



2024:CGHC:47438
NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

REVP No. 274 of 2024

1. State Of Chhattisgarh Through- The Secretary, Health And Family Welfare Department,
2. The Director, Health Services Chhattisgarh,
3. The Chief Medical And Health Officer,
-----(Respondent No.3)

... Petitioners

Versus

Ku. Kirti Kumari Kanwar Shri Rameshwar Kanwar, Aged About 27 Years Occupation-Female Multipurpose Health Worker/ (Anm) (Auxiliary Nurse Midwife)

... Respondent

For Review petitioners / State	:	Mr. Suyash Dhar Badgaiya, Dy. G.A.
For Respondent/ Writ Petitioner	:	Mr. Uday Shankar Dewangan, Advocate on behalf of Mr. Jitendra Nath Nande, Advocate

Hon'ble Shri Justice Rakesh Mohan Pandey
Judgment On Board

03/12/2024

1. By way of this review petition, review petitioners have sought modification/review of the order dated 28.11.2023 passed in WPS No. 6206/2019.
2. Learned counsel for the review petitioner /State submits that writ petitioner was appointed on probation for a period of two years and before the expiry

of the probation period, a decision was taken to remove her from the post of Auxiliary Nurse Midwife (ANM) on the ground that though there were only 14 posts, 27 additional candidates were appointed. He further submits that the petitioner was not regular employees of the State Government, therefore provisions of The Chhattisgarh Civil Services (Classification, Control and Appeal) Rules, 1966 would not attract and there was no occasion for the State Government to conduct inquiry before passing the orders with regard to removal of the petitioner from service. He referred to Clause 4 of the appointment order which stipulates that "*petitioner was appointed on probation for a period of two years and their services would be regularized after completion of that period*". He further referred to Clause 9 wherein it is stated that "*if any candidate is appointed on account of mistake, his/her service would be terminated in accordance with law*". He also referred to Clause 3 which states that "*their appointments are temporary in nature and services can be terminated by giving one month's prior notice or one month's salary*". He argues that this facts could not be brought before this Court when the writ petition was being argued and subsequently disposed of.

He prays that if the order dated 28.11.2023 is passed as it is, the review petitioners will suffer huge financial loss as this order will also attract other similarly situated persons claiming the same relief. Thus, an immediate review of the order dated 28.11.2023 would be expedient in the interest of justice.

3. On the other hand, learned counsel appearing on behalf of the respondent/writ petitioner submits that the grounds which have been raised in this review petition are not available in the return filed by the State in that writ petition. He further submits that according to Clause 5 of

the appointment order, “*selected candidates will be governed by Chhattisgarh Civil Service (General Conditions of Service) Rules, 1961*”.

He contends that the petitioner was appointed against sanctioned and vacant post strictly in accordance with the law. He further contends that an advertisement was issued, following which the writ petitioner submitted her form; the examination was conducted by VYAPAM; the result was declared; a merit list was prepared and thereafter appointment order was issued in favour of the writ petitioner. He argues that the writ petitioner was appointed on 03.07.2017 whereas order of removal was issued on 05.06.2018 . He further argues that no inquiry was conducted and the writ petitioner was removed from service without assigning any reason. It is submitted that though the writ petitioner was on probation for a period of two years, she was appointed against vacant and sanctioned posts; therefore, State authorities were under obligation to conduct an inquiry before passing order of termination from service.

4. I have heard learned counsel for the parties and perused the material/ documents available on the record.
5. Evidently, the grounds urged in this review petition were not pleaded in the return filed by the State in the writ petition and the writ petitioner was appointed against vacant and sanctioned posts according to the constitutional mandate. It is also not in dispute that the services of the writ petitioner were discontinued without affording any opportunity of hearing and without conducting any inquiry. This Court considering all the aspects of the matter allowed the writ petition and also granted liberty in favor of the State Government to take action in accordance with law.
6. On consideration of the above-stated pleadings and other grounds raised in the instant review petition, which are in the nature of taking the liberty

to re-argue the writ petition are unsustainable in the eyes of law. The review petitioners cannot be allowed to commit a volte-face and take up new pleas in the review petition.

