

(2015) 04 RAJ CK 0033

In the Rajasthan High Court

Case No : Civil Review Petition No. 9/2015 in Civil Writ Petition No. 16099/2013, Civil Review Petition No. 194/2014 in Civil Writ Petition No. 6844/2010, Civil Review Petition No. 6/2015 in Civil Writ Petition No. 6076/2010, Civil Rev

Dharampal Gurjar and Others

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 03-04-2015

Acts Referred:

Limitation Act, 1963 — Section 5

Citation : (2015) 04 RAJ CK 0033

Hon'ble Judges : Mohammad Rafiq, J.

Bench : Single Bench

Advocate : Inderjeet Singh, Additional Advocate General and Sudeep Mathur, for the Appellant

Final Decision : Dismissed

Judgement

Mohammad Rafiq, J.—All these review petitions have been filed by the State of Rajasthan seeking review of judgment/order of this court dated 29.05.2014, whereby as many as 34 writ petitions were disposed of with certain directions. These review petitions have been filed with enormous delay of 116 to 172 days. Applications under Section 5 of the Limitation Act filed seeking condonation of delay also do not explain the delay by any sufficient cause. Reasons given for condonation of delay are cryptic and unspecific. All that has been stated is that after writ petitions were allowed by this court and the certified copy was obtained, the counsel for the Government sent the same to the Government along-with legal opinion. Nothing has been stated as to when the certified copy was obtained and when the opinion was sent to the State Government. All that has been stated is that the administrative department, after examining the matter, sent the same to the Law Department for taking final decision with regard to filing of the appeal or the review petition. The matter was placed before the litigation committee which decided to file the review petition. Hence

these review petitions.

2. Though, these review petitions could have been dismissed being filed with enormous delay, yet the same are considered on merits.

3. The writ-petitioners approached this court, inter-alia, with plea that they were appointed as Lecturers/Teachers in different subjects, as substitute in place of the regularly recruited Lecturers/Teachers, on account of their proceeding to undertake research work or for doing M.Phil or Ph.D. under "Teacher Research Fellowship". Grievance of the writ-petitioners was that the Government deducted the salary payable to them for the period of summer break when the colleges remain closed on completion of academic session and reopen at the commencement of new academic session. As per Clause 6.4 of the Guidelines for Special Scheme of Faculty Development Programme for Colleges for the XI Plan (2007-2012), the University Grants Commission decided to pay to the substitute Lecturers/Teachers the minimum scale of pay, but the review-petitioners are not only not paying their salary for the period of summer break but also insisting upon the writ-petitioners to furnish an undertaking that they shall not claim such salary. Reliance was placed on various judgments of this Court.

4. Claim of the writ-petitioners was contested by the review-petitioners relying on judgment of this Court in *Ms. Savita Samriya v. State of Rajasthan and Others*, 2009 (4) WLC (Raj.) 574, ENDLAWFINDER and various other judgments of this court.

5. This court, on consideration of different clauses of the relevant scheme under which the writ-petitioners were engaged, as also the aforesaid judgment, allowed the writ petitions with following directions:--

"1. That the practice of the respondents in obtaining undertaking from the substitute Lecturers/ Teachers not to claim remuneration for summer vacation is declared illegal and unconstitutional;

2. That the petitioners shall be entitled to remuneration at the minimum of the pay scale, otherwise payable to substantive Lecturers/Teachers, even for the period of summer vacations;

3. That engagement of substitute Lecturers/Teachers shall be made for full duration of the research fellowship awarded to substantive Lecturers/Teachers in whose vacancies they are engaged;

4. That the arrears payable consequent upon implementation of this judgment, shall be reimbursed to State Government after it has made such payment, by the UGC;

5. That the respondent State shall pursuant to the order, pay unpaid salary of summer vacations to the petitions within a period of two months from the date a copy of this judgment is produced before them."

6. Shri Inderjeet Singh, learned Additional Advocate General appearing for the

review-petitioners, has argued that afore-quoted directions No. 3 and 4, ought to be reviewed and recalled. Direction No. 3 is to the effect that engagement of substitute Lecturers/Teachers should be made for full duration of the research fellowship. In this respect, it is submitted that the University Grants Commission has given sanction of leave to Lecturers during fellowship for one year, and on satisfactory completion of work, sanction for extension of another one year is granted. It is not possible for the State to engage the Lecturers for full duration at initial stage.

7. In direction No. 4 it has been directed that the arrears payable consequent upon implementation of the judgment, shall be reimbursed to State after such payment is made by the UGC. Submission of learned Additional Advocate General is that the State Government is paying the salary to the suitable Lecturers after receiving the same from the University Grants Commission. The Government does not have any budget nor fund for giving advance payment to the substitute Lecturers. Such payment can be made only after it is received from UGC.

8. Both the aforesaid directions have been issued on interpretation of the guidelines contained in the special scheme for faculty improvement programme for the XI Plan (2007-2012).

