

**(2024) 12 JH CK 0107**

**Jharkhand High Court**

**Case No:** Civil Review Nos.42, 43, 100, 101 Of 2023

Manoj Kumar (Personnel  
No.4796)

APPELLANT

Vs

Steel Authority of India Limited  
(SAIL)

RESPONDENT

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**Date of Decision:** Dec. 19, 2024

**Acts Referred:**

- Constitution of India, 1950 - Article 226
- Code of Civil Procedure, 1908 - Section 114, Order 47 Rule 1
- Administrative Tribunals Act 1985 - Section 14

**Hon'ble Judges:** Sujit Narayan Prasad, J; Subhash Chand, J

**Bench:** Division Bench

**Advocate:** Anil Kumar Sinha, Indrajit Sinha, Ajay Kumar Sah

**Final Decision:** Disposed Of

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### **Judgement**

Sujit Narayan Prasad, J

1. The Civil Review No.42 of 2023 and Civil Review No.43 of 2023 have been filed on behalf of the Steel Authority of India Limited (in short, SAIL), the respondent made in W.P.(S) No.1720 of 2017 and W.P.(S) No. 2386 of 2017 and the

Civil Review No.100 of 2023 and Civil Review No.101 of 2023 have been filed on behalf of the writ petitioners i.e. the employees concern in the said writ petitions.

2. The jurisdiction conferred to this Court under Article 226 of the Constitution of India has been invoked for review of the order dated 10.04.2023 to the extent that the direction has been passed by the writ Court in W.P(S) No.1720 of 2017

with W.P.(S) No. 2386 of 2017 whereby and whereunder the petitioners-employees, who have challenged the order passed by the Central Administrative Tribunal dated 03.01.2017 passed in O.A No.51/52/2015 and the order dated 07.04.2017

passed in O.A/051/00053/2015, have been held to be entitled for the post of Assistant Manager (Mining) of the non-executive cadre, on the ground that there is no post of Assistant Manager (Mining) of the non-executive cadre in the establishment of the respondent-SAIL.

#### Factual Matrix

3. The brief facts of the case as per the pleading made in the writ petitions have also been incorporated in the present review petitions which need to be referred to herein as under:

4. It is the case of the writ petitioners that the applicants/writ petitioners, who were initially appointed against the substantive post of Overman/Mining Supervisor, have been subsequently appointed/authorized to work as Assistant Managers

(Mining) in Chasnalla & Jitpur Colliery of Steel Authority of India (SAIL). The appointment/authorization of the applicants as Assistant Managers (Mining) in the said colliery was done pursuant to their having acquired higher

qualifications/certifications for management of coal mines, after passing the requisite examination conducted by the competent Board of Mining Examinations.

5. The applicants/writ petitioners claim that their appointment/ authorization as Assistant Managers (Mining) was due to the shortage of personnel, with requisite qualifications, for functioning as Assistant Managers (Mining) in the Jitpur

Colliery. In terms of the Coal Mines Regulations, 1957, framed under the Coal Mines Act, 1952, a specified number of employees/personnel are required to be appointed for mining operation. The number of personnel to be appointed at

different levels in the mines is primarily co-related with the average out-put of the said mines. As such, the appointment/authorization of the applicants as Assistant Managers (Mining) was done as per requirements under the said Coal Mines

Regulation, 1957. In other words, the applicants claim that their appointment/authorization as Assistant Manager (Mining) was "directly relatable to the production/output of coal in the mines of the respondents SAIL.

6. In spite of the fact that the applicants have been appointed to act as Assistant Managers (Mining) in terms of the Regulation, 1957, the respondents (SAIL) are not making payment of salary to the applicants vis-à-vis the post of Assistant

Manager (Mining) and they are being paid as per the pay scale and other allowances, attached to their substantive post of Overman. Further, the applicants claim that since they are duly qualified and are actually discharging their duties as

Assistant Manager (Mining), they are entitled to consideration for regular promotion to the executive cadre posts from their substantive post of Overman which is part of

the non-executive cadre. In order to secure such consideration, the applicants had submitted several representations, requesting for consideration of their promotion to the executive cadre.

Further, since the writ petitioners are performing their duty of the higher post of Assistant Manager, even though, they are holding the substantive post of Overman and, hence, they are also entitled to the benefit of regular promotion to the higher post of the Assistant Manager.

7. Since the grievances of the said employees had not been addressed by the respondent SAIL, therefore, the said employees had preferred an application before the learned Tribunal.

