

Neutral Citation No. - 2023:AHC-LKO:63337-DB

Court No. - 1

Case :- CIVIL MISC REVIEW APPLICATION No. - 117 of 2023

Applicant :- Legislative Council Lko. Thru. Prin. Secy And 2 Others

Opposite Party :- Sushil Kumar And 11 Others

Counsel for Applicant :- Akansha Dubey

in re:

Case :- SPECIAL APPEAL DEFECTIVE No. - 485 of 2023

Appellant :- Sushil Kumar And 2 Others

Respondent :- Legislative Council U.P. Lko. Thru. Prin. Secy. And 11 Others

Counsel for Appellant :- Shobhit Mohan Shukla, Manoj Kumar Chaurasiya

Counsel for Respondent :- Akansha Dubey, C.S.C., Gaurav Mehrotra, Raj Kumar Upadhyaya (R.K. Upadhyaya)

Hon'ble Attau Rahman Masoodi, J.

Hon'ble Om Prakash Shukla, J.

- (1) Heard Sri J. N. Mathur, learned Senior Advocate assisted by Ms. Akansha Dubey and Sri Shobhit Mohan Shukla, learned counsel appearing for the respondents.
- (2) The present application seeking review/recall has been filed on behalf of the applicants primarily on the ground that no finding of criminality is contained in the order dated 18th September, 2023 passed in Special Appeal No. 485/2023 and as such in absence of any criminality leading to a *prima facie* satisfaction for registration of a P.I.L., the impugned order would call for a review.

- (3) Sri Shobhit Mohan Shukla, learned counsel appearing for the respondents on the contrary would submit that the review application is maintainable against a judgment by virtue of Chapter V Rule 12 of Allahabad High Court Rules, 1952 and in the present case, the proceedings are pending at the interlocutory level.
- (4) This Court has given an anxious thought to the contention being raised by the applicants/review petitioners and is of the view that the fundamental ground of “error apparent” for the maintainability of any review application has not been made out by the applicants/review petitioners and as such the application as being lacking merits deserves to be dismissed. The ancillary grounds which have been raised, in our bounden duty, however, deserve to be considered.
- (5) We are fully aware that a detailed reasoning and finding is not contained in our order. However, the fact of the matter remains that we have consciously chosen not to delve into the aspect of criminality as the same would adversely affect the preliminary enquiry, which has a wide ramification on the whole recruitment process starting from engaging the agency to the manner in which the recruitment examination was conducted and as to how the final results were manipulated to accommodate underserving candidates as an act of apparent

nepotism, favouritism and fraud. This Court in its wisdom has held its cards of its sleeves and the reason for doing it are not far and wide, keeping in view the serious manipulation *prima facie* observed in this matter.

- (6) This Court need not hasten to put on record the specific instances regarding which the allegations made in the Special Appeal and Writ Petition are grave. Further, serious nepotism and collusion on the part of the officers in securing appointments for their favoured persons have been alleged, which, if found correct, not only flagrantly violates Articles 14 and 16 of Constitution of India, but also exposes senior officers involved in the recruitment exercise to penal consequences.
- (7) This Court having perused the original records itself has already recorded its *prima facie* satisfaction on the substance of allegations levelled vide its order dated 18th September, 2023 and need not go any further, especially when the Court from the entire gamut of facts would find that it was not less than a recruitment scam, wherein hundreds of recruits have been illegally and unlawfully recruited by an external agency of shaken credence. This Court being a vanguard of justice had been urged by the compelling facts to exercise its extraordinary jurisdiction for conducting preliminary enquiry of the entire matter by an independent agency like CBI.

- (8) In our considered view, it is not necessary to narrate the allegations in our order, nor is it appropriate to return a finding with regard to existence of materials justifying the enquiry to be referred to CBI, at this stage when we have called for a preliminary report from an independent investigation agency. We don't wish to cause any embarrassment to the establishment or dent the image of any high level individuals, unless the facts are verified by the said agency. It is only when, we pass final order in the matter that we shall find our reasons for the course that we have adopted in the matter.
- (9) In any case, we have been informed that a Preliminary Enquiry being PE No. PE0062023A0002 dated 22.09.2023 already stands registered by the CBI and the truth would be unravelled.
- (10) For all the reasons as narrated herein above, the present review petition lacks merits and as such the same is *rejected*.

(Om Prakash Shukla, J.) (Attau Rahman Masoodi, J.)

Order Date :- 03.10.2023
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