APHC010344592012

**IN THE HIGH COURT OF ANDHRA PRADESH**
**AT AMARAVATI** **[3418]**
**(Special Original Jurisdiction)**

THURSDAY ,THE NINTH DAY OF MAY
TWO THOUSAND AND TWENTY FOUR
**PRESENT**
**THE HONOURABLE SRI JUSTICE RAVI NATH TILHARI**
**THE HONOURABLE SRI JUSTICE VENUTHURUMALLI GOPALA KRISHNA RAO**

**IA 1 OF 2023**
**IN**
**WRIT PETITION NO: 33306/2012**

**Between:**
Govt.of Ap,prl.scy,home,hyd,& 3 and Others **...PETITIONERS**

**AND**
Vadde Pavan Kumar Anantapur Dist **...RESPONDENT**

**Counsel for the Petitioner(S):**
1. GP FOR SERVICES I

**Counsel for the Respondent:**
1. S.V.S.S.SIVA RAM

APHC010142532013

**IN THE HIGH COURT OF ANDHRA PRADESH**
**AT AMARAVATI** **[3418]**
**(Special Original Jurisdiction)**

THURSDAY ,THE NINTH DAY OF MAY
TWO THOUSAND AND TWENTY FOUR
**PRESENT**
**THE HONOURABLE SRI JUSTICE RAVI NATH TILHARI**
**THE HONOURABLE SRI JUSTICE VENUTHURUMALLI GOPALA KRISHNA RAO**

**IA 1 OF 2023**
**IN**
**WRIT PETITION NO: 17758/2013**

**Between:**
The Govt Of Ap., Home Dept., & 2 Others and Others **...PETITIONERS**

**AND**

P Dilli Kumar Chittoor District **...RESPONDENT**

**Counsel for the Petitioner(S):**
1. GP FOR SERVICES I

**Counsel for the Respondent:**
1. .
2. T S VENKATARAMANA

APHC010368572014

**IN THE HIGH COURT OF ANDHRA PRADESH**
**AT AMARAVATI** **[3418]**
**(Special Original Jurisdiction)**

THURSDAY ,THE NINTH DAY OF MAY
TWO THOUSAND AND TWENTY FOUR

**PRESENT**
**THE HONOURABLE SRI JUSTICE RAVI NATH TILHARI**
**THE HONOURABLE SRI JUSTICE VENUTHURUMALLI GOPALA KRISHNA RAO**

**IA 1 OF 2023**
**IN**
**WRIT PETITION NO: 24990/2014**

**Between:**
Commr. Of Police, Vsp. & 2 Ors. and Others **...PETITIONERS**

**AND**

J Shyamsunder Reddy Ano and Others **...RESPONDENTS**

**Counsel for the Petitioner(S):**
1. GP FOR SERVICES I (AP)

**Counsel for the Respondent(S):**
1. .
2. M KESAVA RAO

APHC010606592018

**IN THE HIGH COURT OF ANDHRA PRADESH**
**AT AMARAVATI** **[3418]**
**(Special Original Jurisdiction)**

THURSDAY, THE NINTH DAY OF MAY
TWO THOUSAND AND TWENTY FOUR

**PRESENT**
**THE HONOURABLE SRI JUSTICE RAVI NATH TILHARI**
**THE HONOURABLE SRI JUSTICE VENUTHURUMALLI GOPALA KRISHNA RAO**

**IA 1 OF 2023**
**IN**
**WRIT PETITION NO: 29006/2018**

**Between:**
The State Of Andhra Pradesh and Others **...PETITIONERS**
**AND**
M Ramachandra **...RESPONDENT**

**Counsel for the Petitioner(S):**
1. GP FOR SERVICES I (AP)

**Counsel for the Respondent:**
1. M/S INDUS LAW FIRM

**DATE OF JUDGMENT PRONOUNCED: 09.05.2024**

SUBMITTED FOR APPROVAL:

THE HON'BLE SRI JUSTICE RAVI NATH TILHARI
&
**THE HON'BLE SRI JUSTICE VENUTHURUMALLI GOPALA KRISHNA RAO**

1. Whether Reporters of Local newspapers may be allowed to see the Judgments? Yes/No
2. Whether the copies of judgment may be marked to Law Reporters/Journals Yes/No
3. Whether Your Lordships wish to see the fair copy of the Judgment? Yes/No

**RAVI NATH TILHARI, J**

**VENUTHURUMALLI GOPALA KRISHNA RAO, J**

*** THE HON'BLE SRI JUSTICE RAVI NATH TILHARI**
**&**
**THE HON'BLE SRI JUSTICE VENUTHURUMALLI GOPALA KRISHNA RAO**

**+ I.A.No.1/2023 in W.P.No.33306/2012**
**I.A.No.1/2023 in W.P.No.17758/2013**
**I.A.No.1/2023 in W.P.No.24990/2014**
**&**
**I.A.No.1/2023 in W.P.No.29006/2018**

% **09.05.2024**

**Between:**

Govt.of AP,Prl.Scy,Home,Hyderabad & ors.