7. At this juncture, it shall be advantageous to discuss the law with regard to the power of review. The Court may review its judgment or order, but no application for review shall be entertained except on the grounds mentioned under Order 47 Rule 1 of the CPC.
8. Section 114 of the CPC vests power of review in Courts and Order 47 Rule 1 of the CPC provides for the scope and procedure for filing a review. The same is reproduced hereunder:-

“Order 47 Rule 1 CPC:

“1. Application for review of judgment- Any person considering himself aggrieved-

(a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred.

(b) by a decree or order from which no appeal is allowed, or

(c) by a decision on a reference from a Court of Small Causes, and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgment to the Court which passed the decree or made the order. (emphasis supplied)

(2) A party who is not appealing from a decree or order may apply for a review of judgment notwithstanding the pendency of an appeal by some other party except where the ground of such appeal is common to the applicant and the appellant, or when, being respondent, he can present to the Appellate Court the case on which he applied for the review.

Explanation. The fact that the decision on a question of law on which the judgment of the Court is based has been reversed or modified by the subsequent decision of a superior Court in any other case, shall not be a ground for the review of such judgment."

9. In the matter of ***M/s Northern India (India) Ltd. v. Lt. Governor of Delhi, 1980 (2) SCC 167***, the Hon'ble Supreme Court held that *"A plea for review, unless the first judicial view is manifestly distorted, is like asking for the moon. A forensic defeat cannot be avenged by an invitation to have a second look, hopeful of discovery of flaws and reversal of result. A review in counsel's mentation cannot repair the verdict once given. So the law laid down must rest in peace."*
10. In the matter of ***Sajjan Singh and others vs. State of Rajasthan and others [AIR 1965 SC 845]***, the Hon'ble Supreme Court held that *"the parties are not entitled to seek review of the judgment delivered by this Court merely for purpose for review and fresh decision of the case. The normal principle that judgments pronounced by this Court would be final, cannot be ignored and unless considerations of a substantial and compelling character make it necessary to do so."*
11. In the matter of ***Parsion Devi and others v. Sumitri Devi and others*** reported in ***1997 (8) SCC 715***, the Hon'ble Supreme Court in para-9 held as under:-

"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 review under Order 47 Rule 1 CPC. In exercise of the jurisdiction under Order 47 Rule 1 CPC it is not permissible for an erroneous decision to be " reheard and corrected ". A review petition, it must be remembered has limited

purpose and cannot be allowed to be "an appeal in disguise."

12. In the matter of ***M/S Shanti Conductors (P) Ltd v. Assam State Electricity Board*** reported in **2020 (2) SCC 677**, the Hon'ble Supreme Court dismissed the petition and held that *"The scope of review is limited and under the guise of review, petitioner cannot be permitted to reagitate and reargue the questions, which have already been addressed and decided."*
13. In the matter of ***Beghar Foundation v. K.S. Puttaswamy, (2021) 3 SCC 1***, the Hon'ble Supreme Court held that *"even the change in law of or subsequent decision/judgment of a coordinate or larger Bench by itself cannot be regarded as a ground for review."*
14. In the matter of ***Satyanarayan Laxminarayan v. Mallikarjun Bhavanappa*** reported in **AIR 1960 SC 137**, the Hon'ble Supreme Court in para-8 held as under:-

"8. The main question that arises for our consideration in this appeal by special leave granted by this Court is whether there is any error apparent on the face of the record so as to enable the superior court to call for the records and quash the order by a writ of certiorari or whether the error, if any, was "a mere error not so apparent on the face of the record", which can only be corrected by an appeal if an appeal lies at all."
15. In the present review petition, the petitioners have prayed for recall of the order passed by this Court in WPS No. 6206/2019. The prayer made by the review petitioners appears to be misconceived. Further, the case [WPS No. 6206/2019] was decided by this Court on 28.11.2023 after discussing the facts and going through the documents available on the record ; there is no error of law apparent on the face of the record,

therefore, the prayer sought for modifying/recalling of the order passed in WPS No. 6206/2019 by way of this review petition is not permissible, and in the opinion of this Court, no ground is made out for review.

16. Accordingly, the instant review petition is hereby **dismissed**.

Sd/-
Rakesh Mohan Pandey
JUDGE

Ajinkya