

**IN THE WEST BENGAL ADMINISTRATIVE
TRIBUNAL
BIKASH BHAVAN, SALT LAKE CITY
K O L K A T A – 7 0 0 0 9 1**

Present :-

**The Hon'ble Smt. Urmita Datta (Sen)
Member (J)**

-AND-

**The Hon'ble P. Ramesh Kumar,
Member (A)**

J U D G M E N T

-of-

Case No. R.A.- 10 of 2018 (OA – 785 of 2015)

Gyani Ram Applicant

-Versus-

State of West Bengal & others Respondents

**For the Applicant : - Mr. Sankha Ghosh,
Mr. Ranjit Kumar Mondal,
Advocates.**

**For the State Respondent:- Mr. Goutam Pathak Banerjee,
Advocate.**

Judgment delivered on : 7th January, 2020

**The Judgment of the Tribunal was delivered by :-
The Hon'ble Smt. Urmita Datta (Sen), Member (J)**

Judgement

1. The instant application has been filed praying for following relief(s):

“(a) The petitioner herein most humbly prays that Your Lordships may graciously be pleased to review and/or cause to be reviewed the solemn Judgement dated 03.10.2018 delivered by the Hon’ble Mrs. Urmita Datta (Sen), Member (Judicial), sitting the Hon’ble Mr. P. Ramesh Kumar, Member (Administrative) of this Hon’ble Tribunal in O.A. No. 785 of 2015 (Gyani Ram – vs – The State of W.B. and Others) after recalling the same and to hear the matter on merit and/or to pass such other or further Order or Orders as to this Hon’ble Tribunal may deem fit and proper ”

2. As per the applicant of this Review Application, the respondent/ applicant had filed one O.A. being No. 786 of 2015, which was finally disposed of vide order dated 03.10.2018 holding inter alia:

“In view of the above, we are of the opinion that the instant case is squarely covered by the aforesaid order dated 18.06.2008 as in the instant case also the respondents vide their communication dated 14.08.2009 had clearly communicated the approval of the Cabinet held on 29.07.2009 as well as Finance Department concurrence dated 16.03.2009. Therefore, unless and until the decision with regard to the applicant revisited and reverse by the Cabinet, the Finance Department observation dated 04.05.2005 cannot nullify the

earlier decision by way of rejecting the claim of the applicant. Accordingly, we quash and set aside the communication dated 04.06.2015 and direct the respondent authorities to take necessary steps within a period of 3 (three) months from the date of receipt of the order.”

3. As per the applicants of the instant application, this Tribunal has passed the order on the basis of the Memo dated 14.08.2009 whereby list of 167 incumbents of casual/master role workers in Group – D were approved by the Cabinet for the purpose of absorption. However, as per the applicant, in earlier occasion, one O.A. being No. 7310 of 2008 was filed by one Rabindra Nath Ghosh & Others claiming absorption in Irrigation and Waterways Directorate on the ground that all of them were engaged as casual labour and were rendered service uninterruptedly for a long period, which was disposed of vide order dated 04.03.2009 directing the authority to take decision with regard to the absorption of the petitioners against the available vacancy. Being aggrieved with the said order, the applicant (State respondents) of this instant application preferred an appeal before the Hon’ble High Court in WPST No. 483 of 2009 which was disposed of on 24.08.2009 by dismissing the writ application, wherein the Hon’ble High Court declared that the regularization circular dated 03.08.1979/ 16.08.1079 and dated 28.08.1980/ 13.03.1996 as ultra virus to the constitution of India. The Hon’ble High Court had further restrained the department to regularize the service of any candidate of the list dated 17.08.2007 issued by the Director of Personnel of Ex-officio Chief Engineer (Annexure P - 2). Against the said order dated 24.08.2009, the State respondents and some of the applicants in the Original Application had moved two separate SLPs being No. 203 of 2010 and 22909 of 2010 respectively before the Hon’ble Apex Court, in which the

Hon'ble Apex Court had granted stay initially. However, ultimately both the matters were dismissed as withdrawn on 07.05.2014 and 16.02.2016. Therefore, according to the applicant of the instant application, the order dated 24.08.2009 is still in vogue. However, during the time of hearing inadvertently or lack of due concentration, the said applicants /respondents had failed to attract proper advise of this Tribunal. Thus, the order under review was passed by this Tribunal. Therefore, applicants have prayed for review of the order dated 11.01.2019 taken into account the judgement passed by the Hon'ble High Court:

It is noted that

“(I) In Parsion Devi and Others vs. Sumitri Devi and Others [1997 (8)

SCC 715], Hon'ble Supreme Court has 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 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".'

