

**HIGH COURT OF MADHYA PRADESH**  
**BENCH AT GWALIOR**

**DIVISION BENCH**

**JUSTICE SHEEL NAGU**  
**&**  
**JUSTICE ANAND PATHAK**

**Review Petition No.539/2021**

M/s Zigitza Health Care Ltd.

**Versus**

Naresh Kumar Verma & Ors.

**Review Petition No.642/2020**

M/s Zigitza Health Care Ltd.

**Versus**

Rakesh Singh & Ors.

**Review Petition No.643/2020**

M/s Zigitza Health Care Ltd.

**Versus**

Keshav Singh Kushwah & Ors.

**Review Petition No.645/2020**

M/s Zigitza Health Care Ltd.

**Versus**

Bhanupratap Singh Kushwah & Ors.

**Review Petition No.646/2020**

M/s Zigitza Health Care Ltd.

**Versus**

Sushil Kumar Dohre & Ors.

**Review Petition No.647/2020**

M/s Zigitza Health Care Ltd.

**Versus**

Ashok Kumar & Ors.

**Review Petition No.648/2020**

M/s Zigitza Health Care Ltd.

**Versus**

Ravi Kumar Shakya & Ors.

**Review Petition No.649/2020**

M/s Zigitza Health Care Ltd.

**Versus**

Charan Singh Rajput & Ors.

**Review Petition No.650/2020**

M/s Zigitza Health Care Ltd.

**Versus**

Kuman Singh Rajput & Ors.

**Review Petition No.651/2020**

M/s Zigitza Health Care Ltd.

**Versus**

Sitaram Sharma & Ors.

**Review Petition No.652/2020**

M/s Zigitza Health Care Ltd.

**Versus**

Dharmendra Singh Baghel & Ors.

**Review Petition No.503/2021**

M/s Zigitza Health Care Ltd.

**Versus**

Rakesh Singh & Ors.

**Review Petition No.519/2021**

M/s Zigitza Health Care Ltd.

**Versus**

Diwan Singh Arya & Ors.

**Review Petition No.520/2021**

M/s Zigitza Health Care Ltd.

**Versus**

Sitaram Sharma & Ors.

**Review Petition No.521/2021**

M/s Zigitza Health Care Ltd.

**Versus**

Ravi Kumar Shakya & Ors.

**Review Petition No.522/2021**

M/s Zigitza Health Care Ltd.

**Versus**

Bhanupratap Singh Kushwah & Ors.

**Review Petition No.526/2021**

M/s Zigitza Health Care Ltd.

**Versus**

Ramendra Singh Narwariya & Ors.

**Review Petition No.527/2021**

M/s Zigitza Health Care Ltd.

**Versus**

Khuman Singh Rajput & Ors.

**Review Petition No.541/2021**

M/s Zigitza Health Care Ltd.

**Versus**

Surendra Singh Dhakad & Ors.

**Review Petition No.542/2021**

M/s Zigitza Health Care Ltd.

**Versus**

Sabal Singh Narwariya & Ors.

**Review Petition No.543/2021**

M/s Zigitza Health Care Ltd.

**Versus**

Satyabhan Singh Tomar & Ors.

**Review Petition No.696/2021**

M/s Zigitza Health Care Ltd.

**Versus**

Bhupendra Singh Gurjar & Ors.

**Review Petition No.697/2021**

M/s Zigitza Health Care Ltd.

**Versus**

Charan Singh Rajput & Ors.

**Review Petition No.698/2021**

M/s Zigitza Health Care Ltd.

**Versus**

Puneet Sharma & Ors.

**Review Petition No.700/2021**

M/s Zigitza Health Care Ltd.

**Versus**

Keshav Singh Kushwah & Ors.

**Review Petition No.703/2021**

M/s Zigitza Health Care Ltd.

**Versus**

Prem Kumar Shrimali & Ors.

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Shri N.K. Gupta, learned senior counsel with Shri Ravi Shankar Gupta and Shri SD Bhadoriya, learned counsel for petitioner.

None for respondent No.1.