8. In the backdrop of the aforesaid facts the learned Tribunal has called upon the respondent SAIL, wherein, the plea was taken in the written statement that both the reliefs cannot be granted in favour of the writ petitioners/applicants, since, the writ petitioners are claiming the pay scale attached to the post of Assistant Manager under the Executive Cadre.

Before the Tribunal, it has further been contended that the applicants/employees are also claiming to have their regular promotion to the post of Assistant Manager in the Executive Cadre.

9. It was submitted that the applicants are holding the substantive post of Overman which is the post under the non-executive cadre and that also having the post of Assistant Manager under the non-executive cadre and as such, there is no question to seek parity in pay scale of the employees working as Overman and discharging their duty to the post of Assistant Manager under the non-executive cadre who have the pay scale of Assistant Manager in the executive cadre.

10. It has been submitted on behalf of the SAIL that since the mode of recruitment for the post of Assistant Manager under the non-executive cadre and the executive cadre both are different and having different qualifications and the nature of work and hence, there is no question of applicability of the principle of "equal pay for equal work".

11. The learned Tribunal after considering their submissions has dismissed the original applications considering it to be misconceived, against which, the writ petitions being W.P.(S) No.1720 of 2017 and W.P.(S) No. 2386 of 2017 have been filed.

12. The writ Court while taking into consideration, the submission made on behalf of Mr. Sinha, learned counsel appearing for the respondent-SAIL that, since, the works are being taken from one or the other writ petitioners of the post of

Assistant Manager (Mining) of the non-executive cadre and as such, they will be entitled for the pay scale attached to the post of Assistant Manager (Mining) of the non-executive cadre, has held that the writ petitioners are entitled for the pay scale attached to the post of Assistant Manager (Mining) of the non-executive cadre from the date of asking them to discharge their duty on the said post till the date of discharge of their duty on the said post.

13. Review of the aforesaid order has been sought for in these review petitions.

14. It is evident from factual aspects of the case that the fact which is not in dispute in the case is that the employees have been appointed in the substantive post of overman. They have been considered to act as an Assistant Manager, based upon the decision taken by the Head of Department dated 15.07.2014 (Annexure-13 to the writ petition) and in pursuant thereto the writ petitioners have been appointed as Assistant Manager at Chasnalla Colliery. They have worked to the post of Assistant Manager and, as such, they have made their claim for disbursement of the arrears of difference of salary attached to the post of Assistant Manager. The same has not been decided and, as such, they have approached to the

Central Administrative Tribunal in view of the provision of section 14 of Administrative Tribunals Act 1985.

15. The Tribunal has rejected the claim of the petitioners against which the writ petitions have been filed under Article 226 of the Constitution of India being W.P(S) No.1720 of 2017 and W.P(S) No. 2386 of 2017.

16. The matter was heard by the Division Bench of this Court and in course of hearing the learned counsel appearing for the employees have conceded that if the employees concerned will be paid the salary attached to the post of Assistant Manager, then the prayer for their promotion to the post of Assistant Manager will not be pressed.

17. The aforesaid concession has been accepted by the learned counsel appearing for the SAIL represented by Mr. Indrajit Sinha, the learned counsel.

18. This Court while recording the concession of the learned counsel for the parties had disposed of the aforesaid writ petitions and accordingly directed the SAIL-the appointing authority to disburse the salary to the writ petitioners for the post of Assistant Manager under non-executive cadre.

19. The review petitions have been filed, four in number, two have been filed on behalf of the writ petitioners/employees concern being Civil Review No.100 of 2023 and Civil Review No.101 of 2023 and the other two have been filed on

behalf of the respondent SAIL being Civil Review No.42 of 2023 and Civil Review No.43 of 2023.

Submissions of the learned counsel for the review petitioner-SAIL

20. The prayers have been made on behalf of the review petitioner-SAIL that since the post of Assistant Manager (Mining) in the non-executive cadre is not available in the establishment and, as such, no such pay can be granted in favour of the writ petitioners.

21. It has further been submitted that other additional allowances as has been decided to be given by virtue of the policy decision, the same will only be disbursed in favour of the writ petitioners, therefore, the order passed by the Division

Bench of this Court to the extent that the writ petitioners are entitled to get the pay-scale of Assistant Manager (Mining) in non-executive cadre needs to be reviewed by holding the writ petitioners entitled for the additional allowances.

LearnedÂ counselÂ appearingÂ forÂ theÂ writ petitioners/employee/review petitioners

22. While on the other hand, the learned counsel appearing for the writ petitioners/review petitioners has submitted that the modification is required at paragraph no.16 wherein the Division Bench of this Court has passed an order holding the

writ petitioners entitled for the pay scale attached to the post of Assistant Manager (Mining) under the non-executive cadre.

