IN THE HIGH COURT OF JUDICATURE AT CALCUTTA
CIVIL APPELATE JURISDICTION
APPELATE SIDE

RESERVED ON: 06.09.2023

DELIVERED ON: 05.10.2023

PRESENT:

THE HON'BLE MR. JUSTICE SHEKHAR B. SARAF

R.V.W 163 of 2021

C.A.N 1 of 2021

C.A.N 3 of 2023

In

W.P.A 3086 of 2019

THE STATE OF WEST BENGAL & ORS.

VERSUS

SUDIPTA GHOSH

Appearance:
Md. T.M. Siddiqui
Mr. S. Adak **..... for the Applicants**

Mr. Sakti Pada Jana
Mr. Subhajyoti Das
..... for the Respondent/Writ Petitioner

JUDGMENT

Shekhar B. Saraf, J.:

1. The instant review application preferred by the State of West Bengal and Others (hereinafter referred to as the "applicants") arises out of an order dated January 11, 2021 passed by this Court in W.P.A 3086 of 2019.

Facts

2. I have outlined the facts leading to the instant review application below :

   a. The respondent in the instant review application Sudipta Ghosh (hereinafter referred to as the " writ petitioner") having qualification B.Sc. (Honours) in Mathematics had participated in the selection process at 11th RLST, (AT), 2010 conducted by the West Bengal Regional School Service Commission, Northern Region and after being selected, his name was recommended for appointment to the post of Assistant Teacher in Mathematics (Hons.) in Haribhanga Junior High School, District – Cooch Behar (hereinafter referred to as the 'school') vide Memo dated June 24, 2011. Pursuant to the appointment letter issued by the school authority dated July 20, 2011, the writ

petitioner joined the service on July 25, 2011. The District Inspect of Schools (S.E.), Cooch Behar (hereinafter referred to as the "D.I. of Schools') approved the appointment of the writ petitioner with the honours scale as prescribed under the ROPA Rules, 2009 vide Memo dated August 17, 2011. Subsequently the appointment of the writ petitioner was approved permanently vide Memo dated May 17, 2013.

b. The writ petitioner was pursuing M.Sc course in the Vinayaka Missions University for the session 2009-2011 through distance education and was admitted in the said University. The writ petitioner completed his M.Sc. Part – 1 course before entering into his service in the school. The writ petitioner applied before the Managing Committee of the school for permission to complete his M.Sc. Part – II course through distance mode. The Ad-Hoc Committee of the school adopted a resolution in the meeting dated September 06, 2011 allowing the writ petitioner to sit in his M.Sc. Part – II examination. The Member Secretary namely S.I. of schools, Sadar Circle-IV, Haribhanga through its Memo dated September 08, 2011 forwarded the prayer of the petitioner with all relevant papers to the D.I. of Schools for permission to undergo M.Sc. Part-II examination and necessary action.

c. The writ petitioner made an application before the Member Secretary, Ad-Hoc Committee of School for grant of study leave for the period from September 19,. 2011 to September 23, 2011 to sit in the M.Sc. Part-II examination. The Member Secretary granted the writ petitioner the study leave of five days. After obtaining the said study leave, the writ petitioner sat in his M.Sc. Part – II examination and successfully passed the same.

d. After upgradation in the qualification of the petitioner from B.Sc. (Honours) in Mathematics to M.Sc. in Mathematics the writ petitioner applied before the school authority on April 04, 2012 for granting post graduate scale of pay as per relevant ROPA rules. The Member Secretary of the Ad-Hoc Committee of the school vide memo dated July 07, 2012 forwarded the writ petitioner's application to the D.I. of Schools for his consideration. The writ petitioner also made a prayer to the D.I. of Schools for grant of post graduate scale of pay for his M.Sc. qualification.

e. Since no action was allegedly being taken by the D.I. of Schools in granting the writ petitioner post graduate scale of pay, a writ petition was moved before this Court. The said writ petition was disposed of on December 20, 2017 with direction issued to the D.I. of Schools to consider the

claim of the petitioner for post graduate scale of pay in accordance with law and pass a reasoned order and communicate the same to the writ petitioner within six weeks from the date of communication of the order.

f. The writ petitioner was asked to appear at the office of the D.I. of Schools on January 15, 2019. The writ petitioner appeared on the said date. On January 21, 2019, the writ petitioner received a communication from the D.I. of Schools. By the said order, it was revealed that the writ petitioner had failed to take prior permission from the D.I. of Schools which was required in terms of the Government Order No. 593-SE(B) dated November 27, 2007. Therefore, in terms of Serial No. 3 of the said Government Order the writ petitioner was held to be not entitled for Post Graduate Scale of Pay. Being aggrieved by the said communication, the writ petitioner preferred a writ application being WPA 3068 of 2019 before this Court.

g. By an order dated January 11, 2011 passed in WPA 3086 of 2019, this Court had set aside the order dated December 21, 2019 passed by D.I. of Schools and directed the authorities to give higher scale of pay to the writ petitioner from the date following the last date of the final examination of the Post Graduate Course.

h. Being aggrieved by the aforesaid order dated January 11, 2011 passed in WPA 3086 of 2019, the applicant has preferred the instant review application.

Submission by the Applicants

3. Md. T.M. Siddiqui, counsel appearing on behalf of the applicants has made the following submissions:

a. University Grants Commission (UGC) vide Letter No. F.9-8/2008 (CPP-I) dated April 28, 2009 had imposed complete bar on all private universities from operating any study centre or off-campus course outside the state. The said letter dated April 28, 2009 was issued by the UGC in light of the Hon'ble Supreme Court's judgment in the case of ***Prof. Yashpal -v- Government of Chhattisgarh***. In addition to the letter dated April 28, 2009 the UGC had issued a public notice dated June 27, 2013 notifying that it has not granted permission to any private university established under a State Act to establish any off-campus or study centre. Furthermore. This Court in **W.P. 5662 (W) of 2016** had held that the degree certificates from Vinayaka Missions Research Foundation, Deemed University, Salem, Tamil Nadu through Directorate of

Distance Education have no validity. As a result, M.Sc. pass certificate of the petitioner is not valid as per UGC Policy contained in paragraph 5 of G.O .593-SE(B) dated November 27, 2007. Despite due diligence, the said fact regarding the M.Sc. pass certificate of the writ petitioner could not be placed before this Court.

b. It is humbly submitted that the grounds taken herein are by no means an attempt to prefer an appeal in disguise. In the judgment passed by the Division Bench of this Court in ***State of West Bengal -v- Confederation of State Government Employees*** reported in **2019 SCC OnLine Cal 9181** it was held that review is not maintainable, when the same is an appeal in disguise. From a perusal of the said judgment, it is crystal clear that the grounds which formed the basis of review application therein were not confined to the parameters of Order 47 Rule 1 of the Code of Civil Procedure, 1908. :

"2. The Learned Advocate General appearing for the State of West Bengal sought the review on several grounds as enumerated below:

a. The Court while passing the said judgment had not put the parties on notice that the matter shall be remanded to the Tribunal for reconsideration. The Learned Advocate General argued that remand could not have been made in a routine manner unless the same had been specifically

pleaded and taken as a ground in the writ petition. He relied on the Supreme Court judgment in Syeda Rahimunnisa v. Malan Bi (Dead) By Legal Representatives reported in (2016) 10 SCC 315 to support his contention that unless a substantial question of law was framed by the Court, the Court could not have remanded the matter to the Tribunal.

