2024:DHC:8498-DB

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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Judgment reserved on: 25.10.2024*
Judgment pronounced on: 05.11.2024

REVIEW PET. 402/2024 in
\+ **W.P.(C) 2659/2019**

RAVI KUMAR .....Petitioner

Through: Petitioner in person

versus

DEPARTMENT OF SPACE AND ORS. .....Respondents

Through: Mr. Harish Vaidyanathan Shankar, CGSC with Mr. Srish Kumar Mishra and Mr. Alexamdar Mathai Paikaday, Advocates

CORAM:
HON'BLE MR. JUSTICE C. HARI SHANKAR
HON'BLE MR. JUSTICE GIRISH KATHPALIA

[Physical Hearing/Hybrid Hearing (as per request)]

J U D G M E N T

GIRISH KATHPALIA, J.:

1. No litigant, much less an advocate appearing as litigant in person, can be allowed to try to browbeat the court. Of course, the court should not be over sensitive. But when despite the court repeatedly ignoring such conduct of the litigant and repeatedly advising him to confine his submissions to merits of the case, the litigant contumaciously continues efforts to overawe, the least the court should do is to bring that conduct on record. We feel

constrained to record such unacceptable conduct of the Review Petitioner, who is a practising Advocate appearing in person.

1.1 Prior to the Review Petition presently under consideration, the petitioner had filed another Review Petition {Review Petition (civil) 393/24}, containing highly outrageous aspersions on the Hon'ble Judge of the bench, who had authored the judgment under review. In the said Review Petition, the petitioner advocate, who appears as litigant in person, had alleged that since the judgment review whereof was sought had been authored on "the last day" of the Hon'ble Judge before his elevation as Chief Justice of another Court, not just the judgment was wrong but it led to gross failure of justice for "pure fault of the court". We took strong objection to the tone and tenor of the petition, so vide order dated 18.10.2024 the review petitioner, expressing regrets sought permission to withdraw the same with liberty to file afresh with temperate language.

1.2 Thereafter, the present Review Petition was filed. But in the course of arguments today the petitioner again repeated his conduct, alleging that the judgment under review is a cut-copy-paste of the impugned order of the learned Central Administrative Tribunal and that acting on "recommendations", there is a concerted effort at covering up a "scam in government service". Petitioner was again warned not to make such objectionable remarks and confine himself to the merits of the matter. When during his lengthy oral arguments the Review Petitioner opted not to point out the error apparent on the face of record, but continued repeating the so called errors in the judgment and extraneous submissions alleging scams in

government service, we concluded the proceedings by reserving the judgment. Despite our dictating the ordersheet thereby reserving the judgment, the petitioner insisted that we could not reserve judgment and were bound to pronounce the operative portion before him. We also brought to his notice that we were sitting in a Special Bench and had our respective Single Bench matters also to be taken up, but he continued to insist that we should pass the operative part of the order immediately and dismiss the Review Petition, constraining us to pass a brief order clarifying that there is no legal compulsion on us to do so while reserving orders on the present review petition.

1.3 Perusal of record reflects that earlier also, vide order dated 09.05.2022, the predecessor Bench had issued Contempt Notice to the petitioner and he tendered affidavit of apology, which was rejected vide order dated 07.10.2022 as not a genuine apology, so he submitted fresh affidavit of apology. That fresh apology affidavit was accepted and the contempt proceedings were closed.

1.4 Even thereafter, petitioner filed an application CM APPL 36901/2024, conveying as if the matter was being adjourned and Roster was being repeatedly changed to delay his matter. That application was withdrawn by the petitioner on 05.07.2024.

2. Notwithstanding such conduct of the petitioner, we must and we have examined the merits of the present Review Petition.

3. Brief background of the issue is as follows. The Indian Space Research Organisation (ISRO) issued recruitment notice, inviting applications for certain posts including that of Administrative Officer. Petitioner and the present respondent no.3 also participated in the recruitment process, undertaking written test followed by interview. The candidates shortlisted for interview were 5 in number, including the petitioner and the respondent no.3. The respondent no.3 secured in the written test 58.5 marks out of 124, which were normalised to 28.31 out of 60, in addition to which he secured in the interview 36.55 marks out of 40, thereby totalling to 64.86 marks. In contrast, the petitioner secured 79.25 marks out of 124, which were normalised to 38.25 out of 60, in addition to which he secured 21.27 marks out of 40 in interview, thereby totalling to 59.62 marks. Thence, going by the criteria fixed by ISRO and publicized in the recruitment notice, the respondent no.3 scored more than the petitioner. Rather, as per the results declared, out of 5 candidates selected for interview, the petitioner scored lowest, while the present respondent no. 3 scored highest. Consequently, it is respondent no.3, who was recruited.

