
(2015) 03 GAU CK 0108

In the Gauhati High Court

Case No : Rev. Pet. No. 115 of 2014 and W.P.(C) No. 2057 of 2013

Dharitry Barman

APPELLANT

Vs

Gauhati High Court and Others

RESPONDENT

Date of Decision : 02-03-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 47 Rule 1

Citation : (2015) 5 GLT 221

Hon'ble Judges : C.R. Sarma and M.R. Pathak, JJ.

Bench : Division Bench

Advocate : H.P. Barman, for the Appellant; U.K. Nair, Standing Counsel, for the Respondent

Final Decision : Dismissed

Judgement

C.R. Sarma, J.—By this application, the writ petitioner, in W.P. (C) No. 2057/2013, has sought review of the judgment and order, dated 26.08.2014, passed in the said writ petition. The petitioner's case, as may be required for disposal of this review petition, may, in brief, be stated as follows:

"The petitioner joined the Assam Judicial Service, in Grade-III, on 17.04.2002 and, on being promoted, she joined as Additional Chief Judicial Magistrate, Goalpara, on 01.07.2012 and continued in the said post till her resignation from the service. She, being unable to bear with various personal problems, relating to her family life, decided to relinquish her job and accordingly, on 03.10.2012, submitted her resignation letter. The same was forwarded by her Controlling Officer i.e. District & Sessions Judge, Goalpara, to the High Court. On 06.10.2012, in the evening hours, the District & Sessions Judge, Goalpara, telephonically informed her that the said resignation letter was accepted by the High Court."

2. On 08.10.2012, at about 3 P.M., she personally met the Registrar General of the High Court and submitted a letter withdrawing her resignation. But, she was

asked by the Registrar General to proceed to Goalpara for handing over the charge of the office. She was also informed by the Sub-Divisional Judicial Magistrate (S), Goalpara that a corrigendum was issued, by the Registry of this Court, directing her to hand over the charge to the SDJM. According to the petitioner, on 08.10.2012, at 11 P.M., she handed over the charge of her office.

3. The contention of the petitioner is that, she had submitted resignation letter, whimsically, due to her various problems.

However, failing to obtain any response in respect of the withdrawal letter, she, invoking the writ jurisdiction, filed the writ petition [WP(C) No. 2057/2013] seeking a mandamus for directing the respondent authority to allow her to withdraw the resignation letter, dated 03.10.2012 and also to reinstate her in the original post. The claim of the writ petitioner was contested by the High Court.

4. The contention of the petitioner is that the proceeding book of the Administrative Committee and the Full Court, pertaining to the acceptance of the resignation of the petitioner were not maintained and produced before the Court. It has also been submitted, on behalf of the petitioner, that she, submitted her resignation under compelling circumstances and that the resignation letter, submitted by the petitioner, was not to take immediate effect and that the same was accepted, violating the relevant Rules.

It has also been contended, on behalf of the petitioner, that the proceedings of the meetings of the Full Court and the Administrative Committee were not recorded in book form, but the same was maintained in some loose papers. It was further argued that, despite Court's direction to file affidavit and produce the records, the learned Standing Counsel of the High Court, without submitting affidavit, produced a bunch of loose papers, containing the proceedings of the Administrative Committee and the Full Court. According to the petitioner, the High Court violated the provision of Rule 19 of the Gauhati High Court Rules and also declining to reinstate the petitioner to the service, committed error and illegality by refusing to allow the petitioner to withdraw her resignation.

5. Having heard the learned Counsel, appearing for both the parties and considering entire aspect of the matter, this Court, by the order, under review, came to the findings that the petitioner filed an application, on 08.10.2012, seeking permission to withdraw her resignation, after the acceptance of her resignation, that too, after coming to know about the said acceptance, on 06.10.2012.

In view of the above, this Court dismissed the writ petition, holding that the respondent authority committed no error or illegality by refusing to allow the petitioner to withdraw her resignation, which was already accepted on 05.10.2012.

Dissatisfied with the said judgment and order, the writ petitioner, as review petitioner, has come up with this application filed under Order 47 Rule 1 of Civil

Procedure Code on the grounds that the respondents, despite Court's order did not file affidavit-in-opposition and instead, during the course of hearing the learned Standing Counsel, High Court produced a bunch of loose papers, to which the learned Counsel for the petitioner objected, that the proceedings of the Administrative Committee and the Full Court were not maintained in book and that the resignation of the petitioner was accepted violating the rules prescribed by the Gauhati High Courts Rules.