.....PETITIONERS

AND

Vadde Pavan Kumar Anantapur Dist. & ors.

.....RESPONDENTS

! Counsel for the Petitioners : Sri G. V. S. Kishore Kumar
GP for Services-I

Counsel for the Respondents : Sri S.V.S.S.Siva Ram,
Sri Haranath Reddy Soma,
Sri T.S.Venkataramana
Sri M. Kesava Rao

< Gist :

> Head Note:

? Cases Referred:

1) (2016) 8 SCC 471
2) 2022 SCC OnLine SC 532
3) (2011) 4 SCC 644
4) (2023) 7 SCC 536
5) (1997) 8 SCC 522
6) (2020) 2 SCC 1
7) (2024) 2 SCC 362
8) (1980) 2 SCC 167
9) (1997) 8 SCC 715
10) (2000) 6 SCC 224

11) (1979) 4 SCC 389
12) 2022 SCC OnLine SC 1034
13) 2024 SCC OnLine SC 548
14) (2008) 8 SCC 612
15) (2024) 2 SCC 362
16) (2013) 8 SCC 320
17) 2024 SCC OnLine SC 180
18) (2016) 8 SCC 471
19) (2011) 14 SCC 709
20) 2022 SCC OnLine SC 532
21) (2019) 17 SCC 696
22) (2023) 7 SCC 536
23) (2011) 4 SCC 644
24) 2022 SCC OnLine SC 597

**THE HON'BLE SRI JUSTICE RAVI NATH TILHARI**
**&**
**THE HON'BLE SRI JUSTICE VENUTHURUMALLI GOPALA KRISHNA RAO**

**I.A.No.1/2023 in W.P.No.33306/2012**
**I.A.No.1/2023 in W.P.No.17758/2013**
**I.A.No.1/2023 in W.P.No.24990/2014**
**&**
**I.A.No.1/2023 in W.P.No.29006/2018**

**COMMON JUDGMENT:** (per Hon'ble Sri Justice Ravi Nath Tilhari)

Heard Sri G. V. S. Kishore Kumar, learned Government Pleader for Services-I, appearing for the review petitioners and Sri S.V.S.S.Siva Ram, Sri Haranath Reddy Soma, Sri T.S.Venkataramana & M. Kesava Rao,

appearing for the respondents in all the review petitions.

2. These review petitions are filed to review the common judgment dated 26.04.2023 passed in W.P.Nos.33306/2012, 17758/2013, 24990/2014 & 29006/2018.

**Facts of the case:**

3. The respondents in W.P.No.33304 of 2012, W.P.No.177518 and W.P.No.24000 of 2014 were initially selected as police constable in the State Police Service. The respondent in W.P.No.29006 of 2018 was selected as Reserve Sub Inspector (AR) as they were found to be qualified and eligible for appointment. Later on, on the ground of suppression of the factum of their involvement in respective criminal cases in the attestation form, the respondent in W.P.No.330306 of 2012 who was undergoing training and was in probation,

was discharged from service and with respect to the respondents in other writ petitions, their selection was cancelled. All the respondents filed separate original application before the Andhra Pradesh Administrative Tribunal (APAT). The same were allowed. The impugned orders were set aside by the Tribunal. The petitioners –State of A.P and its authorities preferred writ petitions as mentioned above. All the writ petitions have been dismissed by the common judgment and order dated 26.04.2023 by the Co-ordinate Bench. The writ petitioners of the writ petitions have preferred the respective review applications as mentioned above.

4. In W.P.No.29006 of 2023 the Tribunal held that there was no suppression of material fact. On a specific query made to the learned Government Pleader, if that finding of the Tribunal was challenged in the writ petition, he fairly submitted that there was no challenge to such finding before the writ Court.

5. The review petitions are being considered and decided by this common judgment as they arise of common judgment and common arguments have been advanced.

**Judgment under Review:**

6. The Coordinate Bench, deciding the writ petitions was of the view that the criminal cases related to trivial offences and were during the young age of the respondents. They had already been acquitted, even prior to issuance of the notification for recruitment. Applying the ratio laid down in the judgments

of the Hon'ble Apex Court in ***Avtar Singh vs. Union of India***[1]***, Pawan Kumar vs. Union of India***[2] ***and Commissioner of Police and another vs. Sandeep Kumar***[3] to the facts of those cases, the orders of the Tribunal were held to be perfectly sustainable under law and finding no legal flaw or infirmity or illegality in the orders of the Tribunal, the writ petitions were dismissed.

