IN THE HIGH COURT AT CALCUTTA

CIVIL APPELLATE JURISDICTION

APPELLATE SIDE

Present:

THE HON'BLE JUSTICE HARISH TANDON
&
THE HON'BLE JUSTICE RABINDRANATH SAMANTA

R.V.W. 159 of 2022
In
WPST 102 of 2020
With
C.A.N. 1 of 2022

The State of West Bengal & Ors.

Vs.

Confederation of State Government Employees, West Bengal & Ors.

Appearance:

For the Applicants : **Mr. S. N. Mookherjee, Ld. Adv. General**
Mr. Sanjay Basu, Adv.
Mr. Shayak Chakraborty, Adv.
Mr. Piyush Agrawal, Adv.
Ms. Ujjaini Chatterjee, Adv.
Ms. Utsha Dasgupta, Adv.
Ms. Shrivalli Kaharia, Adv.

For the Respondents : **Mr. Kallol Basu, Adv.**
Mr. Loknath Chatterjee, Adv.
Mr. Suman Banerjee, Adv.
Mr. Guddu Singh, Adv.

For the Respondent No. 1 : **Mr. Bikash Ranjan Bhattacharyya, Sr. Adv.**
Mr. Firdous Samim, Adv.
Ms. Gopa Biswas, Adv.
Ms. Mousumi Hazra, Adv.

For the Unity Forum : **Mr. Bikash Ranjan Bhattacharyya, Sr. Adv.**
Mr. Prabir Chatterjee, Adv.
Mr. Dilip Kumar Chatterjee, Adv.
Mr. Suprovat Bhattacharyya, Adv.
Mr. Durga Bhusan Mukherjee, Adv.
Mrs. Debolina Banerjee, Adv.

For the State : **Mr. Tapan Kumar Mukherjee, Sr. Adv.**
Mr. Rabindra Narayan Dutta, Adv.
Mr. Hare Krishna Halder, Adv.

Judgment On : **22.09.2022**

Harish Tandon, J.:

The instant review application has been taken out assailing the judgment and order dated 20th May, 2022 passed in WPST no. 102 of 2020 primarily on two grounds. Firstly, there is an error apparent in the said judgment on the face of the record and secondly, there was a mistake on the part of the arguing Counsel in not referring several Government orders issued by the Finance Department, Government of West Bengal releasing the instalments of Dearness Allowance (for short, "DA") to its employees with effect from April 1, 2008 to January 1, 2019.

Though the several grounds have been taken for review of the said judgment and order in the memorandum of review as well as an application

filed therein, yet, the learned Advocate General has squeezed his argument on the aforesaid two points adumbrated herein before.

Being conscious of the scope of review provided under Order 47, Rule 1 of the Code of Civil Procedure and the power of the Court in exercising such powers, the salient facts of the instant case is required to be narrated for the purpose of brevity, clarity and dealing with the points urged before us by the State of West Bengal.

The 5th Pay Commission was set up by the State of West Bengal in the year 2008 to ascertain and recommend the revision in the structure of emoluments to the State Government employees including the Dearness Allowances in juxtaposition with the actual Cost-of-Living Index. On the basis of the recommendation of the 5th Pay Commission, the State Government accepted the recommendations to the extent which is reflected in ROPA Rules, 2009. There is no ambiguity in the mind of the litigants that the aforesaid Rules of 2009 was promulgated in exercise of the powers enshrined in the Constitution and assumed the character of statutory document. The said rule is exhaustive and further imbibed within itself several incidents of allowances including the Dearness Allowance.

The principal grievance of the respondents herein are against the non grant/disbursement of the Dearness Allowance in terms of the said recommendation as well as the ROPA Rules, 2009. Initially, several pleas were taken including that the State cannot devise its own method of ascertaining the DA but should compute the same in the similar fashion that of the Central Government. Another plea was taken that the Central

Government has adopted a methodology of computing the DA twice in a year which was initially accepted and followed by the State Government but later on there has been irregularities in disbursement thereof. The respondents also claimed that there must be an equality in payment of the disbursement of the DA to the employees of the State Government and cannot discriminate the employees' positioned within the State and outside.

