IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI

REVIEW APPLICATION NO.11 OF 2019
IN
ORIGINAL APPLICATION NO.319 OF 2016

Shri Dr. Narayan Dadasaheb Patil.)
Retired Professor and Head of the)
Department, B.J. Medical College, Pune)
and residing at Dhanoza Bk.,)
Taluka : Ambejogai, Dist.: Beed.)**...Applicant**

Versus

1. The State of Maharashtra.)
Through Principal Secretary,)
Medical Education, Mantralaya,)
Mumbai – 400 032.)

2. The Director of Medical Education &)
Research, St. Georges Hospital Compound)
CST, Mumbai – 400 001.)

3. The Dean.)
B.J. Medical College, Pune.)**...Respondents**

Mr. R.M. Kolge, Advocate for Applicant.

Mr. A.J. Chougule, Presenting Officer for Respondents.

CORAM : A.P. KURHEKAR, MEMBER-J

DATE : 06.12.2019

JUDGMENT

1. The Applicant sought review of the Judgment dated 01.07.2019 passed by this Tribunal in O.A.319/2016 invoking jurisdiction of this

Tribunal under Section 22(3)(f) of Administrative Tribunals Act, 1985 read with Section 47 of Civil Procedure Code.

2. O.A.No.319/2016 was filed by the Applicant for condonation of break in service from 02.02.1972 to 09.05.1972 for 96 days and again further break in service from 22.04.1977 to 13.06.1977 for 53 days. Thus, there was total break of 149 days in temporary service of the Applicant. He was appointed as Blood Transfusion Officer by Director, Health Services, Mumbai purely on temporary basis by order dated 8th May, 1972 until further orders. After break, again he was appointed by another order dated 05.01.1973 for a period of one year or till the appointment of regular candidate through Maharashtra Public Service Commission (MPSC), whichever is earlier. In 1978, he was nominated through MPSC and by order dated 6th June, 1978, he was appointed on the post of Lecturer in Grant Medical College, Mumbai. He stands retired on 31.12.1996 on attaining the age of superannuation from B.J. Medical College, Pune. After retirement, he made representation on 06.12.2004 to count his earlier service from 02.02.1972 till 06.06.1978 for pension purposes and also to condone the break in service. However, the Respondent No.1 rejected the representation of the Applicant on the ground that the appointment of the Applicant during the said period was itself irregular, temporary, and therefore, it does not fall in Rule 33 of Maharashtra Civil Services (Pension) Rules, 1982 (hereinafter referred to as 'Pension Rules 1982' for brevity). The Applicant has challenged the order dated 31.01.2011 passed by Government in O.A.No.319/2016.

3. The said O.A. was contested by the Respondents and decided by merit by Judgment dated 01.07.2019. The Tribunal recorded the finding that the service of the Applicant during that period being temporary, Rules 33 and 48 of 'Pension Rules 1982' are not applicable.

4. Shri R.M. Kolge, learned Advocate for the Applicant sought to contend that there is apparent error on the face of record, as the Tribunal has not correctly considered Rules 33 and 48 of 'Pension Rules 1982', and therefore, seek review of the Judgment and to allow the O.A.

5. Per contra, Shri A.J. Chogule, learned Presenting Officer submits that the review itself is not maintainable, as it does not fall within the parameters of review and the Applicant is seeking re-assessment and re-hearing of the Judgment as an Appellate Authority, which is impermissible in law.

6. The entire thrust of the submission of the learned Advocate for the Applicant is that the Tribunal has erred in taking view that Rules 33 and 48 of 'Pension Rules 1982' does not apply to temporary appointment. As such, according to learned Advocate for the Applicant, the finding of the Tribunal is contrary to law, and therefore, it deserves to be reviewed exercising powers of review. I find myself unable to accept his submission.

