Reserved On 16.12.2022

Delivered on 18.01.2023

Court No. - 10

Case :- WRIT - A No. - 2001711 of 2000

Petitioner :- Gyanesh Shukla

Respondent :- Chancellor University Of Lucknow

Counsel for Petitioner :-

I.B.Singh,A.Bharat,A.M.Tripathi,Abhinav N. Trivedi,Aditya Tewari,Anil Kumar Tiwari,Apoorva Tewari,J.B.Singh,U N Misra

Counsel for Respondent :- P.C.Agarwal,Brijesh Kr. Shukla,S.P. Shukla,Savitra Vardhan Singh

Hon'ble Attau Rahman Masoodi,J.

Hon'ble Saurabh Lavania,J.

(Per: Saurabh Lavania, J.)

C.M. Application No. [1/2000 (149630 of 2019) Review Application]

Heard Sri Anil Kumar Tiwari, learned Senior Advocate assisted by Sri Apoorva Tewari, Advocate for petitioner and learned counsel for the respondents.

Present review application under Chapter V Rule 12 of the Allahabad High Court Rules, 1952 and under Order XLVII Rule 1 of the Code of Civil Procedure, 1908 has been preferred by the petitioner in relation to final judgment and order dated 16.11.2019 passed in Writ Petition No. 1711 (S/B) of 2000 (Gyanesh Shukla vs. Chancellor University Of Lucknow and Another).

Brief facts of the case, which are relevant to adjudicate present review application, are as under:-

(i) The petitioner-Gyanesh Shukla prior to his dismissal from services was holding the post of Lecturer in Commercial Arts, Faculty of Fine Arts, Lucknow University.

(ii) One female student made a complaint dated 15.09.1998 levelling serious allegations against her "Teacher/Guru", petitioner-Gyanesh Shukla

(iii) The complaint made by the female student was broadly regarding sexual harassment by the petitioner-Gyanesh Shukla.

(iv) Prior to aforesaid complaint, one complaint dated 20.02.1988 was made by female students against the petitioner-Gyanesh Shukla levelling therein several allegations including regarding exploiting girl students.

(v) Besides aforesaid, one more representation dated 21.11.1998 of students was received by the Vice Chancellor requesting therein to take appropriate action against the petitioner.

(vi) It appears that considering the allegations against the petitioner levelled in the complaint and for taking appropriate action against the petitioner-Gyanesh Shukla, the University decided not to hold the inquiry as per procedure prescribed in the Statute particularly, Statute 8.10, 16.04 and 16.06, referred in the judgment under review, and for holding the proceedings against the petitioner, constituted a Disciplinary Committee vide

its resolution dated 01.12.1998. Relevant portion of the same reads as under:-

> *"The Vice-Chancellor welcomed Sri Shabihul Husnain as new member of the Council.*
>
> *1. The matter relating to allegations levelled by Miss Renu Singh, against Sri Gyanesh Shukla, Lecturer in Commercial Arts, Faculty of Fine Arts was considered at length.*
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> *Sri G.K. Mehrotra moved the following resolution for consideration which was unanimously adopted by the Council:-*
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> *"The Executive Council hereby endorses and records its appreciation for expeditious steps taken by Dr. Roop Rekha Verma, the Vice-Chancellor and Chairman of this August Body in the matter of the complaint made to her by Miss Renu Singh on the perusal of the papers made available to us.*
>
> *It is resolved to constitute a Disciplinary Committee in the matter of the complaint of the aforesaid Miss Renu Singh to make inquiry and submit its report within six weeks on receipt of which the further action in the matter will be taken by the August Body."*
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> *The following Disciplinary Committee was constituted for this purpose:-*
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> *1. The Vice-Chancellor*
>
> *2. Sri D.S.Bhatnagar, Retd. Director General of Police, 15, Rana Pratap Marg, Lucknow*
>
> *3. Dr. Amrita Dass, Director, Institute of Career Studies, Lucknow."*

(vii) In the proceedings of the Disciplinary Committee, the complainant (female student) appeared and indicated the facts related to the allegations made by her against the petitioner.

(viii) The petitioner vide letter/notice dated 26.07.1999 was also directed to appear before the Disciplinary Committee on 29.07.1999 and on the said date, his statement was also taken note of by the Disciplinary Committee.

(ix) The Disciplinary Committee thereafter, based upon the material available before it, submitted its report dated 27.01.2000. Relevant portion of the same on reproduction reads as under:-

> *"The relevant portion of report of Disciplinary Committee constituted under Statutes of Lucknow University to enquire into charges of Molestation and threats of Physical Harm alleged by a girl student of College of Arts & Crafts, Lucknow University, against a Lecturer of the College is quoted below:-*
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> *"**How the Enquiry started:***
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> *Complaint dated 20.02.1998 was made purported to be by all students of College of Arts & Crafts,L.U. signed by Chhabi Chube, Swati Singh, Rahul Saxena, Rajesh and Mamta, addressed to the Principal and copies endorsed to Vice-Chancellor and others, alleging that Sri Gyanesh Shukla, who was Lecturer in the College since 1994, was linked with a gang who indulged in anti-social and criminal activities of exploiting girl students by calling them to residence, taking their nude photos and videographs, blackmailing and threatening them, which was damaging the reputation of the College. It was requested that necessary action be taken in the matter.*
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> *Another complaint dated 15.09.1998 was made by Km. Renu Singh, a student of the College, addressed to the Vice-Chancellor, Lucknow University, giving reference of her earlier complaint dated 20.02.1998 alleging anti-social and criminal activities in the campus being carried out by certain persons who were linked with Sri Gyanesh Shukla. It was further stated that she had*

asked for a secret enquiry but the police officer making the enquiry was not maintaining secrecy. She had repeatedly received telephonic call threatening physical harm to her and her family members and , because of that she had felt compelled to give in writing to police on 01.08.1998 that she was withdrawing her complaint and did not want any action therein. Now she wanted that C.B.I. should conduct the enquiry to bring to book the improper activities of the gang which comprised Gyanesh Shukla, Prem Narain Sharma, Mohd. Islam and Ashok Seth.

The Vice-Chancellor sent the said complaint dated 19.09.1998 to Principal Secretary, Home vide her D.O. letter dated 19.11.1998 mentioning that students were agitated and proposing enquiry by CBI.

The Vice Chancellor received another representation dated 21.11.1998 from student of the college asking for the suspension of the Lecturer, Sri Gyanesh Shukla for reason of his sexual activities with a girl student of the College. In this application, no specific case was indicated.

The Vice Chancellor sent the aforesaid application dated 21.11.1998 with D.O. letter dated 21.11.1998 to the Home Secretary inviting reference to her earlier D.O. letter dated 19.11.1998 addressed to the Principal Secretary, Home.

The complainant, Km. Renu Singh also handed over copies of the following complaints made earlier by her in this matter:

(1) Complaint dated 23.06.1996 to S.S.P., Lucknow alleging that Gyanesh Shukla had taken her objectionable photos and she desired that photos and negatives be secured to her.

(2) Complaint dated 19.07.1996 to S.P. Aliganj, alleging that Gyanesh Shukla, Prem Sharma, Islam and Anand Seth , since after her making complaint to police, have been threatening her with physical harm and that they were a gang which jointly operated in unlawful activities of

taking photos and videographs of nude girls and selling them to foreign magazines.

(3) Complaint dated 03.10.1996 to S.P. Aliganj, alleging that the S.O., Aliganj, Sri Durgesh Tewari and C.O. Sri Asutosh Pandey had not registered her F.I.R. and instead assured her that they would secure to her photos and negatives within three days but nothing had happened ever after three months. She was receiving threats. She desired that her photos, negative and video cassette be availed to her.

The matter was discussed in the meeting of the Executive Council for discussion as Item no.1 of the agenda for the meeting of 01.12.1998. Under the Lucknow University Statue, the Executive Council decided to constitute a Disciplinary Committee to enqire into matter. Besides the Vice Chancellor, the two other members of the Committee were as below:

(1) D.S. Bhatnagar, IPS Ex- Director General of Police, U.P.

(2) Dr. Ms. Amrita Dass, Director, Institute of Career Studies & Social Worker.

Allegation:

The allegation are below:

(1) Renu Singh has stated that she had requested prem to make portrait of her uncle and prem had agreed and told her that, for the purpose, she should reach the residence of Gyanesh. Accordingly, on 18.05.96 at about 9:00 A.M. when she went there prem and gyanesh were present. They had conversations for some time. She was persuaded to change her clothes to banyan and slacks of Gyanesh and they all took tea after which she became unconscious and , in that state, her objectionable photos were taken. In her complaint to SSP, Lucknow, she desired that her only immediate worry was that the photos and negatives be secured to her.

(2) It is stated by Renu Singh that , on 14.07.96, she was informed by Islam to go the residence of

gyanesh for obtaining her photos and negatives. Accordingly. She went there where prem met her. When she asked for photos and negatives, Prem told her to first take bath and, upon her refusal, beat her so badly that two of her ribs were fractured and, with pistols in hand he threatened her so that she forced to take bath while he remained standing there, and it appeared to her that there was a hidden videocamera and the scene,was videographed. She had verbally informed that S.O. of Police Station, Aliganj about this incident. She had received repeated threats of physical harm to her.