The State took a stand that the payment of the Dearness Allowance to its employees is not a legally enforceable right and falls within the absolute prerogative of the State either to grant or refusal to grant the Dearness Allowances. A further plea was taken that although the 5th Pay Commission was set up to ascertain various issues or aspects but it is mere recommendation which may or may not be accepted by the State Government in its entirety.

The Tribunal dismissed the said application holding that it is within the discretionary domain of the State Government to pay or disburse the Dearness Allowance to its employees and, therefore, the inaction and/or refusal in this regard cannot result in denial of an accrued right. It was further held that even if the State Government have acted upon the recommendation of the 5th Pay Commission to a certain extent but it does not ipso facto lead to the situation where the State is bound to carry out the same to its logical conclusion. The Tribunal further held that the claim of the discrimination in the matter of payment of Dearness Allowance to the employees posted within the State of West Bengal and their counterpart outside the State is not tenable.

The said order of the Tribunal was carried by the respondents before this Court in WPST No.45 of 2017 which was set aside and the said proceeding was remanded to the Tribunal on two issues – firstly, whether the claim of the employees serving under the Government of West Bengal for Dearness Allowance at the rate equivalent to that of the employees of the Central Government is sustainable and secondly, whether the discrimination in the matter of payment of DA to the employees of the State of West Bengal with their counterparts serving in New Delhi and Chennai is sustainable.

It is relevant to point out that while remanding the matter the Division Bench held that the claim of the employees under the State of West Bengal pertaining to the DA is a legally enforceable right to such extent of the recommendation of the 5th Pay Commission which was accepted by the Government of West Bengal on promulgation of ROPA 2009 more particularly, Rule 12(1) thereof read with Paragraph 10 of the clarificatory Memorandum being no. 1691–F dated February 23, 2009 and Paragraph 3 of the Memorandum no. 1692–F dated 23rd February, 2009.

The order of the Division Bench was not assailed further by the State of West Bengal and it is an accepted position that they participated in and contested the Tribunal proceedings after remand. It is, therefore, not open to the State of West Bengal to contend that the claim of the Dearness Allowance at the behest of the employees of the State Government is not a legally enforceable right.

After remand the Tribunal answered the aforesaid two points/issues and it would be evident therefrom that the Tribunal in unequivocal terms held that the State Government employees are not entitled to the Dearness Allowance at the rate that of the Central Government. Simultaneously, the Tribunal answered the other point that granting the Dearness Allowance to its employees posted in New Delhi and Chennai at a different rate than the rate prescribed for the employees posted within the State is discriminatory and further suggested that it is within the policy decision of the State Government to devise whether any special allowance can be given to such employees.

The State of West Bengal thereafter challenged the judgment and order of the Tribunal in the instant writ petition being WPST 102 of 2020 and the arguments were advanced not only on the decision but the findings arrived by the Tribunal in answering those points by the judgment and order impugned in the instant review application delivered separately by the constituents of the Division Bench. The said writ petition was dismissed and a direction was passed to disburse the DA at the rate to be calculated on the basis of All India Consumer Price Index average 536 **(1982=100)** in commensurate with their pay as per ROPA Rule, 2009 in terms of the order of the Tribunal within three months from date. In effect, the ultimate conclusion was arrived in dismissing the writ petition filed by the State and affirming the order of the Tribunal.

On the conspectus of the aforesaid facts emerged from the record the State Government has filed the review application and assailed the said

order on the grounds indicated in the first paragraph of the instant judgment.

