

IN THE HIGH COURT OF JHARKHAND AT RANCHI

Civil Review No. 107 of 2024

1. Md. Faiyaz Ahmad,

2. Santosh Kumar

3. Praveen Kumar Sharma,

4. Meena Chownriya,

5. Pritrani Lakra,

6. Shashi Shekhar,

7. Rakesh Kumar Mahatha,

8. Bipin Kishore Topno,

9. Shyamroy Ghosh,

10. Binit Kujur,

11. Deepak Kumar,

12. Sanjay Kumar Mandal,

13. Pawan Kumar Paswan,

14. Santosh Kumar,

15. Nimai Kumar Mahato,

16. Innocent Chore,

.....**Petitioners / Petitioners**

Versus

1. The State of Jharkhand,
2. Principal Secretary, Department of Home, Jail & Disaster Management, Government of Jharkhand,
3. Inspector General of Prison, Jharkhand,
4. Principal Secretary, Department of Finance, Government of Jharkhand,
5. Pharmacy Council of India,
6. Jharkhand State Pharmacy Council,

..... Respondents/ Respondents

7. Ashish Kumar,
8. Firoz Ahmad,
9. Umesh Kumar Yadav,

.....Petitioners/Proforma Respondent

**CORAM: HON'BLE MR. JUSTICE SUJIT NARAYAN PRASAD
HON'BLE MR. JUSTICE PRADEEP KUMAR SRIVASTAVA**

For the Petitioners : Mr. Indrajit Sinha, Advocate
Mr. Ajay Kumar Sah, Advocate
For the Respondent-State: Mr. Sahbaj Akhtar, AC to AAG-III

C.A.V on 18th March, 2025

Pronounced on 29/04/2025

Per, Sujit Narayan Prasad, J.

Prayer

1. The jurisdiction conferred to this Court under Article 226 of the Constitution of India has been invoked for review of the order dated 15.07.2024 passed in W.P(S) No.7247 of 2023, by which the prayer made on behalf of the petitioners to place them in the pay scale of

Rs.5200-20200/- in Grade Pay of Rs. 2800/- from the pay scale of Rs. 5200-20200/- in Grade Pay Rs.1900/- has been held not sustainable in the eyes of law.

Factual Matrix of the Case:

2. The brief facts of the case as pleaded in the instant review petition needs to refer herein which is being referred herein as under:
3. The petitioners averred that an advertisement being Advertisement no.01 of 2018 was published by the Jharkhand Staff Selection Commission inviting applications from eligible candidates for appointment on the post of various posts including Compounder and Pharmacist. As per the said advertisement, the pay scale of Compounder and Pharmacist was shown Rs.5200-20200/-, Grade Pay Rs.2800/- (Rs.29200-66600/-).
4. As per the said advertisement, essential qualification for the posts of Compounder and Pharmacist was Intermediate/10+2 (Science subject) with Diploma Course Pass or Matric Pass prior to 1994 with Diploma Course of Compounder/Pharmacist pass. It is also stated that the syllabus for appointment on the posts of Compounder and Pharmacist was also identical.
5. The specific case of these review petitioners is that they have been found eligible themselves applied for appointment on the post of Compounder and Pharmacist and on scrutiny admit cards were issued to the petitioners for appearing in the written examination, which was held on 2.12.2018.
6. The review petitioners appeared in the said examination and result was published on 8.2.2019 and the petitioners were declared

successful candidates.

7. After publication of the result, the date was fixed for document verification which was scheduled on 14.2.2019. After document verification, final result was published on 16.4.2019 and the petitioners were declared successful.
8. The respondent-Department, Home, Jail and Disaster Management, Government of Jharkhand, Ranchi vide notification as contained in Memo no.4743 dated 4.9.2019 amended Rule 16 (ii) of the Rules, 2016 and reduced the pay scale of Compounder to Rs.5200-20200/-, Grade Pay Rs.1900/- from the pay scale of Rs.5200-20200/-, Grade Pay Rs.2800/-.
9. On being declared successful and after document verification, the petitioners were appointed on the post Compounder, and they joined on the said post vide office order as contained in Memo no.1229 dated 1.6.2023 issued under the signature of the Inspector General of Prison, Jharkhand, Ranchi, the services of the petitioners were confirmed with effect from 22.10.2021.
10. Being aggrieved with Rule 16(ii) of the Rules, 2016 by which the pay scale of Compounder was reduced to Rs.5200-20200/-, Grade Pay Rs.1900/- from the pay scale of Rs.5200-20200/-, Grade Pay Rs.2800/- a writ petition was preferred by the writ petitioners/review petitioners.
11. Before the writ Court the ground has been taken that the pay scale of Compounder and Pharmacist is same and eligibility criteria, syllabus for the said posts are also identical as also the entire process for appointment on the said posts are also same.