4. The petitioner challenged the recruitment by way of Original Application before the Central Administrative Tribunal, Principal Bench, New Delhi, basically alleging that the interview was not conducted fairly, thereby depriving him of the job despite highest score secured by him in the written test. After hearing both sides, vide order dated 25.7.2018 the learned Tribunal, on the basis of material before them, held that the criteria laid down for selection was scrupulously followed by the official respondents

and that the petitioner consciously participated in the selection process, but having failed, he questions the process, which is not tenable.

5. By way of Writ Petition under Articles 226 read with 227 of the Constitution of India, the petitioner challenged the order dated 25.7.2018 of the learned Tribunal. Before this Court, the petitioner claimed that normalisation adopted by the official respondents was sham and aimed only to justify selection of respondent no.3; and that more than 3 candidates could not have been called for interview.

6. On the basis of arguments advanced by both sides, by way of detailed judgment dated 23.09.2018, the writ petition was dismissed by the co-ordinate bench of this court to which one of us (Girish Kathpalia, J.) was a member, the other member having been elevated as Chief Justice of another High Court, this Review Petition has been assigned to this bench.

7. By way of the present Petition, the petitioner seeks review of the said judgment dated 23.09.2024 of this Court. It would be apposite to extract the relevant contents of the Review Petition, which is as follows:

> *"2. Four factual errors (quoted below) in subject order sought to be reviewed are most respectfully stated to be as under:*
> *A. (quoted from Para 25) "25. On this aspect, this Court finds that only three candidates had cleared the Bench mark of 62 marks out of 124 and four more candidates who were next in merit were chosen for interview and for this normalization of marks in the written examination in the ratio of 60:40 was done"*
> *Error – 1: The Hon'ble Bench categorically determines that only 03 candidates cleared bench mark of 62 marks out of 124 (50% cut off) but finally under determining para 32 states to the contrary,*

Error – 2: The Hon'ble Bench further records that normalisation of marks in the ratio of 60:40 was done despite both Petitioner as well as Respondent submitting that there is no such rule in existence(Page 24, 36 & 504 of WP) and it erroneously failed to record the actual rule of 100:40 normalisation (Pg 514-515 of petition).

B. (quoted from para 32) "32. The criteria laid down for selection in the advertisement clearly shows that those candidates who would secure 50% marks in the written test and interview both, and secure minimum aggregate of 60% shall be considered for empanelment. In the case of petitioner, he had secured total 59.62 marks, whereas respondent No.3 had obtained 64.85 marks"

Error – 3: Ex-facie, wrong marks recorded by this Hon"ble Court contrary to its own paras 23, 25, 26 &29 which clearly show Petitioner secured highest as 79.25 (64%) in written and 21.27 (53%) in interview while Respondent - 3 secured 58.50 (47%) & 36.55 (91%) marks respectively,

C. (quoted from para 33) "33. The fact remains that the petitioner participated in the selection process, however, having failed to make his place in the recruitment, he has challenged the selection process."

Error – 4: Ex-facie wrong fact has been inserted in the judgment and much belaboured as well. Whereas infact, to the contrary, Petitioner never challenged the selection process but sought implementation of the notified selection process."

8. The legal position on the scope of review proceedings is well settled. The fact that on some earlier occasion, the Court recorded some *prima facie* observation on same set of facts that would not *per se* be conclusive. Similarly, even if some statement in the order under review was wrong, it would not follow that it was an "error apparent on the face of the record", for there is a distinct 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. Review lies only for patent error. 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 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 limited purpose and cannot be allowed to be an appeal in disguise.

9. In the present case, what the petitioner has done is cherry picking of sentences from the judgment, ignoring the overall discussion and analysis of the rival contentions, which has been crystalised above. None of the observations, labelled as "error" in the Review Petition is erroneous, much less an "error apparent on the face of record", if the entire judgment is examined. The judgment, read in its entirety clearly shows that there is no error, what to say of error apparent on the face of record. Going a step deeper, none of the so called errors would have a bearing on the final outcome that the present respondent no. 3 having secured the highest and the petitioner having scored the lowest, it is the former who was recruited. The petitioner consciously participated in the recruitment process, wherein the principle of normalization had been described in the vacancy advertisement itself. The petitioner did not even whisper any irregularity till he was rejected on account of his lowest score.

10. We are unable to find any error apparent on the face of record. The Review Petition is devoid of merit and is frivolous, so it is dismissed with

cost of Rs.10,000/- to be deposited by the Petitioner with the Delhi High Court Legal Services Committee within one week.

GIRISH KATHPALIA
(JUDGE)

C. HARI SHANKAR
(JUDGE)

OCTOBER 05, 2024/*as/ry*