
(2014) 10 OHC CK 0041
In the Orissa High Court
Case No : RVWPET No. 150 of 2014

Debarchan Mahanandia

APPELLANT

Vs

State of Orissa

RESPONDENT

Date of Decision : 21-10-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 47 Rule 1, Order 9 Rule 9, 114, 141, 151
Constitution of India, 1950 — Article 226

Citation : (2015) 119 CLT 768 : (2015) 1 ILR 368

Hon'ble Judges : B.R. Sarangi, J

Bench : Single Bench

Judgement

B.R. Sarangi, J.—The petitioner, who had appeared at the interview conducted by Bamra Trust Fund College for the post of Lecturer in Oriya, has filed this petition for review/recall of the order dated 6.8.2014 passed in W.P.(C) No. 1724 of 2009.

2. The short facts of the case are that pursuant to the advertisement issued on 3.1.1995 (Annexure-1), the petitioner and opposite party no. 5 appeared at the interview for the single post of Lecturer in Oriya in which the opposite party no. 5 stood first, but the petitioner was issued with appointment letter No. 445 dated 15.9.1995 vide Annexure-3. Pursuant to such appointment letter, the petitioner joined on 20.9.1995. Opposite party no. 5 pursuant to the appointment letter No. 446 dated 15.9.1995 also joined on 18.9.1995. It is stated that the appointment letter was issued in favour of the petitioner against the 3rd post of Lecturer in Oriya vide letter No. 445 dated 15.9.1995, whereas appointment letter No. 446 dated 15.9.1995 was also issued in favour of opposite party no. 5. There was a gap of two days in submitting the joining report by opposite party no. 5 vis-?-vis the petitioner against the 3rd post of Lecturer in Oriya. Since two persons joined against one single post, opposite party no. 5 approached the Director, Higher Education challenging the appointment of the petitioner. On consideration of the grievances made by opposite party no. 5 and on perusing the records and materials available, the Director Higher Education approved the appointment of opposite party no. 5 against the 3rd post of Lecturer in Oriya vide order dated

14.01.2009 (Annexure-9). Challenging such order passed by the Director, Higher Education, the petitioner filed W.P.(C) No. 1724 of 2009, wherein he urged that he being a candidate coming under the reserved category in the selection for the post of Lecturer in Oriya, the provisions of the O.R.V. Act had not been followed, thereby he had been put to harassment by the college authorities and further it was urged that there was non-compliance with the principles of natural justice. After hearing the learned counsel appearing for the parties, this Court found no error in the order passed by the Director, Higher Education and accordingly dismissed the writ petition vide order dated 06.08.2014. Hence, the present review application.

3. Mr. S.K. Purohit, learned counsel for the petitioner, referring to paragraphs 9 and 10 of the writ petition strenuously urged that the question of reservation though pleaded, while disposing of the writ petition, the same has not been taken into consideration. In addition to the same, it is urged that there was non-compliance of the principles of natural justice and therefore, the order impugned suffers from error apparent on the face of the record the same needs to be reviewed/recalled by this Court. It is further urged that while doing so, this Court should take into consideration the documents, which were filed as Annexures-6, 7, 8 and 9 of the writ application. To substantiate his contention, he has relied upon *Ambika Prasad Bhatta Vs. Nehru Paribesh Surakshya Committee and Others*, .

4. Mr. A.K. Mishra, learned Additional Govt. Advocate for the State strenuously urged that this Court having passed the impugned order dated 6.8.2014 in consonance with the provisions of law, the said order should neither be recalled nor reviewed as the same does not satisfy the requirements of the provisions contained in Order 47, Rule 1, C.P.C. read with Section 114 of the Code of Civil Procedure.

5. Mr. D.R. Mohapatra, learned counsel for opposite party no. 5 states that absolutely a new case has been made out in the review application by the petitioner. According to him, in course of hearing of the writ petition, the applicability of the O.R.V. Act was never urged by the learned counsel for the petitioner though pleaded. Merely pleading such fact itself is not a ground to consider his case unless the point is urged before the Court. Therefore, there is no question of consideration of the same as there was abandonment of such plea. Applying the same principle and looking into the materials available on record, the impugned order having been passed by this Court after hearing the learned counsel for the parties, the same should not be interfered with by this Court.