b. The Court in the said judgment had relied upon ten judgments that were neither cited by either of the parties nor referred to by the judges during the hearing. He argued that having not put the parties to notice of these ton judgments the Court had violated the principles of natural justice, and accordingly, the same amounted to a mistake or error apparent on the record. Such a mistake, in his opinion could very well be corrected in review as the same had made the judgment an irregular judgment. He further relied on a Division Bench judgment of the Calcutta High Court in Delia International Limited v. Nupur Mitra reported in AIR 2018 Cal 8 to support his argument that a decision when made on the basis of a judicial precedent not referred to in course of the argument would amount to a breach of the most elementary canons of natural justice. He further relied on a Privy Council judgment in Grafton Isaacs v. Emery Robertson reported in [1984] 3 WLR 705 to draw a distinction between a 'regular' order and an 'irregular' order.

c. The third ground for review argued by the Learned Advocate General was that the Court had ignored a binding precedent and relied upon irrelevant judgments having no nexus with the core issue and accordingly had committed a patent error. He argued that ignorance of a binding precedent is fatal and amounts to a manifest and palpable

error. To buttress this argument he placed reliance on paragraphs 57 and 76 of A.R. Antulay v. U.S. Nayak reported in (1988) 2 SCC 602 and State of Rajasthan v. Surendra Mohnot reported in (2014) 14 SCC 77.

d. The Learned Advocate General thereafter relied on the affidavit in opposition filed on behalf of the respondent Nos. 1 and 2 before the earlier Division Bench and placed reliance on paragraphs 6(b) and 6(c) at page 13 of the said affidavit wherein it had been argued by the State of West Bengal that the settled principle of law is that payment of dearness allowance is not a justiciable right and since the same was not a justiciable right no writ of mandamus could be issued by the Courts on the State Government for payment of dearness allowance, either at a particular rate or within a particular time frame. He argued that the Court had completely ignored these averments made in the affidavit in opposition. He further argued that the ratio laid down in the case of State of Madhya Pradesh v. G.C. Mandawar reported in AIR 1954 SC 493 that dearness allowance is a ex gratia payment and no writ of mandamus would lie for the same was completely ignored by the Court. In view of the same, said judgment contained palpable and patent errors that needed to be reviewed. In support of the above argument, he placed reliance on the judgment in G.C. Mandawar (supra) and also the Supreme Court judgments in State of Jammu and Kashmir v. R.K. Zalpuri reported in (2015) 15 SCC 602 and A.K. Kaul v. Union of India reported in (1995) 4 SCC 73 to emphasize on the concept of justiciable right."

c. On the other hand, in the instant case, the grounds which have been urged are completely new grounds that in spite

of due diligence could not be brought to the notice of this Court and are grounds on which the order under review is liable to be varied and/or reviewed for the sake of equity and administration of conscionable justice.

d. Reliance is placed upon a judgment of a Division Bench of this Court in ***Maruti Real Estate Pvt. Ltd. -v- Life Insurance Corporation*** reported in **(2008) 1 CHN 442** wherein reliance has been placed upon the judgment of a Full Bench decision of this Court in the case of ***Ratan Lal Nahata -v- Nadita Bose*** reported in **AIR 1999 Cal 29** and also upon a judgment of the Hon'ble Supreme Court reported in **AIR 1963 SC 1909**. –

22. The question whether section 114 or Order 47 of the Code of Civil Procedure is applicable to a mandamus appeal on the face of the writ rules framed by this Court incidentally came up for consideration in a Full Bench decision of this Court in the case of Ratan Lal Nahata v. Nadita Bose reported in AIR 1999 Cal 29, when S.B. Sinha, J. (as His Lordship then was) made the following observations in paragraphs 74 to 78 which was accepted by all the other four Judges of the Full Bench:

'Coming now to the applicability of Code of Civil Procedure, in a proceeding under Article 226 of the Constitution of India we may at the very threshold take note of the fact that section 141 of the Code of Civil Procedure as amended in 1976 excludes the applicability of said provision in a proceeding under Article 226 of the Constitution of India. It

may be true that by reason of Rule 53 of the Writ Rules framed by this Court, the procedures provided in the Code of Civil Procedure in regard to suits as far as it can be made practicable may be followed in all proceeding for issue of a writ. The said rule, however, is subject to the rules framed by this Court, viz., Original Side Rules and Appellate Side Rules as would appear from Rule 48 itself. The Appellate Side Rules and the Original Side Rules make provision as regard procedure to be followed in review petition.

The Code of Civil Procedure per force, therefore, is not applicable in a proceeding under Article 226 of the Constitution of India but only the procedural aspects thereof mutatis mutandis apply. Furthermore Rules 48 and 53 of the writ rules must be read in the light of section 4(1) of the Code of Civil Procedure which protects powers under Letters Patent, section 108 of Government of India Act, 1915, section 223 of Government of India Act, 1935 and Article 225 of the Constitution of India, thus read, we have no doubt in our mind that Order 47 Rule 5 ipso facto cannot be made applicable by telescoping the same in the writ proceedings through Rule 53 of the writ rules. The extensive power of the Chief Justice to allocate business of the Court as noticed hereinbefore by no means can be curtailed or whittled down in terms of Order 47 Rule 5 so far as the proceedings before High Court is concerned. We intend to make it clear that Order 47 Rule 5 will have application in cases where Code of Civil Procedure alone applies i.e. before the Subordinate Courts and other Tribunals.

Apart from the reasons noticed hereinbefore, we reiterate that Order 47 Rule 5 having been framed in terms of section 114 of the Code of Civil Procedure which provision itself being not applicable in relation to a writ proceeding, the procedures laid down in terms whereof would not ipso

facto apply inasmuch whereas a Civil Court trying a suit (not the High Court trying in exercise of its original jurisdiction) is bound by the provision of Order 47 Rule 5 of the Code of Civil Procedure, the High Court while exercising its writ jurisdiction is not, as the power of review is taken recourse to by the High Court in exercise of its inherent jurisdiction.

Power under Article 226 of Constitution of India is exercised by the High Court in its equity jurisdiction and thus, as it has to do equity to the parties and to do complete justice to them, its power of review is not and cannot be limited only in terms of section 114 or Order 47 Rule 1 of the Code of Civil Procedure. By parity of the reasoning Order 47 Rule 5 ipso facto would not be attracted in a writ proceeding.

The reason as to why the provisions of Code of Civil Procedure are not applicable in a writ proceeding has been explained by the Apex Court in Puran Singh v. State of Punjab, reported in AIR 1996 SC 1092, N.P. Singh, J., speaking for the Division Bench held that the provisions of Code of Civil Procedure were not applicable even before coming into force of 1976 Amendment Act in view of the decision of the Apex Court in Babubhai v. Nandlal reported in AIR 1974 SC 2105 and held (para 5 of AIR):

"If because of the explanation, proceeding under Article 226 of the Constitution has been excluded, there is no question of making applicable the procedure of Code as far as it can be made applicable to such proceeding. The procedures prescribed in respect of suit in the Code if are made applicable to the writ proceedings then in many cases it may frustrate the exercise of extra ordinary powers by the High Court under Articles 226 and 227 of the Constitution."

23. In this connection, it will be out of place to refer to the following observations of the Apex Court in the case of Shivdeo Singh v. State of Punjab reported in AIR 1963 SC 1909 were the Court approved the inherent power of review of the High Court its order passed under Article 226 of the Constitution of India:

"It is sufficient to say that there is nothing in Article 226 of the Constitution to preclude a High Court from exercising the power of review which inheres in every Court of plenary jurisdiction to prevent miscarriage of justice or to correct grave and palpable errors committed by it."

