

ORDER SHEET
IN THE LAHORE HIGH COURT,
BAHAWALPUR BENCH, BAHAWALPUR.
JUDICIAL DEPARTMENT

Review Application No.07 of 2024

In

Intra Court Appeal No. 57 of 2024

Ahsan Allahi Zaheer and another **Vs.** Government of Punjab through Secretary, Primary and Secondary Healthcare Department Punjab Lahore and three others.

S.No. of order/ proceeding	Date of order/ proceeding.	Order with signatures of Judge, and that of parties or counsel, where necessary.
		03.10.2024 Ms. Samina Qureshi, Advocate for the applicants.

Through this review application the applicants seek review of the order dated 09.05.2024 passed by this Court in the titled Intra Court Appeal No.57 of 2024 whereby the said Intra Court appeal was dismissed and the order dated 03.05.2024 passed by learned Single Judge in Chambers whereby the petition filed by the applicants under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 bearing Writ Petition No.3214 of 2024,was dismissed was upheld.

2. The brief facts, necessary for the disposal of the instant review application are that pursuant to the Recruitment Policy 2022,the Chief Executive Officer, Bahawalpur Health Authority (the Respondent No.2) advertised the posts of BS04 within the Bahawalpur Health Authority

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and amongst others, the applicants qualified for the subject matter posts and through letters dated 02.01.2023, Job Offer Letters were issued for the said posts however in terms of Clause 5 of the Job Offer Letters, upon the completion of the initial contract period of one year, the contracts of the applicants were accordingly, not extended and the applicants filed the Writ Petition No.3214 of 2024 under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 assailing the said termination of their contracts, however, the learned Single Judge in Chambers vide the order dated 03.05.2024 dismissed the petition as filed by the applicants. The applicants preferred the Intra Court Appeal No.57 of 2024 assailing the order passed by the learned Single Judge in Chambers ,however the learned Division Bench of this Court dismissed the said Intra Court Appeal No.57 of 2024 vide order dated 09.05.2024. Now the applicants have filed the instant Review Application.

3. Learned counsel appearing on behalf of the applicants stated that the order under review of the learned appellate Court suffers from certain errors of law which are apparent on the face of the record and the learned Division Bench of this Court in order under review did not consider the questions of payment of the dues to the applicants for the work done by them during their employment and that if there was any irregularity in the appointment process of the applicants, then the applicants could not have been faulted for that error, hence necessitating the review of the order dated 09.05.2024 passed by the learned Division Bench of this Court.

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4. We have heard learned counsel for the applicants and perused the record carefully.

5. Power of review is provided under section 114 and Order XLVII, Rule 1 of the Code of Civil Procedure, 1908. Under section 114, C.P.C. a review application is maintainable for enabling the Court to correct the errors. The main aim of the power of review is to prevent injustice from being done by a Court and is subject to the limitation provided in clauses (a), (b) and (c) of sub-rule (1) of Order XLVII, C.P.C. For the purpose of appreciation, both provisions are being reproduced as under:-

'Section 114-Review (1) 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.

(2) Nothing contained in sub-section (1) shall apply to a review of any judgment pronounced or order made by the Supreme Court."

"Order XLVII, Rule 1-Review-Application for review of judgment

(1) 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,

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- (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, 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."

From the combined analysis of the above referred provisions of law, it becomes crystal clear that the power of review can only be exercised when an error or mistake is manifestly shown to float on the surface of the record, which is so patent that if allowed to remain intact, would perpetuate illegality and gross injustice. Viewed in the background of the aforesaid principles governing the filing of a review application, when we consider the arguments advanced by the learned counsel for the applicants and the points urged in the review application, it appears that all the points were already raised and discussed in the under review decision of the Intra Court Appeal. Each point raised was exhaustively considered, analyzed and dealt with by the learned Division Bench. A perusal of the order under review passed by the learned Division Bench reveals that it did consider the questions of payment of the dues to the

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applicants for the work done by them during their employment and that if there was any irregularity in the appointment process of the applicants, then the applicants could not have been faulted for that error and made a specific observations as under :-

“Being contractual employees, the relationship between the appellants and respondents will be governed by the principle of master and servant and the appellants have to serve till the satisfaction of their master. Hence, in view of the established principle of law that a contract employee is debarred from approaching this Court in its jurisdiction under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 for reinstatement or extension of a contract and the only remedy available to a contract employee is to file suit for damages alleging any breach of contract or failure to extend the contract, this Court cannot force the employer to reinstate or extend the contract of the employees, even in case of any wrongful termination.”

Categorical findings, recorded after careful and conscious appreciation of all the facts and applicable law cannot be regenerated with a view to re-evaluating the same and taking a contrary view, which otherwise did not suffer from misconstruction or misreading. It is a settled proposition of law that the points already raised and considered cannot be re-agitated in review jurisdiction. Reliance is placed upon the case of *Sh. Mehdi Hassan v. Province of Punjab through Member, Board of Revenue and 5 others (2007 SCMR 755)* wherein it has been observed as under:-

"8. We having heard the learned counsel for the parties at length and perused the record with their assistance have found that the contentions raised by the learned counsel in support of this petition have been exhaustively dealt with in

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the judgment under review. This is settled law that the points already raised and considered before the Court, cannot be re-agitated in review jurisdiction which is confined to the extent of patent error or a mistake floating on the face of record which if not corrected may perpetuate illegality and injustice. The mere fact that another view of the matter was possible or the conclusion drawn in the judgment was wrong, would not be a valid ground to review the judgment unless it is shown that the Court has failed to consider an important question of law. The learned counsel has not been able to point out any such error of law in the judgment or interference in the review jurisdiction."