9. Clause 6.4 of the said guidelines was quoted in the judgment, which clearly states that "the salary of the substitute teacher, appointed by the University/college in place of a teacher selected for award of teacher fellowship, will be reimbursed by the UGC." It further states that "The University/college will make a fresh appointment of a substitute Teacher in accordance with the prescribed procedure of the UGC, on the minimum pay scale prescribed for a Lecturer. It further provides that "If the substitute teacher is appointed on a pay scale higher than the minimum pay scale of a Lecturer, the grant towards reimbursement of the salary of the substitute teacher will be paid by the UGC in the minimum scale and the balance amount will be met by the respective university/institute/college or by the respective State Government." It, thus, follows from this that the UGC has to reimburse the payment of substitute teachers so appointed and it is not that payment of their salary shall be made only after grant has been received from the UGC and substitute Lecturer/teacher is required to wait for payment till such grant is received. The word "reimbursement" by itself implies that whatever amount of salary has been paid by the University/college or the State Government to substitute Lecturer/teacher, shall be reimbursed by the UGC.

10. This contention of the State is also liable to be rejected because of Clause 6.4 of the Special Scheme of Faculty Development Programme for Colleges for the Eleventh Plan (2007-2012), which provides that "...The salary of the Substitute Teacher will be paid by the UGC in advance on receipt of the joining report of the Teacher Fellow and salary claim for the Substitute Teacher." Thus, when the provision of the scheme itself provides for advance salary, the State Government cannot be permitted to exploit the substitute teacher. The contention of the State cannot be appreciated.

11. As regards, another contention that the engagement of the Lecturers cannot be made for full duration of the research fellowship, the aforesaid clause 6.4 further provides that "The substitute teacher must be appointed on a full time basis." The insistence of the State upon Substitute Teachers to furnish an undertaking not to claim the remuneration for the period of summer vacations as condition precedent for their re-engagement at the commencement of next academic session, was also held by this court to be arbitrary. This conclusion was based on reading of the counter-affidavit filed on behalf of the UGC, which did not dispute the payment of salary to Substitute Teachers even during period of summer vacations. This Court held that discontinuation of substitute Lecturers/Teachers at the end of sessions may leave the scope for the respondents to engage another contractual lecturers/Teachers in place of earlier once, who had been hitherto rendering the services. The direction was issued for engagement of substitute lecturers/Teachers for full duration of the research fellowship awarded to substantive Lecturers/Teachers concerned, only with a view to restraining the State Government from adopting such an unreasonable practice, which may give rise to the menace of hire and fire as also pick and choose, and to save such Substitute Lecturers/Teachers from exploitation. It however goes without saying that if any research fellow is not granted sanction for extension of another year, as has been urged on behalf of the State Government, and reverted back to the substantive appointment with the State Government, obviously appointment of such substitute Lecturer/Teacher would come to an end, which condition, in any case, has been incorporated in the conditions of such substitute appointment and can be further clarified. But this can happen only in an isolated case and not in every case and cannot be made basis to justify appointment of the substitute Lecturers/Teachers on year to year basis, rather than for the full duration of research fellowship.

12. Besides, it is not open to this court in the scope of review to examine the matter afresh on merits on the arguments that have been raised on behalf of review petitioners. The Supreme Court in *Inderchand Jain (D) through L.Rs. Vs. Motilal (D) through L.Rs.*, held that an application of review would lie only when the order suffers from an error apparent on the face of record and permitting the same to continue would lead to failure of justice. First thing that would be seen to entertain a review petition is that an order of which review is sought, suffers from an error apparent on the face of record and permitting the order to stand would lead to failure of justice. In the absence of any such order, finality attached to the order cannot be disturbed. The power of review can also be exercised by the court in the event of discovery of new and important matter or evidence which, after the exercise of due diligence was not within knowledge of the party or could not be produced by him at the time when the order was made. Review court does not sit in appeal over its own order. Rehearing of matter in the guise of review is impermissible in law. Exercise of inherent jurisdiction cannot be invoked for reviewing any order. The Supreme Court in the aforesaid judgment in *Inderchand Jain*, relied on its earlier judgments in

Rajender Kumar and Others Vs. Rambhai and Others, , Lily Thomas, Vs. Union of India and Others, .

13. In Parsion Devi and Others Vs. Sumitri Devi and Others, , it was held by the Supreme Court that an error, which is not self-evident and has to be detected by process of reasoning, can hardly be said to be an error apparent on the face of record justifying the court to exercise its power of review. In exercise of review jurisdiction, it is not permissible for an erroneous decision to be "reheard and corrected". There is a clear distinction between the erroneous decision and error apparent on the face of record. While the first can be corrected by the higher forum, the latter can only be corrected only by exercise of review jurisdiction.

14. I therefore do not find any merit in the review petitions. The applications under Section 5 of the Limitation and the review petitions are accordingly dismissed. Stay applications, filed with review petitions, are also dismissed.