**Submissions of the learned GP:**

7. Learned Government Pleader raised the **first submission** that the suppression of material fact in relating to the involvement of the respondents in the criminal cases by itself would incur the disqualification to be appointed to the post of constable and RSI. Consequently the appointment or the selection as the case may be of the respondents was liable to be cancelled in the discretion of the departmental authorities. He submitted that in ***Satish Chandra Yadav vs. Unionof India and others***[4]**,** it was held that the suppression of information in the attestation forms relating to involvement in the criminal cases would incur disqualification of the candidate for selection and appointment. The selection was liable to be cancelled and the employee if appointed and was in probation, was liable to be discharged. Nature of the offence, being trivial or otherwise and acquittal or no acquittal, was not a relevant fact to be taken into consideration.

[1] (2016) 8 SCC 471
[2] 2022 SCC OnLine SC 532
[3] (2011) 4 SCC 644
[4] (2023) 7 SCC 536

8. Learned Government Pleader, advanced **second submission** that Paras 21 and 22 of the recruitment notification Rc.No.670/R&T/Genl.2/2008 dated 30.12.2008, issued by the State Level Police Recruitment Board, Andhra Pradesh, Hyderabad provided as under:

> "21. Antecedents verification: No person shall be eligible for appointment to any service by direct recruitment unless he satisfies the selection authority as well as the appointing authority that his character and antecedents are such as to qualify him for such service.
>
> 22. Suppression of material facts or withholding any factual information either in the application or in the attestation form (which would be supplied to the candidates who will be provisionally selected) with disqualify the candidate from being considered for appointment. In the event of any information being found false or incorrect or ineligibility being detected at any time even after appointment, he/she will be discharged from service forthwith by the appointing authority without giving any notice."

His submission is that there was no challenge to those paragraphs 21 and 22 which are in the nature of law and absence of any challenge to such law, the said law not having been declared ultra vires, and those paragraphs 21 and 22 not having been quashed, which was in the domain of the judicial power, but not having been done so, the judgment under review cannot be legally sustained. He argued that what the law is or has been, is a judicial power but what the law shall be is a legislative power, placing reliance in the case of ***S.S. Bola and others vs. B.D. Sardana and others***[5].

[5] (1997) 8 SCC 522

**Submissions of the learned counsels for Respondents:**

9. Learned Counsels for the respondents submitted that the judgment does not suffer from any apparent error of law. The review petitions deserve to be dismissed. They placed reliance in the cases of ***Kantaru Rajeevaru (Sabarimala Temple vs. Indian Young Lawyers Association through its General Secretary and others***[6], and in ***Sanjay Kumar Agarwal vs. State Tax Officer (1) and another***[7].

10. We have considered the submissions of the learned counsels for the parties and perused the material on record.

**Analysis:**
**Scope in Review:**
**Precedents:**

11. We first proceed to consider the scope of review jurisdiction.

12. We start our discussion with the statement of law in the words of Hon'ble Justice V. R. Krishna Iyer in the case of ***Northern India Caterers (India) Ltd. v. Lt. Governor of Delhi***[8] in the following words:

> "14. A plea for review, unless the first judicial view is manifestly distorted, is like asking for the moon. A forensic defeat cannot be avenged by an invitation to have a second look, hopeful of discovery of flaws and reversal of result. A review in the counsel's mention cannot repair the verdict once given. So, the law laid down must rest in peace."

13. In ***Parsion Devi v. Sumitri Devi***[9] the Hon'ble Apex Court observed that an error that is not self-evident and the one that has to be detected by the

[6] (2020) 2 SCC 1
[7] (2024) 2 SCC 362
[8] (1980) 2 SCC 167
[9] (1997) 8 SCC 715

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. The Hon'ble Apex Court held as under in paragraphs 7 to 9:

"**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"."

14. In ***Lily Thomas v. Union of India***[10] the Hon'ble Apex Court held that the power of review can be exercised for correction of a mistake but not to substitute a view. The review cannot be treated like an appeal in disguise. The mere possibility of two views on the subject is not a ground for review. Relevant part of Paragraphs-56 and 58 is as under:

"**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. The mere possibility of two views on the subject is not a ground for review.** Once a review petition is dismissed no further petition of review can be entertained. The rule of law of following the practice of the binding nature of the larger Benches and not taking different views by the Benches of coordinated jurisdiction of equal strength has to be followed and practised. However, this Court in exercise of its powers under Article 136 or Article 32 of the Constitution and upon satisfaction that the earlier judgments have resulted in deprivation of fundamental rights of a citizen or rights created under any other statute, can take a different view notwithstanding the earlier judgment.

