

UNDER CIRCULATION

CENTRAL ADMINISTRATIVE TRIBUNAL
JAMMU BENCH JAMMU

Dated: This the 09TH day of February 2021

HON'BLE MR. RAKESH SAGAR JAIN, MEMBER (J)
HON'BLE MR. PRADEEP KUMAR, MEMBER (A)

Civil Misc. Review Application No. 62/06/2020
In
Original Application No. 62/674/2020

1. Union Territory of J&K through Principal Secretary to Government, Skill Development Department, Civil Secretariat, Jammu/Srinagar.
2. Director, Skill Development Department, J&K Jammu.
3. Joint Director, Skill Development Department Kashmir.
4. Principal/Superintendent Industrial Tr. Institute, Shopian

(By Advocate : Mr. Amit Gupta, Id. Additional Advocate General)

V E R S U S

1. Muslim Jan D/o Mohammad Ayoub Pandit R/o Uthmullah, Hawal District Pulwama (J&K).
2. Arifa Aijaz D/o Aijaz Ahmad Dar R/o Keegam Tehsil and District Shopian.
3. Shakeel Ahmd Parray S/o Mohammad Yousuf Parray R/o Herpora, Chansal Tehsil and District Kulgam.
4. Ishtyaq Ahmad Bhat S/o Nazir Ahmad Bhat, R/o Y K Pora, Kazigund Tehsil and District Anantnag.
5. Hashim Rasheed, S/o Abdul Rasheed Dar, R/o Reshipora Zinapora, District Shopian..

(By Advocate : Mr. Gulzar Ahmad Bhat)

ORDER
BY HON'BLE MR. RAKESH SAGAR JAIN, MEMBER – J

1. The instant Review Application has been filed by Director, Skill Development Department J&K, Jammu against the order dated 06.10.2020 passed by this Tribunal in OA No. 62/674/2020 titled Muslim Jan and others v/s Union Territory of J&K and ors. The OA was disposed by this Tribunal vide order dated 06.10.2020 with following direction: -

“The applicants, Muslim Jan and four others, seek the following reliefs:-

(a) By issuance of order/direction, directing the respondents to allow the applicants to continue in the department in their respective positions.

(b) By issuance of order/direction, directing the respondent No.4 to allow the petitioners to continue in ITI Shopian pursuant their engagement and approvals issued by the department till they are brought on regular establishment.

(c) By issuance of order/direction, commanding upon the respondents not to disengage the applicants from the positions/posts engaged by the department pursuant to advt. notice dated 30.10.2019.

(d) Further such other appropriate relief which have not specially prayed herein may also be passed in favour of the applicant/petitioner and against the respondents”.

2. During the course of arguments, it was submitted by learned counsel for the applicants that he would be satisfied if the O.A is disposed of by directing the respondents to allow the applicants to continue as Guest Instructors at ITI Shopian till regular selection is made and services of the applicants should not be substituted by way

of any other ad-hoc/ temporary/ contractual appointee. In fact, applicants have no grievance in case the respondents proceed with the regular selection process in which the applicants would be able to participate.

3. Heard and considered the arguments of learned counsel for the applicants and Shri Amit Gupta, learned counsel for the respondents and gone through the material on record.

4. In view of the arguments of counsel for the parties, O.A is disposed of with the following directions:

“(i). The respondents shall stand prohibited from substituting the services of the applicants by way of another set of contractual arrangements, provided their services had been satisfactory and if there is work available in the trade for which applicants were engaged.

(ii). Respondents shall be at liberty to initiate the regular selection process in which the applicants would be permitted to participate, provided they fulfil the eligibility condition, if any.

5. It is made clear that we have not entered into the merit of the case.

6. In view of the above direction, the OA is disposed of. No costs.”

2. We have considered the averments of the review application and gone through the material on record to see whether a case for review of the order is made out or not.

3. It is settled law that review jurisdiction is available only on the grounds prescribed under Order XLVII Rule 1 of the Code of Civil Procedure, which contains only three grounds –

(i) mistake or error apparent on the face of record;

- (ii) discovery of new and important matter or evidence, which, even after exercise of due diligence, was not within the knowledge of the review petitioner or could not be produced by him at the time when the order sought to be reviewed was passed; and
- (iii) for any other sufficient reason.