(3) It is stated in complaints that Islam, Prem, Gyanesh Shukla and Ashok Seth were a gang of criminals who indulged in unlawful activities of taking photos and videos of nude girls for sale to foreign magazines and then threatening and blackmailing them.

Brief facts of the case

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Gyanesh has said in his statement that photography had been his subject and that he also made portraits. Renu had come to his residence and asked for Prem who was staying with him those days. He (Gyanesh) had gone to take bath and when he came out, he saw that she had changed her dress to his "banyan' and slacks. Prem told Gyanesh that she was insisting on being photographed. Gyanesh did not have a film but prem proposed to him to do a bluff by flashing the empty camera so that she would go. As she posed,Gyanesh told her to lift the "banyan' further up. She raised it above the breasts. Gyanesh thrice flashed the camera. Gyanesh had pressed her breasts. She complained to Prem about Gyanesh having misbehaved with her. After that she went away.

Sri Gyanesh, in his statement before the present Committee said that his statement had been recorded under threat. The Committee also examined the enquiry officer who stated that the statement was recorded as was stated by Gyanesh

and that it was read out and then handed over to him to read, and he had read then only signed it, and that there was no reason for the statement being wrongly recorded.

Report:

The allegations by Renu Sing, prior to 20.02.1998, made in complaints to police only, were in the usual procedure of report by victim of the crime. Subsequently, in her statement before enquiry officer, she made supplementary accusations

- of having been drugged into unconsciousness through something administered to her in her cup of tea and, in that condition, her semi- nude photos were taken.

- of having been enticed to the same place where, earlier, her semi-nude photos had been taken in there subjected by another member of the group viz. Prem stated by her to be her friend, to severe beating resulting in rib-fractures and, under threat by pistols in hand, forced by him to take bath and the scene having been videographed.

- of having been threatened and black-mailed by group members who are alleged to be a gang of professionals whose "mudus operandi' was to take photos and videos of nude girls and selling the picture to foreign magazines and also black-mailing the subject girl.

2.These allegations by victim girl make out ingredients of serious congizable crime. Even the first written complaint to Senior Superintendent of Police, Lucknow by Renu Singh of having been exposed for objectionable photos and threatened were sufficient to constitute F.I.R. of a criminal case and Senior Superintendent of Police had rightly reacted by making clear orders for "S.O. Aliganj to lodge F.I.R.". Had the subordinate staff of levels of S.O. and C.O. duly registered and investigated , the matter would not have prolonged. As it is , the case was not registered and investigated and, after being fed for about three months on vain expectations from local

police that the photos and negatives would be secured to her, the story temporarily ended there.

3. Apparently, the complainant herself also had not been keen on police investigation and her interest in reporting to police was limited to her photos and negatives being secured to her. She did not mention in any of her written complaints about having been rendered unconscious through to intake in her tea cup and even of the more serious incident about having been severely beaten to extent of rib-fractures and having been forced to be videographed in bathing scene. However, this does not lead to dismissal of her version. For an unmarried girl-complainant in such a case, it was only natural to be primarily concerned and upset about her objectionable photos and negatives being in hand of others who could anytime blackmail her.

4. Afterwards, when the complaint had joined the University as a student of Arts College where Gyanesh Shukla was a Lecturer, she re-invoked the complaints as students alleging organised activity of sex exploitation of girls by a College Lecturer, whereupon enquiry was started by a lady police gazetted officer but, before the enqiry was completed, the complainant gave in writing to police withdrawing her complaint. After sometime, she petitioned to the Vice Chancellor that she had given in writing to police for withdrawal of her complaint because she felt that the enquiry was being conducted in open manner without maintaining confidentiality and she desired that secret enquiry by C.B.I. should be made on her complaints. The Vice-Chancellor sent up the complaints to State Government, Home Department, recommending enquiry by C.B.I.

5. The allegation by Renu Singh make out an organised crime in society and, in the chain of persons alleged against, there is also the link of Gyanesh Shukla. The C.B.I. is a Central Government Organization and normally deals with economic offences pertaining to subjects of Central Government. It would be proper if the case is dealt with as a crime by the Criminal Investigation

Department (Crime Branch) of the State, which is the appropriate agency for the purpose. A substantial spade-work has been already done by the police under Senior Superintendent of Police, Lucknow and confidential report prepared, which would help CID(CB) to make the work easier and quicker. The culprits , whoever they be, should be dealt with according to law.

6. There is one aspect of the matter which needs to be also considered. Renu Singh has stated that the first and last act of misbehavior by Gyanesh Shukla with her was on 18.05.96. During police enquiry, Gyanesh Shukla, in reference to same incident, is on record for having stated that when he had exposed Renu Singh to camera lens, he asked her to lift up the 'banyan' and upon her having lifted the same higher up her breasts, he had pressed her breasts, which was objected to by her. When examined by the present Committee, Gyanesh said that his statement, in course of police enquiry was made under threat. He could give no explanation as to how an educated person of his status could agree to sign that statement. The Committee examined the lady police officer who had the statement recorded and she stated there was no question of any pressure or threat and only what he had stated had been recorded and after recording his statement, the same was read over to him and also handed over to him to read which he had read and thereafter he had signed it of his own free will. The denial of his own recorded and signed statement by Gyanesh Shukla is far from convincing. Such behavior by a University Lecturer, even at his private residential premises and even with an outside girl is self-admitted act of misconduct and moral turpitude.

Conclusion:

(1) The allegation constitute ingredients of crime in society being jointly operated by a group of persons also including a university teacher. The group allegedly indulged in organised criminal activity of enticing girls into a place pre-set with photo and video studio for taking their nude and semi-nude objectionable photos and videographs

and selling them to foreign magazines and subjecting the trapped girls to threats and black-mailing. It would be appropriate if this alleged organised criminal activity is investigated by state CID (Crime Branch) so that whoever if found guilty get suitably dealt with according to law.

(2) In so far as the University Lecturer. Sri Gyanesh Shukla is concerned, his individual conduct is also indictible for scandulous misconduct according to his own duly recorded and signed statement in which he has himself stated to have clicked the camera for the photograph of Renu Dingh and molested her by pressing her breasts.

Recommendation:

in view of the above mentioned facts, the Disciplinary Committee recommends:

(1) that this case be investigation by the CID (Crime Branch) because there are allegation which concern operations of a larger gang in specific offences of drugging, taking objectionable photos and videograph, physical assault, unlawful restraint and threats.

(2) that Sri Gyanesh Shukla be dismissed from service for his scandulous misconduct vide statute 16.04(e) of University of Lucknow First Statute."

In the present case, no charge-sheet was given to the petitioner as per the provisions as provided under Statute 16.06(1) and there is some infirmity in conducting the enquiry as per the provisions as provided under Statute 16.06. on the basis of recommendation of Disciplinary Committee, petitioner was dismissed vide order dated 14.02.2000 and the same was confirmed vide order dated 30.09.2000."

(x) Based upon the observations made by the Disciplinary Committee in its report dated 27.01.2000, the petitioner-Gyanesh Shukla was dismissed from service on 14.02.2000.

(xi) The petitioner-Gyanesh Shukla thereafter, approached the Chancellor by preferring an appeal under Section 68 of U.P. State Universities Act, 1973, which was rejected vide order dated 30.09.2000.

(xii) Thereafter, the petitioner approached this Court by means of the writ petition in which the final judgment, under review, was passed.

(xiii) Main plea before this Court challenging the order(s) of dismissal dated 14.02.2000, which was affirmed by the Chancellor of University vide order dated 30.09.2000 was to the effect that the procedure prescribed in the Statute 8.10, 16.04 and 16.06 was not followed and in regard to various pronouncements regarding holding of disciplinary proceedings as also on the principle that if a Statue/Rule prescribes a mode and manner to do something then in that event the thing should be carried out in the manner prescribed were relied upon.