6. We have heard the learned Counsel for both the parties. Mr. H.P. Barman, learned Counsel for the petitioner, has submitted that the petitioner was compelled to submit her resignation due to personal problems, including sickness and that the resignation was not with immediate effect.

It has also been argued, by the learned Counsel for the petitioner, that the Administrative Committee of the High Court, which accepted the resignation, was not the appropriate authority to accept the resignation, inasmuch as the Administrative Committee is only a recommending authority.

7. The learned Counsel for the petitioner has also submitted that the respondent authority accepted the resignation letter violating the prescribed Rules and that the said authority also committed gross error by refusing to accept the withdrawal letter, submitted by the petitioner.

8. It has also been contended by the learned Counsel for the petitioner that the resignation letter, being submitted without mentioning the date of effect, the same should not have been accepted immediately and that the High Court ought to have allowed the petitioner to withdraw the resignation.

It has further been submitted, by the learned Counsel for the petitioner that, as per Rules, proceedings of the Administrative Committee and the Full Court are required to be maintained in a book, but no such book was produced at the time of hearing, rather, the learned Standing Counsel of the High Court had produced some loose sheets of papers pertaining to the proceedings of the meeting of the Administrative Committee and that the learned Standing Counsel, High Court did not allow the learned Counsel for the petitioner to peruse the said proceedings.

It is also submitted that the writ court failed to appreciate that the Administrative Committee was not the authority to accept the resignation letter and that the acceptance of the resignation was in violation of the prescribed rules. He further submitted that the petitioner, due to various problems, had whimsically submitted her resignation and that the authority ought to have allowed her to withdraw the same and re-instate in the service.

In view of above submissions, the learned Counsel, for the petitioner, has submitted that the judgment and order, passed in the said writ petition, is required to be reviewed directing the respondent authority to allow the petitioner to withdraw her resignation letter aforesaid.

9. Refuting the said argument, advanced by the learned Counsel for the

petitioner, Mr. U.K. Nair, learned Standing Counsel of the High Court, has submitted that the proceedings of the Administrative Committee was properly maintained, that the Administrative Committee was the appropriate authority to accept the resignation letter and that there was no violation of the prescribed rules. It is also submitted that the writ court, while dismissing the petition, examined entire aspect of the matter and passed the order dismissing the writ petition. It is also submitted, by the learned Standing Counsel of the High Court, that the resignation letter was submitted by the petitioner indicating her desire to resign from the service, without mentioning any prospective date and as such the authority committed no error by accepting her resignation letter on 05.10.2012, with immediate effect.

10. The learned Standing Counsel has further submitted that the decision regarding acceptance of the said resignation letter was brought to the notice of the petitioner on 06.10.2012 by the District & Sessions Judge, Goalpara. Therefore, it has been submitted that the resignation of the petitioner, having been accepted, on 05.10.2012 and she being released from the service w.e.f. 08.10.2012, there was no scope for accepting the withdrawal letter, submitted on 08.10.2012, at 3 P.M. i.e. after the acceptance of the resignation and issuance of the notification. The learned Standing Counsel has also submitted that the proceedings of the meeting of the Administrative Committee, held on 05.10.2012, which accepted the resignation of the petitioner, was produced before the Court, at the time of hearing and that the Court, while perusing the same, allowed the learned Counsel for the petitioner also to peruse the same. It is also submitted that the writ court, considering entire aspects of the matter, dismissed the writ petition.

In view of the above, the learned Standing Counsel of the High Court, has submitted that there is no error apparent, on the face of the record and as such the review petition is not maintainable, in the eye of law.

11. Having heard the learned Counsel, appearing for both the parties, we have carefully perused the judgment and order, under review, the grounds taken by the petitioner in the review petition and the relevant materials, on-record.

12. Admittedly, the petitioner had submitted her resignation letter, on 03.10.2012, indicating her desire to resign from the service due to her various problems and the said resignation letter was silent about any date of effect or prospective date. The same was a resignation simpliciter.

The meeting of the Administrative Committee of the High Court, held on 05.10.2012, vide resolution in respect of the Additional Item No. 3, accepted the said resignation with immediate effect. As revealed from the record, the Registrar General of the High Court, by his letter, dated 06.10.2012, requested the Govt. of Assam to release the petitioner from service and accordingly, the Government released her from service w.e.f. 08.10.2012.