4. The law governing the scope of review has been very succinctly laid down by the Hon'ble Apex Court in:

- I. *Ajit Kumar Rath v. State of Orissa and others*, (1999) 9 SCC 596, a review cannot be claimed or asked for merely for a fresh hearing, or arguments, or correction of an erroneous view taken earlier. That is to say, the power of review can be exercised only for correction of a patent error of law or fact which stares in the face without any elaborate argument being needed for establishing it. Any other attempt, except an attempt to correct an apparent error, or an attempt not based on any ground set out in Order 47 of the Code of Civil Procedure, would amount to an abuse of the liberty given to the Tribunal under the Act to review its judgment.
- II. *Union of India v. Tarit Ranjan Das*, 2004 SCC (L&S) 160, the scope for review is rather limited, and it is not permissible for the forum hearing the review application to act as an appellate court in respect of the original order, by a fresh order and rehearing the matter to facilitate a change of opinion on merits.
- III. *Inder Chand Jain(Dead) Through Lrs, Vs.Motilal (Dead) Through Lrs*. Reported in (2009) 14 SCC 663, 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 or pronounced, it should not be altered. It is also trite that exercise of inherent jurisdiction is not invoked for reviewing any order.

Review is not appeal in disguise in Lily Thomas Vs. Union of India. 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.

5. Keeping in mind the principles laid down by the Hon'ble Apex Court in the above decisions, we have considered the claim of the review petitioner to find out whether a case has been made out for review of the order dated 06.10.2020 whereby O.A. No. 062/674/2020 titled Muslim Jan and ors v/s Union Territory of J&K and ors was disposed.

6. We have gone through the pleadings and the present R.A. It has been averred in application by the applicants-respondents that the selection list has been recommended for the next session of 2020-2021 and that the respondents misled the Tribunal since as on 06.10.2020, they were not working as Guest Faculty as mentioned in the writ petition and by concealment of material facts and mis-representation, the respondents succeeded in obtaining the order under review. That the error apparent on the face of record occurred due to communication gap and as the physical hearing is prohibited.

7. It is a settled law that a review is by no means an appeal in disguise whereby an erroneous decision is reheard and

corrected, but lies only for patent error. The appreciation of evidence/ materials on record, being fully within the domain of the appellate court, cannot be permitted to be advanced in the review petition. In a review petition, it is not open to the Tribunal to re-appreciate the evidence/materials and reach a different conclusion, even if that is possible. Conclusion arrived at on appreciation of evidence/materials and contentions of the parties, which were available on record, cannot be assailed in a review petition, unless it is shown that there is an error apparent on the face of the record or for some reason akin thereto. The applicant has not shown any material error, manifest on the face of the order under review dated 06.10.2020 which undermines its soundness, or results in miscarriage of justice. If the applicant is not satisfied with the order passed by this Tribunal, remedy lies elsewhere. The scope of review is very limited. It is not permissible for the Tribunal to act as an appellate court.

8. What cannot possibly be disputed here is, that it is now well settled principle of law, that the earlier order can only be reviewed if the case squarely falls within the legal ambit of review and not otherwise. Order 47 Rule 1 CPC read with Section 22(3)(f) of the Administrative Tribunals Act, 1985 regulates the provisions of review of the orders. It is now well settled principle of law that the scope for review is rather limited and it is not permissible for the forum hearing the review application to act as an Appellate Authority in respect of the original order by a fresh and re-hearing of the matter to facilitate a change of opinion on merits. The reliance in this regard can be placed on the judgments of the Hon'ble Supreme Court in cases of **Parsion Devi and Others vs. Sumitri Devi and Others (1997) 8 SCC 715**, **Union of India Vs. Tarit Ranjan Das (2003) 11 SCC 658** and **Gopal Singh Vs. State Cadre Forest Officers' Association & Others (2007) 9 SCC 369**.

9. Through this review application, the review-applicant wants to re-open the entire issue afresh which is not permissible in review. Review is permissible if there is an error of procedure apparent on the face of the record. The order was passed after hearing both the parties and we find no error apparent on the face of record.

10. Once an order has been passed by this Tribunal, a review thereof must be subject to the rules of the game and cannot be lightly entertained. A review of a judgment is a serious step and resort to it is proper only where a glaring omission or patent mistake or grave error has crept in earlier by judicial fallibility. A mere repetition of old and over-ruled arguments, a second trip over covered ground or minor mistakes of inconsequential import are obviously insufficient, as held by the Hon'ble Supreme Court in *Sow Chandra Kanta And Another vs Sheik Habib*, [AIR 1975 SC 1500].

11. In the light of what has been discussed above, we do not find that the review application is covered by the aforementioned grounds to justify a review of the order dated 06.10.2020. We do not find any valid ground to interfere. Thus, the review application is dismissed. No order as to costs.

(PRADEEP KUMAR)
MEMBER (A)

(RAKESH SAGAR JAIN)
MEMBER (J)

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