Shri Sankalp Sharma, learned counsel for respondent No.2.

Shri G.P. Chaurasiya, learned Government Advocate for respondent No.3/State.

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**O R D E R**

**{Delivered on 1<sup>st</sup> day of February, 2022}**

***Per Justice Anand Pathak, J.:***

1. Regard being had to similitude of controversy, all the review petitions are heard and decided by this common order.
2. For convenience's sake, facts as narrated in review petition No.526/2021 are taken into consideration.

Instant review petition has been preferred seeking

review/recall of the order dated 28-04-2021 passed in Writ Appeal No.457/2020 by which this Court while hearing the appeal preferred by respondent No.2 -National Health Mission partly allowed the appeal and modified the order dated 29-11-2019 passed in writ petition No.2677/2018 by learned Writ Court whereby the petition preferred by respondent No.2/National Health Mission against the order dated 31-01-2018 passed by the Legal Authority under Minimum Wages Act (Labour Court No.1), Gwalior has been dismissed.

3. In this bunch of review petitions, review petition No.642/20, 643/20, 645/20, 646/20, 647/20, 648/20, 649/20, 650/20, 651/20 and 652/20 originate from common order dated 29-05-2020 passed by Coordinate Bench in bunch of writ appeals preferred by review petitioner -M/s Zigitza Health Care Ltd subject matter was same and arose out of the order passed by Writ Court. In those writ appeals, all grounds were raised by the present review petitioner which are being raised in this review petition.
4. Precisely stated facts of the case are that respondent No.2 herein i.e. National Health Mission, is a body created for providing better health services and assistance to the State Authorities to outreach Medical Health Services in each and every part of the State. Under the aegis of respondent No.2, various different programmes are being run through Public Private Partnership, particulars of which are given in the petition. These various

programmes/schemes are being run with an agreement with review petitioner -Zigitza Health Care Ltd. and it is the said entity which carries out the activities.

5. Respondent No.1 is an employee of respondent No.2 and at the relevant point of time was working as Emergency Medical Technician since 21.10.2016.
6. It appears from pleadings that respondent No.1/employee worked for 12 hours for a certain period of time and payment was made only for 8 hours, therefore, he preferred an application under Section 20 of the Minimum Wages Act, 1948 (in short “the Act of 1948”) before the Court below (Labour Court No.1, Gwalior, as Competent Authority under the Minimum Wages Act) with the allegation that respondent No.2 has not paid him overtime, therefore, payment be made under the Act of 1948. Employee referred the calculation of amount to the tune of Rs.1,02,100/- with ten times penalty. Present review petitioner was made party as respondent No.1 in the said case wherein respondent No.2/NHM preferred reply, whereas present review petitioner- Zigitza Health Care Ltd did not prefer to file any reply.
7. It was the case of respondent No.2/NHM before the Court below that since no agreement exists between appellant and respondent No.2/NHM, therefore, no employer-employee relationship exists and he is the employee of respondent No.1-

Zigitza Health Care Ltd., therefore, respondent No.2 is not responsible for such payment. Responsibility lies over present review petitioner. Respondent No.2/NHM referred the scheme and Request for Proposal (RFP) executed between the parties and categorically submitted in its reply that responsibility lies over present review petitioner.

8. Evidence was led in which employee/respondent No.1 appeared in the witness-box and was cross-examined by the present review petitioner as well as respondent No.2. After considering the rival submissions and evidence on record, Court below passed the impugned order dated 31-01-2018 whereby employee was found to be entitled for payment of overtime to the tune of Rs.1,02,100/- with Rs.10,000/- as penalty. It was observed by the Labour Court that relationship of principal employee appears to exist between respondents No.1 and 2.
9. Against the said order, respondent No.2 preferred writ petition with the submissions that no such employer-employee relationship exists between the two and Court below erred in fastening the liability over respondent No.2/National Health Mission. Learned Writ Court dismissed the bunch of writ petitions preferred by respondent No.2 -National Health Mission, therefore, being aggrieved by the same, respondent No.2 preferred writ appeals. Those writ appeals were disposed of in favour of respondent No.2 -National Health Mission with

the direction to respondent No.2 to pay the amount coming under the head of overtime to the employee and recover the same from present review petitioner as per the terms of agreement/contract. Against the said order, present review petition is preferred.