(xiv) It would be apt to refer here that after referring to relevant Statute of University and all the judgments on which reliance was placed by the learned counsel for the petitioner, this Court observed in the judgment, under review, that the order dated 14.02.2000 and 30.09.2000 have been challenged on the main ground which is to the effect that the same are in violation of the principle of **"Audi Alterum Partem".**

(xv) After observing aforesaid and considering the report of Disciplinary Committee as also the facts of the case including

the relationship between the petitioner and complainant as also the judgment of the Hon'ble Apex Court passed in the case of **Hira Nath Mishra and Other vs. Principal, Rajendra Medical College, Ranchi and Another; reported in (1973) 1 SCC 805;** this Court observed as under:-

> *"Keeping in view the basic principle "Audi Alterum Partem" and the aforesaid,we have to consider whether in the facts and circumstances of the present case, which is the case related to a Teacher/Guru and students the opportunity provided to the petitioner before passing the order of punishment was / is justified or not?*
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> *The Hon'ble Apex Court in the case of Hira Nath Mishra and others Vs. The Principal, Rajender Medical College, Ranchi and another, (1973) 1 SCC 895 ,wherein the facts are to the effect that for finding out the veracity of the allegations made by the girls students in the complaint the Committee of three persons was constituted. The Committee recorded the statement(s) of female student(s) and thereafter statement(s) of male student(s) were recorded, who denied the allegations before the Committee, and thereafter Committee came to the conclusion that the male student(s) were guilty of gross misconduct and on the basis of conclusion arrived by the Committee the male students were expelled.The order of expulsion was challenged in the writ proceedings on the ground. The High Court dismissed the writ petition. The judgment of the High Court was challenged before the Hon'ble Apex Court. While dismissing the appeal, the Hon'ble Apex court observed as follows:-*
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> *"The High Court was plainly right in holding that principles of natural justice are not inflexible and may differ in different circumstances. This Court has pointed out in Union of India v. P.K. Roy (1968)2 SCR 186 that the doctrine of natural justice cannot be imprisoned within the strait-jacket of a rigid formula and its application*

depends upon several factors. In the present case the complaint made to the Principal related to an extremely serious matter as it involved not merely internal discipline but the safety of the girl students living in the Hostel under the guardianship of the college authorities. These authorities were in loco parentis to all the students-male and female who were living in the Hostels and the responsibility towards the young girl students was greater because their guardians had entrusted them to their care by putting them in the Hostels attached to the college. The authorities could not possibly dismiss the matter as of small consequence because if they did, they would have encouraged the male student rowdies to increase their questionable activities which would, not only, have brought a bad name to the college but would have compelled the parents of the girl students to withdraw them from the Hostel and, perhaps, even stop their further education. The Principal was, therefore, under an obligation to make a suitable enquiry and punish the miscreants.

But how to go about it was a delicate matter. The Police could not be called in because if an investigation was started the female students out of sheer fright and harm to their reputation would not have cooperated with the police. Nor was an enquiry, as before a regular tribunal, feasible because the girls would not have ventured to make their statements in the presence of the miscreants because if they did, they would have most certainly exposed themselves to retaliation and harassment thereafter. The college authorities are in no position to protect the girl students outside the college precincts. Therefore, the authorities had to devise a just and reasonable plan of enquiry which, on the one hand, would not expose the individual girls to harassment by the male students and, on the other, secure reasonable opportunity to the accused to state their case.

Accordingly, an Enquiry Committee of three independent members of the staff was appointed.

There is no suggestion whatsoever that the members of the Committee were any thing but respectable and independent. The Committee called the girls privately and recorded their statements. Thereafter the students named by them were called. The complaint against them was explained to them. The written charge was handed over and they were asked to state whatever they had to state in writing. The Committee were not satisfied with the explanation given and thereafter made the report.

We think that under the circumstances of the case the requirements of natural justice were fulfilled. The learned Counsel for the respondents made available to us the report of the Committee just to show how meticulous the members of the Committee were to see that no injustice was done. We are informed that this report had also been made available to the learned Judges of the High Court who heard the case and it further appears that the counsel for the appellants before the High Court was also invited to have a look into the report, but he refused to do so. There was no question about the incident. The only question was of identity. The names had been specifically mentioned in the complaint and, not to leave anything to chance, the Committee obtained photographs of the four delinquents and mixed them up with 20 other photographs of students. The girls by and large identified these four students from the photographs. On the other hand, if as the appellants say, they were in their own Hostel at the time it would not have been difficult for them to produce necessary evidence apart from saying that they were innocent and they had not gone to the girls Hostel at all late at night. There was no evidence in that behalf. The Committee on a careful consideration of the material before them came to the conclusion that the three appellants and Upendra had taken part in the night raid on the girls Hostel. The report was confidentially sent to the Principal. The very reasons for which the girls were not examined in the presence of the appellants, prevailed on the authorities not to give a copy of the report to them. It would have been

unwise to do so. Taking all the circumstances into account it is not possible to say that rules of natural justice had not been followed. In Board of Education v. Rice 1911 AC 179 Lord Loreburn laid down that in disposing of a question, which was the subject of an appeal to it, the Board of Education was under a duty to act in good faith, and to listen fairly to both sides, inasmuch as that was a duty which lay on everyone who decided anything. He did not think that the Board was bound to treat such a question as though it were a trial. The Board need not examine witnesses. It could, he thought, obtain information in any way it thought best, always giving a fair opportunity to those who were parties in the controversy to correct or contradict any relevant statement prejudicial to their view-More recently in Russell v. Duke of Norfolk 1949 1 All ER 109 Tucker, L.J. observed: "There are, in my view, no words which are of universal application to every kind of inquiry and every kind of domestic tribunal. The requirements of natural justice must depend on the circumstances of the case, the nature of the inquiry the rules under which the tribunal is acting, the subject-matter that is being dealt with, and so forth. Accordingly, I do not derive much assistance from the definitions of natural justice which have been from time to time used, but, whatever standard is adopted, one essential is that the person concerned should have a reasonable opportunity of presenting his case." More recently in Byrne v. Kinematograph Renters Society Ltd. 1958 2 All ER 579 Harman, J. observed "what, then, are the requirements of natural justice in a case of this kind? First, I think that the person accused should know the nature of the accusation made; secondly that he should be given an opportunity to state his case; and thirdly, of course, that the tribunal should act in good faith. I do not think that there really is anything more".

Rules of natural justice cannot remain the same applying to all conditions. We know of statutes in India like the Goonda Acts which permit evidence being collected behind the back of the goonda and the goonda being merely asked to represent against the main charges arising out of the

evidence collected. Care is taken to see that the witnesses who gave statements would not be identified. In such cases there is no question of the witnesses being called and the goonda being given an opportunity to cross-examine the witnesses. The reason is obvious. No witness will come forward to give evidence in the presence of the goonda. However unsavory the procedure may appear to a. judicial mind, these are facts of life which are to be faced. The girls who were molested that night would not have come forward to give evidence in any regular enquiry and if a strict enquiry like the one conducted in a court of law were to be imposed in such matters, the girls would have had to go under the constant fear of molestation by the male students who were capable of such indecencies. Under the circumstances the course followed by the Principal was a wise one. The Committee whose integrity could not be impeached, collected and sifted the evidence given by the girls. Thereafter the students definitely named by the girls were informed about the complaint against them and the charge. They were given an opportunity to state their case. We do not think that the facts and circumstances of this case require anything more to be done."

In the light of the observations made by the Hon'ble Apex Court in the Judgment passed in the case of Hira Nath Mishra (supra), we have considered the facts and circumstances of the case,which relates to a Teacher/Guru and Students, mentioned herein above in nutshell, including the fact that before the Disciplinary Committee the petitioner never objected the procedure followed by the Disciplinary Committee and after due consideration, we are of the view that in given situation an adequate opportunity was provided by the Disciplinary Committee to the petitioner.

Thus, we are of the view that on account of the plea based on Statute 16.06, the impugned orders are not liable to be interfered."

(xvi) Now, the review application has been filed by the petitioner on the same proposition as would appear from the written submissions placed before this Court, which are taken on record and the same are as under:-

> *"The petitioner/applicant preferred writ petition bearing no. 1711 of 2000 challenging the dismissal order dated 14.02.2000 passed by Lucknow University and order dated 30.09.2000 passed by Chancellor, Lucknow University. The aforesaid writ petition was dismissed by the Hon'ble Court vide judgment and order dated 16.11.2019.*
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> *The petitioner/applicant preferred the instant Review Application on the ground that the said judgment and order dated 16.11.2019 suffers from manifest error apparent on the face of record and misconception of fact & law by the court.*
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> *It is admitted position that no charge sheet was issued to the applicant as evident from a perusal of paragraph 26 of the short counter affidavit filed by the opposite parties. This Court in paragraph 2 at internal page 22 and paragraph 3 at internal page 29 of the judgment and order dated 16.11.2019 categorically recorded that no charge sheet was issued to the petitioner as per provisions provided under the Statute 16.06.*
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> *It is submitted that a Departmental enquiry was instituted against the petitioner vide resolution 01.12.1998 in accordance with the statute 8.10 read with statute 16.04 and 16.06 of First Statute of Lucknow University and the dismissal order was passed by the Lucknow University in furtherance to departmental inquiry proceedings. It is submitted that the statute 16.04 and 16.08 of the First Statute of Lucknow University provide the detailed procedure for holding an inquiry. The relevant statutes of the First Statute of the Lucknow University are quoted at internal page 2 to 4 of the judgment and order dated 16.11.2019.*

That this court noticed the provisions of the statute 8.01, 16.04 and 16.06 of the First Statute of Lucknow University and also noted the specific argument made by the counsel for petitioner in this regard which are recorded at internal page 2 to 9 of the judgment and order dated 16.11.2019 but no finding was returned by the Hon'ble Court as to the consequences for not observing the mandatory specific provisions as prescribed in the First Statute of the Lucknow University.

It is also submitted that there is no such enabling provision under the First Statue of the Lucknow University or any other law which permits the University no to hold inquiry and to pass dismissal order without issuing a formal charge sheet, proving the charges by leading the evidence as well as opportunity to delinquent to lead his defence. Hence on this account also the judgment and order suffers from error apparent on the face of record and misconception of fact & law by the court.