**58.** ……. It is not the case of the petitioners that they have discovered any new and important matter which after the exercise of due diligence was not within their knowledge or could not be brought to the notice of the Court at the time of passing of the judgment. **All pleas raised before us were in fact addressed for and on behalf of the petitioners before the Bench which, after considering those pleas, passed the judgment** in *Sarla Mudgal*

[10] (2000) 6 SCC 224

*case* [*Sarla Mudgal, President, Kalyani* v. *Union of India*, (1995) 3 SCC 635 : 1995 SCC (Cri) 569] . … Error contemplated under the rule must be such which is apparent on the face of the record and not an error which has to be fished out and searched. It must be an error of inadvertence…. No other sufficient cause has been shown for reviewing the judgment. The words "any other sufficient reason appearing in Order 47 Rule 1 CPC" must mean "a reason sufficient on grounds at least analogous to those specified in the rule" as was held in *Chhajju Ram* v. *Neki* [AIR 1922 PC 112 : 49 IA 144] and approved by this Court in *Moran Mar Basselios Catholicos* v. *Most Rev. Mar Poulose Athanasius* [AIR 1954 SC 526 : (1955) 1 SCR 520] . Error apparent on the face of the proceedings is an error which is based on clear ignorance or disregard of the provisions of law. In *T.C. Basappa* v. *T. Nagappa* [AIR 1954 SC 440 : (1955) 1 SCR 250] this Court held that **such error is an error which is a patent error and not a mere wrong decision.** In *Hari Vishnu Kamath* v. *Ahmad Ishaque* [AIR 1955 SC 233 : (1955) 1 SCR 1104] it was held:

"[I]**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? 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.

Mr Pathak for the first respondent contended on the strength of certain observations of Chagla, C.J. in — '*Batuk K. Vyas* v. *SuratBorough Municipality* [AIR 1953 Bom 133 : 54 Bom LR 922] ' that no error could be said to be apparent on the face of the record if it was not self-evident and if it required an examination or argument to establish it. This test might afford a satisfactory basis for decision in the majority of cases. But there must be cases in which even this test might break down, because judicial opinions also differ, and an error that might be considered by one Judge as self-

evident might not be so considered by another. The fact is that what is an error apparent on the face of the record cannot be defined precisely or exhaustively, there being an element of indefiniteness inherent in its very nature, and it must be left to be determined judicially on the facts of each case….."

15. In ***Aribam Tuleshwar Sharma v. Aribam Pishak Sharma***[11] the Hon'ble Apex Court observed that there is nothing in Article 226 of the Constitution of India 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 pulpable errors committed by it. But there are definitive limits to the exercise of the power of review. 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. It was further observed that a power of review is not to be confused with appellate power.

16. In ***S. Madhusudhan Reddy v. V. Narayana Reddy***[12] the Hon'ble Apex Court reiterated that, the Court cannot arrive at a different conclusion even if two views are possible. Under the grab of filing a review petition, a party cannot be permitted to repeat old and overruled arguments for reopening the conclusions arrived at in a judgment. Paragraph 31 is as under:

"**31.** 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

[11] (1979) 4 SCC 389
[12] 2022 SCC Online SC 1034

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*(AIR 1922 PC 112) and *Moran Mar Basselios Catholicos* v. *Most Rev. Mar Poulose Athanasius* (1955 SCR 520)."

17. Recently, in ***State of Telangana v. Mohd. Abdul Qasim***[13] the Hon'ble Apex Court reiterated that a decision, however erroneous, can never be a factor for review, but can only be corrected in appeal. Such a mistake or error should be self-evident on the face of record. The error should be grave enough to be identified on a mere cursory look, and an omission so glaring that it requires interference in the form of a review. Being a creature of the statute, there is absolutely no room for a fresh hearing. The Court has got no role to

[13] 2024 SCC OnLine SC 548

involve itself in the process of adjudication for a second time. Instead, it has to merely examine the existence of an apparent mistake or error. Even when two views are possible, the Court shall not indulge itself by going into the merits.

18. The Hon'ble Apex Court referred the case of ***State of W.B. v. Kamal Sengupta***[14] for the proposition that an order or decision or judgment cannot be corrected merely because it is erroneous in law or on the ground that a different view could have been taken by the court/tribunal on a point of fact or law and that in any case, while exercising the power of review, the court/tribunal concerned cannot sit in appeal over its judgment/decision. The relevant part from para-24 of ***State of W.B*** (supra) is extracted as under:

"24……**Discovery of new matter or evidence**. {***State of West Bengal v. Komal Sengupta***(supra)**}**

"21. …….