- 10.** It is worth mentioning the fact that all the writ appeals were preferred at the instance of respondent No.2 -National Health Mission which were decided vide order dated 28-04-2021. On the other hand, review petitioner i.e. M/s Zigitza Health Care Limited preferred Writ Appeals bearing No.329/20, 330/20, 331/20, 338/20, 339/20, 355/20, 356/20, 367/20, 368/20 and 369/20 against the order dated 29-11-2019 passed by learned Writ Court while exercising the supervisory jurisdiction under Article 227 of the Constitution of India whereby all the petitions preferred by the present review petitioner (M/s Zigitza Health Care Limited) by which challenge was made to the order dated 09-08-2018 by which application under Order IX Rule 13 of CPC preferred by petitioner herein for setting aside *ex parte* order dated 31-10-2017 by the authority under Minimum Wages Act allowing the application under Section 20 under Minimum Wages Act (“MN Act” for brevity) got dismissed and therefore, petitions and thereafter writ appeals were preferred.
- 11.** It is further worth mentioning the fact that said set of writ appeals as referred above preferred by M/s Zigitza Health Care



Limited (review petitioner herein) got dismissed by Coordinate Bench of this Court vide order dated 29-05-2020.

- 12.** Meanwhile, National Health Mission (respondent No.2 herein) preferred writ petitions under Article 227 of Constitution against the order dated 31-01-2018 passed by the authority by which claim of respondent No.1/employee for Overtime was allowed and liability to some extent was fastened over appellant also, but said writ petitions were dismissed by learned Single Bench and therefore, writ appeals were preferred. Said writ appeals were barred by time for 9 days. From the record, it appears that application has been moved by the National Health Mission for condonation of delay in each writ appeal and therefore, vide order dated 18-12-2020 this Court issued notice on the question of admission as well as application for condonation of delay to the respondents on payment of process fee and record of Labour Court was requisitioned. On 04-01-2021 and 20-01-2021, matter was adjourned and was placed after resumption of physical hearing. Thereafter matter was heard and kept reserved for orders on 01-04-2021 and thereafter judgment has been pronounced on 28-04-2021.
- 13.** It is the submission of learned senior counsel appearing for the petitioner that in the case in hand since application for condonation of delay was not decided and matter was heard finally and final order has been passed, therefore, illegality has

been caused. Unless the delay is condoned writ appeals could not have been heard on merits. He relied upon the judgments of Hon'ble Apex Court in the matter of **State of M.P. and another Vs. Pradeep Kumar and another, (2000) 7 SCC 372, Gagandeep Pratishthan Pvt. Ltd. and others Vs. Mechano and another (2002) 1 SCC 475, Mahabir Singh Vs. Subhash and others, (2008) 1 SCC 358 and V.K. Verma Vs. Dawoodi Bohra Masjid Committee, 2008 (I) MPJR 366.**

14. It is further submitted by learned senior counsel that when Overtime wages is fixed then Labour Court can execute such payment of wages but here in the present case, no minimum wages were fixed still Labour Court passed the order, thus exceeded its jurisdiction. It is a case of Payment of Wages Act not Minimum Wages Act.
15. Learned counsel for contesting respondent No.2 - National Health Mission Shri Sankalp Sharma opposed the submission and raised the ground of maintainability of review petition. According to him, writ petitions and thereafter writ appeals preferred by National Health Mission were confined to the question of employer-employee relationship and it was never in respect of jurisdiction *vis-a-vis* Minimum Wages Act or its ascertainment, therefore, looking to the scope of writ appeal, no relief under review jurisdiction can be given to the review petitioner. Since tenor and texture of writ appeal and the relief

sought were not in respect of jurisdiction of Labour Court or any other issue than employer-employee relationship, then learned senior counsel appearing for the review petitioner cannot raise the ground like in appeal.