It is stated that this court vide paragraph 2 at internal page 40 of the order judgment recorded the following perverse finding:-

"the petitioner never objected the procedure followed by the Disciplinary Committee"

It is submitted that from a perusal of paragraph 8 to 19 of the writ petition and arguments advanced by the counsel for petitioner which are recorded in paragraphs 4 onwards at internal page 5 to point (f) at internal page 6 of judgment and order dated 16.11.2019 it is evident that the petitioner always at the earliest opportunities objected the proceedings followed while conducting the disciplinary inquiry against the petitioner.

Supreme Court of India in the case of Brajendra Singh Yambem vs Union Of India (2016) 9 SCC 20 vide paragraph 38 has held that when law provides for particular thing to be done in a particular manner then it must be done in that manner and in no other way. The relevant extract

of the aforesaid judgment is quoted here in below:-

"It is the basic principle of law long settled that if the manner of doing a particular act is prescribed under any statute, the act must be done in that manner or not at all. The origin of this rule is traceable to the decision in Taylor v. Taylor which was followed by Lord Roche in Nazir Ahmad v. King Emperor"

Supreme Court of India in the case of Union of India v. Anil Kumar Sarkar (2013) 4 SCC 161 vide paragraph 19 to 21 has held that disciplinary proceedings commences only when a charge sheet is issued.

High Court of Allahabad in case of Rajendra Bahadur Singh v. U.P. Agro Industrial Corp. vide paragraph 20 to 24 has held that non observance of principles of natural justice vitiates the domestic enquiry.

Supreme Court of India in the case of Union of India v. S.K. Kapoor (2011) 4 SCC 589 vide paragraph 5 as well as in Union of India and others v. Mohd. Ramzan Khan (1991) 1 SCC 588 vide paragraph 13 and 15 has held document relied in department proceedings should be provided to the delinquent employee. Further, Supreme Court of India in the case of M.D. ECIL, Hyderabad v. B. Karunakar (1993) 4 SCC 727 vide paragraph 30 held that delinquent should be provided a copy of the enquiry report.

It is also settled position of law that delinquent employee is required to be afforded reasonable opportunity to cross-examine the witness and produce the witness in his defence. P.N. Srivastava v. State of U.P. and others (1999) 1 UPLBEC 672, Paragraph 10 and Kuldeep Singh v. The Commissioner of Police and others (1999) 2 UPLBEC (Sum.) 55, Paragraph 27, 32.

Supreme Court of India in the case of Union of India and others v. Mohd. Ramzan Khan (1991) 1

SCC 588, M.D. ECIL, Hyderabad v. B. Karunakar (1993) 4 SCC 727 as well as in Allahabad High Court in Nanhey Lal Gupta v. U.P. Upbhogta Sahkari Sangh Ltd. and another (2007) 2 UPLBEC 1510, vide paragraph 3 and 4 has categorically held that after receipt of the report it is mandatory for the disciplinary committee to serve a copy of the show cause notice along with the enquiry report.

In the light of settled position of law and law laid down by Hon'ble Supreme Court and this Hon'ble Court as well it is stated that the finding recorded by the Hon'ble Court vide paragraph 40 in judgment and order dated 16.11.2019 the court failed to consider that non issuance of charge sheet, not holding of disciplinary enquiry by the enquiry officer, non-awarding the opportunity to cross examine witness and non-affording the opportunity to lead evidence vitiates the punishment order.

The Hon'ble Court in paragraph 2 at internal page 36 of the judgment and order dated 16.11.2019 (numbered as xviii) clearly recorded that the proceedings against the petitioner were not carried out strictly as per the provisions as provided under Statute 16.06 of the Statute.

Supreme Court in Union of India v. Tulsiram vide paragraph 133 and 134 held that the disciplinary authority should record in writing its reason for its satisfaction that it was not reasonably practicable to hold the inquiry. If such reason is not recorded in writing, the order dispensing with the inquiry and the order of penalty following thereupon would both be void and unconstitutional.

Therefore the mere accusation howsoever grave it was cannot be basis to ignore the statutory prescription for conducting the enquiry and to dispense with the regular enquiry when there exists no such enabling provision in the statute and further more without recording any reason why the enquiry was dispensed with.

Supreme Court in Natural Resources Allocation, In Re (2012) 10 SCC 1 vide paragraphs 69-73 has held that not everything said by a judge while giving a judgment can be ascribed precedential value. Further, the Hon'ble Supreme Court in State Of Haryana v. M/S AGM Management Services Ltd. (2006) 5 SCC 520 vide paragraph 7 & 8 made it clear that the Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. One additional or different fact may make a world of difference between conclusions in two cases.

It is submitted that the judgment of Hon'ble Apex Court in the case of the H.N. Mishra (1973) 1 SCC 895 has no applicability to the facts and circumstances of the case as the Hon'ble Court only delved into the question whether the duty of furnishing show cause notice was discharged and the said case did not deal with the question whether procedure prescribed in relevant rules and regulations has to be mandatorily adhered with while conducting a disciplinary enquiry. On the other hand, the present case relates to departmental enquiry, where employer-employee relationship exists, which is necessarily to be governed by the procedure prescribed in the First Statute.

It is also submitted that the court failed to consider the judgment in its entirety as the contents of paragraph 11 were not taken into consideration. The relevant extract of the aforesaid judgment is quoted here in below:-

"....the complaint against them was explained to them. The written charge was handed over and they were asked to state whatever they had to state in writing."

Thereafter the Apex Court made the following observations in paragraph 12 which have also not been considered by this court in judgment dated 16.11.2019:-

"There was no question about the incident. The only question was of identity."

The finding that the petitioner was aware of the charges against him based upon letter dated 26.07.1999 is erroneous and error apparent on the face of record as the aforesaid letter only mentions about the constitution of a disciplinary committee in respect of a complaint by and it does not mention any charges framed against the applicant which is evident from annexure no. 5A of the writ petition.

It is stated that the court has not recorded any finding as to how the judgment cited on behalf of the petitioner would not be attracted.

CASE LAWS RELIED BY THE HON'BLE COURT IN JUDGEMENT DATED 16.11.2019 DISTINGUISHED ON FACTS

1. Shashikant B. Kulkarni (Prof.) v. Principal, BPCS College of Physical Education (2008) 110 (5) Bom LR 1819.

The matter related to sexual harassment. The Hon'ble Bombay High Court vide paragraph 13, 15 and 16 of the judgment recorded the following distinguishing facts:-

***13. "...that Charges were framed** under different statues of the First Statute of University,*

***15. The petitioner submitted his reply to the charge-sheet** and the inquiry proceedings commenced with effect from 28.6.2003. **The management produced various documents and examined as many as 21 witnesses** in respect of the aforesaid charges. It is worthwhile to note, and we emphasize, that the management also examined the girl students who were material witnesses to the incidents alleged against the petitioner and who had lodged complaints/protests in respect of the objectionable behavior of the petitioner with the girl students.*

16. "The petitioner was given full opportunity even of cross-examining all these witnesses, including the girl students who claimed to be victims of the alleged misconduct *of the petitioner. Though it is not even the case of the petitioner to the contrary, still we must mention that during the inquiry,* ***the petitioner was given full opportunity to defend himself not only by way of conducting cross-examination of the witnesses examined by the management but also by leading his own evidence.*** *Admittedly,* ***Inquiry was conducted in conformity with the relevant statutes*** *and in full compliance with the principles of natural justice.*

2. Avinash Nagra v. Navodaya Vidyalaya Samiti (1997) 2 SCC 534

Matter relates to improper conduct of petitioner with girl student. Show cause notice was issued to the petitioner and an enquiry was conducted. The Hon'ble Supreme Court vide paragraph 6 of the judgment recorded the following distinguishing facts:-

6. ***".....resolution prescribing special summary procedure*** *was proposed and published by notification dated December 23, 1993, after due approval of the Executives of the respondent-Samiti. The Minister of Human Resources and Development, Government of India is its Chairman. The* ***notification postulates to dispense with regular enquiry under the Rules. in the case of a temporary employee*** *whose integrity and conduct is doubtful but difficult to prove with sufficient documentary evidence to establish the charge and whose retention in service would be prejudicial to the interest of the institution or whose grave misconduct and the enquiry under the Rules would be likely to result in embarrassment to the class of employees or is likely to endanger the reputation of the institution, the appointing authority, for the reasons to be recorded in the file, may terminate his services in terms of the letter of appointment.* ***The order of termination need not contain any reasons but the***

appointing authority has to obtain prior approval of the Deputy Director. *Similarly, when the Director is satisfied, after summary inquiry, that there was a prima facie guilt of moral turpitude involving sexual harassment or exhibition of immoral behaviors towards any girl student, under clause (b) of the above notification, the Director "can terminate the services of that employee by giving him one month's or three months' pay and allowances in lieu thereof, depending upon whether the guilty employee is temporary or permanent in the services of the Samiti.* ***In such cases, procedure prescribed for holding enquiry for imposing major penalty in accordance with the Rules as applicable to the employees of the Respondent, shall be dispensed with provided that the Director is of the opinion that it is not expedient to hold regular enquiry*** *on account of serious embarrassment to the student or his guardians or such other practical difficulties. The Director shall record in writing the reasons under which it is not reasonably practicable to hold such enquiry and he shall keep the Chairman of the Samiti informed of the circumstances leading to such termination of services. It would thus be seen that in a given situation, instead of adopting the regular procedure under the Rules to terminate the services of an employee, the notification prescribes the procedure to dispense with such enquiry, subject to the conditions mentioned above.*

Questions Involved:

-Whether second writ petition would be maintainable if first writ was withdrawn without any liberty being granted?