22. The term "mistake or error apparent" by its very connotation signifies an error which is evident per se from the record of the case and does not require detailed examination, scrutiny and elucidation either of the facts or the legal position. If an error is not self-evident and detection thereof requires long debate and process of reasoning, it cannot be treated as an error apparent on the face of the record for the purpose of Order 47 Rule 1 CPC or Section 22(3)(f) of the Act. **To put it differently an order or decision or judgment cannot be corrected merely because it is erroneous in law or on the ground that a different view could have been taken by the court/tribunal on a point of fact or law. In any case, while exercising the power of review, the court/tribunal concerned cannot sit in appeal over its judgment/decision**……"

[14] (2008) 8 SCC 612

19. In ***Sanjay Kumar Agarwal v. State Tax Officer***[15] on considering various pronouncements on the subject, the Hon'ble Apex Court summarized the gist in paragraph-16 as under:

"**16.** The gist of the aforestated decisions is that:

**16.1.** A judgment is open to review inter alia if there is a mistake or an error apparent on the face of the record.

**16.2.** 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.

**16.3.** 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 record justifying the court to exercise its power of review.

**16.4.** In exercise of the jurisdiction under Order 47 Rule 1CPC, it is not permissible for an erroneous decision to be "reheard and corrected".

**16.5.** A review petition has a limited purpose and cannot be allowed to be "an appeal in disguise".

**16.6. Under the guise of review, the petitioner cannot be permitted to reagitate and reargue the questions which have already been addressed and decided**.

**16.7.** An error on the face of record must be such an error which, mere looking at the record should strike and it should not require any long-drawn process of reasoning on the points where there may conceivably be two opinions.

**16.8.** Even the change in law or subsequent decision/judgment of a coordinate or larger Bench by itself cannot be regarded as a ground for review"

20. In ***Kamlesh Verma v. Mayawati***[16] after discussing various decisions on the scope of review jurisdiction, the Hon'ble Apex Court summarized the principles for exercise of the review jurisdiction, also laying

[15] (2024) 2 SCC 362
[16] (2013) 8 SCC 320

down when the review would be maintainable and when not. Paragraph-20 of ***Kamlesh Verma*** (supra) is as under:

"***Summary of the principles***

**20.** Thus, in view of the above, the following grounds of review are maintainable as stipulated by the statute:

**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."

21. We now proceed to deal with the submissions of the learned GP in the light of settled law on scope of review as in aforesaid judgments.

**Second submission of the learned GP:**

22. We would deal with the second submission first.

23. So far as the 2nd submission of learned Government Pleader is concerned, we find that any such submission was not raised before the Co-ordinate Bench deciding the writ petition. No ground was taken by the petitioner. Any such argument on that aspect not having been raised the same cannot be permitted to be raised for the first time in the review petition. It cannot be said that the judgment under review suffers from any apparent error of law in that count. There was no occasion for the writ court to enter into such aspect of the matter. By raising such a new ground, the review petitioner, in fact, is travelling beyond the scope of the review jurisdiction and is trying to re-argue the matter on merits by raising additional ground, which is not permissible. Learned GP has placed reliance in paragraph Nos.157 & 158 of ***S.S.Bola*** (supra) which are as under:

"**157.** To declare what the law is or has been is a judicial power. To declare what the law shall be is a legislative power. This is the principle deducible from the decision of the Federal Court in *Basanta Chandra*

*Ghose* v. *Emperor* [AIR 1944 FC 86 : (1944) 6 FCR 295] AIR at p. 90 and *Ogden* v. *Blackledge* [2 L Ed 276 : 2 Cranch 272 (1804)] L Ed at p. 278.

**158.** It would be within the exclusive domain of the judiciary to expound the law as it is and not to speculate what it should be as it is the function of the legislature. It is also within the exclusive power of the judiciary to hold that a statute passed by the legislature is ultra vires. The legislature in that situation does not become a helpless creature as it continues to remain a living pillar of a living Constitution. Though it cannot directly override the judicial decision, it retains the plenary powers under Articles 245, 246 and 248 to alter the law as settled or declared by judicial decisions. This is what was observed by this Court in *Anwar Khan Mehboob Co.* v. *State of M.P.* [AIR 1966 SC 1637 : (1966) 2 SCR 40] which had the effect of indirectly overruling its previous decision in *Firm Chhotabhai Jethabai Patel & Co.* v. *State of M.P.* [(1952) 2 SCC 772 : AIR 1953 SC 108 : 1953 SCR 476] The legislature can also validate an Act which was declared invalid by the Court or amend it with retrospective effect so as to remove the grounds of its invalidity. (See: *Rai Ramkrishna* v. *State of Bihar* [AIR 1963 SC 1667 : (1963) 50 ITR 171 : (1964) 1 SCR 897] and *Jadao Bahuji* v. *Municipal Committee* [AIR 1961 SC 1486] .)"