24. Therefore, once we hold that section 114 or Order 47 Rule 1 of the Code of Civil Procedure in terms does not apply to an application for review in the writ jurisdiction, the nomenclature of the application loses its importance and at the same time, the provision contained in Limitation Act for filing an application for review will not be applicable as held by the Supreme Court in the case of Puran Singh v. State of Punjab reported in AIR 1996 SC 1092 and therefore, while considering such an application, the Court will only consider whether such application is filed within a reasonable time and in the process, the period prescribed in the Limitation Act for filing a similar application under the provision of the Code of Civil Procedure may be treated as guideline for deciding whether such application has been filed within the reasonable period."

e. Judgment of the Hon'ble Supreme Court in ***Kamlesh Verma -v- Mayawati*** reported in **(2013) 8 SCC 320** is also relied upon –

"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" have been interpreted in Chhajju Ram v. Neki [(1921-22) 49 IA 144 : (1922) 16 LW 37 : AIR 1922 PC 112] and approved by this Court in Moran Mar Basselios Catholicos v. Most Rev. Mar Poulose Athanasius [AIR 1954 SC 526 : (1955) 1 SCR 520] to 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. [(2013) 8 SCC 337 : JT (2013) 8 SC 275]

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 reheard 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 negatived."

f. Judgment of the Hon'ble Supreme Court in **State of Rajasthan -v- Surendra Mohnot** reported in **(2014) 144 SCC 77** also bears relevance:-

"26. In the case at hand, as the factual score has uncurtained, the application for review did not require a long-drawn process of reasoning. It did not require any advertence on merits which is in the province of the appellate court. Frankly speaking, it was a manifest and palpable error. A wrong authority which had nothing to do with the lis was cited and that was conceded to. An already existing binding precedent was ignored. At a mere glance it would have been clear to the Writ Court that the decision was rendered on the basis of a wrong authority. The error was self-evident. When such self-evident errors come to the notice of the Court and they are not rectified in exercise of review jurisdiction or jurisdiction of recall which is a facet of plenary jurisdiction under Article 226 of the Constitution, a grave miscarriage of justice occurs. In appeal the Division Bench, we assume, did not even think it necessary to look at the judgments and did not apprise itself of the fact that an application for review had already been preferred before the learned Single Judge and faced rejection. As it seems, it has transiently and laconically addressed itself to the principle

enshrined in Section 96(3) of the Code of Civil Procedure, as a consequence of which the decision rendered by it has carried the weight of legal vulnerability."

g. Judgment of the Hon'ble Supreme Court in ***Shivdev Singh -v- State of Punjab*** reported in **AIR 1963 SC 1909** is further relied upon :-

"10. The other contention of Mr Gopal Singh pertains to the second order of Khosla, J., which, in effect, reviews his prior order. Learned counsel contends that Article 226 of the Constitution does not confer any power on the High Court to review its own order and, therefore, the second order of Khosla, J., was without jurisdiction. It is sufficient to say that there is nothing in Article 226 of the Constitution to preclude a High Court from exercising the power of review which inheres in every Court of plenary jurisdiction to prevent miscarriage of justice or to correct grave and palpable errors committed by it. Here the previous order of Khosla, J., affected the interests of persons who were not made parties to the proceeding before him. It was at their instance and for giving them a hearing that Khosla, J., entertained the second petition. In doing so, he merely did what the principles of natural justice required him to do. It is said that the respondents before us had no right to apply for review because they were not parties to the previous proceedings. As we have already pointed out, it is precisely because they were not made parties to the previous proceedings, though their interests were sought to be affected by the decision of the High Court, that the second application was entertained by Khosla, J."

h. Judgment of the Hon'ble Supreme Court in ***S. Nagaraj -v- State of Karnataka*** reported in **1993 Supp (4) SCC 595** is also relied upon:-

"18. Justice is a virtue which transcends all barriers. Neither the rules of procedure nor technicalities of law can stand in its way. The order of the Court should not be prejudicial to anyone. Rule of stare decisis is adhered for consistency but it is not as inflexible in Administrative Law as in Public Law. Even the law bends before justice. Entire concept of writ jurisdiction exercised by the higher courts is founded on equity and fairness. If the Court finds that the order was passed under a mistake and it would not have exercised the jurisdiction but for the erroneous assumption which in fact did not exist and its perpetration shall result in miscarriage of justice then it cannot on any principle be precluded from rectifying the error. Mistake is accepted as valid reason to recall an order. Difference lies in the nature of mistake and scope of rectification, depending on if it is of fact or law. But the root from which the power flows is the anxiety to avoid injustice. It is either statutory or inherent. The latter is available where the mistake is of the Court. In Administrative Law the scope is still wider. Technicalities apart if the Court is satisfied of the injustice then it is its constitutional and legal obligation to set it right by recalling its order. Here as explained, the Bench of which one of us (Sahai, J.) was a member did commit an error in placing all the stipendiary graduates in the scale of First Division Assistants due to State's failure to bring correct facts on record. But that obviously cannot stand in the way of the Court correcting its mistake. Such inequitable consequences

as have surfaced now due to vague affidavit filed by the State cannot be permitted to continue."

Submissions by the Writ Petitioner

4. Mr. Sakti Pada Jana, counsel appearing on behalf of the Writ Petitioner has made the following submissions –

a. The grounds for review of the order dated January 11, 2021 are not tenable either in law or on facts. It has been well settled that a review petition is not maintainable unless there is no error apparent on the face of the record. There was no suppression on the part of the Writ Petitioner in regard to his M.Sc. degree obtained from a recognised University. In other words, mere discovery of new or important matter or evidence is not a sufficient ground for review *ex debito justitiae.* Not only this, the party seeking review has also to show that such additional 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 earlier.

b. The main ground for review urged by the Appellant is that the writ petitioner obtained his M.Sc. degree from Vinayaka Mission University which is not affiliated by the UGC. The

appellant has relied upon a Public Notice of the UGC dated June 27, 2013. The said public notice reveals that "In case education of distance programmes, no Institution deemed to be University, so declared by the Govt. of India after May 26, 2010 is allowed to conduct courses in the distance mode. The Institution deemed to be University declared before May 26, 2010 are not allowed to conduct course in distance mode from any of its Off-campus Centre/Off-shore campuses approved after May 26, 2010"

c. The Vinayaka Mission University (which was formally known as Vinayaka Missions Research Foundation) Salem, Tamil Nadu is deemed to be a University declared under Section 3 of the UGC Act, 1956. The Distance Education Council (DEC) granted ex-post facto Institutional Recognition to the said University for programmes offered by it through distance mode up to the academic year 2005. The DEC, based on recommendations made by the Expert Committee also granted recognition to the courses under offer by the Faculty of Distance Education of the University through distance mode for a period of 5 years with effect from February 28, 2007. Further, DEC granted Institutional Recognition to the said University for the said period of 5 years with effect from the date of issue of its letter that is from February 28, 2007. The programme-wise

recognition was accorded to it for three years from academic session 2011-12 to 2013-14.

d. The writ petitioner took admission in the said University on July 20, 2010 and completed his course through distance mode in September, 2011 that is within the validity of the permission accorded to the DEC for offering programme through distance mode vide letter dated February 28, 2007. The writ petitioner appeared in his examination at the examination centre authorized by the University and last date of his M.Sc. examination was in September, 2011. Therefore, Public Notice dated June 27, 2013 instructing all University regarding offering of courses through off-campus has no manner of application to the instant case.