The learned Advocate General, in his usual eloquence, attacked the impugned order firstly on the ground that there is an error apparent on the face of the record which would be evident from the question framed while addressing the issues involved in the said writ petition. According to him, the question so framed, before the Court proceeded to decide the matter, is factually incorrect which is self-evident and does not require any process of reasoning. As per the learned Advocate General, the record would reveal that the issues framed by the earlier Division Bench in remanding the matter to the Tribunal were, in fact, not decided in favour of the employees as one of the issues pertaining to the similar rates of Dearness Allowance given to the Central Government to be given to the State Government was held against the respondents. He further developed the argument to the extent that the moment the Court has framed the question, as a logical corollary, the findings made thereafter is based thereupon and, therefore, it assumes importance on the concept of a decision making process and, therefore, falls within the ambit of the power of review exercised by the Court. Apart from the same further argument is advanced that there was a bona fide mistake on the part of the State in not referring the several Government orders which form part of the record before the Tribunal and therefore, such mistake comes within the ambit of Order 47, Rule 1 of the Code of Civil Procedure. He vociferously submits that if those several Government orders were brought to the notice of the Division Bench at the time of arguing the writ petition the ultimate conclusion may be different. Mr. Advocate General

would further submit that the review jurisdiction is limited and cannot be expanded to correct the erroneous finding as in such event it would partake the character of the erroneous decisions amenable to the challenge by going higher up. It is thus submitted that when the basis of the decision is founded upon the incorrect question framed therein, it amounts to an error apparent on the face of the record and invite the Court to invoke the powers of review.

On the other hand, the learned Advocate appearing for the respective respondents arduously submits that there appears to be a fallacy in perceiving the error apparent on the face of the record and the real distinction between the erroneous decision and the decision tainted with patent error is sought to be blurred.

Mr. Bhattacharyya, the learned Senior Advocate further submits that every error may not come within the ambit of error apparent on the face of the record if the reasonings and the conclusions are self-evident that such fringe statement does not play an important role in arriving at the ultimate decision. Mr. Bhattacharyya further submits the Court exercising the review jurisdiction must confine itself on the conclusion arrived on the issues or points raised before it and answered by providing the reasons. The point sought to be projected as an error apparent on the face of the record does not have an impact on the conclusion and/or ultimate decision taken by the Division Bench and, therefore, the case does not involve patent error inviting the Court to exercise the review jurisdiction. It is further submitted that the Division Bench has recorded the reasons on the two issues/points on which

the remand was made and, therefore, it is not open to the State to invite the Court to rehear and/or revisit the order/judgment under the review jurisdiction. Mr. Bhattacharyya vociferously submits that the mistake has to be construed of such magnitude which would tilt the ultimate decision and not such mistakes or error which is not relevant for deciding the real cause.

Mr. Basu, learned Advocate appearing for the other respondents adopted the arguments advanced by Mr. Bhattacharyya and further submits that the power of review is limited and cannot be invoked for the purpose of rehearing of the case and placed reliance upon a judgment of the Supreme Court rendered in case of ***S. Madhusudhan Reddy vs. V. Narayana Reddy reported in AIR Online 2022 SC 1304***. He thus submits that the review application deserves dismissal and should not be entertained.

On the basis of the aforesaid submissions advanced before us the point which emerged for consideration before us is whether the impugned judgment and order dated 20th May, 2022 passed in WPST No. 102 of 2020 contained an error apparent on the face of the record and the mistake in not referring the several Government Orders at the time of an argument comes within the peripheral of order 47 Rule 1 of the Code of Civil Procedure. It would be profitable to and relevant to quote the provisions contained under Order 47 Rule 1 of the Code of Civil Procedure which runs thus:

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

(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 of which he applies for the review."

Upon the meaningful reading of the above quoted provisions the review is permissible provided the condition enshrined therein are fulfilled. Although the High Court enjoins the plenary powers of review while dealing under Article 226 of the Constitution of India yet the condition put forth therein needs to be looked into and the power is to be exercised within the

circumference thereof. The review is permissible provided the order/decree contained an error apparent on the face of the record or on a discovery of new and important matters or evidence which despite the exercise of due diligence was not within the knowledge of the aggrieved person, at the time of passing of the said order or decree or for any other substantial reasons. The explanation appended thereto creates a further fetter on the part of the Court exercising review jurisdiction in not entertaining if aimed at the subsequent decision of the superior Court in any other case.