-Whether the petitioner was entitled to full fledged inquiry and opportunity to cross examine the girl student who had made the complaint?

• To prevent their unnecessary exposure at an enquiry in relation to the conduct of a teacher resulting in sexual harassment of the girl student etc. involving misconduct or moral turpitude, resolution prescribing special summary procedure

was proposed and published by notification dated 23-12-1993, after due approval of the Executives of the respondent-Samiti. The Minister of Human Resources and Development, Government of India is its Chairman. The notification postulates to dispense with regular enquiry under the Rules. ***Paragraph 6***

• It is seen that the rules wisely devised have given the power to the Director, the highest authority in the management of the institution to take decision, based on the fact situation, whether a summary enquiry was necessary or he can dispense with the services of the appellant by giving pay in lieu of notice. Two safeguards have been provided, namely, he should record reasons for his decision not to conduct an enquiry under the rules and also post with facts the information with Minister, Human Resources Department, Government of India in that behalf. ***Paragraph 12***

• Thus, exemption to cross examine was granted as per the rules only after summary inquiry was held.

3. Manager, Nirmala Senior Secondary School v. N.I. Khan (2003) 12 SCC 84; *Respondent N.I. Khan allegedly abused and attempted to assault a lady Principal of the appellant's minority educational institution in front of the school. Terminated by school management after initiating enquiry. The Hon'ble Supreme Court vide paragraph 5 of the judgment recorded the following distinguishing facts:-*

5. ".....On 19.9.1997 Khan was intimated that ***several opportunities had been granted to him but he did not appear*** *and was therefore guilty of the charges.* ***On the punishment aspect, intimation was given to respondent-Khan on 6.10.1997 and he was granted opportunity.*** *Though Khan did not respond on the issue of punishment his stand was that all the charges were to be dropped. On 25.11.1997 the School requested the Director to nominate his representative for the disciplinary proceedings. The request was re-iterated on 12.*

12.1997. The Director on 15.12.1997 wrote back stating that since the suspension was without prior permission, necessarily no one would be sent for the disciplinary proceeding."

Questions Involved

-Whether a minority Institution may adopt its own procedure for enquiry in view of Article 30(1) of the Constitution and whether the procedure adopted was fair?

The Supreme Court did not enter into the controversy and ordered payment of Rs. 4,50,000/- upon receipt of which the respondent N.I. Khan would stand terminated not on the grounds taken in the inquiry but in furtherance of the instant judgment. ***Paragraph 11***

4. Hira Nath Mishra v. The Principal, Rajinder Medical College, Ranchi (1973) (1) SCC 805. *The aforesaid case law has no applicability to the facts and circumstances of the case as the Hon'ble Court only delved into the question whether the duty of furnishing show cause notice was discharged and the said case did not deal with the question whether procedure prescribed in relevant rules and regulations has to be mandatorily adhered with while conducting a disciplinary enquiry. On the other hand, the present case relates to departmental enquiry, where employer-employee relationship exists, which is necessarily to be governed by the procedure prescribed in the First Statute.*

The Hon'ble court failed to consider the judgment in its entirety as the contents of paragraph 11 were not taken into consideration. The relevant extract of the aforesaid judgment is quoted here in below:-

"....the complaint against them was explained to them. The written charge was handed over and they were asked to state whatever they had to state in writing."

Thereafter the Apex Court made the following observations in paragraph 12 which have also not been considered by this court in judgment dated 16.11.2019:-

"There was no question about the incident. The only question was of Identity."

5. Shashi Bhushan Prasad v. Inspector General (2019) 7 SCC 797. *Matter pertains to scope of Departmental Enquiry and Criminal Trial. However, in the cited case, the charge in departmental inquiry and charge in criminal trial were different and accused was acquitted in the trial because material witnesses were declared hostile.*

• Facts and ratio of judgments relied by the court have no applicability in view of the aforesaid.

• The compilation of the case laws relied upon by the petitioner may also be read along with this written submission. The compilation of the case law is separately submitted."

To pursue this Court in seeking review of the judgment dated 16.11.2019, Sri Tiwari argued on the points indicated in the written submissions/brief note, quoted above.

In addition to above submissions which were based upon the written submissions, Sri Anil Tiwari also placed before this Court a compilation of case laws and his submissions based upon the same, in brief, are as under:-

(a) The procedure prescribed to hold the disciplinary proceedings under relevant Rules, Regulations and Statute etc. is required to be followed and if there is some violation in following the procedure prescribed, the benefit would be given

to the charged official. On the aforesaid, reliance was placed on the following judgments:-

Sunil Kumar Gupta vs. State of U.P. passed in Writ Petition No.451 (S/B) of 2013, Chamoli District Cooperative Bank Ltd. vs. Raghunath Singh Rana; reported in (2016) 12 SCC 204; Yatendra Kumar vs. State of U.P. and Others; reported in (2019) (2) ESC 561 (AII) (DB) (LB) and State of U.P. vs. Deepak Kumar and Others; reported in 2018 SCC OnLine.

(b) Non observance of principles of natural justice vitiates the domestic inquiry. In this regard, reliance was placed on the judgment passed in the case of **Rajendra Bahadur Singh vs. U.P. Agro Industrial Corp.; reported in SCD 1993 (2) 656.**

(c) The relevant document relied upon in the departmental proceedings should be provided to the charged official else the departmental proceedings vitiate the punishment.

Prior to imposing the punishment, the show cause notice alongwith the inquiry report should also be served upon the charged official otherwise it vitiates the punishment order.

In support of above arguments, reliance was placed on the judgment passed in the case of **Union of India vs. S.K. Kapoor; reported in (2011) 4 SCC 589, Union of India and Others vs. Mohd. Ramzan Khan reported in (1991) 1 SCC 588, M.D. ECIL, Hyderabad vs. B.Karunakar; reported in (1993) 4 SCC 7277 and Nanhey Lal Gupta vs. U.P. Upbhogta Sahkari Sangh Ltd. & Another; reported in (2007) 2 UPLBEC 1510.**

(d) The opportunity to cross-examine the witness and produce the witness in his defence should be provided to the charged official as the principles of Evidence Act shall be applicable to departmental inquiry. In this regard, reliance was placed on the judgment passed in the case of **P.N.Srivastava vs. State of U.P. and Others; reported in (1999) 1 UPLBEC 672, Kuldeep Singh vs. The Commissioner of Police and Others; reported in (1999) 2 UPLBEC (Sum.), Asha Ram Verma and Others vs. State of U.P. and Others; reported in (2003) 2 UPLBEC 1726 and Ministry of Finance and Another vs. S.B. Ramesh; reported in (1998) 2 UPLBEC 1087.**

(e) The judicial review in the departmental proceedings is limited to the procedural aspects of the case and High Court can not enter into the facts finding. In this regard, reliance was placed on the judgment passed in the case of **High Court of Judicature at Bombay vs. Shashikant S. Patil reported in (2000) 1 SCC 416.**

(f) The Court should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. One additional or different fact may make a world of difference between conclusions in two cases. In this regard, reliance was placed on the judgment passed in the case of **State of Haryana vs. M/S AGM Management Services Ltd.; reported in (2006) 5 SCC 520.**

(g) Departmental proceedings commence only when charge sheet is issued to delinquent employee. In this regard, reliance

was placed on the judgment passed in the case of **Union of India vs. Anil Kumar Sarkar; reported in (2013) 4 SCC 161.**

(h) When the Statute provides for particular thing to be done in a particular manner then it must be done in that manner and in no other way. In this regard, reliance was placed on the judgment passed in the case of **Brajendra Singh Yambem vs. Union of India; reported in (2016) 9 SCC 20.**

(i) The disciplinary authority should record in writing its reason for its satisfaction that it was not reasonably practicable to hold the inquiry. If such reason is not recorded in writing, the order dispensing with the inquiry and the order of penalty following thereupon would both be void and unconstitutional. In this regard, reliance was placed on the judgment passed in the case of **Union of India vs. Tulsiram; reported in AIR 1985 SC 1414.**

Considered the submissions advanced by the learned counsel for the petitioner/review applicant and perused the records available before us.

Before proceeding further it would be apt to refer that in regard toe review jurisdiction, in the very recently judment passed in the case of **S.Madhusudhan Reddy vs. V.Narayana Reddy and Others; reported in 2022 SCC OnLine SC 1034;** the Hon'ble Apex Court observed as under:-

> *"**16.**Section 114 of the CPC which is the substantive provision, deals with the scope of review and states as follows:*

*"**Review**: - Subject as aforesaid, any person considering himself aggrieved:—*

(a) by a decree or order from which an appeal is allowed by this Code, but from which no appeal has been preferred;

(b) by a decree or order from which no appeal is allowed by this Code; or

(c) by a decision on a reference from a Court of Small Causes, may apply for a review of judgment to the court which passed the decree or made the order, and the court may make such order thereon as it thinks fit."