e. The M.Sc. in Mathematics which the writ petitioner obtained from the said University through distance mode was offered by Vinayaka Mission University, which is in the list of deemed Universities recognized by the UGC through distance mode.

f. The Judgment and order dated May 16, 2016 passed in WP 5662 (W) of 2016 have no applicability in the instant case as the petitioner had undertaken his M.Sc. course through distance mode conducted by the Faculty of Distance

Education of the said University, and not through a study centre.

g. For the three years from academic session 2011-12 to 2013-14 the said University had been enjoying institution al recognition and there is no contra materials produced before this Court that the writ petitioner had been admitted in a study centre beyond the main campus of the University and completed the course in DEC only in the study centre and not at the main campus. Therefore, to that extent the stand taken by the University that all these courses especially the M.Sc. degree course during the relevant years were conducted by the University only at the main campus have to be accepted. The question regarding whether the Writ Petitioner's certificate is genuine or not has also been asserted by the Assistant Controller of Examination.

h. Judgment of the Hon'ble Supreme Court in ***S. Madhusudhan Reddy -v- V. Naryana Reddy*** reported in **2022 INSC 846** bears relevance on the aspect of maintainability –

"31. The above chronology of events gains significance as it goes to amply demonstrate that several opportunities were available to the Respondents if they really wished to file authenticated copies of the revenue records relating to the

purported surrender proceedings before the Tehsildar which they did not avail of, for reasons best known to them. The first opportunity arose when the Respondents challenged the ex parte order dated 2nd April, 2005 passed by the Appellate Authority when they filed two Civil Revision Petitions which were allowed and the matter was remanded back to the Appellate Authority for fresh consideration; the second opportunity arose when the Appellate Authority re-considered the appeals remitted by the High Court and passed an order dated 23rd March, 2013, in favour of the predecessors-in-interest of the Appellant; the third opportunity arose when the Respondents preferred a second set of Civil Revision Petitions assailing the order dated 23rd March, 2013 that culminated in the common judgment and order dated 9th July, 2013 passed by the High Court; the fourth opportunity arose when the Respondents filed two review applications for seeking review of the common judgment and order dated 9th July, 2013, that came to be dismissed vide order dated 20th February, 2014; and the fifth opportunity arose when the Respondents preferred petitions for special leave to appeal before this Court being aggrieved by the common judgment and orders dated 9th July, 2013 and the review order dated 20th February, 2014 passed by the High Court.

32. Pertinently, this Court had declined to entertain the said petitions preferred by the Respondents but having regard to the submission made on their behalf that they would be in a position to file documents to show that there was surrender of tenancy on the part of the protected tenants and their legal heirs, it was left open to the Respondents to file a review petition before the High Court. It was only thereafter that the Respondents woke up to filing certified copies of

those documents, xerox copies whereof had already been filed by them in the second round of revision petitions preferred before the High Court. That being the position, the Respondents cannot be heard to state that the documents in question were not to their knowledge or that the certified copies of the revenue record could not be produced by them before the High Court passed the common judgment and order dated 09th July, 2013. At the time of filing the second set of review petitions, the Respondents raised a plea that the learned Single Judge did not consider the relevant record produced by them regarding the surrender proceedings and had erroneously returned a finding that the file relating to surrender of the land by the protected tenants in the year 1967, was manipulated by ante-dating the same after the land ceiling was finalized by the Land Ceiling Tribunal. However, apart from the bald averment by the Respondents that the documents were not considered, which averment has been replicated in the impugned order, a perusal of the earlier judgment of the High Court does not suggest any such non-consideration. Rather, it appears that the High Court considered the records available before it, which included the copies of the revenue records as admitted by the parties and passed certain observations."

33. A perusal of the averments made in the second set of review petitions shows that there is no explanation offered regarding discovery of new material in the form of the documents sought to be filed. When it is the case of the Respondents themselves that the relevant documents were all along available in the revenue records and they had already filed xerox copies thereof during the second revision proceedings, they can hardly be heard to state that the said documents were unknown to them and were unavailable for

being produced before the learned Single Judge prior to passing of the common judgment and order dated 9th July, 2013. It is evident from the above that the Respondents had not discovered any new material for them to have moved a second set of review petitions. In order to satisfy the requirements prescribed in Order XLVII Rule 1 Code of Civil Procedure, it is imperative for a party to establish that discovery of the new material or evidence was neither within its knowledge when the decree was passed, nor could the party have laid its hands on such documents/evidence after having exercised due diligence, prior to passing of the order. What to speak of conclusive proof of having undertaken an exercise of due diligence for accessing the relevant documents, there is not an averment made by the Respondents in the second set of review petitions to the effect that they could not trace the documents in question earlier or that they had made sincere efforts to obtain certified copies thereof before the common order dated 9th July, 2013 was passed, but could not do so for some cogent and valid reasons.

34. In other words, nothing has been stated on affidavit to substantiate the plea taken by the Respondents at such a belated stage that the documents sought to be filed by them with the second set of review petitions had come to light after passing of the judgment and order dated 9th July, 2013. Under the garb of the liberty granted to them, the Respondents have tried to fill in the glaring loopholes and introduce evidence in the review proceedings that was all along in their power and possession and ought to have seen the light of the day much earlier. In fact, it appears that the Civil Revision Petitions were originally argued to the hilt on several other grounds, not limited just to the revenue record,

which were all considered and turned down as meritless. Therefore, we have no hesitation in holding that non-production of the relevant documents on the part of the Respondents at the appropriate stage cannot be a ground for seeking review of the judgment and order dated 9th July, 2013 particularly, when five opportunities enumerated in para 31 above, were available to them for production of the said documents, which were all frittered away, one by one.

* * *

36. Given the above facts and circumstances, we are of the firm view that the second set of review petitions were nothing short of an abuse of the process of the court and ought to have been rejected by the High Court as not maintainable, without having gone into the merits of the matter. In the result, the present appeals are allowed. The impugned judgment dated 29th April, 2022, is set aside and the common judgment and order dated 9th July, 2013 passed in CRP No. 2786/2013 and CRP No. 2787 of 2013, is restored."

i. Judgment of the Madras High Court in **S. Sivan -v- The Regional Accounts Officer and Ors.** reported in **MANU/TN/4506/2023** is also relied upon regarding the aspect of validity of the degree obtained from Vinayaka Mission University where the program wise recognition was given by the UGC from 2011-12, 2013-14:-

"23. In this context, it is to be noted that the stand of the UGC counsel was that, insofar as the approval that has been

given by the DEC, IGNO in respect of the University or deemed to be University are concerned to have such Distance Education Course only at the head quarters and not beyond which, which means, the study centres that had been run by various Universities like the present University were not approved or recognized by the UGC.

24. During the relevant period i.e., from 2007 to 2012, the University was given institution wise recognition as stated by the learned counsel appearing for the UGC and from 2011-2012 , 2013-2014, the program wise recognition was given by the UGC.

25. Therefore, insofar as these teachers are concerned, they joined in the course either in the year 2007 or in the year 2008 and they completed either in the year 2008 or 2009 respectively. Since the course is one year duration they joined in 2007 and completed in 2008 and those who joined in 2008 had completed in 2009.

26. These two academic years or calendar years, the University had been enjoying the institution recognition and there is no contra materials produced before this Court that these teachers had been admitted only in study centres beyond the main campus of the University and completed the course only in the study centres and not at the main campus, therefore, to that extent the stand taken by the University that all these courses especially the M.Phil degree course during the relevant years were conducted by the University only at the main campus have to be accepted.

