

(2011) 09 CHH CK 0008
In the Chhattisgarh High Court
Case No : R.P. No. 64 of 2011

Atahar Ali Khan

APPELLANT

Vs

Chairman, Coal Inida Ltd. and Others

RESPONDENT

Date of Decision : 06-09-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 47 Rule 1, Order 47 Rule 2

Citation : (2011) 2 CGBCLJ 170

Hon'ble Judges : Satish K. Agnihotri, J

Bench : Division Bench

Advocate : Mateen Siddique, for the Appellant;

Final Decision : Dismissed

Judgement

Satish K. Agnihotri, J.—The applicant seeks review of the order dated 08.09.2010 (Annexure A/1) passed in W.P. No. 4178/1998 (Atahar Ali Khan v. Chairman, Coal India Limited & Others), mainly on the ground that after the direction of the Hon"ble High Court of Madhya Pradesh in W.P.(S) No. 4624/2004, vide order dated 19.3.2009, one similarly situated employee namely Shri A.K. Shukla was given promotion on the post of E-2 executive grade. The brief facts, in nutshell are, that the review petitioner sought quashing of the order dated 11.6.1995 (Annexure P/2 to the writ petition, in respect of promotion granted to the respondent No. 5 therein and to promote the review petitioner as Law Officer w.e.f. 13.6.1996 along with financial and other consequential benefits. This Court, after having considered the writ petition from all aspects and after hearing the parties, vide order dated 8.9.2010, came to the conclusion as under:

16. Applying the ratio laid down by the Supreme Court in the above stated case, the principle of law is well settled that no direction can be issued to the respondent-employer to appoint the petitioner from the select list after validity of the same was over. Secondly, the petitioner cannot claim parity with the respondent No. 5 as he was selected through other mode of selection for direct recruitment quota.

2. The sole ground for seeking review of the order dated 8.9.2010 is that the High Court of Madhya Pradesh, in an identical matter i.e. A.K. Shukla v. Coal India & Others (6) No. 4624/2004, vide order dated 19.3.2009, extended the benefit of promotion as well as of notional seniority and all consequential benefits from retrospective effect and the review petitioner herein seeks a review on the same lines. Although, the review petitioner in para 1.3. of this pleadings, in clear and categorical terms has averred that aggrieved by the order dated 8.9.2010 passed in W.P. No. 4178 1998, the applicant had preferred a writ appeal before this Hon''ble Court being W.P. No. 71/2011, which was subsequently withdrawn by order dated 2.5.2011 by the applicant with liberty to file a review application and the same finds place in para 2.8 and 2.10 of the grounds of the review petition. The law with regard to maintainability of review petition and indulgence of this Court, in so far as review jurisdiction under Order 47 Rule 1 of the C.P.C. is concerned, is well settled.

3. It is evident that the applicant has not pointed out any manifest error on record and further has not brought any new fact which could not be produced by the applicant earlier inspite of due diligent efforts. It is a trite law that review proceedings have to be strictly confined to the scope and ambit of Order 47 Rule 1 of the Code of Civil Procedure, 1908. (See S.R. Chavan v. Cement Corporation of India and others (2008) 1 CGLJ and Kanhaiya Lal Mehar v. High court of Chhattisgarh (2007) 2 CGLJ 326).

4. Principle of law is well settled by several judicial pronouncements of the Hon''ble Supreme Court in the case of Smt. Meera Bhanja Vs. Smt. Nirmala Kumari Choudhury, , Lily Thomas, Vs. Union of India and Others, Ajit Kumar Rath Vs. State of Orissa and Others, , The Government of Tamil Nadu and Others Vs. M. Ananchu Asari and Others,

5. In the matte of Kerala State Electricity Board Vs. Hitech Electrothermics and Hydropower Ltd. and Others, , the Supreme Court observed as under:

10. This Court has referred to several documents on record and also considered the documentary evidence brought on record. This Court on a consideration of the evidence on record concluded that the respondent had been denied power supply by the Board in appropriate time which prevented the respondent from starting the commercial production be 31.12.1996. This is a finding of fact recorded by this Court on the basis of appreciation of evidence produced before the Court. In a review petition it is not open to this Court to reappraise 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 advance 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. To permit the review petitioner to argue on a question of appreciation of evidence would amount to converting a review petition would amount to converting a review petition into an appeal in disguise.

6. The explanation below Rule 2 of Order 47 by the CPC (Amendment) Act, 1976 was inserted. The same reads as under:

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.

7. In view of foregoing even the subsequent decision of this Court or by the Supreme Court which has taken a contrary stand cannot be a ground for review of the order passed by the court. In the case on hand, the review petitioner relies on a decision of the learned Single Judge of the High Court of Madhya Pradesh, which was passed prior to the order sought to be reviewed in this case. The decision of the other High court is not binding and cannot be a ground for review of this order.

8. In *The State of West Bengal and Others Vs. Kamal Sengupta and Another*, the Supreme court observed that there was a divergence of opinion of various High Courts as to whether the subsequent decision made by the same or a superior court on a point of law, which is contrary to the decision taken earlier can be treated as an error apparent on the face of the record for the purpose of review of an earlier judgment. The Supreme court, held as under:

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 of 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.

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 for 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 23(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.

9. The Supreme Court, in Karnataka Power Corpn. Ltd. v. Alagendran Exports Ltd. (2004) 13 SCC 377. observed as under:

7. In our view, the review could not have been allowed on the ground that some other court had taken a different view. Merely because two views are possible is no ground to review a judgment already passed.

10. The Supreme Court, Union of India (UOI) Vs. Sube Ram and Others, observed as under:

5.....It is true that if the were a case of a superior court having interpreted the law and the law having become final, by Order 47 Rule 1 CPC it could not constitute a ground for review of the judgment.

11. Applying the well settled principles of review to the facts of the case, the applicant is seeking opportunity to argue the entire case afresh under the garb of review petition, which is not permissible and tenable in law. This review petition is in the nature of appeal which cannot be considered and decided by this Court. Thus, the review petition is devoid of merit and deserves to be and is accordingly dismissed.