

HON'BLE MRS JUSTICE SUREPALLI NANDA

Review I.A. No.1 of 2024

in

W.P. No. 24093 of 2008

AND

C.C.No.870 of 2024

in

W.P. No. 24093 of 2008

**COMMON ORDER:**

Heard Sri Rahul Reddy, learned Special Government Pleader appearing on behalf of review petitioners/Contemnors and Sri N. Ashok Kumar, learned counsel appearing on behalf of the Writ Petitioner/respondent No.1.

2. The present review has been filed seeking prayer as under :

"...in W.P.No.24093 of 2008, dated 05.06.2023, deserves to be reviewed for the above grounds and also grounds which are to be urged at the time of hearing and pass such other or further orders ..."

3. The learned Special Government Pleader appearing on behalf of the Review Petitioners mainly puts forth the following submissions :

a)      Sub-Rule-4 of Rule-18 of Classification, Control and Appeal Rules 1991 needs to be considered in the present case since when the order of removal/dismissal has been set aside on technical grounds without going into merits of the case, Sub-Rule-4 of Rule-18 of Classification, Control and Appeal Rules 1991 applies, hence the Authority competent to impose the penalty decides to hold a further enquiry into the allegation on which the penalty of dismissal, removal or compulsory retirement was originally imposed, and the Government servants shall be deemed to have been placed under suspension by the Authority competent to impose the suspension from the date of original order of dismissal, removal or compulsory retirement and shall continue to remain under suspension until further orders. The said rule position was not properly brought to the notice of the Court, when the order of removal was set aside in W.P.No.24093 of 2008, dated 05.06.2023, and hence, the present Review has to be allowed.

b)      The period of removal from the date of removal of the petitioner to the date of setting aside of the same in the present writ petition is for a period of fifteen years and if at all

the order has to be implemented by reinstating the petitioner into service, there will be a financial implication of about one crore on the public exchequer, and hence the order under Review needs to be reconsidered.

c) The order of removal which has been set aside in W.P.No.24093 of 2008, dated 05.06.2023, is not on the ground of illegal removal but was only on account of non-providing an opportunity of cross-examination and also non-furnishing of vigilance report to the petitioner. Therefore, since it is purely technical in nature, and as such Sub-Rule-4 of Rule- 18 of TS (CC&A) and Conduct Rules 1991, would clearly attract and hence, Review Petitioners are entitled for the relief as claimed for in the present Review Petition.

**4. The learned Special Government Pleader appearing on behalf of the review peitioners places reliance upon the judgment of the Apex Court in State of Uttar Pradesh and Others Vs. Vinod Kumar Katheria reported in (2021) 14 SCC 668, dated 23.09.2019 in support of the review petitioners' case and contends that the order of this Court, dated 05.06.2023 passed in**

**W.P.No. 24093 of 2008 in so far as directing reinstatement of the petitioner forthwith without back wages from the date of dismissal till the date of reinstatement needs to be set aside and the order of the Court, dated 05.06.2023 passed in W.P.No. 24093 of 2008 has to be reconsidered and reviewed accordingly.**

5. Learned counsel appearing on behalf of the Writ Petitioner on the other hand submits that there is no error apparent on the face of the record and hence, the review petition cannot be entertained and the same needs to be dismissed in view of the detailed reasoned orders, dated 05.06.2023 passed by this Court in W.P.No. 24093 of 2008 in favour of the petitioner referring to various judgments.

**DISCUSSION AND CONCLUSION:**

6. **Order 47 Rule 1 of Civil Procedure Court 1908 which governs the grounds on which a judgment or an order can be reviewed is extracted hereunder :**

- a) From the discovery of new and important matters or evidence after the exercise of due

diligence was not within the knowledge of the applicant;

- (b) Such important matter or evidence could not be produced by the knowledge of the applicant; at the time when the decree was passed or order made; and
- (c) On account of some mistake or error apparent on the face of the record or any other sufficient reason."

This Court is of the firm opinion that none of the above referred grounds exist in the present case that warrant interference by this Court at the present stage in the present Review Petition.

7. In the judgment of Apex Court in Lily Thomas vs. Union of India, dated 05.04.2000 reported in 2000 (6) SCC 224 in particular at para No. 56, it is observed as under :

"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.

The submissions and the pleas put-forth by the learned counsel appearing on behalf of the Review Petitioners do not include a misconception of fact or law by this Court, since there is no error or mistake apparent on the face of record that warrants review of the order dated 05.06.2023 passed in W.P.No. 24093 of 2008.

8. The Apex Court in the Judgment reported in 1980 (2) SCC 167, dated 21.12.1979 in Northern India Caterers (India) Ltd. Vs. Lt.Governor of Delhi observed at para No. 8 as under :

Para 8 : It is 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 for a fresh decision of the case. The normal principle is that a judgment pronounced by the Court is final and departure from the principle is justified only when circumstances of a substantial and compelling character make it necessary to do so.

In the present case, this Court opines that no circumstances of a substantial and compelling

character exist that warrant interference by this Court for passing of orders in favour of the review petitioners.