The Three Judge Bench of the Supreme Court in case of ***M/s. Thungabhadra Industries Ltd. Vs. The Government of Andhra Pradesh reported in AIR 1964 SC 1372*** discussed the incidents which can be engulfed within the expression "error apparent on the face of the record". It is held that there is a distinction between an erroneous decision and a decision vitiated by a patent error. It is highlighted that the review jurisdiction should not be invoked and/or exercised converting itself as a court of appeal but founded upon the well sanctified parameters and at the time of exercising such jurisdiction the Court must be cautious and careful in bearing in mind the aforesaid distinction. The error can be said to be apparent on the face of the record provided the law expounded therein does not invite two possible conclusions/opinions. It is an ardent duty of the Court not to find out the error after an elaborate argument in these words:

> ***"11. 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. We do not consider that this furnishes a suitable occasion for dealing with this difference exhaustively or in any great detail, but it would suffice for us to say that where without any elaborate argument one could point to the error and say here is a substantial point of law which stares one in the face, and there could reasonably be no two opinions entertained about it, a clear case of error apparent on the face of the record would be made out. No questions of fact were involved in the decision of the High Court in T. T. Cs. 75 to 77 of 1956. The entire controversy turned on the proper interpretation of R. 18(1) of the Turnover and Assessment Rules and the other pieces of legislation which are referred to by the High Court in its order of February 1956; nor could it be doubted or disputed that these were substantial questions of law. In the circumstances

therefore, the submission of the appellant that the order of September 1959 was vitiated by "error apparent" of the kind envisaged by O XLVII, R. 1, Civil Procedure Code when it stated that "no substantial question of law arose" appears to us to be clearly well founded. Indeed, learned Counsel for the respondent did not seek to argue that the earlier order of September 1959 was not vitiated by such error."

In ***Parsion Devi & Ors. vs. Sumitri Devi & Ors. reported in (1997) 8 SCC 715***, the Apex Court in fact, propelled the exposition of law laid down in the case of ***Thungabhadra (Supra)*** and held that the error apparent on the face of the record must be self-evident and does not require to be ascertained by a process of reasoning. It is further held that the said jurisdiction can never be invoked for the purpose of mere correction of the order and upon rehearing of the entire matter, in the following:

"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"."

In ***Haridas Das vs. Usha Rani Banik & Ors. reported in (2006) 4 SCC 78,*** the Apex Court held that the error or mistake appearing in Order 47 Rule 1 of the Code must not be such which is to be established by a long drawn process of reasoning upon lengthy arguments but should be self-evident in the following:

"A Constitution Bench of this Court in the case of Pandurang Dhondi Chougule v. Maruti Hari Jadhav MANU/SC/0033/1965: [1966]1SCR102 has held that the issue concerning res judicata is an issue of law and, therefore, there is no impediment in treating and deciding such an issue as a preliminary issue. Relying on the aforementioned judgment of the Constitution Bench, this Court has taken the view in the case of Meharban v. Punjab Wakf Board (supra) and Harinder Kumar (supra) that such like issues can be treated and decided as issues of law under Order XIV, Rule 2(2) of the Code. Similarly, the other issues concerning limitation, maintainability and Court fee could always be treated as preliminary issues as no detail evidence is required to be led. Evidence of a formal nature even with regard to preliminary issue has to be led because these issues would either create a bar in accordance with law in force or they are jurisdictional issues."

In a recent judgment rendered by the Three Judge Bench of the Supreme Court in ***S. Madhusudhan Reddy (Supra)***, it is held that the power of review should not be equated with the power of an appeal. It is further held that the Court can exercise such powers for correction of a mistake but not to substitute its view taken earlier solely on the ground that there is a possibility of two views. It would be profitable to quote the observations contained in Paragraph 26 thereof which runs thus:

> ***"26. As can be seen from the above exposition of law, it has been consistently held by this Court in several judicial pronouncements that the Court's jurisdiction of review, is not the same as that of an appeal. A judgment can be open to review if there is a mistake or an error apparent on the face of the record, but an error that has to be detected by a process of reasoning, cannot be described as an error apparent on the face of the record for the Court to exercise its powers of review under Order XLVII Rule 1 CPC. In the guise of exercising powers of review, the Court can correct a mistake but not substitute the view taken earlier merely because there is a possibility of taking two views in a matter. A judgment may also be open to review when any new or important matter of evidence has emerged after passing of the judgment, subject to the condition that such evidence was not within the knowledge of the party seeking review or could not be produced by it when the order was made despite undertaking an exercise of due diligence. There is a clear distinction between an erroneous decision as against an***

error apparent on the face of the record. An erroneous decision can be corrected by the Superior Court, however an error apparent on the face of the record can only be corrected by exercising review jurisdiction. Yet another circumstance referred to in Order XLVII Rule 1 for reviewing a judgment has been described as "for any other sufficient reason". The said phrase has been explained to mean "a reason sufficient on grounds, at least analogous to those specified in the rule" (Refer: Chajju Ram V. Neki Ram 17 and Moran Mar Basselios Catholicos and Anr. V. Most Rev. Mar Poulose Athanasius and Others 18)."

The law that emanates from the aforesaid decision leaves no ambiguity that the power of the review is to be exercised within the limited compass. Though the substantive provision in the Code of Civil Procedure in the form of Section 114 confers power upon the Court to review its judgment, order or decree yet it does not prescribe any conditions and/or the grounds of such review. In other words Section 114 of the Code of Civil Procedure neither prescribes any condition for exercising the power of review nor creates any brindle or prohibition on the Court from exercising such powers. Logically what follows therefrom is that though the substantive provision of review is provided in the Code yet the power is to be exercised by the Court on the grounds enumerated under Order 47 Rule 1 of the Code. Although the High Court enjoins a plenary power of correcting its mistakes or the errors in a writ jurisdiction yet by virtue of the introduction of Order 47 Rule 1 of the Code it is required to be exercised bearing in mind

the condition enshrined therein. The expression 'mistake' or 'error' apparent on the face of the record leaves no ambiguity on the legislative intent that such error which are self-evident and does not require a detailed examination, the detailed scrutiny, roving enquiry and/or the elucidation of the facts or the legal position, are kept outside the purview of the aforesaid expression. The said expression connotes that the mistake or error apparent on the face of record must be such which does not require a long debate or the elaborate reasoning but on a bare look of the record and the consequence to follow therefrom. Every error cannot be construed as error apparent if it does not result into an accepted decision already taken. The fringe mistake or error which is ministerial having no impact on the ultimate decision taken on a well defined reasonings, cannot be perceived an error apparent on the face of the record. There is a real and apparent distinction between an erroneous decision and the decision containing an error apparent on the face of the record. In former case the remedy available to an aggrieved person is to move higher up and the review jurisdiction cannot be invoked; on the other hand, in later case if the Court finds that the judgment under review contained patent error striking at the root of the decision the review can be the proper remedy. Though the Justice is a virtue and transcends all barriers unbrindled with the rules of procedure or technicalities but there is a difference in the nature of a mistake and scope of the review as it largely depends upon the facts of the each case. The plenary powers of the Writ Court is based on equity and the fairness and the mistake of a Court should not cause prejudice to the litigants. The moment the mistake or the error is qualified with the word "apparent on the face of

the record", the power is to be exercised in keeping the legislative intent and the conferment of the jurisdictions by the statutory provisions. The review jurisdiction is never equated with the appellate jurisdiction nor can be considered as an appeal in disguise. In case of an error, there is a possibility of two views and the one has been adopted it cannot come within the purview of the review jurisdiction even the Court feels the other possible views should have been taken. In such cases, it should be regarded as an erroneous decision capable of being corrected by a higherer forum and does not come within the ambit of the review jurisdiction. The normal principle perceived in this regard is that the Court should avoid the departure from the judgment taken as it becomes final except when it is justified by the circumstances of substantial and compelling character.

The Apex Court in case of ***Kamlesh Verma Vs. Mayawati & Ors. reported in (2013) 8 SCC 320*** succinctly laid down the incident of the review and the incidents which does not come within the purview thereof in the following:

> ***"20. Thus, in view of the above, the following grounds of review are maintainable as stipulated by the statute:***
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> ***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 and approved by this Court in Moran Mar Basselios Catholicos v. Most Rev. Mar Poulose Athanasius 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.

