

(2019) 03 UK CK 0086

In the Uttarakhand High Court

Case No : Delay Condonation Application No. 436 Of 2019 Review Application
No. 18 Of 2019 Special Appeal No. 373 Of 2013

Bharat Heavy Electricals Limited And Another

APPELLANT

Vs

Rishipal

RESPONDENT

Date of Decision : 15-03-2019

Acts Referred:

Code Of Civil Procedure, 1908 — Order 47 Rule 1
Allahabad High Court Rules, 1952 — Rule 5

Citation : (2019) 03 UK CK 0086

Hon'ble Judges : Ramesh Ranganathan, CJ; Manoj K. Tiwari, J

Bench : Division Bench

Advocate : V.K. Kohli, Rajni Supyal, Kanti Ram Sharma, Pankaj Miglani

Final Decision : Dismissed

Judgement

Ramesh Ranganathan, CJ

1. The application, to condone the delay in preferring this review application, is not opposed, and the delay is therefore condoned. Delay Condonation application stands allowed.

2. This application is filed seeking review of the order of the Division Bench in Special Appeal No. 373 of 2013 dated 11.09.2018. The petitioner, who was hitherto working as a Gardner on daily wages in the review-applicant Corporation, was terminated from service. On his raising an Industrial dispute, the Labour Court set-aside the order of termination vide award dated 10.04.2003, and directed that he be reinstated into service, but without back-wages. Aggrieved by the award of the Labour Court, directing reinstatement of the respondent-writ petitioner, the review-applicant herein filed WPMS No. 882 of 2003 questioning the award of the Labour Court. To the extent he was denied back-wages, the petitioner filed WPMS No. 43 of 2004. Both these writ petitions were dismissed by common judgment dated 19.02.2008 and, as a result, the award of Labour Court continued to remain in force and, since no appeal was

preferred against the order passed in both the writ petitions, the award of the Labour Court has also attained finality.

3. The aforesaid award required the review-applicants herein to reinstate the respondent-writ petitioner into service, and to put him back in the very same position he was in prior to the date on which he was terminated from service earlier. The fact that the respondent-writ petitioner, prior to his earlier termination, was given the Temporary Leave Arrangement code is not in dispute. Since he was denied extension of the said code, on the ground that casual labourers working in the B.H.E.L. as at present were not extended the benefit of such a code, he invoked the jurisdiction of this Court.

4. In his order, in WPSS No. 577 of 2013 dated 1.08.2013, the learned Single Judge observed that the petitioner was liable to be given the same status and salary which he was getting prior to his termination and, therefore, the Temporary Leave Arrangement (T.L.A.) Code, which the petitioner was given prior to his retrenchment, was also required to be given to him. A mandamus was issued to the review-applicants herein to forthwith give the petitioner the Temporary Leave Arrangement (T.L.A.) code. Aggrieved thereby, the review-applicant herein filed Special Appeal No. 373 of 2013 and the Division Bench, in its order dated 11.09.2018, held that the learned Single Judge had rightly come to the conclusion that, after the award was upheld, the respondent-workman was liable to be given the Temporary Leave Arrangement code. Holding that there was no illegality or perversity in the judgment rendered by learned Single Judge, the appeal preferred by the review-applicant herein was dismissed. Aggrieved thereby, the present review application.

5. Mr. V.K. Kohli, learned Senior Counsel appearing on behalf of the review-applicant, would draw our attention to the averments in the counter affidavit filed, by the review-applicant herein, in the writ petition. In paragraph no. 7 of the counter affidavit, the review-applicant herein had stated that, pursuant to the order passed in WPMS No. 882 of 2003, the respondent-writ petitioner was offered employment by letter dated 28.05.2008, which was accepted by him on 31.05.2008; he was, thereafter, employed by the review-applicant; Code No. 900877, given earlier (prior to termination) to the petitioner, was for internal purposes, and is not being given to casual workers at present; and the code number cannot be claimed as a matter of right.