12. Further, at the time of initiation of selection process, the grade pay of compounder was Rs.2800/- and the same was also advertised in the advertisement, but after declaration of final result i.e. on 16.4.2019, the respondent-State of Jharkhand by virtue of amended Rules, 2016 had reduced the pay scale of compounder from Grade Pay Rs.2800/- to Grade pay Rs.1900/- without any lawful reason.
13. Further ground has been taken that Pharmacist and Compounder discharging similar duties are at respective place of postings and for the same nature of work, lower grade pay for the Compounder has been fixed by the respondent-State of Jharkhand, which is arbitrary and violative of fundamental right to get equal pay for equal work.
14. The petitioners/review petitioners state that in similar situation, in neighbouring States i.e. State of Bihar and State of Orissa, the persons who were appointed against the post of Compounder/Pharmacist are getting the pay scale of Rs.5200-20200/-, Grade Pay Rs.2800/- and more.
15. The respondent-State has contended before the Writ Court that the advertisement was issued but the scale mentioned therein was reduced prior to joining of the petitioners, and as such, it was well within the knowledge of the petitioners that the pay scale was reduced from Rs.5200-20200/- (Grade Pay Rs.2800/-) to Rs.5200-20200/- (Grade Pay Rs.1900/-).
16. It has further been contended that the petitioners joined the post on the reduced scale of pay as such they cannot claim for a higher pay scale since before their joining the post, the decision was taken to reduce the scale of pay, hence, the prayer made by the petitioners

cannot be entertained.

17. The Division Bench taking in to consideration the aforesaid grounds have dismissed the writ petitions by observing that since the appointments of the petitioners have not been made in the scale of pay, i.e., Rs.5200-20200/- (Grade Pay Rs.2800/-), as such, the claim made in the petition cannot be sustained in the eyes of law.

18. Hence against the order dated 15.07.2024 the instant review petition had been preferred.

Submission of the learned counsel for the Review petitioners:

19. It has been submitted that in terms of the government order issued in the year 1987, the designation of all Compounders was changed to Pharmacist and onwards all Compounders have been considered as Pharmacist and all such benefits that the Pharmacist would receive would have to be passed on all those persons who are holding the post of Compounders.

20. It is submitted that the Compounders were redesigned as Pharmacist, and hence, the petitioners are entitled for the grade pay of Rs.2800/- which is being paid to the persons who were appointed on the post of Pharmacist.

21. It has been contended that the nature of the work performed by the petitioners and the nature of the work that of the Pharmacist are same and similar, and in such circumstance, the petitioners are also entitled for the grade pay of Rs.2800/-. It is stated herein that the petitioners also possess the certificate of Pharmacist issued by the competent authority i.e. Pharmacy Council of India.

22. Further, the change of designation of Compounder to Pharmacist is

also in consideration before the different High Courts and the Hon'ble Courts had considered and held that the post of Compounder is now re-designated as Pharmacist and the petitioners who were appointed against the Compounders were entitled for the benefits attached with Pharmacist.

23. It has been contended that since from the notification of the vacancy i.e. advertisement, the respondent had advertised that the Compounder and the Pharmacist will get the grade pay of Rs.2800/, meaning thereby, the respondent had all knowledge of post of Compounder was redesigned at Pharmacist by the competent authority i.e. Pharmacy Council of India, but, the respondent in the mid of the appointment that too after declaration of the final result and verification of the document by the Examination Authority had been pleased to amend the rules and reduce the grade pay from Rs.2800/- to Rs.1900/-, only with respect to Compounder, i.e. in derogation with the notification issued by the concerned department and the decisions of the Court of law.

Submission of the state respondent

24. While on the other hand, the State has vehemently opposed the prayer primarily on the ground that the consideration having been made by the learned writ Court as would be evident from the impugned order wherein the reason has been assigned that once the reduced pay scale has been accepted by the writ petitioners, it is not available for them to question the said pay scale. It has been contended that in any way the same cannot be a ground for review, since, the consideration is there and if the petitioners are at all agreed

then the recourse available to the them is to prefer the appeal before the appropriate Forum and not the review.