13. It is the petitioner's case that she had submitted her withdrawal letter on

8.10.2012, at about 3 P.M. (Paragraph 10 of the Writ Petition). Hence, it is clear that she submitted her withdrawal letter after acceptance of her resignation. There was no future or prospective date of coming into effect of the said resignation. In fact, the resignation letter was silent regarding any future date of coming into effect. As the resignation was without any precondition or a prospective date of coming into effect, the authority committed no error by accepting the resignation letter, on 5.10.2012. In fact, the service of the writ petitioner stood terminated from the date on which her resignation letter was accepted by the authority.

In view of the Rules, prescribed by Chapter-I of the Gauhati High Court Rules, the Administrative Committee is the appropriate authority to deal with the promotion, degradation, suspension or dismissal of Judicial Officers. The Rules do not restrict the Administrative Committee from accepting the resignation of a Grade-II Judicial Officer. As revealed from the record, the Administrative Committee, after accepting the resignation letter, recommended the matter to the government for issuing the release order.

In view of the above, this Court, while dismissing the writ petition, after examining the relevant service rules as well as the Gauhati High Court Rules, came to the findings that the Administrative Committee was the accepting authority of the resignation of a Grade-II Judicial Officer. While passing the judgment and order, under review, it has been observed that, on being recommended by the High Court, the Government released the petitioner from service w.e.f. 08.10.2012.

14. It is a matter of record that the resignation letter, dated 03.10.2012, was without any prospective date of effect and the same was accepted by the meeting of the Administrative Committee, dated 05.10.2012 and on being recommended by the High Court, the Government released the petitioner on 08.12.2012.

15. Rule 1, 1 (A), Rule 2, Rule 3, Rule 4, Rule 13(1), Rule 15(c), Rule 17, Rule 18 and Rule 19 of Chapter 1 of the Gauhati High Court Rules, violation of which has been alleged by the writ petitioner, in the review petition, does not indicate that the Administrative Committee was not the appropriate authority to accept the resignation letter of the writ petitioner, who belonged to the Grade-II of the Assam Judicial Service. This Court, while disposing the said writ petition, examined the power of the Administrative Committee and held that the Administrative Committee was the appropriate authority for accepting resignation of Grade-II Judicial Officers.

16. Considering entire materials, on-record, the writ court came to the findings that the writ petitioner submitted her withdrawal letter on 08.10.2012 i.e. after her resignation was accepted. The writ court further observed that there being no prospective date, or date of coming into effect of the said resignation letter, the same was to be treated as a resignation with immediate effect. Therefore,

the writ court, on the basis of the materials on-record, held that the authority committed no error by accepting the resignation letter on 05.10.2012.

17. From the judgment and order, under review, it transpires that the proceeding of the meeting of the Administrative Committee, held on 05.10.2012, was produced before the Court, by the learned Standing Counsel of the High Court, at the time of hearing of the writ petition and the same was perused by the Court. It also transpires that the learned Counsel for the petitioner was given an opportunity to peruse the relevant records, i.e. proceedings of the meeting of the said Administrative Committee. Hence, there is no force in the contention of the learned Counsel for the petitioner that the proceeding of the Administrative Committee was not produced before the Court and also that he was not allowed to peruse the same.

18. The petitioner's contention that the proceedings of the meeting of the Administrative Committee has not been maintained in a book, can not be a ground for review of the judgment and order, dated 26.08.2014, aforesaid. Fact remains that the proceedings, containing the resolution, accepting the resignation, was maintained and the same was produced before the Court. This was sufficient compliance with regard to acceptance of the resignation of the petitioner. Failure to maintain the proceeding of the Committee in a book form does not affect the acceptance of the resignation, inasmuch as the Administrative Committee took a resolution accepting the resignation.

19. As stated by the review petitioner, she came to know about the acceptance of the said resignation letter on 06.10.2012 itself (Para 9 of the writ petition) and she submitted her withdrawal letter on 08.10.2012 at about 3 PM. (Para 10 of the writ petition). Hence, it has been clearly established that she submitted her said withdrawal letter, after her resignation was accepted, that too, after her release from the service.

20. Law is well settled that withdrawal letter, submitted after acceptance of the resignation letter, can not be maintained.

The principles of law, applicable to an application for review, has been settled by the Supreme Court and various High Courts in a catena of decisions.

21. In the case of Devender Pal Singh Vs. State, N.C.T. of Delhi and Another, , Hon"ble Supreme Court, while dealing with a review application observed:

"17. As was observed by this Court in Col. Avtar Singh Sekhon Vs. Union of India (UOI) and Others, , review is not a routine procedure. A review of earlier order is not permissible unless the Court is satisfied that material error, manifest on the fact of the order undermines its soundness or results in miscarriage of justice. A review of judgment in a case is serious step and reluctant resort to it is proper only where a glaring omission or patent mistake or like grave error has crept in earlier by judicial fallibility.....The stage of review is not a virgin ground but review of an earlier order which has the normal feature of finality.

