

**Mcd and ors. Vs. Hem Raj and ors.**

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**SooperKanoon Citation :** [sooperkanoon.com/919975](http://sooperkanoon.com/919975)

**Court :** Delhi

**Decided On :** Jul-22-2011

**Judge :** Anil Kumar; Veena Birbal, Jj.

**Acts :** Code of Civil Procedure (CPC) - Order 47 Rule 1

**Appeal No. :** RA No. 361/2011 in WP(C) No.7095/2010

**Appellant :** Mcd and ors.

**Respondent :** Hem Raj and ors.

**Advocate for Def. :** Mr.M.K.Bhardwaj, Adv.

**Advocate for Pet/Ap. :** Ms. Biji Rajesh, Adv.

**Judgement :**

These are the applications filed by the petitioners/applicants for condoning the delay of 29 days in re-filing the review application and for condonation of 11 days delay in filing the review petition. The petitioners/applicants have contended that the review petition was filed without an application for delay and consequently, it was received back with defect on 18th April, 2011. The application for condonation of delay was received by the applicants on 26th April, 2011. However, the petition could not be filed as the „Certificate of Fitness was not appended to the application and consequently, after the petitioners counsel received the petition back on 9th May, 2011 and prepared the appropriate „Fitness Certificate, it was re-filed on 16th

May, 2011. The review application was again returned on 3rd June, 2011 but on account of summer holidays, the review application could not be filed leading to delay of 29 days in re-filing the review application.

Regarding 11 days delay in filing the review application, the petitioners/applicants have contended that review application was prepared on 15th March, 2011. The concerned official had signed the review petition on 4th April, 2011, which was thereafter filed on 5th April, 2011 and thus 11 days delay was caused in filing the review application. In the circumstances, the petitioners/applicants have sought condonation of 29 days delay in re-filing the review application and condonation of delay of 11 days in filing the review application.

The reasons disclosed by the petitioners/applicants constitute sufficient cause for condonation of delay in the facts and circumstances and as contemplated in law. Therefore, the delay of 29 days in re-filing the review application is condoned and 11 days delay in filing the review application is also condoned and the applications are allowed.

RA No. 361/2011

The applicants have sought review of order dated 15th February, 2011 on the ground that the impugned order records that the stand of the petitioner was that the Recruitment Rules of the Govt. of NCT of Delhi are applicable for 8 posts in the Finance Department. According to the applicants, there is an error apparent on the face of the record as the plea of the petitioners was that the Recruitment Rules of Govt. of NCT of Delhi are not applicable to the petitioners.

This is not disputed by the applicants that Recruitment Rules were not framed by the petitioners department for the post of DEO. The applicants also contended that the applicability of Govt. of NCT of Delhi Recruitment Rules to the petitioners department were never argued before the Tribunal and were not considered even before this Court.

Perusal of the record, however, reveals that before the Tribunal an additional affidavit dated 22nd January, 2010 was filed on behalf of respondents categorically stating that as per the policy decision taken by the MCD, the Recruitment Rules notified by Delhi Govt. had been made applicable in the MCD as well, which is evident from the documents of MCD itself. The respondents had further contended that the petitioners had agreed that the post of DEO could be filled up by following the Recruitment Rules as notified in Govt. of NCT of Delhi. The respondents also contended that following the Recruitment Rules of the Govt. of NCT of Delhi, which was made applicable to MCD, a similarly placed person Sh. Sandeep Kumar was regularized in the service of MCD in September, 2002, who is posted in the office of Additional Commissioner. The averments made in the affidavit dated 22nd January, 2010 in paragraphs 3 & 4 are as under:-

**"3. That as per the policy decision taken by the MCD, the Recruitment Rules notified by the Delhi Govt. are made applicable in MCD as well and the same is evident from the documents of MCD itself. The MCD has agreed tht the post of DO can be filled up by following the RRs of DEO as notified in Govt. of NCT of Delhi. Copy of RRs is annexed as annexure P-2.**

**4. That while following the said RRs the respondents regularized the service of one similarly placed persons namely Sh. Sandeep Kumar. His services were regularized in Sept.2002 and presently he is posted in the office of Addl. Commissioner."**

This is not disputed that the averments made by the respondents were not refuted before the Tribunal by filing the response to the said affidavit nor were these averments denied even in the writ petition filed before this Court except for the bald averments that the Rules of Govt. of NCTD are not applicable. Other categorical averments made in the said affidavit have not been denied. Since the

learned counsel for the petitioners was unable to show anything, which would reflect as to how Mr. Sandeep Kumar was appointed and on the basis of what rules, in view of the other facts and circumstances, while passing the order dated 15th February, 2011, it was noted that the Recruitment Rules of Govt. of NCTD are applicable for those 8 posts in the Finance Department. The applicants now want to reargue the whole matter in the garb of the plea that they had not admitted that the rules of GNCTD are applicable to the applicants for filling up the said posts nor was it adopted by them.

It is well settled that review proceedings have to be strictly confined to the ambit and scope of Order 47 Rule 1 CPC. Under Order 47 Rule 1 CPC a judgment may be open to review inter alia if there is a mistake or an error apparent on the face of the record. An error which is not self evident and has to be detected by a process of reasoning, can hardly be said to be an error apparent on the face of the record justifying the court to exercise its power of review under Order 47 Rule 1 CPC. In exercise of the jurisdiction under Order 47 Rule 1 CPC it is not permissible for an erroneous decision to be reheard and corrected. A review petition, it must be remembered has a limited purpose and cannot be allowed to be an appeal in disguise. The applicant, by filing the present applications, is attempting only to re-agitate the issues. No error much less an error apparent on the face of the record has been pointed out by the applicant. An error which is not self evident and has to be dictated by a process of reasoning can hardly be said to be an error apparent on the face of the record. This principle was reiterated by the Supreme Court in the case of Lily Thomas, etc. v. Union of India and Ors. (2000) 6 SCC 224 with a clear caution that in exercise of the power of review, the Court may correct the mistake but not substitute the view. The mere possibility of two views on the subject is not a ground for review. A review cannot be sought merely for fresh hearing or arguments or correction of an erroneous view taken earlier. The power of review can be exercised only for correction of a patent error of law or fact which stays in the face without any elaborate argument being needed for establishing it. The specific averments made by the respondents in their additional affidavit were not denied as no response to the same was filed before the Tribunal. Even in the writ petition contending that the rules of GNCTD are not applicable other pleas and

contentions on the basis of which it was inferred that the applicants have followed the rules of GNCTD were not denied. The applicants also took considerable time to frame the rules, however, despite various opportunities being granted to them, the rules were not framed nor was any cogent reason given for not framing the rules for appointment to the posts of DEO in the applicants department. This is also not the case of applicants that there is no work for DEO in the applicants. These pleas and contentions were argued and considered while deciding the writ petition. The allegation, in the facts and circumstances, that there is an error apparent in the order deciding the writ petition is not correct and is an attempt by the applicants to re-argue the whole matter which cannot be permitted in exercise of the powers for review.

In the circumstances, the plea of the petitioners/applicants that there is an error apparent in the order dated 15th February, 2011 and the order is entitled to be reviewed, has not been made out.

The review application is without any merit and it is, therefore, dismissed.

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