25. It is evident from record that the ground as was taken on behalf of the writ petitioners that the pursuant to the advertisement, the petitioners were selected and by the time they were appointed, the pay scale was reduced, therefore, in that advertisement whatever pay scale was available that should be paid to the petitioners and the reduction in the pay scale adversely will affect the service condition.
26. The respondents have taken a plea that such advertisement was issued but the pay scale mentioned therein was reduced prior to joining of the writ petitioner and, as such, it was well within the knowledge of the writ petitioner that the pay scale was reduced from Rs.5200-20200/- in Grade Pay of Rs. 2800/- to Rs. 5200-20200/- in Grade Pay Rs.1900/-.
27. It was further contended by the respondents that the petitioners joined the post on reduced scale of pay and now they cannot claim for a higher pay scale since before they joined their post, the decision was taken to reduce the scale of pay and, hence, the prayer made by the writ petitioners cannot be entertained.
28. The learned writ Court has heard the matter and declined to pass positive direction in favour of the writ petitioners on the ground that the petitioners have been selected in pursuance to the advertisement but not appointed on the given scale of pay and now the petitioners' claim that they should be granted benefit of pay admissible to them to Rs.5200-20200/- in Grade Pay of Rs. 2800/-.
29. The reason has been assigned by the learned writ Court that since

the appointments of the petitioners have not been made in the pay scale of Rs.5200-20200/- (Grade Pay of Rs. 2800/-), as such, the claim made in the writ petition was not sustainable and the said order was sought to be reviewed by filing the instant review petition.

Analysis

30. It is evident that the instant review petition primarily has been filed on the aforesaid ground in the backdrop of the fact that the Rule has been amended after the advertisement having been issued reducing the pay scale as was reflected in the advertisement and, as such, the amended Rule cannot be said to be effective with retrospective effect affecting the pay scale which was already been notified in pursuant to the advertisement.

31. While on the other hand, the State has vehemently opposed the prayer primarily on the ground that the consideration having been made by the learned writ Court as would be evident from the impugned order wherein the reason has been assigned that once the reduced pay scale has been accepted by the writ petitioners, it is not available for them to question the said pay scale. It has been contended that in any way the same cannot be a ground for review, since, the consideration is there and if the petitioners are at all agreed then the recourse available to them is to prefer the appeal before the appropriate Forum and not the review.

32. We have heard the learned counsels appearing for the parties and gone through the pleadings made in the review petition based upon the pleadings made in the writ petition.

33. The admitted fact therein that the advertisement was floated vide

Advertisement No.01/2018 for inviting applications from one or the other candidates for consideration of different posts. The petitioners are intending to be considered as Compounder and has made application. The advertisement contains the pay scale of Rs.5200-20200/- in Grade Pay of Rs. 2800/-. (Rs.29200-66600/-). The petitioners have been declared to be successful. The case of the petitioners has been recommended but before accepting such recommendation by the competent authority, the rule has been changed with respect to by reducing the pay scale pertaining to the service condition of one or the other candidates reducing it from the pay scale reflected in the advertisement.

34. The petitioners after joining to the post, had accepted the pay scale by accepting the joining on the said post on the basis of the reduced pay scale but subsequent thereto they have approached to this Court seeking to declare Sub-rule (ii) of the Jharkhand Para Medical Staff Cadre (Appointment, Promotion and other Service Conditions), 2016 as ultra vires, wherein, the pay scale of the Compounder was reduced from Rs.5200-20200/- in Grade Pay of Rs. 2800/- to Rs. 5200-20200/- in Grade Pay Rs.1900/-.

35. The same has been declined to be interfered with by the learned writ Court on the ground that the day when the petitioners have joined the post that was on the basis of the reduced pay scale and when they joined on the reduced pay scale, it is not available for them to raise the claim with respect to declare Sub-rule (ii) of the Jharkhand Para Medical Staff Cadre (Appointment, Promotion and other Service Conditions), 2016 as ultra vires.

36. The ground for review as has been tried to be made out is that the amended Rule is to be applicable prospectively and not retrospectively.

