

**IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR**

BEFORE

**HON'BLE SHRI JUSTICE RAVI MALIMATH,
CHIEF JUSTICE**

&

HON'BLE SHRI JUSTICE VISHAL MISHRA

ON THE 21st OF JULY, 2022

WRIT APPEAL No. 692 of 2022

Between:-

**ABHAY KUMAR PANDE, S/O LATE SHRI
GOVIND PANDE, AGED ABOUT 67 YEARS,
OCCUPATION: DY. COMMISSIONER
(RTD), COMMERCIAL TAX, R/O 173,
NEAR TRIMURTI CHOWK, SUNDAR
NAGAR, RAIPUR (CHHATTISGARH)**

.....APPELLANT

***(BY SHRI MANOJ SHARMA - SENIOR ADVOCATE ASSISTED BY
SHRI PARAG TIWARI - ADVOCATE)***

AND

- 1. THE STATE OF MADHYA PRADESH,
THROUGH PRINCIPAL SECRETARY,
DEPARTMENT OF COMMERCIAL TAXES,
MANTRALAYA, VALLABH BHAWAN,
BHOPAL (MADHYA PRADESH)**
- 2. COMMISSIONER, COMMERCIAL TAXES,
MOTI BUNGALOW, MG ROAD, INDORE
(MADHYA PRADESH)**

.....RESPONDENTS

(BY SMT. JANHAVI PANDIT - DEPUTY ADVOCATE GENERAL)

.....
*This appeal coming on for orders this day, Hon'ble Shri Justice
Ravi Malimath, Chief Justice passed the following:*

ORDER

Smt. Janhavi Pandit - Deputy Advocate General takes notices for respondents.

2. There is a delay of 968 days in filing the present appeal. The learned Senior Counsel submits that subsequent to the order dated 24.07.2019 passed in Review Petition No.91 of 2018, the review petitioner filed another Review Petition No.1704 of 2019. By the order dated 14.03.2022, the review petition was withdrawn with liberty to file a writ appeal. In this process, the delay has occasioned.

3. On hearing both sides, we are of the view that appellant has made out sufficient cause to condone the delay. Hence, the delay in filing the appeal is condoned. I.A. No.9655 of 2022 - application for condonation of delay is disposed off.

4. This appeal is filed being aggrieved by the order dated 24.07.2019 passed by the learned Single Judge in Review Petition No.91 of 2018. In terms of the said order, the order sought to be reviewed was modified and various directions were issued. Questioning the same, the instant appeal is filed.

5. The learned Senior Counsel submits that the learned Single Judge having come to the conclusion that there is an error apparent on the face of the record, should have allowed the review petition and directed rehearing of the main writ petition. However, he has gone on to pass orders which affect his rights. The same is impermissible. Hence, the appeal requires to be allowed.

6. The learned Deputy Advocate General, appearing for the respondents, defends the impugned order.

7. On hearing learned counsels, we are of the view that appropriate interference is called for.

8. By the impugned under review on coming to the conclusion that there is error on the face of the record, the review petition was allowed as follows:-

"As a result, the review petition stands allowed and it is directed that in the last para of the order dated 14.9.2017 passed in WP No.16185/2014 as reproduced above, the same should be read as under:-

"Now it is directed that the ACRs which were not communicated be communicated to the petitioner within a period of two months from the date of receipt of certified copy of this order and on being communicated the petitioner shall make a representation, if he so chooses, against the said entry within two months thereafter and the said representation will be decided within two months thereafter. If his entry is upgraded the petitioner shall be considered for promotion retrospectively by the Departmental Promotion Committee (DPC) within three months thereafter and if the petitioner gets selected for promotion retrospectively, he should be given higher pension with arrears of pay and interest @ 8% per annum till the date of payment."

Accordingly, the review petition stands allowed and disposed of.

A copy of this order be placed in the record of W.P. No.16185/2014."

9. The learned Single Judge modified the order under review by giving various directions and substituting the said reasons to be added in the order under review. Therefore, virtually the writ petition has been reheard on merits and interference has been made. That for reasons recorded therein, directions have been issued as quoted hereinabove in the said order. It was held by the learned Single Judge that the said directions should be read as part and parcel of the order under review.

10. In a petition under Order XLVII Rule 1 of the Code of Civil Procedure, the jurisdiction of the court is merely to consider whether there is an error apparent on the face of the record. The court can only pass an order reviewing the order in the review petition. The question of modifying the order under review and passing directions or any such orders of the like nature, in our considered view, is opposed to the provisions of Order XLVII Rule 1 of the Code of Civil Procedure. The learned Single Judge, therefore, exceeded his jurisdiction in passing such an order. Even assuming that the learned Single Judge was justified in holding that there is an error apparent on the face of the record, all that he could have and should have done is only to review and recall the order for the original matter to be reheard on merits. The directions being issued in a review petition, in our considered view, is opposed to law. Such directions cannot be granted in a petition under Order XLVII Rule 1 of the Code of Civil Procedure. The power under review in terms of Order XLVII Rule 1 of the Code of Civil Procedure does not authorize a Court to issue directions, clarifications etc. All this has to be done by the court from which the order under review has been passed. The powers of the review court is only to ascertain whether grounds exist for review as provided under Order XLVII Rule 1 of the Code of Civil Procedure. If so,

then the order under review has to be reviewed and recalled and the matter remitted for a fresh consideration. No directions, clarifications or any such order could be passed. The same is beyond the powers under Order XLVII Rule 1 of the Code of Civil Procedure.

11. Consequently, the appeal is allowed. The order dated 24.07.2019 passed by the learned Single Judge in Review Petition No.91 of 2018 is partly set aside. The order of the learned Single Judge in allowing the review petition to that extent is upheld. However, all directions issued therein are set aside. As a consequence to reviewing and recalling the order dated 14.09.2017 passed in Writ Petition No.16185 of 2014, the said writ petition is restored to file for a fresh consideration in accordance with law.

12. The matter be listed before the learned Single Judge to be decided on merits in accordance with law.

(RAVI MALIMATH)
CHIEF JUSTICE

(VISHAL MISHRA)
JUDGE