18. As was observed by this Court in M/s. Northern India Caterers (India) Ltd.'s case (supra), whatever nature of the proceeding it is beyond dispute that 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 glaring omission or patent mistake or like error has crept in earlier.

19. A judgment of the final Court of the country is final, and a review of such judgment is an exception."

22. In the case of The Tamilnadu Small Industries Development Corporation Ltd. rep. by its General Manager v. Venkittammal, The Government of Tamilnadu rep. by its Secretary, Industries Department and The Revenue Divisional Officer, (R.A. No. 58 of 2000, decided on 29.07.2010) a learned single Judge of the High Court of Madras observed:

"19. The limitation of the exercise of the powers of review is well settled. The primary requirement for entertaining a review application is that the order, review of which is sought for suffers from error apparent on the face of the order and if file order is allowed to stand, it would lead to failure to justice, if there is no error apparent on the face of the record the finality attached to such judgment or order cannot be disturbed. Further, the Hon"ble Supreme Court has held that the power of review can also be exercised by Court in the event of discovery of new and important matter or evidence, which despite exercise of due diligent was not within the knowledge of the applicant or could not be produced, when the matter was heard and orders passed. Further, an application for review would also lie if the order has been passed on account of some mistake. The Review Court does not sit in appeal over its own order and rehearing of the matter has been held to be impermissible. In other words, it has been held that review is not an appeal in disguise. The Hon"ble Supreme Court in Thungabhadra Industries Ltd. Vs. The Government of Andhra Pradesh, stated that there was a real distinction between a mere erroneous decision and decision, which could be characterized as vitiated by error apparent and that a review was by no means an appeal in disguise. This legal provision was also reiterated by the Hon"ble Supreme Court in the subsequent decision. The Hon"ble Supreme Court in Lily Thomas, Vs. Union of India and Others, held that the power of review can be exercised for correction of a mistake and not to substitute a view. Further, the Hon"ble Supreme Court in S. Bagirathi Ammal v. Palani Roman Catholic Mission 2007 5 CTC 881, after analyzing Order 47 Rule 1 CPC held that review is permissible under following circumstances:

5...(a) from the discovery of new and important matter or evidence which, after the exercise of due diligence could not be produced by the party at the time when the decree was passed; (b) on account of some mistake; (c) where error is apparent on the fact of the record or is a palpable wrong; (d) any other sufficient reason.

Therefore, what is required to be seen in the present case is whether there is any

error apparent in the order passed in the writ petitions calling for exercise of jurisdiction of review."

In view of the above decisions, scope of a review court is very limited. It is not to re-appreciate the materials on record, like an appellate authority. A review cannot take the place of the original hearing. Review court is not to alter the original findings unless, there is glaring omission or patent mistake or error apparent on the face of the record, resulting miscarriage of justice.

23. In the case of Tamil Nadu Electricity Board and another Vs. N. Raju Reddiar and another, , Hon'ble Supreme Court observed:

"Review petition is not, and should not be, an attempt for hearing the matter again on merits."

24. A close reading of the review application and the submissions, made on behalf of the petitioner, indicates that this is an appeal in the guise of a review application. The points urged by the petitioner, in this application, were already raised and decided in the writ petition. The review petitioner has sought to re-open and re-hear the matter, which is not permissible. The review power is not to be confused with appellate power. Though the appellate court can re-appreciate the materials, on-record, for correcting all manner of errors committed by the subordinate courts, no such power is vested with a review court. A review court, while re-examining its own order, is only to correct any glaring mistake or error apparent on the face of record to prevent miscarriage of justice. Review power can also be exercised on the discovery of new and important materials or evidence which, after exercise of due diligence was not within the knowledge of the review petitioner or could not be produced. This power cannot be exercised for correcting any erroneous decision on merit.

In view of what has been discussed above the review petitioner has not been able to show any reason warranting review in terms of law governing scope of review, in the context of the decision, rendered in the writ jurisdiction.

Considering entire aspect of the matter, we find no error apparent on the face of the record or any glaring mistake resulting miscarriage of justice. There is no discovery of new and important matter or evidence, which even the exercise of due diligence was not within the knowledge of the petitioner. Hence, we find no merit in this review petition to disturb the judgment and order, rendered by this Court in the said W.P.(C) No. 2057/2013. There is no merit in this review petition. Accordingly, the review petition is dismissed.