27. If we look at the impugned order, which was challenged before the Writ Court is concerned, the audit team has raised the objection to the following effect:

"1) திரு.சு.சிவன், முதகலை ஆசிரியர்

இவர் எம்.பில் உயர்கல்வி பெற்றமைக்கு 30.12.09 முதல் ஒரு ஊக்க ஊதிய உயர்வு ரூ.530+530 திருமல்வாடி அ.மே.நி.பள்ளி தலைமை ஆசிரியரது ஆணை எண்.09/அ1/10 நாள். 20.12.10ன் படி அனுமதிக்கப்பட்டு அடிப்படை ஊதியம் ரூ.17670 லிருந்து ரூ.18730/-க்கு உயர்த்தப்பட்டுள்ளது. இவர் எம்.பில் உயர்கல்வியை சேலம் விநாயக மிஷன் தன்னாட்சி பல்கலைக்கழகத்தில் அஞ்சல் வழியில் பயின்றுள்ளார். இப்பல்கலைக்கழகம் அஞ்சல் வழியில் உயர்கல்வி வழங்க புதுடில்லி அஞ்சல் வழிக்கல்வி ஆணையத்தால் அங்கீகரிக்கப்பட்ட ஆணை தணிகைக்கு முன்னிலைபடுத்தப்பட வேண்டும்.

இயலாத நிலையில் அனுமதிக்கப்பட்ட ஊக்க ஊதியம் இரத்து செய்யப்பட வேண்டும். கிகையாக வழங்கப்பட்ட ரூ.30808 + படிகள் அரசுக் கணக்கில் திரும்ப செலுத்தப்பட வேண்டும்."

28. The audit team has stated that, the teachers concerned has been given the advanced incentive increment for having acquired the M.Phil higher qualification but whether the teacher has completed the said course and acquired the qualification in Vinayaka Missions University, if so, whether the said University was recognized or approved by the DEC, New Delhi and if so, the said order should be produced before the audit team and if no such order is produced then the Department has to cancel the advanced incentive increment allowed to these teachers.

29. Therefore, it was a condition imposed by the audit team that, if the DEC's order recognizing or approving the University viz., Vinayaka Missions University to conduct Distance Education Courses is made available, the advance incentive increment given to the teachers need not be interfered, provided if no such orders are produced, it should be cancelled.

30. Here, the fact remains that, insofar as the Vinayaka Mission's University is concerned, it has been given the

recognition or approval by the DEC, IGNO by order dated 28.02.2007.

31. When that being so, even according to the audit team, since these teachers are entitled to get their advance incentive increment as their increment has been ordered already and was enjoyed by them it need not be stopped or cancelled.

32. This position, even though had been projected, the learned single Judge has rejected the writ petitions, where the learned Judge has considered the counter affidavit filed by the Government as well as the deemed to be University and ultimately concluded that these teachers are not entitled to get the advance incentive increment as allowed to them earlier in view of the stand taken by the Government that they are not entitled to get such incentive increment because the degree obtained by them through Distance Education Mode of the Vinayaka Missions University cannot be an approved or recognized or accepted.

33. In this context, the learned Government Pleader appearing for the State has relied upon the G.O.Ms. No. 91, Higher Education Department, dated 03.04.2009 and has stated that the Government by the said G.O, declared that the M.Phil and Ph.D degree obtained through the correspondence or Distance Education or Open University system are ineligible for Government appointments and appointment as lecturers in colleges or Universities including self-financing colleges, therefore the import of the said G.O.Ms. No. 91, dated 03.04.2009 if it is implemented that will stand in the way for extending the benefit of advance incentive increment to the teachers.

34. However, the said submission made by the learned Government Pleader is liable to be rejected because, the said G.O has only mentioned about the eligibility for a person to get employment. Here, the teachers, as per earlier qualification acquired already, been appointed as teachers or lecturers and the benefit now questioned is only the grant of advance incentive increment for having acquired the higher qualification. Therefore, the G.O.Ms. No. 91 dated 03.04.2009 issued by the Higher Education Department

does not deal with anything about the allowing of advance incentive increment to the teachers, who acquired higher qualification, therefore, that argument made by the learned Government Pleader also is to be rejected and accordingly, it is rejected.

35. In the result, the following orders are passed in these writ appeals:

• That the impugned order passed by the writ Court dated 06.09.2018 is set aside. As a sequel, the impugned order that was challenged before the Writ Court in the respective petitions is also set aside to the extent that those teachers who had studied in the Vinayaka Mission's University during the relevant point of time i.e., 2007 to 2009 since had acquired the qualification during the period which the University also enjoyed the approval or recognition from the DEC, IGNO, the said objection raised by the audit Department would not be sustained. Therefore, on that ground, the incentive increment already allowed to these teachers need not be disturbed. If the increment already been allowed to these teachers have been cancelled or stopped by virtue of the order, which is impugned herein, the same shall be restored and the arrears to that effect shall be calculated and be paid to the teachers/appellants. To that extent, all these writ appeals are allowed. No costs. Connected miscellaneous petitions are closed."

Analysis and Conclusion

5. I have heard the counsel appearing on behalf of the parties and perused the materials on record.

6. Before I proceed to adjudicate the instant review petition, based on its merits, I consider it integral to outline the inherent power of review vested within the High Courts by virtue of them being

Courts of Record under Article 215 of the Constitution of India and the law on review as it exists today.

7. Nobody is perfect. Everyone, at one point or the other, makes mistakes. 'To err is to human" is the one of the oldest proverbs in the English language. While we as judges of constitutional courts may be addressed as "Your Lordships", we are not infallible. Recognising this principle, and to also prevent miscarriage of justice, being Courts of Record under Article 215 of the Constitution of India, power of reviewing their own orders are inherent in the High Courts. However, exercise of this power is not limitless and is subject to certain conditions. Review power are to be exercised with extreme diligence and wariness, or else it would defeat the very purpose of the existence of such power.

8. Inherent power of the High Courts under Article 215 of the Constitution of India was recently reiterated by this Court in its judgment in ***Radha Bhattad -v- Rashmi Cement Limited*** reported in **2023 SCC OnLine Cal 2570 –**

> *"13. It is important to demarcate the source if invocation of the power of review and the power to enter into a substantive review of the order on merits. Article 215 of the Constitution declares High Courts to be Courts of records. Being Courts of records, the High Courts are invested with inherent powers to correct the records. The term "Courts of records" does not simply mean keepers of*

records but that the High Courts have an obligation, indeed a duly, to maintain correct records within its jurisdiction in accordance with law. The power to correct orders, including where there is an apparent error on the face of the record, falls within the plenary powers of the High Court as a Court of record. The power under Article 226 of the Constitution, although emanating from a different source, reinforces the power as held in Shivdev Singh where the Supreme Court specifically held that there is nothing in Article 226 to preclude a High Court from exercising the power of review as a Court of plenary jurisdiction for preventing miscarriage of justice."

9. It would be prudent on my part to reproduce Order 47 Rule 1 of the Code of Civil Procedure, 1908 which governs the grounds on which a judgment or an order can be reviewed:-

"(a) From the discovery of new and important matters or evidence which after the exercise of due diligence was not within the knowledge of the applicant;

(b) Such important matter or evidence could not be produced by the applicant at the time when the decree was passed or order made;

and

(c) On account of some mistake or error apparent on the face of the record or any other sufficient reason."