The scope of review is very limited. A judgment can be reviewed only when the error is apparent on the face of the record and that it must be so manifest, so clear, that no Court could permit such an error to remain on record. Reliance in this regard is placed on the case of *Mehmood Hussain Lark and others v. Muslim Commercial Bank Limited and others (2010 SCMR 1036)* wherein it has been observed as under:-

"We have given due consideration to the arguments advanced by the petitioners in person, gone through the judgment sought to be reviewed. We are of the view that before an error can be a ground of review, it is necessary, that it must be one which is apparent on the face of the record and that it must be so manifest, so clear, that no Court could permit such an error to remain on record. Incorrectness of a conclusion arrived at after a conscious perusal of record and in depth examination of evidence cannot be made a ground for review because to permit a review on the ground of incorrectness would amount to granting the Court jurisdiction of re-hearing appeals against its own judgment."

In the case of *Syed Wajihul Hassan Zaidi v. Government of the Punjab and others (PLD 2004 SC 801)*, it was held:---

"Every judgment pronounced by Supreme Court is presumed to be final,

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solemn and well considered covering all points arising out of the case. If the Court has taken a conscious and deliberate decision on a point of fact or law, a review petition will not be competent. The circumstance that the view canvassed in the review petition is more reasonable than the view already accepted by the Court in the impugned order of which review is sought would not be sufficient to maintain a review petition. Likewise, factum that a material irregularity was committed by the Court would not be adequate enough to warrant a review of the judgment unless the material irregularity be of a nature so as to convert the process of acting in aid of justice to a process of gross injustice. In such eventuality a review petition would be competent. Similarly, fact that the conclusion drawn in a judgment is wrong would not warrant review of the same but if the conclusion is wrong because something manifest has been ignored by the Court or the Court has not considered an important aspect of the matter, a review petition would lie. Furthermore, principle of law is well recognized that Supreme Court would not exercise the power of review as a routine matter to rehear a case already decided but the same can be pressed into service where a glaring omission on the face of record or patent error has crept the judgment by judicial fallibility."

It is also a settled question of law that review also cannot be allowed on the discovery of some new material if such material was available at the time of trial, the appeal or the revision as the case may be. Review cannot be made a pretext for re-arguing the whole case and the matter cannot be revived under the garb of a review application. Reliance in this regard is placed on the case titled *Abdul Hakeem and another v. Khalid Wazir (2003 SCMR 1501)*, wherein it has been observed as under:-

"7. Learned counsel relied on *Abdul Ghaffar v. Asghar Ali (PLD 1998 SC 363)* and asserted that review under Order XLVII, Rule 1, C.P.C. could be allowed

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only when some new and important matter or evidence has been discovered which, after exercise of due diligence, was not within his knowledge or could not be produced. However, that an order could be reviewed on account of some mistake or error apparent on the face of record. He went on to submit that the equality of the right of vendee, if at all, was or should have been in the knowledge of the vendee right from day one. That it should have been asserted before the Court of original jurisdiction, if not, before the First Appellate Court and at the most before the Court of revisional jurisdiction. Having not agitated this point before all the forums, the vendees cannot derive advantage through the process of review. Order XLVII, Rule 1 of the C.P.C. clearly lays down that review proceedings cannot partake re-hearing of a decided case. Review also cannot be allowed on the ground of discovery of some new material if such material was available at the time of hearing of the trial, the appeal or the revision, as the case may be. A ground not urged or raised at such earlier stages cannot be allowed to be raised in review proceedings."

The august Supreme Court of Pakistan in the case titled *Majid Mahmood v. Muhammad Shafi (2008 SCMR 554)* has held as under:-

"8. The exercise of review jurisdiction does not mean a rehearing of the matter and as finality attaches to the order, a decision, even though it is erroneous per se, would not be a ground to justify its review. Accordingly, in keeping with the limits of the review jurisdiction, it is futile to reconsider the submissions, which converge on the merits of the decision. It needs no reiteration that before an error can be a ground for review, it is necessary that it must be one which is apparent on the face of the record, that is, it must be so manifest, so clear that no Court could permit such an error to remain on the record. It may be an error of fact or of law, but if must be an error which is self evident and floating on the surface and does not require any elaborate discussion or process of ratiocination. It is not denied that if the Court has taken a conscious and deliberate decision on a point of law or fact while disposing of a petition or an

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appeal, review of such judgment or order cannot be obtained on the grounds that the Court took an erroneous view or that another view on reconsideration is possible. Review also cannot be allowed on the ground of discovery of some new material, if such material was available at the time of hearing of appeal or petition but not produced."

The august Supreme Court of Pakistan in the case titled *Ali Ahmad v. Muhammad Iqbal* (2009 SCMR 394) has observed as under:-

"A review by its very nature was not an appeal or rehearing merely on the ground that one party or another conceived himself to be dissatisfied with the decision of the Court"

6. In view of the foregoing discussion, we are unanimous that the instant review application is misconceived and unfounded and is hereby dismissed.

Raheel

Approved for Reporting

Judge

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