23. It has been contended by raising the ground that if the post of Assistant Manager (Mining) is not available in the cadre structure under the non-executive cadre, hence, the modification by way of review of the direction passed by the

Division Bench of this Court in paragraph-16 is required modifying the same by holding the writ petitioners entitled to the pay-scale attached to the post of Assistant Manager (Mining) which is available in the executive cadre and to that extent

only the present review petitions being Civil Review Nos. 100 of 2023 and 101 of 2023 have been filed.

Response of the learned counsel for the review petitioner-SAIL

24. The learned counsel appearing for the SAIL has submitted that when there is no cadre structure of post of Assistant Manager (Mining) in the non-executive cadre, then the employees concerned who have been asked to discharge their

duty by an authority as Assistant Manager, depending upon the urgency of the work, cannot be held to be entitled for the pay-scale attached to the post of

Assistant Manager (Mining) non-executive cadre, rather they are only entitled to get the additional allowances. But the aforesaid aspect of the matter although has not been raised at the time of the argument advanced in the writ proceedings and, hence, the aforesaid review petitions being Civil Review No. 42 of 2023 and Civil Review No. 43 of 2023 have been filed.

Response of the learned counsel appearing for the writ petitioners/employee/review petitioners

25. Mr. Anil Kumar Sinha, the learned counsel for the writ petitioners/review petitioners has submitted that it is incorrect on the part of the SAIL to take the ground that merely because the post of Assistant Manager (Mining) in the non-executive cadre is not available, it does not mean that even though the work has been taken from the writ petitioners on the post of Assistant Manager (Mining) non-executive cadre by virtue of the decision taken by the Apex Body of the SAIL, hence, they are entitled to have the pay-scale of the post of Assistant Manager (Mining) irrespective of the fact that such cadre post is not available in non-executive cadre and if such post is available in the executive cadre, then the petitioners will be entitled to get the pay-scale attached to the post of Assistant Manager (Mining) executive cadre. Therefore, these present review petitions have been filed.

26. It has been contended that the writ petitioners of W.P(S) No.2386 of 2017 have preferred to challenge the order passed by this before the Honâ€™ble Apex Court being Special Leave Petition (Civil) Diary No.(s) 19068 of 2023, but the same has been withdrawn with a liberty to file a review of the aforesaid aspect of the matter and, therefore, the present review petitions being Civil Review No.101 of 2023 has been filed by the writ petitioners.

Analysis

27. We have heard the learned counsel for the parties and gone through the pleadings made in the writ petitions as also the review petitions.

28. This Court before appreciation of the arguments advanced on behalf of the parties with respect to the issue as to whether the power of review can be exercised in the factual background of the present case needs to be referred the underlying principle to invoke the power or review.

29. The Honâ€™ble Apex Court in the case Moran Mar Basselios Catholicos and Anr. vs. Most Rev. Mar Poulose Athanasius and Ors., [AIR 1954 SC 526], particularly at paragraph-32 has observed as under:

32. Before going into the merits of the case it is as well to bear in mind the scope of the application for review which has given rise to the present appeal. It is needless to emphasize that the scope of an application for review is much more restricted than that of

an appeal. Under the provisions in the Travancore Code of Civil Procedure which is similar in terms to Order XL VII, Rule I of our Code of Civil Procedure, 1908, the Court of review has only a limited jurisdiction circumscribed by the definitive limits fixed by the

language used therein. It may allow a review on three specified grounds, namely (i) discovery of new and important matter or evidence which, after the exercise of due diligence, was not within the applicant's knowledge or could not be produced by him at

the time when the decree was passed,

(ii) mistake or error apparent on the face of the record and (iii) for any other sufficient reason.

30. Likewise, in the case of Col. Avatar Singh Sekhon Vrs. Union of India (1980) Supp. SCC 562, the Hon'ble Apex Court observed that a review of an earlier order cannot be done unless the court is satisfied that the material error which

is manifest on the face of the order, would result in miscarriage of justice or undermine its soundness. The observations made are as under:

12. A review is not a routine procedure. Here we resolved to hear Shri Kapil at length to remove any feeling that the party has been hurt without being heard. But we cannot review our earlier order unless satisfied that material error, manifest on the face of

the order, undermines its soundness or results in miscarriage of justice. In Sow Chandra Kante v. Sheikh Habib 1975 1 SCC 674 this Court observed:

"A review of a judgment is a serious step and reluctant resort to it is proper only where a glaring omission or patent mistake or like grave error has crept in earlier by judicial fallibility. The present stage is not a virgin ground but review of an earlier

order which has the normal feature of finality."