6. With regards the petitioner's contention that he was given salary and status pertaining to Temporary Leave Arrangement i.e. T.L.A., which was not being given to him now, the review-applicant had stated that there was no such classification of employees in the standing orders of the Company; in his earlier spell, the petitioner was being paid the rates fixed by the State Government; at present also, he is being paid at the current rate fixed by the State Government only; and there is no change in the status of payment.

7. Even on a bare reading, of paragraph no. 7 of the counter affidavit, it is

evident that the respondent-writ petitioner was given a Temporary Leave Arrangement Code No. 900877 prior to his termination from service earlier. The stand taken by the review-applicant, in their counter affidavit filed in the writ petition, was that such a code number was not being given to casual workers as at present. The respondent-writ petitioner was denied this code, by the review-applicant, on the ground that, after the earlier writ petitions were dismissed and he was reinstated into service, casual workers of the applicant-Corporation are not being extended the benefit of this code.

8. In his order, in WPSS No. 577 of 2013 dated 1.08.2013, the learned Single Judge had observed that, since the petitioner was required to be put back in the very same position he was in prior to his termination, and since he was given the benefit of said code prior to the termination of his services earlier, he was entitled to be given such a code. This finding recorded by the learned Single Judge has been affirmed by the Division Bench which has held that there was no illegality or perversity in the said order of the learned Single Judge.

9. There are definitive limits to the exercise of the power of review. The power of review may be exercised on the discovery of new and important matters or evidence which, after the exercise of due diligence, was not within the knowledge of the person seeking the review or could not be produced by him at the time when the order was made. It may be exercised where some mistake or error apparent on the face of the record is found. It may also be exercised on any analogous ground. But it may not be exercised on the ground that the decision was erroneous on merits. That would be the province of a Court of Appeal. The power of review is not to be confused with the appellate power which may enable an Appellate Court to correct all manner of errors committed by the Subordinate Court. [Aribam Tuleswar Sharma v. Aribam Pishak Sharma and others, AIR 1979 SC 1047; Shivdeo Singh and others vs. State of Punjab and other, AIR 1963 SC 1909; Smt. Meera Bhanja vs. Smt. Nirmala Kumari Choudhury, AIR 1995 SC 455]. Review proceedings are not by way of an appeal, and should be strictly confined to the scope and ambit of Order 47 Rule 1 C.P.C. (Smt. Meera Bhanja, AIR 1995 SC 455).

10. A party is not entitled to seek review of a judgment merely for the purpose of a rehearing, and a fresh decision of the case. [Sajjan Singh vs. State of Rajasthan, AIR 1965 SC 845; M/s Northern India Caterers (India) Ltd. vs. Lt. Governor of Delhi, (1980) 2 SCC 167]. A review proceeding cannot be equated with the original hearing of the case, and the finality of the judgment delivered by the Court will not be reconsidered except "where a glaring omission or patent mistake or like grave error has crept in earlier by judicial fallibility." [Sow Chandra Kante & another vs. Sheikh Habib, (1975) 1 SCC 674; M/s Northern India Caterers (India) Ltd., (1980) 2 SCC 167].

11. As review proceedings are neither an appeal in disguise, nor is it a re-hearing of the writ petition/ special appeal on merits, it is only if the order under review suffers from an error apparent on the face of the record, would the order

necessitate review.

12. Yet another factor which would require us to refrain from interference, is that the scope of an intra-Court Appeal is extremely limited. It is only if the order of the learned Single Judge suffers from a patent illegality or perversity would interference be called for in an intra-Court Appeal under Chapter VIII Rule 5 of the Allahabad High Court Rules. In the order under review, the Division Bench has held that the order of learned Single Judge did not suffer from illegality or perversity. The review petition, filed by the review-applicant herein, is not against the order of the learned Single Judge, but against the order passed by the Division Bench in an intra Court appeal. As the order under review does not suffer from any error, much less an error apparent, interference with the said order would be wholly unjustified.

13. We see no reason therefore to entertain this review application. The review application fails and is, accordingly, dismissed.