
(2004) 09 JH CK 0082

In the Jharkhand High Court

Case No : Civil Review No. 19 of 2004, Cont (C) No. 199 of 2003 and C.M.P. No. 64 of 2003

Chittaranjan Sahay and Others

APPELLANT

Vs

Ashutosh and Others
 Ashutosh and Others Vs Union
of India (UOI) and Others

RESPONDENT

Date of Decision : 17-09-2004

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 47 Rule 1
Constitution of India, 1950 — Article 226, 227

Citation : (2004) 4 JCR 313

Hon'ble Judges : Vishnudeo Narayan, J;M.Y. Eqbal, J

Bench : Division Bench

Advocate : A.K. Singh, Sameer Saurabh, for the Appellant; S. Akhtar, SC-II, J.P. Gupta, S.S. Verma and A.K. Pandey, for the Respondent

Final Decision : Allowed

Judgement

M.Y. Eqbal, J.—The instant review petition has been filed by above named five petitioners for review and/or recall of that part of judgment and order dated 1.4.2002 passed by a Bench of this Court in Civil Review No. 10/2002 whereby although this Court in the facts and circumstances of the case held that the review application No. 10/2002 is not maintainable because no ground warranting the review of the judgment and order dated 26.2.2002 passed in WPS No. 6006/2001 is made out, the Court thereafter to passed a detailed and specific direction giving liberty to the petitioners therein i.e: contesting respondents-1st set to make representation to the Central Government seeking redressal of their new grievances. For better appreciation order dated 1.4.2002 sought to be reviewed is quoted herein below :

"In this review application these five petitioners have sought a review of our Judgment passed on 26.2.2002 in WP (S) No. 6006 of 2001. That writ petition had arisen from out of an Order passed by the Central Administrative Tribunal.

These writ petitioners had approached "the Tribunal challenging the Notification dated 11.6.2001, issued by the Central Govt. in which the allocations of the writ petitioners and respondent Nos. 5 to 12 to Bihar and Jharkhand cadres of the Indian Forest Service (IFS) were altered. The petitioners were returned to Bihar Cadre of IFS (after originally being allocated Jharkhand Cadre), whereas respondents Nos. 5 to 12 were allocated Jharkhand Cadre (after originally being retained in Bihar Cadre). While dismissing the writ application, we had taken note of the Roster system as had been formulated and adopted by U.C. Agarwal Committee, based on the guidelines issued by the Central Government. Our entire judgment was based practically on a single point and that was the earlier wrong inclusion of S.B. Gayakwad in the Open General Category, whereas he actually belonged to SC/ST Category and later on by detection of this mistake, his exclusion and the consequential change in the placement positions of the officers in the Roster Blocks of 4 officers each. In other words, what we had observed was that because every officer whose name figured at Sl. No. 3 in every such 4- officers Roster Block was to be retained in Bihar Cadre, because of the exclusion of S.B. Gayakwad, the placements in the Roster Block got altered, thus shifting the position of the petitioners to Sl. No. 3 in every such Roster Block.

In this Review Application, the petitioners have drawn out attention to the affidavit filed on behalf of the Union of India before the Central Administrative Tribunal. Particular reference is invited to the averments contained in para "18" of that affidavit. Our attention has also been drawn to the guidelines issued on the subject. It is contended that after allocating nine officers in Direct Recruit insider Quota (five belonging to the General Category and four to the Reserved Categories) there remained a "gap" of 23 in DR insiders Quota of Jharkhand and that this "gap" had to be filled up from out of the officers willing to serve in Jharkhand drawn from all categories, namely, insiders Bihar and Outsiders Bihar, who had been left behind in Bihar after the initial round of allocation. As per the aforesaid affidavit of the Central Government there were exactly 23 such officers, who had opted for Jharkhand Cadre and to fill up the aforesaid "gap" all such 23 optees were allocated Jharkhand Cadre. The grievance of the petitioners is that the petitioners also had a right to exercise their option. They say that they actually exercised such an option. The right to exercise the option being available, the petitioners options were not considered. Till according to the petitioners is a new ground which they discovered after going through the aforesaid affidavit filed on behalf of the Union of India before the Central Administrative Tribunal, Additionally, it is contended that the aforesaid guidelines were also not available to the petitioner and that these were supplied to them only on 24.2.2002. Annexure-"I 1" to the Review Application (at page 135) is the list of 23 officers styled as "DR insider (residual Bihar} left in Bihar, who were willing to serve in Jharkhand and were considered for filling the deficit/gap in insider Jharkhand" quota."

