balbir Singh, who had not availed the remedy of filing Special Leave to Appeal before the Hon’ble Supreme Court.

13. The scope of review of judgment is quite restrictive. It definitely cannot extend to grounds on which an appeal can be preferred. The scope of interference is only if any error on the face of record is found to exist or some new and important material becomes available which despite due diligence could not be produced. This Court in exercise of jurisdiction under Article 226 of the Constitution, can also review its decisions on any other sufficient grounds. The scope of interference by way of review of judgment has been explained as under: In *State of Rajasthan v. Surendra Mohnot*, (2014) 14 SCC 77, it was held as under:

22. In *Aribam Tuleshwar Sharma v. Aribam Pishak Sharma* (1979) 4 SCC 389, the two-Judge Bench speaking through Chinnappa Reddy, J. observed thus: (SCC p. 390, para 3)

“3. ... It is true as observed by this Court in *Shivdeo Singh v. State of Punjab* AIR 1963 SC 1909, 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.”

23. In *Thungabhadra Industries Ltd. vs. State of A.P.* AIR 1964 SC 1372, while dealing with the concept of review, the Court opined thus:

“11. ... A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected, but lies only for patent error. We do not consider that this furnishes a suitable occasion for dealing with this difference exhaustively or in any great detail, but it would suffice for us to say that where without any elaborate argument one could point to the error and say here is a substantial point of law which stares one in the face, and there could reasonably be no two opinions entertained about it, a clear case of error apparent on the face of the record would be made out.”

24. In *Northern India Caterers (India) Ltd. v. Lt. Governor of Delhi* (1980) 2 SCC 167, R.S. Pathak, J. (as His Lordship then was) while speaking about jurisdiction of review observed that:

“8. ... it is beyond dispute that a review proceeding cannot be equated with the original hearing of the case, and the finality of the judgment delivered by the Court will not be reconsidered except ‘where a glaring omission or patent mistake or like grave error has crept in earlier by judicial fallibility’.”

25. To appreciate what constitutes an error apparent on the face of the record, the observations of the Court in *Satyanarayan Laxminarayan Hegde v. Mallikarjun Bhavanappa Tirumale* AIR 1960 SC 137 are useful:

“An error which has to be established by a long-drawn process of reasoning on points where there may conceivably be two opinions can hardly be said to be an error apparent on the face of the record. Where an alleged error is far from self-evident and if it can be established, it has to be established, by lengthy and complicated arguments, such an error cannot be cured by a writ of certiorari according to the rule governing the powers of the superior court to issue such a writ.”

In *Inderchand Jain v. Motilal*, (2009) 14 SCC 663, the Hon'ble Supreme Court held as under:

10. It is beyond any doubt or dispute that the review court does not sit in appeal over its own order. A rehearing of the matter is impermissible in law. It constitutes an exception to the general rule that once a judgment is signed or pronounced, it should not be altered. It is also trite that exercise of inherent jurisdiction is not invoked for reviewing any order.

11. Review is not appeal in disguise. In *Lily Thomas v. Union of India* (2000) 6 SCC 224 this Court held:

“56. It follows, therefore, that the power of review can be exercised for correction of a mistake but not to substitute a view. Such powers can be exercised within the limits of the statute dealing with the exercise of power. The review cannot be treated like an appeal in disguise.” Our opinion, the principles of law enumerated by it, in the facts of this case, have wrongly been applied. In *Parsion Devi v. Sumitri Devi*, (1997) 8 SCC 715, Hon'ble Supreme has held as under “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”.

14. Exercise of power of review, as propounded by the Apex Court and various other High Courts may thus be summarised as hereunder:

(i) Review proceedings are not by way of appeal and have to be strictly confined to the scope and ambit of Order 47 Rule 1 CPC.

(ii) Power of review may be exercised when some mistake or error apparent on the fact of record is found. But error on the face of record must be such an error which must strike one on mere looking at the record and would not require any long-drawn process of reasoning on the points where there may conceivably be two opinions.

(iii) Power of review may not be exercised on the ground that the decision was erroneous on merits.

(iv) Power of review can also be exercised for any sufficient reason which is wide enough to include a misconception of fact or law by a court or even an advocate.

(v) An application for review may be necessitated by way of invoking the doctrine *actus curiae neminem gravabit*.”

15. In the cases in hand, all the relevant questions had already been considered and decided. The fact of the matter is that the Clause 7 (iv) of the Policy was challenged in more than one petitions including those filed by the petitioners herein. The grounds as were raised in respective petitions were decided. The ground relating to equation with definition of “family” in the Himachal Pradesh Panchayati Raj Act was also considered while deciding CWP No. 4197 of 2022, titled *Smt. Khimi Devi vs. State of H.P. and others*, decided on 30.06.2022. In such view of the matter, there is no reason to examine the question in light of identical or akin definition of “family” provided in the Himachal Pradesh Tenancy and Land Reforms Act, 1972.

16. The contention of petitioner(s) in the light of judgment passed by a Division Bench of this Court in LPA No. 40 of 2019, titled *Sudama Nand vs. State of H.P. and others*, is clearly misplaced as the term “family” in that case was considered in the context of a totally different scheme known as “Part Time Water Carrier Scheme”. Similarly, the reliance on *K.V. Muthu* (supra) is baseless for the reasons that in the said judgment also the Hon'ble Supreme Court had clearly spelt out that the word “family” is of great flexibility and is capable of different meanings in different contexts.

17. It is also more than settled that the review will not be permissible in the situation where the process of re-thinking is involved. The petitioner(s), therefore, cannot have any possible right to assail the judgments passed by this Court on merits under the garb of filing the instant petitions.

18. In result, no ground of review is made out, hence, the petitions are dismissed.