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.

In Paragraph 20.2 of the above referred decision the minor mistake which is inconsequential in nature cannot be regarded as a mistake or error apparent on the face of the record nor when the sense of argument and the reliefs were sought at the time of arguing the main matter and have been negative to be reopened and reheard taking aid of the review jurisdiction. The said principle has been applied and accepted by the Supreme Court in ***S. Madhusudhan Reddy*** (Supra) and did not take a view departed therefrom.

On a well defined legal proposition on the scope of the review and the power of the Court exercising thereunder, the aforesaid two points urged before us are whether capable of inviting the Court to exercise review jurisdiction. The error has been perceived by the State of West Bengal only

on the ground that the question framed by the Division Bench is factually incorrect. The consideration before us is whether the aforesaid facts could have resulted in two conclusions. Both the judgments delivered by the Division Bench separately confined the consideration on the aforesaid two points framed by the earlier Division Bench at the time of remanding the matter to the Tribunal to decide the same. The entire judgment have taken into account the various factors and the unanimous decision which has been taken is that the State Government cannot depart from the provision of the statutory rules framed after accepting the recommendation of the 5th Pay Commission to the extent enumerated therein. It has been held by one of the Judge of the Division Bench that the Dearness Allowance is required to be calculated at the rate in terms of the All India Consumer Price Index average 536 **(1982=100)** by virtue of the Clause 3(c) of the ROPA Rule, 2009 framed in exercise of power under Article 309 of the Constitution of India. Even if it is accepted for the purpose of the reasoning that one of the issues pertaining to the same rate of DA to be given to the employees of the State of West Bengal as determined with the Central Government, was decided against the State Government employees. Yet, by virtue of the statutory provisions the calculation is to be made within the framework of the statutory rules which ultimately has been held by the Division Bench. Such mistake at best can set to be ministerial and does not impact upon the decision and, therefore, cannot be regarded as the mistake of such magnitude requiring the Court to review its own decision. Drawing an inspiration from the Three Judge Bench decision of the Supreme Court in ***S.***

Madhusudhan Reddy (supra), such mistake is of inconsequential import and, therefore, the review is not maintainable.

It takes us to another point that certain Government Orders which were relied upon by the Tribunal could not be placed at the time of arguing the main matter. We have meticulously examined the aforesaid point in conjunction with the findings arrived by the Tribunal and we do not find that it has any impact on the legal issues framed by the earlier Division Bench while remanding the matter. The said Government Orders indicate that there has been a revision of the Dearness Allowances at the relevant interval which does not appear to be a seminal point involved in the instant matter. The point of consideration was that what should be the parameters for ascertaining the rate of the Dearness Allowance and whether the rate prescribed by the Central Government should be accepted as sacrosanct and be given to the State Government employees. We have elaborately discussed that in view of the ROPA 2009, the method and the manner of calculating the Dearness Allowance cannot be departed with. Even the Tribunal has held after noticing the aforesaid Government Orders that the same would reveal that the State Government was following the pattern of the Central Government in releasing the DA to the State employees but it was found that the same was done in somewhat erratic manner. Even the Division bench has found that the ascertainment of the rate of the DA is within the realm of the State but such ascertainment has to be done strictly on the basis of the Rule 3(c) of the ROPA 2009 and, therefore, we do not find that the aforesaid point is of seminal importance. Furthermore, the mistake has to be construed to be patent on the record and there is no quarrel to the

proposition that if the mistake is committed by the Court, the Court inheres the plenary power to correct it based on the legal *maxim actus curiae neminem gravabit* i.e. an act of the Court shall not prejudice the litigants.

We, thus, do not find any error apparent on the face of the record nor the mistake of a like nature and, therefore, there is no merit in the review application.

Accordingly, the review application is dismissed. No Costs.

Urgent photostat certified copies of this judgment, if applied for, be made available to the parties subject to compliance with requisite formalities.

I agree. **(Harish Tandon, J.)**

(Rabindranath Samanta, J.)