6. Now coming to the question of review, the principles laid down in Section 114 read with Order 47, Rule 1, C.P.C. have to be looked into. The apex Court in *Gulab Ajwani and Others Vs. Saraswati Bai and Others*, and *Kalabharati Advertising Vs. Hemant Vimalnath Narichania and Others*, has clearly laid down that "review" means a judicial re-examination of the case in certain specified and

prescribed circumstances. The power of review is not inherent in a Court or Tribunal. It is a creature of the statute. A Court or Tribunal cannot review its own decision unless it is permitted to do so by statute. The Courts having general jurisdiction have no inherent power under Section 151, CPC to review its own order. The Explanation to Section 141, CPC clearly lays down that the expression "proceedings" includes proceedings under Order IX, but does not include any proceeding under Article 226 of the Constitution. Therefore, the provisions contained in Section 114 read with Order 47, Rule 1, CPC ipso facto may not apply to a proceeding under Article 226 of the Constitution, but its principle will apply. Therefore, the scope of review being very limited in nature, if the principle, which is applicable to mean (1) if the judgment is vitiated by an error apparent on the face of the record in the sense that it is evident on a mere looking at the record without any long-drawn process of reasoning, a review application is maintainable; (2) if there is a serious irregularity in the proceeding, such as violation of the principles of natural justice, a review application can be entertained and (3) if a mistake is committed by an erroneous assumption of a fact which if allowed to stand, cause miscarriage of justice, then also an application for review can be entertained. The scope of review has been elaborately considered by the apex Court in *Shivdeo Singh and Others Vs. State of Punjab and Others*, , *Aribam Tuleshwar Sharma Vs. Aribam Pishak Sharma and Others*, and *S. Nagaraj and Others Vs. State of Karnataka and Another*, .

7. Mr. S.K. Purohit, learned counsel for the petitioner urged that pleadings were made available in paragraphs 9 and 11 of the writ application with regard to the applicability of the O.R.V. Act, but the same was not considered while deciding the matter on merit, thereby there has been gross error apparent on the face of the record while deciding the same vide order dated 6.8.2014.

8. Admittedly, M/s. S.K. Purohit and associates were not the counsel for the petitioner in W.P.(C) No. 1724 of 2009. Rather M/s. S.K. Nayak and associates were. In course of hearing of the writ petition, none of the counsel appearing for the petitioner did urge such question before this Court.

9. The principle of law is well settled by catena of decisions that it is not enough for a party to raise objection in the memorandum of appeal or review. Objection should also be pressed at the time of hearing the arguments. If they are not pressed, presumption would be that they are abandoned by a party. Therefore, even though the factum of applicability of O.R.V. Act has been pleaded, in course of hearing the arguments, the same having not been pressed, necessary consequence thereof is that this Court had no occasion to deal with such question as raised in the review application on the plea of error apparent on the face of record. Since the earlier counsel who was appearing in the case had not pressed such plea, presumption is that they were abandoned by the party.

10. In *Jain Studios Limited through its President Vs. Shin Satellite Public Co. Ltd.*, , the apex Court has held that power of review cannot be confused with appellate power which enables a superior Court to correct all errors committed

by a subordinate Court. It is not rehearing of an original matter. A repetition of old and overruled argument is not enough to reopen concluded adjudications. The power of review can be exercised with extreme care, caution and circumspection and only in exceptional cases. Similar view has also been taken in Subhash Vs. State of Maharashtra and Another, .

11. So far as applicability of the principles of natural justice is concerned, this Court on the basis of the materials available on record, considered the same and passed the impugned order recording that the Director, Higher Education after affording opportunity of hearing, passed the order rejecting the claim of the petitioner.

12. In that view of the matter, mere change of counsel cannot be a ground to review the order dated 6.8.2014 passed by this Court in the writ petition. Accordingly, this Court is not inclined to review/recall the order dated 6.8.2014 passed in W.P.(C) No. 1724 of 2009 and dismisses the Review Petition

13. The RVWPET is dismissed.