24. There can be no dispute on the proposition of law laid down therein that to declare the law is the judicial power and the legislative power. It is within the exclusive power of the judiciary to hold that the statute passed by the legislature is *ultra vires* and that the legislature cannot directly override the judicial decision though it retains the plenary power to alter the law as settled or declared by the judicial decisions. The said judgment, in our view, is neither applicable nor attracted in the present case. The present respondents' O.As having been allowed by the Tribunal and the writ petitions having been filed by the present review petitioners, there was no occasion for the respondents to challenge paras-21 and 22, even if in the submission of the learned GP the

same was required though we are of the different view. The question as to the applicability of the law as laid by the Hon'ble Apex Court in the cases of ***Avtar Singh*** and others (supra) have been considered by the Coordinate Bench in deciding the writ petitions.

**First submission of the learned GP**

25. On the first submission, we find that the aforesaid submission was considered by the Coordinate Bench deciding the writ petitions on merits, also taking into consideration the judgment in ***Satish Chandra Yadav*** (supra).

26. To consider the first submission of the learned GP, we would refer to the recent judgment in ***Ravindra Kumar v. State of U.P***[17] wherein the Hon'ble Apex Court observed that 'the vexed question is back again'. "Is it a hard and fast and a cut and dried rule that, in all circumstances, non-disclosure of a criminal case (in which the candidate is acquitted) in the verification form is fatal for the candidate's employment?

27. In ***Ravindra Kumar*** (supra) on consideration of various previous pronouncements including Larger Bench Judgment in the case of ***Avtar Singh v. Union of India***[18], ***Ram Kumar v. State of U.P.***[19], ***Pawan Kumar v. Union of India***[20], ***Mohammed Imran v. State of Maharashtra***[21] and ***Satish Chandra Yadav v. Union of India***[22], the Hon'ble Apex Court observed and held that the nature of the office, the timing and nature of the

[17] 2024 SCC OnLine SC 180
[18] (2016) 8 SCC 471
[19] (2011) 14 SCC 709
[20] 2022 SCC OnLine SC 532
[21] (2019) 17 SCC 696
[22] (2023) 7 SCC 536

criminal case; the overall consideration of the judgment of acquittal; the nature of the query in the application/verification form; the contents of the character verification reports; the socio economic strata of the individual applying; the other antecedents of the candidate; the nature of consideration and the contents of the cancellation/termination order are some of the crucial aspects which should enter the judicial verdict in adjudging suitability and in determining the nature of relief to be ordered. It was observed that in ***Satish Chandra Yadav*** (supra) even the broad principles set out therein recognize that each case should be scrutinized thoroughly by the public employer concerned and the Court is obliged to examine whether the procedure of enquiry adopted by the authority concerned was fair and reasonable. The Hon'ble Apex Court referred the case of ***Avtar Singh*** (supra), that while passing the order of cancellation of candidature for giving false information, the employer may take notice of special circumstances of the case, if any, while giving such information, and further, the principle that in case of suppression or false information of involvement of criminal case, where acquittal has already been recorded, the employer can still consider all relevant facts available as to antecedents and may take appropriate decision as to the continuance of the employee. The emphasis was laid that though the person who has suppressed the material information cannot claim unfettered right for appointment or continuity in service but he has a right not to be dealt with arbitrarily and exercise of power has to be in reasonable manner with objectivity having due regard to the facts of the cases.

28. Paragraph-21 of ***Ravindra Kumar*** (supra) is as follows:

"**21.** The law on this issue is settled by a three-Judge Bench of this Court in *Avtar Singh* (Supra). Paras 34, 35, 36 & 38, which sets out the conclusions, are extracted herein below:—

"34. No doubt about it that verification of character and antecedents is one of the important criteria to assess suitability and it is open to employer to adjudge antecedents of the incumbent, but ultimate action should be based upon objective criteria on due consideration of all relevant aspects.

35. Suppression of "material" information presupposes that what is suppressed that "matters" not every technical or trivial matter. The employer has to act on due consideration of rules/instructions, if any, in exercise of powers in order to cancel candidature or for terminating the services of employee. Though a person who has suppressed the material information cannot claim unfettered right for appointment or continuity in service but he has a right not to be dealt with arbitrarily and exercise of power has to be in reasonable manner with objectivity having due regard to facts of cases.

36. What yardstick is to be applied has to depend upon the nature of post, higher post would involve more rigorous criteria for all services, not only to uniformed service. For lower posts which are not sensitive, nature of duties, impact of suppression on suitability has to be considered by authorities concerned considering post/nature of duties/services and power has to be exercised on due consideration of various aspects.

38. We have noticed various decisions and tried to explain and reconcile them as far as possible. In view of the aforesaid discussion, we summarise our conclusion thus:

38.1. Information given to the employer by a candidate as to conviction, acquittal or arrest, or pendency of a criminal case, whether before or after entering into service must be true and there should be no suppression or false mention of required information.