16. It is further submitted that notice was issued in respect of application for condonation of delay as well as on admission and thereafter after hearing all the parties concerned at length, final order has been passed. Review petitioner or employee did not prefer to file any reply to the application for condonation of delay and consented to advance arguments and thereafter with consent of parties, matter was heard, therefore, at this stage, no such ground can be taken. He relied upon the judgment of Hon'ble Apex Court in the matter of **Davinder Pal Sehgal and another Vs. Partap Steel Rolling Mills Pvt. Ltd. and others, (2002) 3 SCC 156** and Allahabad High Court in the matter of **Indrajeet Singh Vs. D.D.C. and Ors. 2014 (4) ADJ 349**.
17. Learned counsel for the State supported the judgment passed by this Court and submitted that in this review petition, State is not contesting party, however if any direction is issued to the State, same shall be complied with in letter and spirit.
18. Heard learned counsel for the parties at length and perused the record/documents appended thereto.
19. It is a case where review petitioner -M/s Zigitza Health Care

Limited has preferred review petition taking exception to the order dated 28-04-2021 passed by this Court in writ appellate jurisdiction on twin grounds.

- 20.** So far as ground regarding jurisdiction of Labour Court *vis-a-vis* Minimum Wages Act is concerned, same has been concluded in writ appeals preferred by M/s Zigitza Health Care Limited bearing No.329/20, 330/20, 331/20, 338/20, 339/20, 355/20, 356/20, 367/20, 368/20 and 369/20 vide order dated 29-05-2020 by the Coordinate Bench. Perusal of the said order reveals that scope of proceedings under Section 20 of MN Act has been dealt with in details and thereafter writ appeal preferred by review petitioner got dismissed. Even otherwise after allowing the parties to lead evidence and considering the submission, pleadings and evidence as well as impact of agreement executed between the National Health Mission and review petitioner, Labour Court rightly came to the conclusion about the amount to be paid for Overtime. Labour Court took pains to go through the calculation sheet available on record. Therefore, in the considered opinion of this Court, no case for review is made out whereas it has already been decided specifically by the Coordinate Bench (Division Bench) in writ appeal preferred by review petitioner -M/s Zigitza Health Care Limited that no illegality or perversity is apparently available in the order of Labour Court whereby respective claims have been decided.

- 21.** Review petition has been conspicuously filed challenging the order dated 28-04-2021 in respect of writ appeals preferred by National Health Mission and counsel for National Health Mission is right when he makes the submission that writ appeal preferred by National Health Mission was confined to employer-employee relationship because learned Writ Court burdened the respondent No.2 -National Health Mission with liability of employer and National Health Mission was aggrieved by the said observation primarily. Therefore, on this count also review petition appears to be misconceived.
- 22.** So far as question of limitation is concerned, after issuance of notice to the application for condonation of delay as well as admission, no such reply has been filed by the review petitioner - M/s Zigitza Health Care Limited nor any objection at that time of hearing of writ appeal was taken. Paragraphs 14, 15 and 16 of impugned judgment testify the said fact and those proceedings cannot be challenged in review jurisdiction. Once the appeals were proceeded for hearing, delay was deemed to be condoned. Even otherwise procedures are handmaid to the justice and not master of it. Besides that, writ appeal has been preferred against the order passed by learned Writ Court wherein writ petition under Article 226/227 of Constitution preferred by National Health Mission was dismissed and therefore, in writ and writ appellate jurisdiction, provisions of

limitation are not strictly construed as in the matter arising out of Civil Procedure Code.