31. Further, the Hon'ble Apex Court in the case of Kamlesh Verma v. Mayawati, reported in (2013) 8 SCC 320 has 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 as under:

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 Athanasio* 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.

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32. It is evident from the aforesaid judgments that the power of review is to be exercised if there is any error occurred on the face of the order or the factual aspect could not have been brought to the notice of this Court in spite of the due diligence having been taken in the matter of making available the factual aspect of the relevant documents.

33. The position of law is well settled, as would appear from the reference of the judgment made hereinabove that the review of the judgment can only be made if the new fact has come which could not have been brought to the notice of the Court in spite of the due diligence, as has been held by the Honâ€™ble Apex Court in *Moran Mar Basselios Catholicos and Anr. v. Most Rev. Mar Poulouse* (supra).

34. It is evident that while power of review may be inherent in the High Court to review its own order passed in a writ petition, the same has to be exercised on well-recognised and established grounds on which judicial orders are reviewed.

For example, the power may be exercised on the discovery of some new and important matter or evidence which was not within the knowledge of the parties seeking review despite due exercise of diligence when the order was made.

35. Review can also be sought when the order discloses some error apparent on the face of record or on grounds analogous thereto. These are all grounds which find mention in various judicial pronouncements right from the earliest time as well as in the Rules of Order 47 of the Civil Procedure

36. 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.

37. 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’. There is a clear distinction between an erroneous decision and an error apparent on the face of the record. While the first can be corrected by the higher forum, the latter only can be corrected by exercise

of the review jurisdiction. A review petition has a limited purpose and cannot be allowed to be "an appeal in disguise".

38. In the very recent judgment in the case of Sanjay Kumar Agarwal Vrs. State Tax Officer (1) & Anr., reported in (2024) 2 SCC 362, the Hon'ble Apex Court while interpreting the provision of Order 47 Rule 1 of the C.P.C. the

proposition has been laid down to entertain the review, as has been held at paragraph 16.1 to 16.7 which reads as under:-

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.

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39. This Court is now proceeding to examine the factual aspect as to whether the factual aspect as available in the present case and the ground which has been agitated is available to exercise the power of review.

40. Before proceeding further, it needs to refer herein that the issue which is the subject matter of the present review petitions and at the time of the pendency of the writ petition being W.P(S) No. 2386 of 2017 (Arvind Kumar Singh and Anr.

v. Steel Authority of India Ltd. & Ors.) the SAIL has preferred Special Leave Petition being Special Leave to Appeal (C) No.28656 of 2018 against the order dated 23.08.2018 whereby and whereunder this Court has passed an order when it

has been informed that a High Power Committee has been constituted by the Executive Director, Colliery Division for the purpose of taking final decision and,

hence, a direction was passed to take a final decision within eight weeks.

41. The Hon<sup>ble</sup> Apex Court has disposed of the said Special Leave Petition by directing the High Court to take a final view in the matter and, in the meantime, as per the general directions of the SAIL, the respondents (writ petitioners)

will be entitled to draw the amounts as per the recommendation of the High Power Committee, i.e., honorarium @ 3% of basic pay per month from the date of authorization from retrospective effect to the persons authorized to the post as

Assistant Manager/Under Manager as approved on 09.07.2018.

42. For the ready reference, the aforesaid order of the Hon<sup>ble</sup> Apex Court is being quoted hereinbelow:

“Upon hearing the counsel the Court made the following

ORDER

On hearing learned counsel for parties it transpires that the writ petition has been kept pending in the High Court ostensibly on the ground of pendency of the present special leave petition(s) while all that this Court had directed was that the impugned order was

stayed which have made some interim directions.

Learned counsel for the petitioners submits that insofar as the implementation of the High Power Committee is concerned, payments in terms thereof are being made and can be permitted to be drawn as directed. This is stated to be a general order for the entire

organization.

We are thus of the view that the present matter can be disposed of by directing the High Court to take a final view on the matter and in the meantime, as per the general directions of the petitioner, the respondents will be entitled to draw the amounts as per the

recommendation of the High Power Committee, i.e., honorarium @ 3% of basic pay per month from the date of authorization from retrospective effect to the persons authorized to the post as Assistant Manager/Under Manager as approved on 09.07.2018.

The remaining direction contained in the impugned order need not be implemented till a final view is taken in the matter.

The special leave petitions accordingly stand disposed of.