38.2. While passing order of termination of services or cancellation of candidature for giving false information, the employer may take notice of special circumstances of the case, if any, while giving such information.

38.3. The employer shall take into consideration the government orders/instructions/rules, applicable to the employee, at the time of taking the decision.

38.4. In case there is suppression or false information of involvement in a criminal case where conviction or acquittal had already been recorded before filling of the application/verification form and such fact later comes to knowledge of employer, any of the following recourses appropriate to the case may be adopted:

38.4.1. In a case trivial in nature in which conviction had been recorded, such as shouting slogans at young age or for a petty offence which if disclosed would not have rendered an incumbent unfit for post in question, the employer may, in its discretion, ignore such suppression of fact or false information by condoning the lapse.

38.4.2. Where conviction has been recorded in case which is not trivial in nature, employer may cancel candidature or terminate services of the employee.

38.4.3. If acquittal had already been recorded in a case involving moral turpitude or offence of heinous/serious nature, on technical ground and it is not a case of clean acquittal, or benefit of reasonable doubt has been given, the employer may consider all relevant facts available as to antecedents, and may take appropriate decision as to the continuance of the employee.

38.5. In a case where the employee has made declaration truthfully of a concluded criminal case, the employer still has the right to consider antecedents, and cannot be compelled to appoint the candidate.

38.6. In case when fact has been truthfully declared in character verification form regarding pendency of a criminal case of trivial nature, employer, in facts and circumstances of the case, in its discretion, may appoint the candidate subject to decision of such case.

38.7. In a case of deliberate suppression of fact with respect to multiple pending cases such false information by itself will assume significance and an employer may pass appropriate order cancelling candidature or terminating services as appointment of a person against whom multiple criminal cases were pending may not be proper.

38.8. If criminal case was pending but not known to the candidate at the time of filling the form, still it may have adverse impact and the appointing authority would take decision after considering the seriousness of the crime.

38.9. In case the employee is confirmed in service, holding departmental enquiry would be necessary before passing order of termination/removal or dismissal on the ground of suppression or submitting false information in verification form.

38.10. For determining suppression or false information attestation/verification form has to be specific, not vague. Only such information which was required to be specifically mentioned has to be disclosed. If information not asked for but is relevant comes to knowledge of the employer the same can be considered in an objective manner while addressing the question of fitness. However, in such cases action cannot be taken on basis of suppression or submitting false information as to a fact which was not even asked for.

38.11. Before a person is held guilty of *suppressio veri or suggestio falsi*, knowledge of the fact must be attributable to him."

(Emphasis supplied)"

29. The case of ***Commissioner of Police v. Sandeep Kumar***[23] was noticed in ***Avtar Singh*** (supra) on this aspect in ***Ravindra Kumar*** (supra), the Hon'ble Apex Court observed as under in paras-23 & 24:

"**23.** *Avtar Singh* (Supra) also noticed the judgment in *Commissioner of Police* v. *Sandeep Kumar*, (2011) 4 SCC 644. In *Sandeep Kumar* (supra), this Court set out the story of the character "Jean Valjean" in Victor Hugo's

[23] (2011) 4 SCC 644

novel *Les Miserables*, where the character was branded as a thief for stealing a loaf of bread for his hungry family. It also discussed the classic judgment of Lord Denning in *Morris* v. *Crown Office*, [1970] 2 Q.B. 114 and concluded as follows:—

10… …

In our opinion, we should display the same wisdom as displayed by Lord Denning.

*11.* As already observed above, youth often commits indiscretions, which are often condoned. *12.* It is true that in the application form the respondent did not mention that he was involved in a criminal case under Sections 325/34 IPC. Probably he did not mention this out of fear that if he did so he would automatically be disqualified. At any event, it was not such a serious offence like murder, dacoity or rape, and hence a more lenient view should be taken in the matter."

"**24.** Thereafter, in *Avtar Singh* (supra) dealing with *Sandeep Kumar* (supra), this Court observed as under:

This Court has observed that suppression related to a case when the age of Sandeep Kumar was about 20 years. He was young and at such age people often commit indiscretions and such indiscretions may often be condoned. The modern approach should be to reform a person instead of branding him a criminal all his life. In [*Morris* v. *Crown Office*, [1970] 2 Q.B. 114 : [1970] 2 WLR 792 (CA)], the observations made were that young people are no ordinary criminals. There is no violence, dishonesty or vice in them. They were trying to preserve the Welsh language. Though they have done wrong but we must show mercy on them and they were permitted to go back to their studies, to their parents and continue the good course."

