

Rozi Begum Vs State Of West Bengal & Ors

Court: Calcutta High Court (Appellate Side)

Date of Decision: Jan. 15, 2025

Acts Referred: Constitution of India, 1950 " Article 137, 145, 226
 Code of Civil Procedure, 1908 "Order 47 Rule 1

Hon'ble Judges: Rajarshi Bharadwaj, J

Bench: Single Bench

Advocate: Moniruzzaman, Prosenjit Mukherjee, Babita Pramanik

Final Decision: Dismissed

Judgement

Rajarshi Bharadwaj, J

1. The present review petition filed by the petitioner, Smt. Rozi Begum, seeking to review the order dated 24.03.2017, wherein this Hon'ble Court

dismissed the petitioner's writ petition challenging the termination of her services as a teacher (Sahayika) at Dakshin Nagar Sishu Siksha Kendra

(SSK).

2. The Dakshin Nagar SSK was established in 2004 under the supervision of Khargram Panchayat Samity. One Rijia Begum, Smt. Motahara Begum,

and Bela Dutta were engaged as teachers (Sahayikas). One Bela Dutta's service was terminated in 2007 and subsequently, the petitioner was

engaged on 23.07.2009 through a resolution passed by the new managing committee. However, her service was terminated by an impugned order

dated 29.10.2015 issued by the Mission Director on the grounds that her engagement was not approved, leading to the filing of the original writ

petition.

3. The petitioner contended that her appointment was approved through a resolution dated 27.07.2015 by Khargram Panchayat Samity. Further, an

order dated 24.08.2015 issued by the Additional District Magistrate, Murshidabad, had directed her transfer to a nearby SSK, indicating the approval

of her service. The petitioner seeks a review of this decision, citing an error apparent on the face of the record.

4. The petitioner highlights the dismissal order failed to consider material records, specifically the resolution dated 27.07.2015, wherein the competent

authority approved the petitioner's appointment. The order under review erroneously concluded that the petitioner's engagement was not

approved, despite evidence to the contrary in the form of the Additional District Magistrate's order dated 24.08.2015.

5. The submissions of Respondent No. 15 in the writ petition emphasize that the petitioner was illegally appointed without adhering to prescribed

guidelines, including prior approval from the Panchayat Samity and proper advertisement of the position. The managing committee that facilitated her

appointment was per se declared illegal and the petitioner's engagement was deemed invalid due to procedural violations and misappropriation of

funds. The petitioner failed to demonstrate any legal right to her appointment.

The respondent argues that the petitioner's review application lacks merit as it does not meet the grounds under Order 47 Rule 1 CPC, such as

discovery of new evidence or apparent errors on record. The submissions further assert that the petitioner's claims are intended to delay the

refund of misappropriated funds and that the Mission Director's decision to terminate her appointment was just and within jurisdiction.

Consequently, Respondent No. 15 seeks the dismissal of the review application with exemplary costs, as it does not meet the legal thresholds for

reconsideration.

6. In the matter of S. Madhusudhan Reddy vs. V Arayana Reddy and Others reported in 2022 SCC OnLine SC 103, 4 Hon'ble Supreme

Court has summarized the principles for exercising of review jurisdiction as under:

"24. After discussing a series of decisions on review jurisdiction in Kamlesh Verma v. Mayawati, this Court observed that review proceedings have to be

strictly confined to the scope and ambit of Order XLVII Rule 1, CPC. As long as the point sought to be raised in the review application has already been dealt

with and answered, parties are not entitled to challenge the impugned judgment only because an alternative view is possible. The principles for exercising review

jurisdiction were succinctly summarized in the captioned case as below:

20. Thus, in view of the above, the following grounds of review are maintainable as stipulated by the statute:

20.1. When the review will be maintainable:

(i) Discovery of new and important matter or evidence which, after the exercise of due diligence, was not within knowledge of the petitioner or could not be

produced by him;

(ii) Mistake or error apparent on the face of the record;

(iii) Any other sufficient reason.

The words "any other sufficient reason" has been interpreted in Chajju Ram v. Neki, and approved by this Court in Moran Mar Basselios Catholicos v. Most

Rev. Mar Poulouse Athanasius to mean “a reason sufficient on grounds at least analogous to those specified in the rule”. The same principles have been

reiterated in *Union of India v. Sandur Manganese & Iron Ores Ltd.*

20.2. When the review will not be maintainable:

(i) A repetition of old and overruled argument is not enough to reopen concluded adjudications.

(ii) Minor mistakes of inconsequential import.

(iii) Review proceedings cannot be equated with the original hearing of the case.

(iv) Review is not maintainable unless the material error, manifest on the face of the order, undermines its soundness or results in miscarriage of justice.

(v) A review is by no means an appeal in disguise whereby an erroneous decision is re-heard and corrected but lies only for patent error.

(vi) The mere possibility of two views on the subject cannot be a ground for review.

(vii) The error apparent on the face of the record should not be an error which has to be fished out and searched.

(viii) The appreciation of evidence on record is fully within the domain of the appellate court, it cannot be permitted to be advanced in the review petition.

(ix) Review is not maintainable when the same relief sought at the time of arguing the main matter had been negated.

7. Earlier also the Hon'ble Supreme Court in the matter of *Northern India Caterers (India) Ltd. v. Lt. Governor of Delhi* reported in 1980

(2) SCC 167 had held as under:

“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 a fresh decision

of the case. The normal principle is that 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: *Sajjan Singh v. State of Rajasthan*. For instance, if the attention of the Court is not drawn to a

material statutory provision during the original hearing, the Court will review its judgment: *G.L. Gupta v. D.N. Mehta*. The Court may also reopen its judgment if

a manifest wrong has been done and it is necessary to pass an order to do full and effective justice: *O.N. Mohindroo v. Distt. Judge, Delhi*. Power to review its

judgments has been conferred on the Supreme Court by Article 137 of the Constitution, and that power is subject to the provisions of any law made by Parliament

or the rules made under Article 145. In a civil proceeding, an application for review is entertained only on a ground mentioned in Order 47 Rule 1 of the Code of

Civil Procedure, and in a criminal proceeding on the ground of an error apparent on the face of the record (Order 40 Rule 1, Supreme Court Rules, 1966). But

whatever the nature of the proceeding, 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": Sow Chandra Kante v. Sheikh Habib.

8. The Supreme Court in Aribam Tuleswar Sharma v. Aribam Pishak Sharma as reported in (1979) 4 SCC 389 speaking through Chinnappa

Reddy, J. has made the following pertinent observations:

"It is true there is nothing in Article 226 of the Constitution to preclude the 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 power which may

enable an appellate court to correct all manner of errors committed by the subordinate court.

9. Having regard to the aforesaid fact, this Court finds that there is no dispute to the said proposition but for seeking review, petitioner is required to

show error apparent on the face of record which he has failed in the present case. The grounds raised by the petitioner for review may be grounds

available in appeal, but could not furnish any ground to enter into a limited field of review. Therefore, as there is no apparent error on the face of the

record, no ground for review is made. Hence, the review petition and connected applications are dismissed.

10. There shall be no order as to costs.

11. Urgent Photostat certified copies of this judgment, if applied for, be supplied to the parties upon fulfilment of requisite formalities.