

**CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH, KOLKATA**



M.A./351/00161/AN/ 2019

M.A./351/00060/AN/2019

CPC./351/00036/AN/2019

(O.A./351/00095/AN/2019)

**Coram : Hon'ble Ms. Bidisha Banerjee, Judicial Member
Hon'ble Dr. N. Chatterjee, Administrative Member**

Education

..... Applicants.

Versus

Liton Baroi & Ors.

..... Respondents.

For the applicant : Mr. R. Halder, Counsel

For the respondents : Mr. P.C. Das, Counsel

Date of Order : 29.5.2019

ORDER

Per : Bidisha Banerjee, Judicial Member

M.A. 161 of 2019, has been preferred by Education Department to seek the following reliefs:

"8.a) To allow this application for Recall the order dated 23/01/2019 passed by Hon'ble Judicial Member Mr. A.K. Patnaik in the O.A. No. 351/0095/2019 by recalling the order immediately.

b) To allow the applicant to place their case by filing Reply in the O.A. 351/0095/2019 or to allow the applicant to dispose of the alike cases by issue of a reasoned speaking order.

c) To pass an order in favour the applicants to publish a new notification with the vacancies that may be cause till the date of fresh notification with age relaxations which

was provided by Hon'ble Lt. Governor, A & N Islands to the candidates, who had applied earlier in pursuance to the notification which has been cancelled subsequently.

d) To stay any effect in the order dated 23/01/2019 passed by Hon'ble Judicial Member in the O.A. No. 351/0095/2019 until disposal of the Recalling Application being the present M.A.

e) The Tribunal may pass an order which it may deem fit and proper.

And for this Act of kindness,

Your petitioners herein as in duty bound shall ever pray."

2. We note the following order in a connected MA, being M.A/174/2019 filed in regard to applicants in O.A 120/2019, which records the following:

"Tribunal's power to review its own order in such grounds as enumerated supra, is well recognised. [Judgment of Hon'ble Apex Court in case of **Gopal Singh vs. State Cadre Forest Officers' Assn. and Others, (2007)9 SCC 369**].

The Hon'ble Apex Court on numerous occasions had deliberated upon the very same issue arriving at the conclusion that review proceedings are not by way of an appeal and have to be strictly confined to the scope and ambit of Order 47 Rule 1 of CPC. In **AribamTuleshwar Sharma v AribamPishak Sharma,(1979) 4 SCC 389=AIR 1979 SC 1047**, the Hon'ble Apex court held that there are definite limits to the exercise of power of review. In that case, an application under Order 47 Rule 1 read with Section 151 of the Code of Procedure was filed which was allowed and the order passed by the Judicial Commissioner was set aside and the writ petition was dismissed. On an appeal to the Apex court, it was held as under:

*"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 definite 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."

(Emphasis added)

In **Parson Devi &Ors. vs. Sumitri Devi &Ors.**, (1997) 8 SCC 715, the Hon'ble Apex Court opined that:-

"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 added)

The Hon'ble Apex Court also in the case of **State of West Bengal and Ors. Vs. Kamal Sengupta and Anr.**, reported in (2008) 8 SCC 612 held as under:-

"21. At this stage it is apposite to observe that where a review is sought on the ground of discovery of new matter or evidence, such matter or evidence must be relevant and must be of such a character that if the same had been produced, it might have altered the judgment. In other words, mere discovery of new or important matter or evidence is not sufficient ground for review *ex debito justitiae*. Not only this, the party seeking review has also to show that such additional 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 earlier.

22. The term "mistake or error apparent" by its very connotation signifies an error which is evident *per se* from the record of the case and does not require detailed examination, scrutiny and elucidation either of the facts or the legal position. If an error is not self-evident and detection thereof requires long debate and process of reasoning, it cannot be treated as an error apparent on the face of the record for the purpose of Order 47 Rule 1 CPC or Section 22(3)(f) of the Act. To put it differently an order or decision or judgment cannot be corrected merely because it is erroneous in law or on the ground that a different view could have been taken by the court/tribunal on a point



of fact or law. In any case, while exercising the power of review, the court/tribunal concerned cannot sit in appeal over its judgment/decision."

The ground on which recalling/ review has been sought for is that the order has been passed without jurisdiction and therefore on the ground of an "error of law".

A two member Bench of this Tribunal has co equal power as that of a single Member Bench while deciding cases falling under the classification-

"Single Bench cases"

The difference being that a 2 Member Bench has the power to decide cases falling under the classification "Division Bench" cases whereas a Single Member can only dispose of such a case directing consideration of any pending representation.

But a Double Member Bench is not empowered to, and cannot sit on appeal over a decision of a Single Member Bench to nullify it on the ground that the single Member had decided a Division Bench matter without jurisdiction and had erred in law.

Such an "error of law" should be questioned in a higher forum. Hence the Recalling Application fails."

3. In view of the order enumerated ^{thus} ^B supra, the M.A fails and is dismissed.

(Dr. N. Chatterjee)
Administrative Member

drh

(Bidisha Banerjee)
Judicial Member