The aforesaid contentions of the petitioners may be right these may not be correct. But the fact remains that these contentions, perhaps. Indicate that a

new cause of action might have accrued in favour of the petitioners. Whether such a new cause of action has actually accrued to them or not is not for us to comment upon. We are making these observations only to hold that the remedy of the petitioners is not by invoking our review Jurisdiction. In the facts and circumstances, the Review Application is held not maintainable because no ground warranting the review of our Judgment dated 26.2,2002 is made out. In our considered view, the remedy of the petitioners may lie elsewhere. It may be by way of seeking redressal of grievance through alternative means. Even though, therefore, we are not inclined to entertain this Review Application, we would have no hesitation in issuing an appropriate direction to meet the ends of justice.

The petitioners are at liberty to make a fresh representation to the Central Government seeking redressal of grievances on the aforesaid lines and on the basis as indicated hereinabove. If they file such a representation before the Central Government within two weeks from today, we direct the Central Government to consider the same on its merits and dispose it of in accordance with law within a period of six weeks from the date of its receipt, by passing a speaking order. If the petitioners feel aggrieved in any manner by the aforesaid order that the Central Government may pass on the petitioners' aforesaid representation, they shall be at liberty to approach the Central Administrative Tribunal against such an order. To that extent their fresh petition before the Tribunal may not be hit by res Judicata or the principles of constructive res judicata. However, in any such fresh petition before the Tribunal, Respondents No. 5 to 12 herein cannot be disturbed because any fresh or further changes to the allocation of these respondents in Jharkhand cadre shall definitely be hit by res judicata.

The learned counsel for the petitioner submits that till the Central Government disposes of the representation of the petitioners, the petitioners be accorded the interim protection of their continuing in Jharkhand Cadre on the strength of the notification issued on 14.11.2000. This contention is supported by the factual submission that the number of officers in Jharkhand finally posted in IFS Cadre is still short of the actual allocation. Even though we do not wish to pass any order on such prayer of the petitioners, we give liberty to the petitioners to make a representation for the aforesaid purpose to the Chief Secretary, Government of Jharkhand. If such a representation is made within one week from today, we direct that the Chief Secretary may consider the same on its merits and take a decision there upon. While taking such a decision, the Chief Secretary may be guided. If he thinks it proper by the fact as to whether there is any short-fall in the number of officers who actually and physically stand posted in Jharkhand vis-a-vis the allocated cadre strength and as to whether because of such short-fall, the interests of the Government are suffering. While determining such a short-fall (in any), it shall however be kept in mind that the respondents Nos. 5 to 12 herein have to be accommodated in Jharkhand Cadre in any case. If after keeping in mind that aspect of the matter, the Chief Secretary finds that there is

still a short-fall and sliort-fall is more than five, he may consider the desirability of retaining the petitioners in Jharkhand Cadre till the disposal of their representation by the Central Government.

With the aforesaid observation/directions, the Review Application is disposed of. No order as to costs."

2. Petitioners" case is that they are the direct recruit "Insider" Officers of the erstwhile Bihar cadre of the Indian Forest Service and have been serving in the existing State of Bihar till the bifurcation of the State, All these petitioners had been allotted their home cadre of the existing Bihar on merit, on account of their high ranks in the merit list of the respective years in which they competed in the examinations for selection to the Indian Forest Service conducted by the Union Public Service Commission. After coming into force of Bihar Reorganisation Act 2000. and the resultant bifurcation of the cadre of the Indian Forest Service of the erstwhile Bihar between the two successor States, these petitioners were allocated Jharkhand cadre as per the Notification 16016/22/2000-IFS-11, dated 14.11.2000 issued by the Ministry of Environment and Forest Govt. of India, in exercise of power conferred by Section 71 (4) of the Bihar Reorganisation Act. 2000 regard with Rule 5 of the Indian Forest Service (Cadre) Rules. 1966. Consequent to the allocation of cadre off the Indian Forest Service between the two successor States of Bihar and Jharkhand vide notification dated 14.11.2000, the contesting respondents-1st set, who were petitioners in the Civil Review Petition No. 10/2002 were allocated Jharkhand Cadre. Al] these contesting respondents were consequently posted in the territories now falling in the State of Jharkhand and they started their duties as members of the Jharkhand cadre of India Forest Service. It is significant to Indicate here that all these contesting respondents-1st set were Direct Recruit "Outsiders" to the erstwhile Bihar Cadre of the Indian Forest Service. However, the Government of India. Ministry of Environment and Forests issued a fresh notification dated 11.6.2001 purportedly on representation made by six officers of the IFS cadre allocated to residual Bihar Cadre, bringing into notice an anomaly which had crept In the preparation of roaster for allocation of General Category Direct Recruit "Outsider" cadre by wrongly including one officer, i.e. S.B. Gayakwad of 1984 Batch who actually belongs to SC/ST category of Direct Recruit Outsiders , To rectify the aforesaid anomaly the roster of Direct Recruit "Outsider General" as well as "Outsider SC/ST" were amended by the. Govt. of India by excluding the name of Shri S.B. Gayakwad from the roster of "Outsider General" and including it in the "Outsider SC/ST" roster. As a result of this amendment in roster, eight officers who are Proforma Respondents herein and were private respondents in Civil Review No. 10/2002 and the Original Writ No. 6006/2001 as also the Original Application No. 95/2001. and who had earlier been allocated to the residual Bihar Cadre, were now allocated to Jharkhand cadre while nine officers earlier allocated to Jharkhand cadre were now allocated to the residual Bihar cadre.