7. While deciding O.A.319.2016, the Tribunal has considered Rules 30, 33, 48 of 'Pension Rules 1982' as well as Rule 57 of 'Pension Rules 1982' to find out whether the Applicant's break can be condoned. The Tribunal recorded finding of fact that the appointment of the Applicant itself was temporary during that period. It was the appointing without following due process of law. With this finding, the Tribunal held that the break in service in such temporary or irregular service cannot be condoned. As such, having considered relevant Rules, the Tribunal dismissed the O.A. on merit. Therefore, it cannot be said that there is any apparent error on the face of record to be corrected exercising review jurisdiction. Needless to mention that the scope of review is very limited and the decision which aggrieved party considered incorrect or erroneous cannot be a ground

of review and the remedy is to challenge the same before higher forum.

8. At this juncture, it would be apposite to reproduce order 47 of CPC, which is as follows :-

> "**1. Application for review of judgment**.- (1) Any person considering himself aggrieved.-
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> (a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred,
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> (b) by a decree or order from which no appeal is allowed, or
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> (c) by a decision on a reference from a Court of Small Causes,
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> 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.
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> (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."

9. Needless to mention that the review proceedings have to be strictly confined to the ambit and scope of Order 47, Rule 1 of CPC. The review is by no means an appeal in disguise whereby the matter is re-heard. True, under Order 47, Rule 1 of CPC, the Judgment may be opened to review, if there is mistake or error apparent on the face of record. An error which is not self-evident and has to be detected by the process of reasoning can hardly be said to be an error apparent on the face of record justifying the Court to exercise its powers of review. In exercise of jurisdiction under Order 47 of CPC, it is not permissible that the matter to be re-heard and erroneous view to be corrected. Suffice to say, it must be remembered that the Review

Petition cannot be allowed as an appeal in disguise. There is clear distinction between an erroneous decision and error apparent on the face of record. Erroneous decision can be corrected by the higher forum in appeal in Writ Jurisdiction, whereas error apparent on the face of record can be corrected by exercise or review jurisdiction. This is fairly settled legal position.

10. At this juncture, it would be apposite to refer the decision of Hon'ble Supreme Court ***Parsion Devi & Ors. Vs. Sumitri Devi & Ors. (1997) 8 SCC 715***, wherein it has been held that if an error is not self-evident and detection thereof requires longer debate and process of reasoning, it cannot be treated as error apparent on the face of record for the purpose of Order 47 under Rule 1 of CPC. In other words, the order or decision or Judgment cannot be corrected merely because its erroneous view in law or on the ground that the different view could have been taken on account of fact or law, as the Court could not sit in appeal over its own Judgment. Similar view was again reiterated by Hon'ble Supreme Court in ***AIR 2000 SC 1650 (Lily Thomas Vs. Union of India)*** where it has been held that the power of review can be exercised for correction of mistake only and not to substitute a view. Such powers can be exercised within limits of statute dealing with the exercise of power and review cannot be treated an appeal in disguise. The mere possibility of two views on the subject is not ground for review.

11. Now, turning to the present case, the submission advanced by the learned Advocate for the Applicant that there is apparent error on the fact of record is misconceived and fallacious. In O.A.319/2016, the Tribunal has considered all submissions advanced by the learned Advocate for the Applicant and recorded finding against the Applicant. It is finding of fact, which is outcome of assessment of the material on record. As such, it cannot be termed as error apparent on the face of record. As such, even assuming for a moment that the view taken by

the Tribunal in O.A.319/2016 was incorrect, in that event also, the remedy was to file appeal/Writ Petition challenging the same and it can never be challenged by filing Review Application. The Applicant in the present Review is in fact seeking re-hearing of the entire matter which requires long debate and process of reasoning, which is not permissible in revisional jurisdiction. This Court could not sit in appeal. The order 47 of CPC by its very connotation signifies an error, which is evident *per se* from the record of the case and does not require any detailed examination, scrutiny and elucidation either of fact or legal position.

12. For the aforesaid reasons, I have no hesitation to sum-up that the ground raised in Review does not fall within the parameters of order 47 of CPC and this Court cannot sit in appeal for its own Judgment. The Review Application is devoid of merit and deserves to be dismissed. Hence, the following order.

O R D E R

The Review Application is dismissed with no order as to costs.

Sd/-
(A.P. KURHEKAR)
Member-J

Mumbai
Date : 06.12.2019
Dictation taken by :
S.K. Wamanse.
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