Pending applications stand disposed of.”

43. The writ petition was finally taken-up and on the basis of the concession of the learned counsel appearing for the parties, the order was passed.

44. The learned counsel for the writ petitioners has consented to forego the claim of their promotion as Assistant Manager (Mining) by virtue of rendering the service in the capacity of Assistant Manager, however, they have claimed the

enhanced salary for the period for which they have discharged their duty as Assistant Manager as per the office order dated 15.07.2014.

45. The same has been accepted by the learned counsel appearing for the SAIL. The Order has been passed with consent as would be evident from the concession so recorded of the learned counsel appearing for the parties in various

paragraphs of the order dated 10.04.2023 passed in W.P(S) No.1720 of 2017 with W.P.(S) No. 2386 of 2017, which are being referred hereinbelow:

“5. -----However, he has submitted that since the writ petitioners are working as Assistant Manager by way of authorization given by the Agent of the project which is in the non-executive cadre, as such, they at best be held entitle for

the pay scale attached to the post of Assistant Manager of the non-executive cadre.

6. In response, Mr. Gadodia, learned counsel appearing for the writ petitioners has submitted that by conceding to the argument advanced on behalf of the respondent SAIL that the pay scale attached to the post of Assistant Manager of the non-executive cadre

can only be paid to the writ petitioners and the submission has been made that the same if paid to the writ petitioners, there will be no issue.-----

9. Since, Mr. Gadodia, learned counsel appearing for the writ petitioners has confined his prayer only for disbursement of pay scale attached to the post of Assistant Manager (Mining), therefore, the issue of entitlement of the writ petitioners of the pay scale

attached to the post of Assistant Manager (Mining) is only required to be considered and is being considered hereinafter.

10. The submission has been made on behalf of the respondent-SAIL, so far as the entitlement of the pay scale attached to the post of Assistant Manager (Mining) is concerned, by advancing the argument, that the writ petitioners can only be held entitle for the

pay scale attached to the post of Assistant Manager (Mining) of the non-executive cadre, such contention has been made by putting reliance upon the judgments rendered by the Hon<sup>ble</sup> Apex Court in the case of State of Punjab Vrs. B.K. Dhir, [(2017) 9

SCC 337], State of Punjab and Anr. Vrs. Dharam Pal, [(2017) 9 SCC 395], P. Grover (Smt) Vrs. State of Haryana and Anr., [(1983) 4 SCC 291], Secretary-cum-Chief Engineer, Chandigarh Vrs. Hari Om Sharma, [(1998) 5 SCC 87] and A. Francis Vrs.

Management of Metropolitan Transport Corporation Limited, Tamil Nadu, [(2014) 13 SCC 283], wherein, the law has been laid down regarding disbursement of salary in course of discharging duty in the officiating capacity.

It has been held that if by virtue of the order passed by the competent authority, an employee in the lower hierarchy is being asked to discharge his duty of the higher post of higher responsibility, the pay scale attached to the post of the higher hierarchy is to be

admissible to the concerned employee.

It has been submitted on the basis of the aforesaid position of law that the writ petitioners at best can be entitled for the pay scale attached to the post of Assistant Manager (Mining) in the non-executive cadre.

14. This Court, on the basis of the discussion made hereinabove and taking into consideration the concession of the learned counsel for the parties, is of the view that the orders passed by the learned Tribunal are required to be quashed and set aside.

15. Accordingly, the order dated 03.01.2017 passed in O.A. No.51/52/2015 and order dated 07.04.2017 passed in OA/051/00053/2015 by the Central Administrative Tribunal, Patna Bench, Circuit Bench at Ranchi, are hereby quashed and set aside.

16. In consequence thereof, the writ petitioners are entitled for the pay scale attached to the post of Assistant Manager (Mining) of non-executive cadre.

17. The respondent-Steel Authority of India Limited, in consequence thereof, is directed to disburse the difference of arrears of salary attached to the post of Assistant Manager (Mining) of the non -executive cadre within the period of three months from the

date of receipt/production of copy of this order.

18. In the result, the instant writ petitions are allowed.

46. This Court by taking the note of the said concession at paragraph no.14 has proceeded to decide the claim as to whether the writ petitioners are entitled to get the salary attached to the post of Assistant Manager. This Court has considered

the judgment rendered by the Hon<sup>ble</sup> Apex Court in the case of State of Punjab Vrs. B.K. Dhir, [(2017) 9 SCC 337], State of Punjab and Anr. Vrs. Dharam Pal, [(2017) 9 SCC 395], P. Grover (Smt) Vrs. State of Haryana and

Anr., [(1983) 4 SCC 291], Secretary-cum-Chief Engineer, Chandigarh Vrs. Hari Om Sharma, [(1998) 5 SCC 87] and A. Francis Vrs. Management of Metropolitan Transport Corporation Limited, Tamil Nadu, [(2014) 13 SCC

283] wherein the law has been laid down that if one or the other employees in any establishment has been asked to discharge the duty on the higher post, then such employee will be entitled to get the pay-scale attached to the said post.

