

(2010) 06 CHH CK 0004
In the Chhattisgarh High Court
Case No : R.P. No. 49 of 2010

Chamarin Bai

APPELLANT

Vs

Divisional Forest Officer, Korba and Another

RESPONDENT

Date of Decision : 21-06-2010

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 47 Rule 1
Constitution of India, 1950 — Article 226
High court of Chhattisgarh Rule, 2007 — Rule 90(2)
Industrial Disputes Act, 1947 — Section 25F

Citation : (2010) 4 MPJR 6

Hon'ble Judges : S.K. Agnihotri, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

S.K. Agnihotri, J.—The matter is taken up for consideration in the chamber under provisions of sub Rule 2 of Rule 90 under /chapter VI of the High court of Chhattisgarh Rule, 2007.

2. I.A. No. 1 this is an application for condonation of delay in filing the review petition. The review petition has been filed after 87 days of the limitation period. The grounds made in the application for condonation of delay is satisfactory and appears to be bonafide. Thus, delay in filing review petition is condoned.

3. The review petitioner seeks review of the order dated 7.12.2009 passed in W.P. No. 1911 of 1917 (Divisional Forest Officer v. Chamarin Bai & another), on the following grounds :

2.1 that the order dated 17.12.2009 passed by this Hon''ble Court deserves review since thought the applicant's husband didn't complete 240 days of service as per the requirement under the Industrial Disputes Act, 1947 in the instant case the facts and circumstances make out a sufficient case for adoption of sympathetic view for old and disabled widow, i.e. the applicant hence the decision passed by the Hon''ble Supreme Court in The Chief Soil Conservator

Punjab and Others Vs. Gurmail Singh, and Jaipur Development Authority Vs. Ram Sahai and Another, , becomes applicable, and the applicant is entitled for compensation by taking a sympathetic view towards the old applicant who is hand to mouth. 2.2 That, further since the claim of the applicant regarding non-payment of salary for few months for which he had worked, still survives, therefore the same deserves sympathetic consideration by this Hon''ble Court.

4. The review petitioner is not disputing the fact that the review petitioner has not completed 240 days of service in the preceding year or 12 months. However, the review petitioner claims sympathetic view in view of Jaipur Development Authority Vs. Ram Sahai and Another, and The Chief Soil Conservator Punjab and Others Vs. Gurmail Singh, . The Supreme Court, in Jaipur Development Authority v. Ramsahai and another (supra) in a situation wherein the employee had not completed 240 days service in the preceding year, observed as under:

8. The fact that the respondent was appointed on daily wages and he has not completed 240 days. Is not in dispute. Retrenchment of the respondent by the appellant. Therefore, did not require compliance with the provisions of section 25-F of the Act,

5. In Chief Soil Conservator, Punjab (supra), the order was passed in the peculiar facts of the case and as such, the same is not applicable to the facts of the present case.

6. In State of M.P. and Others Vs. Sanjay Kumar Pathak and Others, , the Supreme Court observed as under:

25. Furthermore, ordinarily, the writ court should not, in absence of any legal right, act on the basis of sympathy alone.

7. The prayer and the grounds mentioned in the review petition appears to be misconceived. Invoking sympathetic consideration in review petition is misplaced as it has already been held that the petitioner has not acquired any legal right.

8. The review petitioner has not pointed out any manifest error on the record and has not further brought into the notice, any new facts which could not be produced earlier despite diligent efforts made by the petitioner. It is well settled principles of law that the review proceedings are not by way of an appeal and have to be strictly confined to the scope and ambit of Order 47 Rule 1 of the Code of Civil Procedure. Even in exercise of review jurisdiction by the High Court under Article 226 of the Constitution, the applicants have not produced any ground for review.

9. It appears that the applicant by presentation of this review petition seeks an opportunity to argue the entire case afresh on merits under the garb of the review petition which is not permissible and tenable in law. It is well settled principle of law that under the garb of review petition, the applicant should not be permitted to argue the entire case afresh which would amount to convert the review petition into an appeal and the same is not sustainable in law. (See: Smt.

Meera Bhanja Vs. Smt. Nirmala Kumari Choudhury, , Lily Thomas etc. V Union of India and others AIR 2000 SC 1650, Ajit Kumar Rath v. State of Orissa and others AIR 2000 SC 85 , The Government of Tamil Nadu and Others Vs. M. Ananchu Asari and Others, , and Kerla State Electricity Board v. Hitech Electrothermicism & Hydropower Ltd. and others (2005) 6 SCC 651).

10. As a result and in view of the foregoing, the review petition is dismissed.