23. Even otherwise, reasons assigned in the application for condonation of delay appeared to be *bona fide* and delay otherwise also deserved to be condoned. Sufficiency of cause was shown by the then appellant i.e. National Health Mission (respondent No.2 herein) for condonation of delay.
24. One more thing deserves attention is that proceedings initiated by employee was under benevolent/beneficiary legislation wherein the wages for extra time were under consideration and therefore, proceedings originate from the plight of workmen/employees. Therefore, object of such benevolent legislation and relief so granted to the employee cannot be frustrated on such technical pretext. In the matter of Davinder Pal Sehgal and another (surpa), Hon'ble Apex Court has observed as under:

*“7. ....Therefore, merely because in the order of trial court, specifically, there is no reference to petition for condonation of delay, it cannot be said that it did not consider the same. From a bare perusal of the order, it would appear that the grounds stated in the restoration application for non appearance on 24th August, 1988 as well as delay in filing the restoration application having found favour with the trial court, the suit has been restored, therefore, it cannot be said that the order of restoration has been passed without condoning*

*the delay in filing the restoration application. The submission of the learned counsel appearing on behalf of the respondents that application for restoration filed on behalf of the plaintiffs was dismissed earlier for non prosecution cannot be taken to be a ground for throwing out the restoration application as the High Court on the earlier occasion set aside order of the trial court whereby restoration application was dismissed for non prosecution and the said order attained finality. In view of these facts, we are of the opinion that trial court had not acted in the exercise of its jurisdiction illegally or with material irregularity and accordingly the High Court was not justified in interfering with its order in the exercise of revisional jurisdiction.”*

25. So far as judgments relied upon by the review petitioner are concerned same move in different factual realm specifically those are the matters arising out of civil proceedings (Civil Suit, Regular Civil Appeal under CPC etc.) and therefore, that analogy cannot be strictly borrowed here in the writ petition/writ appeal and especially in summary proceedings under benevolent legislation. On this count also case of review petitioner fails.
26. The review petitioner has not only sought review/recall of the order passed in the writ appeals preferred by National Health Mission but it has also preferred the review petitions against the order whereby the writ appeals preferred by petitioner -M/s

Zigitza Health Care Ltd. have been dismissed. Those review petitions are bearing No.642/20, 643/20, 645/20, 646/20, 647/20, 648/20, 649/20, 650/20, 651/20 and 652/20 out of the present bunch of cases. Therefore, on this count also, case of review petitioner lacks merit because arguments raised in review petitions are already discussed and decided by the earlier Coordinate Bench vide order dated 29-05-2020 in bunch of writ appeals preferred by review petitioner -M/s Zigitza Health Care Ltd.

27. In the case of **Kamlesh Verma Vs. Mayawati and Others, (2013) 8 SCC 320**, principles relating to review jurisdiction have been laid down.

The principles relating to review jurisdiction may be summarized as follows:

**When the review will be maintainable:**

- (i) Discovery of new and important matter or evidence which, after the exercise of due diligence, was not within knowledge of the petitioner or could not be produced by him;
- (ii) Mistake or error apparent on the face of the record;
- (iii) Any other sufficient reason.

The words “any other sufficient reason” have been interpreted in **Chhajju Ram Vs. Neki, (1921-22) 49 IA 144** and approved by this Court in the case of **Moran Mar Basselios**



**Catholicos Vs. Most Rev. Mar Poulouse Athanasius, AIR 1954**

**SC 526** to mean “a reason sufficient on grounds at least analogous to those specified in the rule”.

**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 order, undermines its soundness or results in miscarriage of justice.
- (v) A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected but lies only for patent error.
- (vi) The mere possibility of two views on the subject cannot be a ground for review.
- (vii) The error apparent on the face of the record should not be an error which has to be fished out and searched.
- (viii) The appreciation of evidence on record is fully within the domain of the appellate Court, it cannot be permitted to be advanced in the review petition.
- (ix) Reviews is not maintainable when the same relief sought at the time of arguing the main matter had been

negatived.”

28. It is also held by the Apex Court in the case of **State Of West Bengal & Ors. Vs. Kamal Sengupta & Anr., (2008) 8 SCC 612** that mistake or error apparent on the face of the record means that mistake or error which is *prima facie* visible and does not require any detail examination. Erroneous view of law is not a ground for review and review cannot partake the category of the appeal.
29. In the considered opinion and cumulative analysis, case of review petitioner sans merits and appears to be misconceived. Therefore, review petitions stands **dismissed** sans costs.

**(Sheel Nagu)**  
Judge

**(Anand Pathak)**  
Judge

Anil\*