***17.** The grounds available for filing a review application against a judgment have been set out in Order XLVII of the CPC in the following words:*

*"**1. Application for review of judgment**- (1) Any person considering himself aggrieved -*

(a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred,

(b) by a decree or order from which no appeal is allowed, or

(c) by a decision on a reference from a Court of Small Causes,

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

1[Explanation-The fact that the decision on a question of law on which the judgment of the Court is based has been reversed or modified by the subsequent decision of a superior Court in any other case, shall not be a ground for the review of such judgment.]"

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

19. *In Col. Avatar Singh Sekhon v. Union of India10, this Court observed that a review of an earlier order cannot be done unless the court is satisfied that the material error which is manifest on the face of the order, would result in miscarriage of justice or undermine its soundness. The observations made are as under:*

"12. A review is not a routine procedure. Here we resolved to hear Shri Kapil at length to remove any feeling that the party has been hurt without being heard. But we cannot review our earlier order unless satisfied that material error, manifest on the face of the order, undermines its soundness or results in miscarriage of justice. In Sow Chandra Kante v. Sheikh Habib11 this Court observed:

'A review of a judgment is a serious step and reluctant resort to it is proper only where a glaring omission or patent mistake or like grave error has crept in earlier by judicial fallibility. ... The present stage is not a virgin ground but review of an earlier order which has the normal feature of finality.'"

20. *In Parsion Devi v. Sumitri Devi12, stating that an error that is not self-evident and the one thathas to be detected by the process of reasoning, cannot be described as an error apparent on the face of the record for the Court to exercise the powers of review, this Court held as under:*

"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.13 this Court opined:

'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 characterized 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.'

8. Again, in Meera Bhanja v. Nirmala Kumari Choudhury14 while quoting with approval a passage from Aribam Tuleshwar Sharma v. Aribam Pishak Sharma15 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 this 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'".***

***21.** The error referred to under the Rule, must be apparent on the face of the record and not one which has to be searched out. While discussing the scope and ambit of Article 137 that empowers the Supreme Court to review its judgments and in the course of discussing the contours of review jurisdiction under Order XLVII Rule 1 of the CPC in Lily Thomas (supra), this Court held as under:*

***"54.** Article 137 empowers this court to review its judgments subject to the provisions of any law made by Parliament or any rules made under Article 145 of the Constitution. The Supreme Court Rules made in exercise of the powers under Article 145 of the Constitution prescribe that in civil cases, review lies on any of the grounds specified in Order 47 rule 1 of the Code of Civil Procedure which provides:*

***"1. Application for review of judgment** - (1) Any person considering himself aggrieved -*

(a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred,

(b) by a decree or order from which no appeal is allowed, or

(c) by a decision on a reference from a Court of Small Causes,

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

Under Order XL Rule 1 of the Supreme Court Rules no review lies except on the ground of error apparent on the face of the record in criminal cases. Order XL Rule 5 of the Supreme Court Rules provides that after an application for review has been disposed of no further application shall be entertained in the same matter.

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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.*

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58. Otherwise also no ground as envisaged under Order XL of the Supreme Court Rules read with Order 47 of the Code of Civil Procedure has been pleaded in the review petition or canvassed before us during the arguments for the purposes of reviewing the judgment in Sarla Mudgal case[16]. 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[16] case. We have also not found any mistake or error apparent on the face of the record requiring a review. ***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 such error has been pointed out by the learned counsel appearing for the parties seeking review of the judgment. The only arguments advanced were that the judgment interpreting Section 494 amounted to violation of some of the fundamental rights. 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*** *Chajju Ram v. Neki Ram[17]* ***and approved by this Court in*** *Moran Mar Basselios Catholicos. v. Most Rev. Mar Poulose Athanasius[18].* ***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[19]* ***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[20], it was held:*

"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, CJ in - 'Batuk K Vyas v. Surat Borough Municipality'21, 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.***

Therefore, it can safely be held that the petitioners have not made out any case within the meaning of Article 137 read with Order XL of the Supreme Court Rules and Order 47 Rule 1 CPC for reviewing the judgment in Sarla Mudgal case16. The petition is misconceived and bereft of any substance."

22. *It is also settled law that in exercise of review jurisdiction, the Court cannot reappreciate the evidence to arrive at a different conclusion even if two views are possible in a matter. In Kerala State Electricity Board v. Hitech Electrothermics & Hydropower Ltd.22, this Court observed as follows:*

*"10. ….****In a review petition it is not open to this Court to reappreciate the evidence and reach a different conclusion, even if that is possible.***

Learned counsel for the Board at best sought to impress us that the correspondence exchanged between the parties did not support the conclusion reached by this Court. We are afraid such a submission cannot be permitted to be advanced in a review petition. ***The appreciation of evidence on record is fully within the domain of the appellate court. If on appreciation of the evidence produced, the court records a finding of fact and reaches a conclusion, that conclusion cannot be assailed in a review petition unless it is shown that there is an error apparent on the face of the record or for some reason akin thereto.*** *It has not been contended before us that there is any error apparent on the face of the record.* ***To permit the review petitioner to argue on a question of appreciation of evidence would amount to converting a review petition into an appeal in disguise."***

23. *Under the garb 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. The power of review is not to be confused with the appellate power which enables the Superior Court to correct errors committed by a subordinate Court. This point has been elucidated in Jain Studios Ltd. v. Shin Satellite Public Co. Ltd.*[23] *where it was held thus:*

"11. So far as the grievance of the applicant on merits is concerned, the learned counsel for the opponent is right in submitting that virtually the applicant seeks the same relief which had been sought at the time of arguing the main matter and had been negatived. Once such a prayer had been refused, no review petition would lie which would convert rehearing of the original matter. ***It is settled law that the power of review cannot be confused with appellate power which enables a superior court to correct all errors committed by a subordinate court. It is not rehearing of an original matter. A repetition of old and overruled argument is not enough to reopen concluded adjudications. The power of review can be exercised with extreme care, caution an16. Section 114 of the CPC which is the substantive provision,***

deals with the scope of review and states as follows:

"Review : - Subject as aforesaid, any person considering himself aggrieved:—

(a) by a decree or order from which an appeal is allowed by this Code, but from which no appeal has been preferred;

(b) by a decree or order from which no appeal is allowed by this Code; or

(c) by a decision on a reference from a Court of Small Causes, may apply for a review of judgment to the court which passed the decree or made the order, and the court may make such order thereon as it thinks fit."

17. The grounds available for filing a review application against a judgment have been set out in Order XLVII of the CPC in the following words:

"1. Application for review of judgment - (1) Any person considering himself aggrieved -

(a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred,

(b) by a decree or order from which no appeal is allowed, or

(c) by a decision on a reference from a Court of Small Causes,

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

1[Explanation-The fact that the decision on a question of law on which the judgment of the Court is based has been reversed or modified by the subsequent decision of a superior Court in any other case, shall not be a ground for the review of such judgment.]"

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

19. In Col. Avatar Singh Sekhon v. Union of India10, this Court observed that a review of an earlier order cannot be done unless the court is satisfied that the material error which is manifest on the face of the order, would result in miscarriage of justice or undermine its soundness. The observations made are as under:

"12. A review is not a routine procedure. Here we resolved to hear Shri Kapil at length to remove any feeling that the party has been hurt without being heard. But we cannot review our earlier order unless satisfied that material error, manifest on the face of the order, undermines its soundness or results in miscarriage of justice. In Sow Chandra Kante v. Sheikh Habib11 this Court observed:

'A review of a judgment is a serious step and reluctant resort to it is proper only where a glaring omission or patent mistake or like grave error has crept in earlier by judicial fallibility. ... The present stage is not a virgin ground but

review of an earlier order which has the normal feature of finality.'"

20. In Parsion Devi v. Sumitri Devi12, stating that an error that is not self-evident and the one thathas to be detected by the process of reasoning, cannot be described as an error apparent on the face of the record for the Court to exercise the powers of review, this Court held as under:

"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.13 this Court opined:

'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 characterized 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.'

8. Again, in Meera Bhanja v. Nirmala Kumari Choudhury14 while quoting with approval a passage from Aribam Tuleshwar Sharma v. Aribam Pishak Sharma15 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 this 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'".

21. The error referred to under the Rule, must be apparent on the face of the record and not one which has to be searched out. While discussing the scope and ambit of Article 137 that empowers the Supreme Court to review its judgments and in the course of discussing the contours of review jurisdiction under Order XLVII Rule 1 of the CPC in Lily Thomas (supra), this Court held as under:

"54. Article 137 empowers this court to review its judgments subject to the provisions of any law made by Parliament or any rules made under Article 145 of the Constitution. The Supreme Court Rules made in exercise of the powers under Article 145 of the Constitution prescribe that in civil cases, review lies on any of the grounds specified in Order 47 rule 1 of the Code of Civil Procedure which provides:

"1. Application for review of judgment - (1) Any person considering himself aggrieved -

(a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred,

(b) by a decree or order from which no appeal is allowed, or

(c) by a decision on a reference from a Court of Small Causes,

and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review

of the decree passed or order made against him, may apply for a review of judgment to the Court which passed the decree or made the order.