47. The reference of the said judgments has been made in respective paragraphs which have been taken note of by this Court while disposing of the writ petitions.

48. The Honâ€™ble Apex Court in the case of Arindam Chattopadhyay v. State of W.B., (2013) 4 SCC 152 the Honâ€™ble Apex Court at para-13 held as under:

â€œ13. Reverting to the facts of this case, we find that although the appellants were recruited as ACDPOs, the State Government transferred and posted them to work as CDPOs in ICDS Projects. If this would have been a stopgap arrangement for few months or

the appellants had been given additional charge of the posts of CDPO for a fixed period, they could not have legitimately claimed salary in the scale of the higher post i.e. CDPO. However, the fact of the matter is that as on the date of filing of the original

application before the Tribunal, the appellants had continuously worked as CDPOs for almost 4 years and as on the date of filing of the writ petition, they had worked on the higher post for about 6 years. By now, they have worked as CDPOs for almost 14 years

and discharged the duties of the higher post. It is neither the pleaded case of the respondents nor has any material been produced before this Court to show that the appellants have not been discharging the duties of the post of CDPO or the degree of their

responsibility is different from other CDPOs. Rather, they have tacitly admitted that the appellants are working as full-fledged CDPOs since July 1999. Therefore, there is no legal or other justification for denying them salary and allowances of the post of CDPO

on the pretext that they have not been promoted in accordance with the Rules. The convening of the Promotion Committee or taking other steps for filling up the post of CDPO by promotion is not in the control of the appellants. Therefore, they cannot be

penalised for the Government's failure to undertake the exercise of making regular promotionâ€

49. The law has also been laid down by the Hon'ble Apex Court in State of Punjab Vrs. B.K. Dhir, (supra), that when if an employee has been asked to discharge the duty to the higher post, then the salary attached to the higher post is not to be denied.

50. The Hon'ble Apex Court and while considering the issue, in State of Punjab and Another v. Dharam Pal (Supra), at paragraph 22 it has been held as under:

“22. In the instant case, the Rules do not prohibit grant of pay scale. The decision of the High Court granting the benefit gets support from the principles laid down in P. Grover [(1983) 4 SCC 291] and Hari Om Sharma [(1998) 5 SCC 87] . As far as the authority in A. Francis [(2014) 13 SCC 283] is concerned, we would like to observe that the said case has to rest on its own facts. We may clearly state that by an incorporation in the order or merely by giving an undertaking in all circumstances would not

debar an employee to claim the benefits of the officiating position. We are disposed to think that the controversy is covered by the ratio laid down in Hari Om Sharma [(1998) 5 SCC 87] and resultantly we hold that the view expressed by the High Court is

absolutely impeccable.”

51. In the aforesaid judgment the Hon'ble Apex Court, in view of the decision rendered in P.Grover (Smt) v. State of Haryana and Another [(1983) 4 SCC 291], Secretary-cum-Chief Engineer, Chandigarh v. Hari Om Sharma and Others

(Supra) and A. Francis v. Management of Metropolitan Transport Corporation Limited, Tamil Nadu (Supra) has been pleased to hold that the issue of eligibility to hold the post was not taken before the High Court and the appeal was disposed

of taking into consideration the fact that when the respondent had worked in the officiating post and has been granted the benefits by the High Court, he should be extended the said benefit by making an observation that had there been a

contest on the eligibility of the respondent, possibly the matter would have been different and taking note of the situation, the order passed by the Punjab and Haryana High Court has been declined to be interfered with.

52. Herein, it is admitted fact that the post of Assistant Manager (Mining) is not available in the non-executive cadre, rather it is available in the executive cadre. This Court has taken note of this fact while passing the order in the writ petitions

that; (i) if a decision was taken by the Head of Department that in order to fulfill the mandatory statutory obligation of Mining Act, 1952 and Coal Mines Regulations, 1957 statutorily qualified employees are authorized to act as an Assistant



and rewards to motivate them.