30. In ***Ravindra Kumar*** (supra) the Hon'ble Apex Court held that Broad-brushing every non-disclosure as a disqualification, will be unjust and the same will tantamount to being completely oblivious to the ground realities obtaining in the great, vast and diverse country. Each case will depend on the

facts and circumstances that prevail thereon and the Court will have to take a holistic view, based on objective criteria with the available precedents serving as a guide. It can never be a one size fits all scenario. Para-33 of ***Ravindra Kumar*** (supra) is as follows:

> "**33.** On the facts of the case and in the backdrop of the special circumstances set out hereinabove, where does the non-disclosure of the unfortunate criminal case, (which too ended in acquittal), stand in the scheme of things? In our opinion on the peculiar facts of the case, we do not think it can be deemed fatal for the appellant. Broad-brushing every non-disclosure as a disqualification, will be unjust and the same will tantamount to being completely oblivious to the ground realities obtaining in this great, vast and diverse country. Each case will depend on the facts and circumstances that prevail thereon, and the court will have to take a holistic view, based on objective criteria, with the available precedents serving as a guide. It can never be a one size fits all scenario."

31. We have referred the judgment of ***Ravindra Kumar*** (supra) in which ***Avtar Singh*** (supra), ***Satish Chandra Yadav*** (supra), ***Pawan Kumar*** (supra), ***Ram Kumar*** (supra) have been recently considered. All these judgments were considered by the Writ Court (Division Bench) of which judgment is under review. We may not be understood as testing the judgment under review on merits for its correctness or otherwise in the light of the Hon'ble Apex Court judgment in ***Ravindra Kumar*** (supra). In the exercise of the review jurisdiction, we are conscious that one view taken by the writ court, even if another view be possible, as in the submission of the review petitioner's counsel, the view as taken in ***Satish Chandra Yadav*** (supra) should have

been taken, the view taken by the writ Court, cannot be substituted, in the exercise of the review jurisdiction.

32. The view which has been taken by the writ court in dismissing the writ petition of the review petitioners, is also a possible view which could be taken in the facts of the present case, and is having the support of the law as in the cases of ***Sandeep Kumar*** (supra) and ***Pawan Kumar*** (supra). The writ Court referred the judgment in the case of ***Avtar Singh*** (supra) as well. The other view also might be possible on the strength of ***Satish Chandra Yadav*** (supra) and ***Chetan Jeff*** (supra), in which it was held that the nature of the offence being trivial and otherwise and the factum of acquittal and conviction is not relevant at all and what is relevant is that there was concealment and suppression of material fact with regard to the antecedents and consequently, such candidate was not entitled for being given appointment, and if already appointed, was not entitled to be retained the employer, having right to refuse appointment or to cancel the appointment merely on the ground of suppression of material fact in attestation form.

33. If the Coordinate Bench has taken one view having the support of law, it cannot be a ground for review. It has been argued by the learned GP that the better view of two such views, ought to have been taken by the writ Court. We are not convinced. Such argument deserves outright rejection. The reason is that it cannot be said by us which is the better view. In fact, both the views, in our view, have been taken in the cases of ***Pawan Kumar*** (supra) and ***Satishchandra Yadav*** (supra) on consideration of the Larger Bench Judgment

in the case of ***Avtar Singh*** (supra) and are by equal Strength Benches. They are in the facts and circumstances of their respective cases. In any case, such an argument, falls outside the permissible grounds of review. It can certainly not be said that the view which has been taken by the Writ Court is not a possible view. It cannot be said that the judgment suffers from any apparent error of law on that count.

34. Learned Government Pleader placed reliance in the ***State of Rajashthan and others vs. Chetan Jeff***[24] which it appears was what has been held in ***Chetan*** (supra) is almost the same as in the ***Satish Chandra Yadav*** (supra) which was placed and was considered, we proceed to consider the scope of review as also and thereafter if the case for review was made or not.

35. With respect to the scope of review it has repeatedly been held that in the exercise of review jurisdiction, neither the Court can sit in appeal nor it is open for review petitioner to reagitate and reargue the questions which had already been addressed and decided by the writ Court. It is not permissible to allow the review petition to be re-heard and decide as an appeal in disguise. The present review petitions are an effort in the nature of second commencement of re-hearing of writ petitions which is impermissible.

**Conclusion:**

36. The judgments under review do not suffer from any apparent error of law. No case for review is made out.

[24] 2022 SCC OnLine SC 597

**Result:**

37. All the Review Petitions are dismissed.

Pending miscellaneous petitions, if any, shall stand closed in consequence.

**RAVI NATH TILHARI, J**

**VENUTHURUMALLI GOPALA KRISHNA RAO, J**

Date: 09.05.2024
Gk/Dsr

Note:
LR copy to be marked
B/o
Dsr