10. The boundary within which the power of review under Order 47 Rule 1 of Code of Civil Procedure, 1908 has to be exercised has been demarcated by the Hon'ble Supreme Court in its recent judgment in ***S. Murali Sundaram -v- Jothibai Kannan and Ors.*** reported in **2023 INSC 161 :-**

> *"5.1. While considering the aforesaid issue two decisions of this Court on Order 47 Rule 1 read with Section 114 Code of Civil Procedure 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 Code of Civil Procedure, 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 Code of Civil Procedure 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 Code of Civil Procedure.*
>
> *(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 by 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."

11. In its judgment in ***Aribam Tuleshwar Sharma -v- Aribam Pishak Sharma*** reported in **(1979) 4 SCC 389**, the Hon'ble Supreme Court stated that review power is inherently different from the appellate power which enable the High Courts to correct all manners of errors in the judgment or order under challenge :-

"3. The Judicial Commissioner gave two reasons for reviewing his predecessor's order. The first was that his predecessor had overlooked two important documents Exs. A-1 and A-3 which showed that the respondents were in possession of the sites even in the year 1948-49 and that the grants must have been made even by then. The second was that there was a patent illegality in permitting the appellant to question, in a single writ petition, settlement made in favour of different respondents. We are afraid that

neither of the reasons mentioned by the learned Judicial Commissioner constitutes a ground for review. It is true as observed by this Court in Shivdeo Singh v. State of Punjab [AIR 1963 SC 1909] there is nothing in Article 226 of the Constitution to preclude a High Court from exercising the power of review which inheres in every court of plenary jurisdiction to prevent miscarriage of justice or to correct grave and palpable errors committed by it. But, there are definitive limits to the exercise of the power of review. ***The power of review may be exercised on the discovery of new and important matter or evidence which, after the exercise of due diligence was not within the knowledge of the person seeking the review or could not be produced by him at the time when the order was made; it may be exercised where some mistake or error apparent on the face of the record is found; it may also be exercised on any analogous ground. But, it may not be exercised on the ground that the decision was erroneous on merits. That would be the province of a court of appeal. A power of review is not to be confused with appellate powers which may enable an appellate court to correct all manner of errors committed by the subordinate court."***

(Emphasis Added)

12. In ***Parsion Devi -v- Sumitri Devi*** reported in **(1997) 8 SCC 715**, the Hon'ble Supreme Court reiterated that under Order 47 Rule 1 of the Code of Civil Procedure, 1908, an erroneous decision cannot be "reheard and corrected" :-

"7. It is well settled that review proceedings have to be strictly confined to the ambit and scope of Order 47 Rule 1 CPC. In Thungabhadra Industries Ltd. v. Govt. of A.P. [AIR 1964 SC 1372 : (1964) 5 SCR 174] (SCR at p. 186) this Court opined:

"What, however, we are now concerned with is whether the statement in the order of September 1959 that the case did not involve any substantial question of law is an 'error apparent on the face of the record'). The fact that on the earlier occasion the Court held on an identical state of facts that a substantial question of law arose would not per se be conclusive, for the earlier order itself might be erroneous. Similarly, even if the statement was wrong, it would not follow that it was an 'error apparent on the face of the record', for there is a distinction which is real, though it might not always be capable of exposition, between a mere erroneous decision and a decision which could be characterised as vitiated by 'error apparent'. A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected, but lies only for patent error."

(emphasis ours)

8. Again, in Meera Bhanja v. Nirmala Kumari Choudhury [(1995) 1 SCC 170] while quoting with approval a passage from Aribam Tuleshwar Sharma v. Aribam Pishak Sharma [(1979) 4 SCC 389] this Court once again held that review proceedings are not by way of an appeal and have to be strictly confined to the scope and ambit of Order 47 Rule 1 CPC.

9. 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". A review petition, it must be remembered has a limited purpose and cannot be allowed to be "an appeal in disguise"."

(Emphasis Added)

13. The law laid down by the Hon'ble Supreme Court in ***Parsion Devi -v- Sumitri Devi (supra)*** was referred to and reiterated by the High Court of Punjab and Haryana in its recent judgment in ***Paramjit Singh through Lrs -v- Gurdial Singh and Others*** reported in **2022 SCC OnLine P&H 1637**:-

"The counsel has further in his arguments sought to raise the points of self-contradictions and self-defeating stands and which could not be taken into consideration in a review application and it is well settled law as has sought to be relied upon by counsel for the respondent who has cited the judgments titled as 'Sasi (D) Through Lrs. v. Aravindakshan Nair' (2017) 2 RCR (Civil) 363 and 'Parsion Devi v. Sumitri Devi' (1997) 4 RCR (Civil) 458; where ***the Apex Court has laid down that a review cannot be allowed to be disguised as an appeal for getting an erroneous***

decision reheard and corrected and has to be used within the ambit of Order 47 Rule 1 CPC to rectify any error patent on the records instead of assailing the orders on the appeals by this Court before the next Court the instant review has come about for a motivated cause. *Since, this Court cannot come across any mistake or an error apparent on the records which could be self evident and any such interpretation that is sought to be put forth by the counsel for the applicant by process of reasoning cannot be considered at this juncture."*

(Emphasis Added)

14. In ***S. Madhusudan Reddy -v- Narayana Reddy (supra)***, the Hon'ble Supreme Court asserted the limited grounds on which a review petition can be assailed under the relevant provisions of the Code of Civil Procedure, 1908 :-

"18. A glance at the aforesaid provisions makes it clear that a review application would be maintainable on (i) discovery of new and important matters or evidence which, after exercise of due diligence, were not within the knowledge of the applicant or could not be produced by him when the decree was passed or the order made; (ii) on account of some mistake or error apparent on the face of the record; or (iii) for any other sufficient reason.

19. In Col. Avatar Singh Sekhon v. Union of India[10], this 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[11] 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.'"

(emphasis added)

20. In Parsion Devi v. Sumitri Devi, stating that an error that is not self-evident and the one thathas to be detected by the process of reasoning, cannot be described as an error apparent on the face of the record for the Court to exercise the powers of review, this Court held as under:……."

15. In **Shri Ram Sahu (Dead) through Legal Representatives and Others -v- Vinod Kumar Rawat and Others** reported in **(2021) 13 SCC 1**, the Hon'ble Supreme Court after examining precedents reiterated and delineated the principles of review –

"7.1. In Haridas Das v. Usha Rani Banik [Haridas Das v. Usha Rani Banik, (2006) 4 SCC 78] while considering the scope and ambit of Section 114CPC read with Order 47

Rule 1CPC it is observed and held in paras 14 to 18 as under : (SCC pp. 83-84)

"14. In Meera Bhanja v. Nirmala Kumari Choudhury [Meera Bhanja v. Nirmala Kumari Choudhury, (1995) 1 SCC 170] it was held that : (SCC pp. 172-73, para 8)

'8. It is well settled that the review proceedings are not by way of an appeal and have to be strictly confined to the scope and ambit of Order 47 Rule 1CPC. In connection with the limitation of the powers of the court under Order 47 Rule 1, while dealing with similar jurisdiction available to the High Court while seeking to review the orders under Article 226 of the Constitution of India, this Court in Aribam Tuleshwar Sharma v. Aribam Pishak Sharma [Aribam Tuleshwar Sharma v. Aribam Pishak Sharma, (1979) 4 SCC 389] speaking through Chinnappa Reddy, J. has made the following pertinent observations : (SCC p. 390, para 3)