Sd/-

AGM (Engg.) & I/C (P&A)

C&J

Cc: GM (C&J), Chasnalla

Cc: GM (P&A),-Coll., Kolkata

Cc: AGM (Mining)/HOM, Chasnalla

Cc: Sr.Manager (Mining), Chasnalla.

Cc: Personal File.

53. The one or the other writ petitioners based upon the aforesaid policy decision have been appointed as Assistant Manager at Chasnalla Colliery. The writ petitioners have started discharging their duty to the post of Assistant Manager as per

the aforesaid policy decision dated 15.07.2014 as referred hereinabove which refers that the Company adheres to a laydown policy for selection of non-executive employee in the executive cadre through the Junior Officers, however, no such

endeavour has been taken at the level of the Head of Department. However, the writ petitioners are not claiming the post of the Assistant Manager as available in the executive cadre and, hence, we are not making any comment upon the

same in view of the instant review petitions, but the fact remains that they have been asked to discharge the duty as Assistant Manager by giving an expectation that they would be considered for selection in the executive cadre.

54. The writ Court on the aforesaid premise and based upon the principles laid down by the Honâ€™ble Apex Court in the case of â€™State of Punjab v. B.K. Dhirâ€™ (supra) and other cases as referred hereinabove has passed an order in

the context of the fact that the writ petitioners have been authorized to act as an Assistant Manager and as such they have been held to be entitled to the pay-scale attached to the post of Assistant Manager. However, while holding the writ

petitioners entitled for the post of Assistant Manager this Court has passed an order that the pay-scale is attached to the post of Assistant Manager (Mining) in the non-executive cadre. The aforesaid fact has come in the order as per the

submission made by Mr. Indrajit Sinha, the learned counsel appearing for the SAIL as would appear from paragraph-10 of the order dated 10.04.2023 passed in W.P(S) No.1720 of 2017 with W.P (S) No.2386 of 2017.

55. The learned counsel appearing for the respondent-SAIL has submitted that the post of Assistant Manager (Mining) is not available in the non-executive cadre. However, the concession so recorded of Mr. Indrajit Sinha, the learned counsel is with respect to the entitlement of pay-scale of the Assistant Manager (Mining) and since the post of Assistant Manager (Mining) is not available in non-executive cadre, hence, the respondent-SAIL admittedly has taken work on the post of the Assistant Manager (Mining) which is equivalent to the post of Assistant Manager (Mining) in the executive cadre since as would appear from the communication dated 15.07.2014 by which the decision has been taken to take the petitioners as Assistant Manager in the executive cadre which suggests that the work which has been taken from the petitioners in the capacity of Assistant Manager is equivalent to the post of Assistant Manager in the executive cadre and, therefore, the writ petitioners/employees will be entitled to the pay-scale as attached to the post of Assistant Manager (Mining) in the executive cadre, and, hence, concession has been made also to that effect by the learned counsel for the SAIL.

56. However, based upon the concession of Mr. Indrajit Sinha, the learned counsel the reference of the pay-scale attached to the post of Assistant Manager (Mining) non-executive cadre has been referred and on the basis of the same the order has been passed in paragraph-16 holding the writ petitioners entitled for the pay-scale attached to the post of Assistant Manager (Mining) in the non- executive cadre and the same appears to be an error in view of the fact that the petitioners have discharged their duty in officiating capacity as per policy decision and in that view of the matter and as per the decision taken by the respondent-SAIL, the petitioners cannot be held entitled only for the additional allowances.

57. But the fact remains that the petitioners have discharged their duty in officiating capacity to the higher post of Assistant Manager (Mining) as per the policy decision dated 15.07.2014 (Annexur-13 to the writ petitions) and that the moment they have been authorized in the expectation of formulation of the policy decision for inducting them in the executive cadre the discharge of duty to the higher post cannot be a question so far as the entitlement of the writ petitioners with respect to the salary attached to the post of Assistant Manager (Mining) in the executive cadre is concerned.

58. This Court after consideration of the order passed by the Division Bench of this Court in W.P(S) No.1720 of 2017 with W.P(S) No.2386 of 2017 since has passed the order on the basis of the concession recorded of the learned counsel

appearing for the SAIL, Mr. Indrajit Sinha, who had conceded regarding entitlement of the pay-scale of the writ petitioners of the post of Assistant Manager and since the post of Assistant Manager (Mining) is not available in the non-executive cadre, the same will be said to be of the executive cadre only.