Under Order XL Rule 1 of the Supreme Court Rules no review lies except on the ground of error apparent on the face of the record in criminal cases. Order XL Rule 5 of the Supreme Court Rules provides that after an application for review has been disposed of no further application shall be entertained in the same matter.

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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.

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58. Otherwise also no ground as envisaged under Order XL of the Supreme Court Rules read with Order 47 of the Code of Civil Procedure has been pleaded in the review petition or canvassed before us during the arguments for the purposes of reviewing the judgment in Sarla Mudgal case16. 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 Mudgal16 case. We have also not found any mistake or error apparent on the face of the record requiring a review. 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 such error has been pointed out by the learned counsel appearing for the parties seeking review of the judgment. The only arguments advanced were that the judgment interpreting Section 494 amounted to violation of some of the fundamental rights. 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 Chajju Ram v. Neki Ram17 and approved by this Court in Moran Mar Basselios Catholicos. v. Most Rev. Mar Poulose Athanasius18. 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. Nagappa19 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. Ahmad20, it was held:

"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, CJ

in - 'Batuk K Vyas v. Surat Borough Municipality'21, 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.

Therefore, it can safely be held that the petitioners have not made out any case within the meaning of Article 137 read with Order XL of the Supreme Court Rules and Order 47 Rule 1 CPC for reviewing the judgment in Sarla Mudgal case16. The petition is misconceived and bereft of any substance."

22. It is also settled law that in exercise of review jurisdiction, the Court cannot reappreciate the evidence to arrive at a different conclusion even if two views are possible in a matter. In Kerala State Electricity Board v. Hitech Electrothermics & Hydropower Ltd.22, this Court observed as follows:

"10. ....In a review petition it is not open to this Court to reappreciate the evidence and reach a different conclusion, even if that is possible. Learned counsel for the Board at best sought to impress us that the correspondence exchanged between the parties did not support the conclusion reached by this Court. We are afraid such a submission cannot be permitted to be advanced in a review petition. The appreciation of evidence on record is fully within the domain of the appellate court. If on appreciation of the evidence produced, the court records a finding of fact and reaches a conclusion, that conclusion cannot be assailed in a review petition unless it is shown that there is an

error apparent on the face of the record or for some reason akin thereto. It has not been contended before us that there is any error apparent on the face of the record. To permit the review petitioner to argue on a question of appreciation of evidence would amount to converting a review petition into an appeal in disguise."

23. Under the garb 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. The power of review is not to be confused with the appellate power which enables the Superior Court to correct errors committed by a subordinate Court. This point has been elucidated in Jain Studios Ltd. v. Shin Satellite Public Co. Ltd.23 where it was held thus:

"11. So far as the grievance of the applicant on merits is concerned, the learned counsel for the opponent is right in submitting that virtually the applicant seeks the same relief which had been sought at the time of arguing the main matter and had been negatived. Once such a prayer had been refused, no review petition would lie which would convert rehearing of the original matter. It is settled law that the power of review cannot be confused with appellate power which enables a superior court to correct all errors committed by a subordinate court. It is not rehearing of an original matter. A repetition of old and overruled argument is not enough to reopen concluded adjudications. The power of review can be exercised with extreme care, caution and circumspection and only in exceptional cases.

12. When a prayer to appoint an arbitrator by the applicant herein had been made at the time when the arbitration petition was heard and was rejected, the same relief cannot be sought by an indirect method by filing a review petition. Such petition, in my opinion, is in the nature of 'second innings' which is impermissible and unwarranted and cannot be granted."

24. After discussing a series of decisions on review jurisdiction in Kamlesh Verma v. Mayawati24, this

Court observed that review proceedings have to be strictly confined to the scope and ambit of Order XLVII Rule 1, CPC. As long as the point sought to be raised in the review application has already been dealt with and answered, parties are not entitled to challenge the impugned judgment only because an alternative view is possible. The principles for exercising review jurisdiction were succinctly summarized in the captioned case as below:

"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" has been interpreted in Chajju Ram v. Neki17, and approved by this Court in Moran Mar Basselios Catholicos v. Most Rev. Mar Poulose Athanasius18 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.25,.

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 re-heard 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."

25. In Aribam Tuleshwar Sharma v. Aribam Pishak Sharma15, this Court was examining an order passed by the Judicial Commissioner who was reviewing an earlier judgment that went in favour of the appellant, while deciding a review application filed by the respondents therein who took a ground that the predecessor Court had overlooked two important documents that showed that the respondents were in possession of the sites through which the appellant had sought easementary rights to access his home-stead. The said appeal was allowed by this Court with the following observations:

"3 ...It is true as observed by this Court in Shivdeo Singh v. State of Punjab26 there is nothing in Article 226 of the Constitution to preclude a High Court from exercising the power of review which inheres in every court of plenary jurisdiction to prevent miscarriage of justice or to correct grave and pulpable errors committed by it. But, there are definitive limits to the exercise of the power of review. The power of review may be exercised on the discovery of new and important matter or evidence which, after the exercise of due diligence was not within the knowledge of the person seeking the review or could not be produced by him at the time when the order was

made; it may be exercised where some mistake or error apparent on the face of the record is found; it may also be exercised on any analogous ground. But, it may not be exercised on the ground that the decision was erroneous on merits. That would be the province of a court of appeal. A power of review is not to be confused with appellate power which may enable an appellate court to correct all manner of errors committed by the subordinate court."

26. In State of West Bengal v. Kamal Sengupta27, this Court emphasized the requirement of the review petitioner who approaches a Court on the ground of discovery of a new matter or evidence, to demonstrate that the same was not within his knowledge and held thus:

"21. At this stage it is apposite to observe that where a review is sought on the ground of discovery of new matter or evidence, such matter or evidence must be relevant and must be of such a character that if the same had been produced, it might have altered the judgment. In other words, mere discovery of new or important matter or evidence is not sufficient ground for review ex debito justitiae. Not only this, the party seeking review has also to show that such additional matter or evidence was not within its knowledge and even after the exercise of due diligence, the same could not be produced before the court earlier."

27. In the captioned judgment, the term 'mistake or error apparent' has been discussed in the following words:

"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".

28. In S. Nagaraj v. State of Karnataka28, this Court explained as to when a review jurisdiction could be treated as statutory or inherent and held thus:

"18. Justice is a virtue which transcends all barriers. Neither the rules of procedure nor technicalities of law can stand in its way. The order of the court should not be prejudicial to anyone. Rule of stare decisis is adhered for consistency but it is not as inflexible in Administrative Law as in Public Law. Even the law bends before justice. Entire concept of writ jurisdiction exercised by the higher courts is founded on equity and fairness. If the court finds that the order was passed under a mistake and it would not have exercised the jurisdiction but for the erroneous assumption which in fact did not exist and its perpetration shall result in miscarriage of justice then it cannot on any principle be precluded from rectifying the error. Mistake is accepted as valid reason to recall an order. Difference lies in the nature of mistake and scope of rectification, depending on if it is of fact or law. But the root from which the power flows is the anxiety to avoid injustice. It is either statutory or inherent. The latter is available where the mistake is of the Court".

29. In Patel Narshi Thakershi v. Shri Pradyuman Singhji Arjunsinghji29, this Court held as follows:

"4..... It is well settled that the power to review is not an inherent power. It must be conferred by law either specifically or by necessary implication. No provision in the Act was brought to notice from which it could be gathered that the Government had power to review its own order. If the Government had no power to review its own

order, it is obvious that its delegate could not have reviewed its order.....”

30. In Ram Sahu (Dead) Through LRs v. Vinod Kumar Rawat30, citing previous decisions and expounding on the scope and ambit of Section 114 read with Order XLVII Rule 1, this Court has observed that Section 114 CPC does not lay any conditions precedent for exercising the power of review; and nor does the Section prohibit the Court from exercising its power to review a decision. However, an order can be reviewed by the Court only on the grounds prescribed in Order XLVII Rule 1 CPC. The said power cannot be exercised as an inherent power and nor can appellate power be exercised in the guise of exercising the power of review.

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 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 Ram17 and Moran Mar Basselios Catholicos v. Most Rev. Mar Poulose Athanasius18).d circumspection and only in exceptional cases.

12. When a prayer to appoint an arbitrator by the applicant herein had been made at the time when the arbitration petition was heard and was rejected, the same relief cannot be sought by an indirect method by filing a review petition. ***Such petition, in my opinion, is in the nature of 'second innings' which is impermissible and unwarranted and cannot be granted."***

24. *After discussing a series of decisions on review jurisdiction in Kamlesh Verma v. Mayawati24, this Court observed that review proceedings have to be strictly confined to the scope and ambit of Order XLVII Rule 1, CPC. As long as the point sought to be raised in the review application has already been dealt with and answered, parties are not entitled to challenge the impugned judgment only because an alternative view is possible. The principles for exercising review jurisdiction were succinctly summarized in the captioned case as below:*

"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" has been interpreted in Chajju Ram v. Neki17, and

approved by this Court in Moran Mar Basselios Catholicos v. Most Rev. Mar Poulose Athanasius18 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.25,.