"3. ... It is true ... there is nothing in Article 226 of the Constitution to preclude the High Court from exercising the power of review which inheres in every court of plenary jurisdiction to prevent miscarriage of justice or to correct grave and palpable errors committed by it. But, there are definitive limits to the exercise of the power of review. The power of review may be exercised on the discovery of new and important matter or evidence which, after the exercise of due diligence was not within the knowledge of the person seeking the review or could not be produced by him at the time when the order was made; it may be exercised where some mistake or error apparent on the face of the record is found, it may also be exercised on any analogous ground. But, it may not be exercised on the ground that the decision was erroneous on merits. That would be the province of a court of appeal. A power of review is not to be confused with appellate powers which may enable an appellate court to correct all manner of errors committed by the subordinate court." '

*****

15. A perusal of Order 47 Rule 1 shows that review of a judgment or an order could be sought : (a) from the discovery of new and important matters or evidence which after the exercise of due diligence was not within the knowledge of the applicant; (b) such important matter or evidence could not be produced by the applicant at the time when the decree

was passed or order made; and (c) on account of some mistake or error apparent on the face of the record or any other sufficient reason.

16. In Aribam Tuleshwar Sharma v. Aribam Pishak Sharma [Aribam Tuleshwar Sharma v. Aribam Pishak Sharma, (1979) 4 SCC 389] , this Court held that there are definite limits to the exercise of power of review. In that case, an application under Order 47 Rule 1 read with Section 151 of the Code was filed which was allowed and the order passed by the Judicial Commissioner was set aside and the writ petition was dismissed. On an appeal to this Court it was held as under : (SCC p. 390, para 3)

'3. It is true as observed by this Court in Shivdev Singh v. State of Punjab [Shivdev Singh v. State of Punjab, AIR 1963 SC 1909] there is nothing in Article 226 of the Constitution to preclude a High Court from exercising the power of review which inheres in every court of plenary jurisdiction to prevent miscarriage of justice or to correct grave and palpable errors committed by it. But, there are definitive limits to the exercise of the power of review. The power of review may be exercised on the discovery of new and important matter or evidence which, after the exercise of due diligence was not within the knowledge of the person seeking the review or could not be produced by him at the time when the order was made; it may be exercised where some mistake or error apparent on the face of the record is found; it may also be exercised on any analogous ground. But, it may not be exercised on the ground that the decision was erroneous on merits. That would be the province of a court of appeal. A power of review is not to be confused with appellate powers which may enable an appellate court to correct all manner of errors committed by the subordinate court.'

17. The judgment in Aribam case [Aribam Tuleshwar Sharma v. Aribam Pishak Sharma, (1979) 4 SCC 389] has been followed in Meera Bhanja [Meera Bhanja v. Nirmala Kumari Choudhury, (1995) 1 SCC 170] . In that case, it has been reiterated that an error apparent on the face of the record for acquiring jurisdiction to review must be such an error which may strike one on a mere looking at the record and would not require any long-drawn process of reasoning. The following observations in connection with an error

apparent on the face of the record in Satyanarayan Laxminarayan Hegde v. Mallikarjun Bhavanappa Tirumale [Satyanarayan Laxminarayan Hegde v. Mallikarjun Bhavanappa Tirumale, AIR 1960 SC 137] were also noted : (AIR pp. 141-42, para 17)

'17. … An error which has to be established by a long-drawn process of reasoning on points where there may conceivably be two opinions can hardly be said to be an error apparent on the face of the record. Where an alleged error is far from self-evident and if it can be established, it has to be established, by lengthy and complicated arguments, such an error cannot be cured by a writ of certiorari according to the rule governing the powers of the superior court to issue such a writ.'

18. It is also pertinent to mention the observations of this Court in Parsion Devi v. Sumitri Devi [Parsion Devi v. Sumitri Devi, (1997) 8 SCC 715] . Relying upon the judgments in Aribam [Aribam Tuleshwar Sharma v. Aribam Pishak Sharma, (1979) 4 SCC 389] and Meera Bhanja [Meera Bhanja v. Nirmala Kumari Choudhury, (1995) 1 SCC 170] it was observed as under : (SCC p. 719, para 9)

'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

7.2. In Lily Thomas v. Union of India [Lily Thomas v. Union of India, (2000) 6 SCC 224 : 2000 SCC (Cri) 1056] , it is observed and held that the 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 in the said decision that the words "any other sufficient reason" appearing in Order 47 Rule 1CPC must mean "a reason sufficient on grounds at least analogous to those specified in the rule" as was held in Chhajju

Ram v. Neki [Chhajju Ram v. Neki, 1922 SCC OnLine PC 11 : (1921-22) 49 IA 144 : AIR 1922 PC 112] and approved by this Court in Moran Mar Basselios Catholicos v. Mar Poulose Athanasius [Moran Mar Basselios Catholicos v. Mar Poulose Athanasius, AIR 1954 SC 526] .

7.3. In Inderchand Jain v. Motilal [Inderchand Jain v. Motilal, (2009) 14 SCC 663 : (2009) 5 SCC (Civ) 461] in paras 7 to 11 it is observed and held as under : (SCC pp. 668-69)

"7. Section 114 of the Code of Civil Procedure (for short "the Code") provides for a substantive power of review by a civil court and consequently by the appellate courts. The words "subject as aforesaid" occurring in Section 114 of the Code mean subject to such conditions and limitations as may be prescribed as appearing in Section 113 thereof and for the said purpose, the procedural conditions contained in Order 47 of the Code must be taken into consideration. Section 114 of the Code although does not prescribe any limitation on the power of the court but such limitations have been provided for in Order 47 of the Code; Rule 1 whereof reads as under : (Kamal Sengupta case [State of W.B. v. Kamal Sengupta, (2008) 8 SCC 612 : (2008) 2 SCC (L&S) 735] , SCC p. 631, para 17)

'17. The power of a civil court to review its judgment/decision is traceable in Section 114CPC. The grounds on which review can be sought are enumerated in Order 47 Rule 1CPC, which reads as under:

"1. Application for review of judgment.—(1) 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 of the court which passed the decree or made the order." '

8. An application for review would lie inter alia when the order suffers from an error apparent on the face of the record and permitting the same to continue would lead to failure of justice. In Rajender Kumar v. Rambhai [Rajender Kumar v. Rambhai, (2007) 15 SCC 513 : (2010) 3 SCC (Cri) 584] this Court held : (SCC p. 514, para 6)

'6. The limitations on exercise of the power of review are well settled. The first and foremost requirement of entertaining a review petition is that the order, review of which is sought, suffers from any error apparent on the face of the order and permitting the order to stand will lead to failure of justice. In the absence of any such error, finality attached to the judgment/order cannot be disturbed.'

9. The power of review can also be exercised by the court in the event discovery of new and important matter or evidence takes place which despite exercise of due diligence was not within the knowledge of the applicant or could not be produced by him at the time when the order was made. An application for review would also lie if the order has been passed on account of some mistake. Furthermore, an application for review shall also lie for any other sufficient reason.

10. It is beyond any doubt or dispute that the review court does not sit in appeal over its own order. A rehearing of the matter is impermissible in law. It constitutes an exception to the general rule that once a judgment is signed or pronounced, it should not be altered. It is also trite that exercise of inherent jurisdiction is not invoked for reviewing any order.