37. 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 is to be exercised in the factual background of the present case needs to be referred to underlying principle to invoke the power of review.

38. The Hon'ble Apex Court in the case ***Moran Mar Basselios Catholicos and Anr. vs. Most Rev. Mar Poulouse 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 emphasis 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.”

39. 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.’”

40. 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 Athanasiusto 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.*”

41. 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.

42. Thus, 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 Hon’ble Apex Court in ***Moran Mar Basselios Catholicos and Anr. v. Most Rev. Mar Poulouse*** (supra).

43. 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.

44. 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 Code as permissible grounds of review.

45. 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.

46. 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’.

47. 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 reargue 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.—"

48. 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 or not.

49. Now advertent to the fact of the instant review petition, it is evident that the law with respect to exercise of power of review is settled which can only be exercised in the case where there is any error apparent on the face of the record and the fact could not be brought to the notice in spite of the due diligence of the parties concerned.

50. This Court has to proceed to examine the ground of review on the

basis of the legal position as has been settled by the learned Hon'ble Apex Court in the judgments referred hereinabove.

51. Admittedly, the petitioners have applied for consideration of their candidature to the post of Compounder in terms of the Advertisement No.1/2018. The pay scale of the different posts has been mentioned in the advertisement. The petitioners have been declared to be successful, but before acceptance of the recommendation as was made by the recruiting agency the rules have been amended by reducing the pay scale of different posts from Rs.5200-20200/- in Grade Pay of Rs. 2800/- to Rs. 5200-20200/- in Grade Pay Rs.1900/.
- 52.The offer of appointment was issued after the said amendment having been enacted. One or the other petitioners have accepted the offer of appointment and given their joining based upon the reduced pay scale as per the amended rule.
- 53.The petitioners after accepting the joining to the reduced pay scale have approached to this Court by challenging the validity of the amended rule as contained under Sub-rule (ii) of the Jharkhand Para Medical Staff Cadre (Appointment, Promotion and other Service Conditions), 2016 whereby and whereunder the pay scale of the different posts have been reduced from Rs.5200-20200/- in Grade Pay of Rs. 2800/- to Rs. 5200-20200/- in Grade Pay Rs.1900/-.
- 54.The ground has been taken that the amended rule cannot have its retrospective application rather it will be prospective in nature.
- 55.We are not in dispute that any amended rule unless specifically provided is to be made applicable prospectively and not retrospectively.

56. But the fact is to be considered herein as to whether the writ petitioners were at all have the right to question the rule merely on the basis of participation in the selection process or even on the basis of recommendation and in a case where no appointment letter was issued in favour of the writ petitioners so as to establish their accrued right to question the decision which taken by the State by reducing the pay scale before coming in service so far as the petitioners are concerned.

57. The answer of this Court will be that one or other petitioners will not have any locus to question the policy decision of the State Government merely on the basis of the recommendation and unless the offer of appointment is being issued in favour of one or the other petitioners.

58. The question of accrued vested right will have the paramount bearing in the present case and the accrued right will be said to be there the moment the letter of appointment will be issued in favour of the one or the other appointees, the petitioners herein.

59. The pay scale if had been reduced after the issuance of appointment as has been contended on behalf of the writ petitioners are concerned, the same cannot be said to be accepted but merely on the basis of the recommendation which has been made by the recruiting agency, in absence of any accrued/vested right, the petitioners will have no right to question the aforesaid decision of the competent authority of reducing the pay scale.

60. This Court, in order to appreciate the said issue, is of the view that the reference of the interpretation of the aforesaid vested right needs

to be referred herein.

61. Rights are ‘vested’ when right to enjoyment, present or prospective, has become property of some particular person or persons as present interest; mere expectancy of future benefits, or contingent interest in property founded on anticipated continuance of existing laws, does not constitute ‘vested rights.’ Thus, vested right is a right independent of any contingency and it cannot be taken away without consent of the person concerned. Vested right can arise from contract, statute or by operation of law. Unless an accrued or vested right has been derived by a party, the policy decision/scheme could be changed.