3. The contesting respondents 1st set challenged the said notification dated

11.6.2001 before the Central Administrative Tribunal, Patna Bench, Patna on various grounds. The Union of India, State of Bihar, State of Jharkhand and the private respondents who are respondent Nos. 10 to 17 herein were made parties. The Central Administrative Tribunal after hearing the parties dismissed the original application No. 95/2001 in terms of order dated 10.12.2001 holding that there was no illegality or irregularity in issuance of impugned notification dated 11.6.2001. The contesting respondents 1st set being aggrieved by the said judgment and order of the Tribunal filed writ petition being WPS No. 6006/2001 before this Court. A Division Bench of this Court after hearing the parties dismissed the writ petition in terms of judgment dated 26.2.2002 affirming the judgment and order passed by the Central Administrative Tribunal. The respondents 1st set then filed review petition being Civil Review No. 10/2002 for review of the judgment passed in WPS No. 6006/2001. The said review petition was heard and dismissed as not maintainable in terms of order dated 1.4.2002 but with fresh direction. The said order dated 1.4.2002 so far it relates to fresh direction is the subject matter of this review/recall application.

4. Learned counsel appearing for the review petitioners. Firstly submitted that once the main relief sought by way of review petition In Civil Review No. 10/02 was held not maintainable as no grounds for warranting a review of the original order passed in the writ petition was made out then the Court ought not to have proceeded to pass categorical and specific direction in favour of those petitioners on the totally new facts, de hors their original plea in the original writ petition. Learned counsel submitted that those petitioners were the necessary and proper parties in the said Civil Review No. 10/02 and the directions given in the review petition prejudicially affected them and they become seriously aggrieved by the said direction. Learned counsel also submitted that the writ petitioners had raised totally new cause at the stage of review which they are precluded from raising within the limited scope of review jurisdiction and if such plea is raised for the first time then the persons affected had to be given opportunity of hearing by the Court. Learned counsel put reliance on the decision of the Supreme Court In the case of The State of Orissa Vs. Madan Gopal Rungta, and also in the case of Union of India (UOI) and Others Vs. Vidya Bagaria, .

5. Learned counsel appearing for the writ petitioners (contesting respondents), on the other hand. submitted that this Court in its jurisdiction vested under Articles 226 and 227 of the Constitution of India has to act in furtherance of interest of justice and not in order to thwart it. Learned counsel submitted that the review application was not based on any new cause of action but merely based on fresh facts having come to the knowledge of the petitioners on account of detailed analyses of guidelines. Learned counsel drawn my attention to the guidelines issued by PMO and submitted that this Court while dismissing the review application rightly Issued necessary directions for the purpose of giving effect to the guidelines. Learned counsel then submitted that recalling the order passed in review petition will amount to giving perpetuity to a wrong decision.

6. Learned counsel appearing on behalf of the interveners. who is the association of Forest Officers, also made submissions contending inter alia, that the interveners are seriously affected by the conduct of the writ petitioners who are not joining Bihar pursuant to the cadre allocation vide notification dated 11.6.2001 and still working in the sanctioned post allocated to the promotees. Learned counsel submitted that on the ground of pendency of the case, the writ petitioners are continuing in Jharkhand inspite of the notification against the quotas of promotees Officers.

7. Since the scope of review under Articles 226 and 227 of the Constitution of India read with the Order XLVII, Rule 47, Rule 1, C.P.C. is very limited, the only question that needs consideration is as to whether the order dated 1,4.2002 passed In Civil Review No. 10/02 is justified. Inasmuch as, such fresh directions could have been issued while dismissing the review petition as not maintainable. Before deciding the issue, I would like to discuss the decisions of the Supreme Court relied upon by the petitioners in this regard.