[Emphasis added]

(II). In the case of State of West Bengal Vs. Kamal Kumar Sengupta [2008(8) SCC 612] Hon'ble Supreme Court has held as under:-

“The principles which can be culled out from the above noted judgments are:

(i) The power of the Tribunal to review its order/decision under Section 22(3)(f) of the Act is akin/analogous to the power of a Civil Court under Section 114 read with Order 47 Rule 1 of CPC.

(ii) The Tribunal can review its decision on either of the grounds enumerated in Order 47 Rule 1 and not otherwise.

(iii) The expression "any other sufficient reason" appearing in Order 47 Rule 1 has to be interpreted in the light of other specified grounds.

(iv) An error which is not self-evident and which can be discovered by a long process of reasoning, cannot be treated as an error apparent on the face of record justifying exercise of power under Section 22(3)(f).

(v) An erroneous order/decision cannot be corrected in the guise of exercise of power of review.

(vi) A decision/order cannot be reviewed under Section 22(3)(f) on the basis of subsequent decision/judgment of a coordinate or larger bench of the Tribunal or of a superior Court.

(vii) While considering an application for review, the Tribunal must confine its adjudication with reference to material which was available at the time of initial decision. The happening of some subsequent

event or development cannot be taken note of for declaring the initial order/decision as vitiated by an error apparent.

(viii) Mere discovery of new or important matter or evidence is not sufficient ground for review. The party seeking review has also to show that such matter or evidence was not within its knowledge and even after the exercise of due diligence, the same could not be produced before the Court/Tribunal earlier.”

(III). In a recent judgment, Hon'ble Apex Court in the matter of Union of India Vs. Sandur manganese Iron Ore Ltd. [2013 STPL (Web) 351 SC] has held that mere disagreement with a view of the judgment cannot be ground for interfering the same as long as points were already dealt with are answered, the parties are not entitled to challenge on the guise that alternative view can be taken.”

4. We have gone through the petition as well as our judgement, it is noted that this Tribunal in earlier order dated 04.03.2009 passed in O.A. No. 7310/2008 never issued any mandatory direction to the respondents to absorb the applicants. However, the State respondents in one hand had preferred one appeal before the Hon'ble High Court in WPST No. 483/2009, on the other hand, approved the absorption of 167 candidates by way of Cabinet decision in concurrence to the Finance Department vide order dated 14.08.2009, which is prior to 10 (ten) days from the date of passing of the judgement dated 24.08.2009 by the Hon'ble High Court. Subsequently, though they had preferred appeal before the Hon'ble Apex Court but had chosen to withdraw the case. Therefore, the absorption of 165 candidates, out of 167 enlisted candidates is well within the knowledge of the State respondents.
5. In the case of Kamal Kumar Sengupta (supra), the Hon'ble Apex Court has clearly stipulated that while considering an application for review,

the Tribunal must confine its adjudication with reference to material, which was available at the time of final decision and mere discovery of new or important matter or evidence is not sufficient ground for review. The party seeking review has also to show that such matter or evidence was not within their knowledge and even after exercise of due diligence the same could not be produced before the Tribunal earlier. However, in the instant case, the applicants/ State respondents were well aware of the judgement passed by the Hon'ble High Court as they were the party in the said writ petition and they themselves had taken decision of regularization of 165 candidates and had regularized 165 candidates except the respondent / applicant and another person during the pendency of writ petition but did not disclose the same neither before the Hon'ble High Court nor before the Hon'ble Apex Court. Therefore, in view of the judgement as well as ground taken by the applicant, we have little scope to entertain the review application as we do not find any error apparent on the face of record. Accordingly, we reject Review Application with no order as to cost.

P. RAMESH KUMAR
MEMBER (A)

URMITA DATTA (SEN)
MEMBER (J)