62. “Vested right” has been defined by the Hon'ble Apex Court in the case of ***MGB Gramin Bank v. Chakrawarti Singh [(2014) 13 SCC 583]*** at paragraph 11, 12 and 13, which read hereunder as:—

“11. The word “vested” is defined in Black's Law Dictionary (6th Edn.) at p. 1563, as

“Vested.—fixed; accrued; settled; absolute; complete. Having the character or given in the rights of absolute ownership; not contingent; not subject to be defeated by a condition precedent. Rights are ‘vested’ when right to enjoyment, present or prospective, has become property of some particular person or persons as present interest; mere expectancy of future benefits, or contingent interest in property founded on anticipated continuance of existing laws, does not constitute ‘vested rights’.”

12. In Webster's Comprehensive Dictionary (International Edition) at p. 1397, “vested” is defined as law held by a tenure subject to no contingency; complete; established by law as a permanent right; vested interest.

13. Thus, vested right is a right independent of any contingency and it cannot be taken away without consent of the person concerned. Vested right can arise from contract, statute or by operation of law. Unless an accrued or vested right has been derived by a party, the policy decision/scheme could be changed.”

63. Further, so far as the question of taking away the vested right is concerned, the Hon'ble Apex Court has laid down the proposition in the case of ***Chairman, Railway Board v. C.R. Rangadhamaiah,***

(1997) 6 SCC 623 at paragraph-24, which reads hereunder as follows: —

“24. In many of these decisions the expressions “vested rights” or “accrued rights” have been used while striking down the impugned provisions which had been given retrospective operation so as to have an adverse effect in the matter of promotion, seniority, substantive appointment, etc., of the employees. The said expressions have been used in the context of a right flowing under the relevant rule which was sought to be altered with effect from an anterior date and thereby taking away the benefits available under the rule in force at that time. It has been held that such an amendment having retrospective operation which has the effect of taking away a benefit already available to the employee under the existing rule is arbitrary, discriminatory and violative of the rights guaranteed under Articles 14 and 16 of the Constitution. We are unable to hold that these decisions are not in consonance with the decisions in Roshan Lal Tandon [AIR 1967 SC 1889], B.S. Vadera [AIR 1969 SC 118] and Raman Lal Keshav Lal Soni [(1983) 2 SCC 33].”

64.It is evident that the vested right as has been defined in the aforesaid judgment will be a right which has been accrued in favour of the parties concerned and once the right will be accrued there will not adversely impact on the amendment if incorporated in the statutory provision after the right as has been accrued

65.Adverting to the factual aspect of the present case also, it is admitted case of the petitioners that prior to issuance of offer of appointment the pay scale has been reduced by amending the rule. Therefore, there is no accrual of right. However, this Court has considered the aforesaid facts by holding therein that in absence of appointment letter which has not been issued in favour of one or the other writ petitioners, the pay scale cannot be allowed to be given only on the

basis of reflection in the pay scale of the advertisement rather the pay scale which was there at the time of the appointment of the writ petitioners based upon the amended rule will be applicable.

66. This Court has also considered while holding the issue of the grievance of the writ petitioners to be not sustainable that the writ petitioners have accepted the reduced pay scale and once the reduced pay scale has been accepted, it is not available for one or the other petitioners to turn around and question the said decision.

67. This Court, therefore, is of the view that whatever grievance is being raised by filing the instant review petition that has already been taken into consideration by this Court and the order sought for by the petitioners is according to considered view of this Court that the present review is an appeal in the garb of review which cannot be allowed to be maintainable in view of the ratio laid down by the Hon'ble 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 being 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”.”

(Emphasis supplied)

68. Similarly, in *S. Murali Sundaram Versus Jothibai Kannan and Others 2023 SCC OnLine SC 185* the Hon'ble 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 CPC.

(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*.”

69. Further, in *Sanjay Kumar Agarwal v. State Tax Officer, (supra)* the Hon’ble Apex Court at para 16.5 has observed that a review petition

has a limited purpose and cannot be allowed to be “an appeal in disguise.

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

71.This Court, on the basis of the discussion made hereinabove is of the view that petitioners have accepted the reduced pay scale and once the reduced pay scale has been accepted, it is not available for one or the other petitioners to turn around and question the said decision and further in absence of any error apparent on the face of the order or the issue of due diligence the fact having not brought to the notice of this Court, we are of the view that the instant review petition is liable to be dismissed and, accordingly, dismissed.

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

(Sujit Narayan Prasad, J.)

I Agree.

(Pradeep Kumar Srivastava, J.)

(Pradeep Kumar Srivastava, J.)

Sudhir
Dated:29/04/2025
Jharkhand High Court, Ranchi
AFR