9. The boundary within which the power of review under Order 47 Rule 1 of CPC 1908 has to be exercised has been demarcated by the Hon'ble Supreme Court in its recent judgment in Murali Sundaram vs. Jothibai Kannan, dated 24.02.2023 reported in (2023) SCC OnLine SC 185 and at para No. 5.1 of the said judgment it is observed as under:

"5.1. While considering the aforesaid issue two decisions of this Court on order 47 Rule 1 read with Section 114 Code of Civil Procedure. In the case of Perry Kansagra (supra) this Court has observed that while exercising the review jurisdiction in an application Under Order 47 Rule 1 read with Section 114 Code of Civil Procedure, the Review Court does not sit in appeal over its own order. It is observed that a rehearing of the matter is impermissible in law. It is further observed that review is not appeal in disguise. It is observed that 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. It is further observed that it is wholly

unjustified and exhibits a tendency to rewrite a judgment by which the controversy has been finally decided. **After considering catena of decisions on exercise of review powers and principles relating to exercise of review jurisdiction Under Order 47 Rule 1 Code of Civil Procedure, this Court had summed upon as under:**

- (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 Code of Civil Procedure.
- (ii) Power of review may be exercised when some mistake or error apparent on the face 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*.

This Court opines that the Review petitioners failed to convince this Court with sufficient reasons for exercise of power of Review by this Court in the present case.

10. The Apex Court Judgment dated 18.08.2022 reported in 2022 Live Law (SC) 685 in "S.Madhusudhan Reddy v. V.Narayana Reddy and others", in particular, at paragraph No. 26, observed as under:

"26. As can be seen from the above exposition of law, it has been consistently held by this Court in several judicial pronouncements that the Court's jurisdiction of review, is not the same as that of an appeal. A judgment can be open to review if there is a mistake or an error apparent on the face of the record, but an error that has to be detected by a process of reasoning, cannot be described as an error apparent on the face of the record for the Court to exercise its powers of review under Order XLVII Rule 1 CPC. In the guise of exercising powers of review, the Court can correct a mistake but not substitute the view taken earlier merely because there is a possibility of taking two views in a matter. A judgment may also be open to review when any new or important matter of evidence has emerged after passing of the judgment, subject to the condition that such evidence was not within the knowledge of the party seeking review or could

**not be produced by it when the order was made despite undertaking an exercise of due diligence.** There is a clear distinction between an erroneous decision as against an error apparent on the face of the record. An erroneous decision can be corrected by the Superior Court; however an error apparent on the face of the record can only be corrected by exercising review jurisdiction. Yet another circumstance referred to in Order XLVII Rule 1 for reviewing a judgment has been described as "for any other sufficient reason". The said phrase has been explained to mean "a reason sufficient on grounds, at least analogous to those specified in the rule".

**11. It would be apt to discuss the jurisdiction of this Court to review its own judgment. After examining a catena of Supreme Court Judgments (1) Sasi D through LRS v Aravindakshan Nair and Others reported in (2017) 4 SCC, dated 03.03.2017, para Nos. 6 to 9; (2) Haridas Das v Smt. Usha Rani Banik and Others reported in (2006) 4 SCC 78, dated 21.03.2006 paras 15 to 18; (3) Parsion Devi v Sumitri Devi reported in 1997 (8) SCC 715, dated 14.10.1997, para Nos. 7 to 10; (4) Aribam Tuleshwar Sharma v Aribam Pishak Sharma reported in (1979) 4 SCC 389, dated 25.01.1979 para No. 3 the principles that emerge from a perusal of the land-mark Supreme Court Judgments on the issue of review, are enlisted below:**

A) The power to review is inherent in the High Court and the High Court can review its own order/judgment passed in a writ petition.

B) This power of review is a limited power and would be governed by the principles of Section 151 read with Order XLVII Rule 1 of the Code of Civil Procedure.

C) Firstly, a Court can review its own judgment when there is discovery of new and important matter or evidence that was in spite of exercise of due diligence not within the knowledge or could not be produced due to cogent reasons by the party seeking a review. Secondly, the court may review its order or judgment on account of some mistake or error apparent on the face of the record. Thirdly, a residuary clause in Rule 1 of Order XLVII provides for a review for any other sufficient reason'. It is to be noted that the Apex Court on several occasions has held that the third condition "for any other sufficient reason" has to be read within the four corners of the first two conditions.

D) An error which is not self-evident and has to be detected by a process of reasoning is not an error apparent on the face of the record.

E) A review petition has a limited purpose and cannot be allowed to be "an appeal in disguise". There is a sharp distinction between an erroneous decision that

can be only appealed against and an error apparent on the face of the record that is subject to review.

**12. The Apex Court in the Judgment reported in (2024) 2 Supreme Court Cases 362 in "Sanjay Kumar Agarwal v. State Tax Officer (1) and another", at paragraph No.16 observed as under:**

"16. The gist of the aforesaid 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 e 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 coordinate or larger Bench by itself cannot be regarded as a ground for review."

**13. This Court is firm of the opinion that given the limited scope of review, as explained in the various Judgments of the Apex Court (referred to and extracted above), i) 2000 (6) SCC 224, dated 05.04.2000, ii) 1980 (2) SCC 167, dated 21.12.1979, iii) (2023) SCC Online SC 185, dated 24.02.2023, iv) 2022 Live Law (SC) 685, dated 18.08.2022 and v) 2024 (2) SCC Page 362, this Court is not inclined to entertain the present Review, since the same is devoid of merits and hence, the same is accordingly dismissed.**

**14. In view of the fact that Review I.A. No.1 of 2024 in W.P. No. 24093 of 2008 had been dismissed on 05.06.2023, the Contempt Case No. 870 of 2024 in W.P. No. 24093 of 2008 is disposed of by directing the Respondents/contemnors to implement the order of this Court dated 05.06.2023 passed in W.P. No. 24093 of 2008 within four (04) weeks from the date of receipt of copy of the order. However, there shall be no order as to costs.**

Miscellaneous petitions pending, if any, shall stand closed.

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**MRS. JUSTICE SUREPALLI NANDA**

**Date: 06.09.2024**  
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