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 re-heard 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.

***25.** In Aribam Tuleshwar Sharma v. Aribam Pishak Sharma15, this Court was examining an order passed by the Judicial Commissioner who was reviewing an earlier judgment that went in favour of the appellant, while deciding a review application filed by the respondents therein who took a ground that the predecessor Court had*

overlooked two important documents that showed that the respondents were in possession of the sites through which the appellant had sought easementary rights to access his home-stead. The said appeal was allowed by this Court with the following observations:

"3 …It is true as observed by this Court in Shivdeo Singh v. State of Punjab[26] there is nothing in Article 226 of the Constitution to preclude a High Court from exercising the power of review which inheres in every court of plenary jurisdiction to prevent miscarriage of justice or to correct grave and pulpable errors committed by it. But, there are definitive limits to the exercise of the power of review.

The power of review may be exercised on the discovery of new and important matter or evidence which, after the exercise of due diligence was not within the knowledge of the person seeking the review or could not be produced by him at the time when the order was made; it may be exercised where some mistake or error apparent on the face of the record is found; it may also be exercised on any analogous ground. But, it may not be exercised on the ground that the decision was erroneous on merits. That would be the province of a court of appeal. A power of review is not to be confused with appellate power which may enable an appellate court to correct all manner of errors committed by the subordinate court."

26. *In State of West Bengal v. Kamal Sengupta[27], this Court emphasized the requirement of the review petitioner who approaches a Court on the ground of discovery of a new matter or evidence, to demonstrate that the same was not within his knowledge and held thus:*

"21. At this stage it is apposite to observe that where a review is sought on the ground of discovery of new matter or evidence, such matter or evidence must be relevant and must be of such a character that if the same had been produced, it might have altered the judgment. ***In other words, mere discovery of new or important matter or***

evidence is not sufficient ground for review ex debito justitiae. Not only this, the party seeking review has also to show that such additional matter or evidence was not within its knowledge and even after the exercise of due diligence, the same could not be produced before the court earlier.”

27. *In the captioned judgment, the term ‘mistake or error apparent’ has been discussed in the following words:*

“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”.***

28. *In S. Nagaraj v. State of Karnataka28, this Court explained as to when a review jurisdiction could be treated as statutory or inherent and held thus:*

“18. Justice is a virtue which transcends all barriers. Neither the rules of procedure nor technicalities of law can stand in its way. The order of the court should not be prejudicial to anyone. Rule of stare decisis is adhered for consistency but it is not as inflexible in Administrative Law as in Public Law. Even the law bends before justice. ***Entire concept of writ jurisdiction exercised by the higher courts is founded on equity and fairness. If the court finds that the order was passed under a mistake and it would not have exercised the jurisdiction but for***

the erroneous assumption which in fact did not exist and its perpetration shall result in miscarriage of justice then it cannot on any principle be precluded from rectifying the error. Mistake is accepted as valid reason to recall an order. Difference lies in the nature of mistake and scope of rectification, depending on if it is of fact or law. But the root from which the power flows is the anxiety to avoid injustice. It is either statutory or inherent. The latter is available where the mistake is of the Court".

29. *In Patel Narshi Thakershi v. Shri Pradyuman Singhji Arjunsinghji29, this Court held as follows:*

*"4….. **It is well settled that the power to review is not an inherent power. It must be conferred by law either specifically or by necessary implication.** No provision in the Act was brought to notice from which it could be gathered that the Government had power to review its own order. If the Government had no power to review its own order, it is obvious that its delegate could not have reviewed its order……."*

30. *In Ram Sahu (Dead) Through LRs v. Vinod Kumar Rawat30, citing previous decisions and expounding on the scope and ambit of Section 114 read with Order XLVII Rule 1, this Court has observed that Section 114 CPC does not lay any conditions precedent for exercising the power of review; and nor does the Section prohibit the Court from exercising its power to review a decision. However, an order can be reviewed by the Court only on the grounds prescribed in Order XLVII Rule 1 CPC. The said power cannot be exercised as an inherent power and nor can appellate power be exercised in the guise of exercising the power of review*

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 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 Ram17 and Moran Mar Basselios Catholicos v. Most Rev. Mar Poulose Athanasius18)."

Considering the aforesaid facts and circumstances of the case and submissions advanced by Sri Anil Kumar Tiwari, learned Senior Advocate, it is apparent that Sri Tiwari had argued the matter afresh on merits, which is not permissible under law, as review is not a disguise appeal. Moreover, the judgment under review, if erroneous, as projected by Sri Tiwari, the same can be corrected by the Superior Court and not in the review jurisdiction.

(Per: Attau Rahman Masoodi, J.)

I have gone through the well articulated judgment rendered by my esteemed brother in Review Application No. [1/2000(149630 of 2019)] which I concur with for my own reasons put on record.

The lis pertains to dismissal of the review petitioner from service who was then holding the post of lecturer permanently in the Commercial Faculty of Fine Arts, University of Lucknow. The petitioner was dismissed from service by order dated 14.2.2000 as affirmed by the Chancellor vide order dated 30.9.2000. Serious allegations of sexual harassment of girls students particularly Km. Renu Singh were levelled against the delinquent employee and his services in the capacity of lecturer were brought to an end on the basis of a report of disciplinary committee constituted on 1.12.1998. The report was submitted on 27.1.2000 and the same has been well discussed within the ambit of the principle of *audi alteram partem.*

It is desirable to recaptuate that India known as Bharat is governed under the supreme law known as the Constitution of India and every other law made by the legislative organs, customs or usages within the meaning of Article 13 of the Constitution of India is subservient to Part-III of the Constitution of India. This is our solemn faith of the societal structure.

The petitioner questioning the legality of the order of dismissal from service as affirmed by the Chancellor had approached this Court on several grounds.

Needless to say that a permanent employee of the University before inflicted with a major penalty, as per rules, is well protected under the rule of opportunity and unless procedure prescribed under law was duly followed, the services of a permanent employee could not be brought to an end for its serious consequences upon his livelihood and dignity.

On a careful study of the paper book, I find that the real question in the proceedings was as to whether the disciplinary proceedings were at all initiated against the review petitioner before passing the order of dismissal from service. A ground to this effect was raised by the petitioner in the writ petition vide ground E and F and the same are reproduced hereunder :-

> *"E. Because no charges were either framed against the petitioner or communicated to him as well as the petitioner has never been informed about the statement of the grounds on which the action was proposed to be taken against the petitioner.*
>
> *F. Because the petitioner was never informed about any nature of alleged misconduct, the person in respect of whom the alleged misconduct was committed, the names and identity of the proposed witnesses etc."*

The review petitioner does appear to have known the constitution of disciplinary committee on 1.12.1998 and was called upon to face the proceedings before the enquiry report was submitted by the committee on 27.1.2000 but there is no indication as to when the allegations on being reduced to definite charges by the competent authority were communicated to him in writing before constitution of the disciplinary committee or while facing the inquiry except in the form of allegations. There is a distinction between the existence of

allegations and initiation of disciplinary proceedings on definite charges.

The petitioner does appear to have argued his case before the writ court on all the aspects. It is a well settled principle of law that no one should be condemned unheard. This doctrine is a golden thread which knits Article 21 through the course of Article 19 with Article 14 of the Constitution of India, inasmuch as, any action having civil or penal consequences cannot be proceeded against a person without adhering to the rule of opportunity.

The lack of framing of charges by the competent authority before appointing the disciplinary committee or before stepping into the enquiry is certainly an aspect which has escaped attention of the writ court in the spirit of law and the petitioner ought to have laid emphasis. The impracticality of holding enquiry into the charges is also not the case at hand as there is no order passed to that effect in writing.

Having gone through the judgment rendered by the writ court on the grounds urged by the review petitioner, I may have a different opinion but the verdict of a coordinate bench is binding unless it suffers from an error apparent on the face of record for which it requires concurrence. In so far the above question is concerned, the judgment may or may not suffer from any illegality but the same is to be viewed in exercise of the appellate jurisdiction. The review jurisdiction is limited in its nature.

An infirmity or illegality in the judgment which cannot be re-looked in the proceeding of review application, on this, I

have thoroughly gone through the judgment authored by my brother Hon'ble Saurabh Lavania, J. on the scope of review application and I am of the considered opinion that an error apparent on the face of record ought to be such which may not require the court to rehear the parties at length.

It is not the case of discovery of new or important matter or evidence, therefore, repetition of old and overruled arguments is not enough to reopen the concluded adjudication.

In other words, a review by no means can be treated to be at par with an appeal whereby an erroneous decision is reheard and corrected. The scope of review is confined to an apparent error on the face of record and the Court cannot proceed to take a different view unless there is a consensus on the different view to be taken. Therefore, I concur with the opinion recorded by my esteemed brother on the scope of review application without any further discussion on the merits of the case.

Conclusion

For the cumulative reasons aforesaid, we are not inclined to review the judgment and order dated 16.11.2019. Accordingly, the review application is dismissed. No order as to costs.

Order Date :- 18.01.2023

Vinay/kanhaiya