8. In the case of State of Orissa v. Madan Gopal Rungta, (supra) the Supreme Court while considering the question for grant of interim relief has observed :

"The question which we have to determine is whether directions in the nature of interim relief only could be granted under Art. 226, when the Court expressly stated that it refrained from determining the rights of the parties on which a writ of mandamus or directions of a like nature could be issued. In our opinion, Art. 226 cannot be used for the purpose of giving interim relief as the only and final relief on the application as the High Court has purported to do. The directions have been given here only to circumvent the provisions of S. 80, Civil P.C. and in our opinion that is not within the scope of Art. 226. An interim relief can be granted only in aid of and as ancillary to the main relief which may be available to the party on final determination of his rights in a suit or proceeding. If the Court was of opinion that there was no other convenient or adequate remedy open to the petitioners, it might have proceeded to investigate the case on its merits and come to a decision as to whether the petitioners succeeded in establishing that there was an infringement of any of their legal rights which entitled them to a writ of mandamus or any other directions of a like nature; and pending such determination it might have made a suitable interim order for maintaining the status quo ante. But when the Court declined to decide on the rights of the parties and expressly held that they should be investigated more properly in a civil suit, it could not, for the purpose of facilitating the institution of such suit, issue directions in the nature of temporary injunctions, under Art. 226 of the Constitution."

9. It is well-settled proposition of law that once the High Court held that the writ jurisdiction cannot be invoked and the writ is not maintainable, it become *junctus of-ficio* and, therefore, no direction could be issued touching the merit of the contention made by the petitioners. In this connection. reference may be made to the decision of the Supreme Court in the case of P.K. Ramachandra Iyer and

Ors. v. Union of India and Ors. (1984) 2 SCC 14.

10. As noticed above, by notification dated 11.6.2001, the writ petitioners are allocated Bihar Cadre. They challenged the said notification before the Central Administrative Tribunal in original application of 95/201. The said case was dismissed by the Tribunal holding the validity of the said notification. The writ petitioners then filed the writ petition being WP (S) No. 6006/2001 challenging the order of Central Administrative Tribunal. The Division Bench of this Court after hearing the parties dismissed the writ petition in terms of judgment dated 26.2.2002 and affirmed the judgment and order passed by the Central Administrative Tribunal. The writ petitioners thereafter filed a review petition being Civil Review No. 10/02 seeking review of the judgment passed in the writ petition on the ground of various new points raised by them. This Court while dismissing the review petition as not maintainable categorically held that the grounds taken by the petitioners indicate that a new cause of action might have accrued in their favour. The Court further held that the remedy of the petitioners is not by invoking review jurisdiction and the review application is not maintainable. This Court further held that the review application may be filed by way of redressal of the grievance but the Court not at all inclined to entertain the review application. In spite of the dismissal of the review petition as not maintainable some directions were issued by the Court after going into the merit of the contention made by the petitioners. In our opinion, these directions are beyond the scope of the Review Court.

11. It is interesting to note that the judgment was passed in original application by the Central Administrative Tribunal and also in the writ petition by the Court in presence of the contesting respondent Nos. 5 to 12 but in the review application names of these contesting respondents were deleted which is evident from paragraphs 14 and 15 of the review petition being Review Petition No. 10 of 2002 whereby review petitioners sought leave of the Court to delete the names of respondent Nos. 5 to 12. The Review Petition No. 10 of 2002 therefore disposed of by passing order dated 1.4.2002 without issuing notice to the contesting respondent Nos. 5 to 12. Besides the above, petitioners of the instant review application admittedly have been affected by the impugned direction issued in the Review Petition No. 10 of 2002 while dismissing it as not maintainable. In that view of the matter also, in our considered opinion petitioners of the instant review petition being persons affected are entitled to file application for review/recall of the direction given in the impugned order dated 1.4.2002.

12. Recently in the case of Pohla Singh @ Pohla Ram (d) by Lrs. and Others Vs. State of Punjab and Others, the Supreme Court while considering the maintainability of the second writ petition held that if a decision rendered in a writ petition adversely affects the interest of a third person who was not impleaded as a party in the writ petition, it is always open to him to ask for recall of the Judgment which has been rendered without affording any opportunity of

hearing to him.

13. Taking into consideration the entire facts and circumstances of the case and the discussion made hereinabove, we are of the definite view that the Civil Review No. 10 of 2002 was dismissed as not maintainable, any further direction on the merit of the case was unwarranted in law and is liable to be recalled.

14. For the aforesaid reasons, this review application is allowed and the fresh direction touching on the merit of case of the parties herein is recalled.

Vishnudeo Narayan, J.

I agree.