59. The contention which has been raised on behalf of the learned counsel appearing for the SAIL that since the post of Assistant Manager is not available in the non-executive cadre and, as such, the writ petitioners cannot be held entitled for the pay-scale attached to the post of Assistant Manager (Mining), rather they are entitled to get only the additional allowances, but it is evident from the order dated 10.04.2023 the order has been passed on the concession of the learned

counsel appearing for the SAIL and, as such, it is not available for the learned counsel appearing for the SAIL to take the plea contrary to his concession so recorded based upon that the writ petitions have been filed holding the writ petitioners

entitled to get the pay-scale attached to the post of Assistant Manager (Mining) of non-executive cadre.

60. Here in the instant case, the order since has been passed on the basis of the concession of the learned counsel appearing for the SAIL and, as such, the new ground cannot be allowed to be agitated.

61. So far as the grounds taken on behalf of the writ petitioners are concerned, we on applying the principle as laid down by the Honâ€™ble Apex Court in the case of â€™State of Punjab v. B.K. Dhirâ€™ (supra) and considering the admitted

fact therein as has been admitted by the learned counsel appearing for the SAIL also that there is no post in the nature of Assistant Manager in the non-executive cadre, but the same has been taken note in paragraph no.16 of the order dated

10.04.2023 sought to be reviewed holding the writ petitioners entitled for the pay-scale attached to the post of Assistant Manager (Mining) of non-executive cadre is error apparent on the face of the record, reason being that from bare perusal

of the order sought to be reviewed the reference has been taken note based upon the pleadings and submission made on behalf of the parties that there is no post of Assistant Manager (Mining) in the non-executive cadre and that has also

been reflected in the decision dated 15.07.2014 (Annexure-13 to the writ petition) and, as such, this Court is of the view that paragraph no-16 of the order dated 10.04.2023 passed by the Division Bench of this Court in W.P(S) No1720 of 2017

with W.P(S) No.2386 of 2017 needs to be reviewed to the extent by holding that the writ petitioners are entitled to the pay-scale attached to the post of Assistant Manager (Mine) in the executive cadre.

62. Further, the law is well settled that a review petition, has a limited purpose and cannot be allowed to be "an appeal in disguise", as has been settled by the Hon<sup>ble</sup> Apex Court in the case of *Parsion Devi v. Sumitri Devi* (1997) 8

SCC 715, for ready reference the relevant paragraph of the aforesaid judgment is quoted as under:

"9. Under Order 47 Rule 1CPC 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 1CPC. In exercise of the jurisdiction under Order 47 Rule 1CPC 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".

63. Similarly, in *S. Murali Sundaram Versus Jothibai Kannan and Others* 2023 SCC OnLine SC 185 the Hon<sup>ble</sup> Apex Court observed as under:

15. While considering the aforesaid issue two decisions of this Court on Order 47 Rule 1 read with Section 114 CPC are required to be referred to? 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 CPC, 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 CPC 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.

(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*.â€

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64. Further, in *Sanjay Kumar Agarwal v. State Tax Officer*, (supra) the Honâ€™ble Apex Court at para 16.5 has observed that a review petition has a limited purpose and cannot be allowed to be â€œan appeal in disguiseâ€.

It is, thus, evident from the aforesaid proposition of law that the review cannot be filed in disguise of an appeal.

#### Conclusion

65. This Court considering the aforesaid facts and taking into consideration the scope to exercise the power of review, is of the view that whatever has been argued on behalf of the learned counsel for the review petitioner-SAIL is not falling

under the fold either of the error apparent on the face of the order or any document said to be not brought on record in spite of due diligence, hence, this Court is of the view that no ground is available to review the order dated 10.04.2023

passed by this Court in W.P.(S) No.1720 of 2017 with W.P.(S) No. 2386 of 2017.

66. This Court, in view of the aforesaid discussion, is of the view that the review petitions being Civil Review Nos.42 of 2023 and Civil Review No.43 of 2023 filed on behalf of the SAIL is concerned, the same deserves to be dismissed and, accordingly, both are dismissed.

67. So far as the review petitions being Civil Review No.100 of 2023 and Civil Review No.101 of 2023 filed on behalf of the employees is concerned, based upon the reason aforesaid, it needs to be allowed to the extent where the writ

petitioners have been held entitled for the pay-scale attached to the post of Assistant Manager (Mining) non-executive cadre is being reviewed holding the writ petitioners of writ petition being W.P.(S) No.1720 of 2017 and W.P.(S) No. 2386 of

2017 entitled for the pay-scale attached to the post of â€œAssistant Manager (Mining) executive cadreâ€.

68. Accordingly, all these civil reviews are disposed of in terms of the observations and directions as referred herein above.

69. Pending Interlocutory Application(s), if any, stands disposed of.