11. Review is not appeal in disguise. In Lily Thomas v. Union of India [Lily Thomas v. Union of India, (2000) 6 SCC 224 : 2000 SCC (Cri) 1056] this Court held : (SCC p. 251, para 56)

'56. It follows, therefore, that the 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. The review cannot be treated like an appeal in disguise.' "

8. The dictionary meaning of the word "review" is "the act of looking, offer something again with a view to correction or

improvement". It cannot be denied that the review is the creation of a statute. In Patel Narshi Thakershi v. Pradyumansinghji Arjunsinghji [Patel Narshi Thakershi v. Pradyumansinghji Arjunsinghji, (1971) 3 SCC 844] , this Court has held that the power of review is not an inherent power. It must be conferred by law either specifically or by necessary implication. The review is also not an appeal in disguise.

9. What can be said to be an error apparent on the face of the proceedings has been dealt with and considered by this Court in T.C. Basappa v. T. Nagappa [T.C. Basappa v. T. Nagappa, AIR 1954 SC 440] . It is held that such an error is an error which is a patent error and not a mere wrong decision. In Hari Vishnu Kamath v. Syed Ahmad Ishaque [Hari Vishnu Kamath v. Syed Ahmad Ishaque, (1955) 1 SCR 1104 : AIR 1955 SC 233] , it is observed as under : (SCC p. 244, para 23)

"23. … It is essential that it should be something more than a mere error; it must be one which must be manifest on the face of the record. The real difficulty with reference to this matter, however, is not so much in the statement of the principle as in its application to the facts of a particular case. When does an error cease to be mere error, and become an error apparent on the face of the record? The learned counsel on either side were unable to suggest any clear-cut rule by which the boundary between the two classes of errors could be demarcated." "

16. I also feel prudent to make a reference to the judgment of the Hon'ble Supreme Court in ***M/s Northern India Caterers (India) Ltd. -v- Ltd. Governor of Delhi*** reported in **(1980) 2 SCC 167** , wherein it was held as follows –

"8. It is well settled that a party is not entitled to seek a review of a judgment delivered by this Court merely for the purpose of a rehearing and a fresh decision of the case. The normal principle is that 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*: Sajjan Singh v. State of Rajasthan [AIR 1965 SC 845 : (1965) 1 SCR 933, 948 : (1965) 1 SCJ 377] . For instance, if the attention of the Court is not drawn to a material statutory provision during the original hearing, the Court will review its judgment: G.L. Gupta v. D.N. Mehta [(1971) 3 SCC 189 : 1971 SCC (Cri) 279 : (1971) 3 SCR 748, 750] . The Court may also reopen its judgment if a manifest wrong has been done and it is necessary to pass an order to do full and effective justice: O.N. Mohindroo v. Distt. Judge, Delhi [(1971) 3 SCC 5 : (1971) 2 SCR 11, 27] . Power to review its judgments has been conferred on the Supreme Court by Article 137 of the Constitution, and that power is subject to the provisions of any law made by Parliament or the rules made under Article 145. In a civil proceeding, an application for review is entertained only on a ground mentioned in Order 47 Rule 1 of the Code of Civil Procedure, and in a criminal proceeding on the ground of an error apparent on the face of the record (Order 40 Rule 1, Supreme Court Rules, 1966). But whatever the nature of the proceeding, it is beyond dispute that a review proceeding cannot be equated with the original hearing of the case, and the finality of the judgment delivered by the Court will not be reconsidered except "where a glaring omission or patent mistake or like grave error has crept in earlier by judicial fallibility": Sow Chandra*

Kante v. Sheikh Habib [(1975) 1 SCC 674 : 1975 SCC (Tax) 200 : (1975) 3 SCR 933] .”

(Emphasis Added)

17. At this juncture, my mind also goes back to the elegant words of Krishna Iyer, J. in **P.N. Eswara Iyer and Ors. -v- Registrar, Supreme Court of India** reported in **(1980) 4 SCC 680** :-

“..... unchecked review has never been the rule. It must be supported by proper grounds. Otherwise, every disappointed litigant may avenge his defeat by a routine review adventure and thus obstruct the disposal of the 'virgin' dockets waiting in the long queuefor preliminary screening or careful final hearing.....”

Krishna Iyer, J. further stated:

“Even otherwise, frivolous motions for review would ignite the 'gambling' element in litigation with the finality of judgments even by the highest court, being left in suspense. If, every vanquished party has a fling at 'review' lucky dip and if, perchance, notice were issued in some cases to the opponent the latter-and, of course, the former, -would be put to great expense and anxiety. The very solemnity of finality, so crucial to judicial justice, would be frustrated if such a game were to become popular.”

18. Law on review is exquisitely clear wherein the appellant seeking review of a judgment or order is required to show the discovery

of new and important matter or evidence which could not be brought to the knowledge of the court despite proper and adequate due diligence. An appeal cannot cloak as review, and the High Courts while reviewing their own orders must keep in mind the principles elucidated above. Courts while exercising their review jurisdiction act as third umpires and are only empowered to look into an error apparent on the face of record. If the courts are required to embark upon a journey in search for the error on which review has been sought, then that error cannot be termed as an error apparent on face of record. Review jurisdiction cannot be treated as second opportunity by the parties aggrieved by a judgment or order to argue afresh.

19. Drawing back to the instant case, it is abundantly clear that the grounds assailed by the appellant do not merit review of this Court's order dated January 11, 2021.

20. Appellants before this Court has questioned the validity of M.Sc. certificate of the writ petitioner which entitled him to a higher pay grade. Appellants, however, have failed to establish that despite proper due diligence, they could not bring up the alleged invalidity of the writ petitioner's M.Sc. certificate to the notice of this Court. Appellant's failure to challenge the validity

of the M.Sc. certificate before this Court on the earlier occasion, cannot be treated as a ground that would invite this Court to review/recall its order dated January 11, 2021.

21. Furthermore, this review application does not concern an error which is apparent on the face of the record, but rather requires this Court to examine the validity of the writ petitioner's M.Sc. Certificate which is not within the scope of a review application.

Principles

22. I have culled out the principles emerging from the aforesaid discussion below –

a. Being Courts of Record under Article 215 of the Constitution of India, High Courts are empowered to review/recall their orders. Existence of this power is also necessary to prevent the miscarriage of justice.

b. Power of review is extremely restricted and is to be exercised within the confines of Section 151 read with Order 47 Rule 1 of the Code of Civil Procedure, 1908

c. Review proceedings cannot be treated as an appeal and have to be strictly confined to the grounds laid down under

Order 47 Rule 1 of the Code of Civil Procedure, 1908. A matter cannot be **"reheard"** under review, and re-adjudicated on its merits.

d. Review power inherently differs from the appellate powers which allow the courts to correct all manner of errors present within a judgment or order. Only on discovery of new and important matter, or evidence which could not be brought before the court on earlier occasion despite exercise of proper due diligence, a court can review its own order.

e. For an error to merit review of a judgment or order, it must be an error *apparent on the face of record*. If the Courts have to search for the error, it cannot be termed as an error apparent on the face of record and would not entitle a party to seek review of a judgment.

Directions

23. In light of the aforesaid discussion and finding, it is clear that there exists no grounds for this court to review its order dated January 11, 2021.

24. Accordingly, RVW 163 of 2021 is dismissed and the interlocutory applications being C.A.N 1 of 2021 and C.A.N 3 of 2023 are disposed of. There shall be no order as the costs.

25. Urgent photostat certified copy of this order, if applied for, should be readily made available to the parties upon compliance with requisite formalities

(Shekhar B. Saraf, J.)

October 05, 2023