

(1976) 11 SHI CK 0001
In the High Court Of Himachal Pradesh
Case No : Civil Review No. 9 of 1976

Dr. K.P. Pandey

APPELLANT

Vs

The Himachal Pradesh University etc.

RESPONDENT

Date of Decision : 19-11-1976

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 47 Rule 1
Himachal Pradesh University Act, 1970 — Section 22, 30, 37
Income Tax Act, 1922 — Section 35

Citation : (1976) 5 ILR HP 791

Hon'ble Judges : R.S. Pathak, C.J.; T.U. Mehta, J

Bench : Division Bench

Advocate : Kamlesh Sharma, for the Appellant; Inder Singh, Bhawani Singh, D.K. Khanna and S.S. Ajuha, Advs.-General and H.K. Paul, for the Respondent

Final Decision : Dismissed

Judgement

T.U. Mehta, J.—By this review petition the Petitioner Dr. K.P. Pandey wants us to review the judgment given by us on 3rd May, 1976, in Civil Writ Petition No. 139 of 1976 which was filed by him, challenging certain notifications issued on behalf of the Respondent Vice-Chancellor, Himachal Pradesh University. Shortly stated, by notification which was produced in that writ petition as Annexure E one Mr. V.S. Mathur who was Respondent No. 4 in the writ petition was appointed as the Head of the Department of Education with immediate effect in place of the Petitioner. By second notification which was Annexure E.1 it was declared that the said Professor Mathur as Head of the Department of Education would hold the office of the Dean, Faculty of Education, vice the present Petitioner. By the third notification Annexure E.2 Professor Mathur was declared a member of the Executive Council in place of the Petitioner in accordance with the statute 10 (1) (ii) of the First Statutes. Thus the effect of these three impugned notifications was that the Petitioner could not continue as the Head of the Department of Education or as the Dean of the Faculty of Education or as a member of the Executive Council, and his place was taken up by Professor Mathur. The case of

the Petitioner was that he was entitled to continue on these three posts upto March 29, 1976, but before that date his functioning on the above three posts was illegally stopped on account of the above referred notifications which were issued on January 5, 1976.

2. One more notification was also challenged by the Petitioner in that writ petition. It was the notification Annexure K issued on January 6, 1976, by which the Vice-Chancellor of the University appointed an Enquiry Committee to enquire into certain charges levelled against the Petitioner with regard to the alleged publication and sale of a book titled "Programme Learning".

3. So far as the first three notifications referred to above are concerned, it was the contention of the Respondents in that writ petition that the Petitioner was appointed as Director of Correspondence Courses-cum-Professor of Education which was a post in the Directorate of Correspondence Courses and therefore he was never appointed to the post of Professor in the Department of Education. According to the Respondents, therefore, when the post of Professor in the Department of Education was filled in by the appointment of Prof. Mathur, the Petitioner was no longer entitled to function on that post, though during the interim period, that is, before the appointment of Dr. Mathur, an ad hoc arrangement was made with a view to run the administration, and by this arrangement the Petitioner was allowed to function on the above referred three posts from which he was removed by the above three impugned notifications.

4. A Division Bench of this Court, by the judgment which is now sought to be reviewed, upheld the contentions of the Respondents so far as the first three impugned notifications are concerned, and came to the conclusion that the Petitioner was never appointed to the post of Professor in the Department of Education but was appointed in the Directorate of Correspondence Courses wherein his designation was given as "Director of Correspondence Courses-cum-Professor of Education". This Court also accepted the Respondents' contention that the arrangement by which the Petitioner was functioning on the above referred three posts on which subsequently Prof. Mathur was appointed and the Petitioner was removed, was merely an ad hoc arrangement with a view to run the administration of the University.

5. So far as the setting up of enquiry by virtue of the fourth impugned notification Annexure K is concerned, this Court held in favour of the Petitioner and that finding of this Court is not sought to be reviewed in this petition, and therefore, we need not refer to the details with regard to that finding.

6. By this review petition, the Petitioner wants to show that this Court has committed an error apparent on the face of the record by omitting to take into consideration certain provisions of law as well as certain aspects of the evidence produced in the record of the case while giving the decision that the Petitioner was never appointed to the post of Professor in the Department of Education. If a reference is made to the review petition it will be found that it seeks to reagitate

practically all the points which have been determined by this Court. However, broadly speaking, the contentions which have been raised on behalf of the Petitioner by his learned Advocate Miss Sharma are: (1) that certain provisions of the First Statutes of the University have been ignored by this Court; (2) the finding of this Court that the Petitioner belonged to the Directorate of Correspondence Courses is patently wrong; and (3) that the Directorate of Correspondence Courses to which the Petitioner is said to have been appointed was never in existence in eye of law and therefore the Petitioner's appointment must have been taken to be in the Department of Education, and in this connection the Court has omitted to take into consideration Sections 22 and 30 of the University Act.

7. We shall shortly advert to the broad aspects of the contentions raised by the learned Advocate for the Petitioner in this review petition. But before doing that, it would be proper to state some accepted principles on which a review petition is held to lie. Review of a Judgment is competent under Order 47, Rule 1 of the CPC which contemplates that a mistake or an error which is apparent on the face of the record can be corrected by the court whose judgment is sought to be reviewed. We have made it clear during the course of the hearing of this petition that this review is not sought on any other ground such as discovery of a new and important matter or evidence which in spite of due diligence was not within the knowledge of the parties. Under the circumstances the hearing of this petition was confined on the ground that this Court has committed mistakes and errors which were apparent on the face of the record. Under these circumstances, it is first necessary to consider what are the mistakes or errors which can be treated as those possessing the character of being apparent on the face of the record.

8. It is by now well established that no error can be said to be apparent on the face of the record if it is not self-evident or obvious and if it requires an examination or an argument to establish it. The expression "error apparent on the face of the record" would obviously admit of no precise or exhaustive definition, there being an element of indefiniteness inherent in it. Nonetheless, it cannot be gainsaid that the record on the face should reveal the error in question. If it can be revealed only by a process of argumentation and reasoning, or by revaluing or reappreciating evidence which was already before the Court when it gave the decision sought to be reviewed, or by reference to something which did not form part of the record or an issue before the Court, it may be an error simpliciter, but not an error which can claim an attribute of being "apparent on the face of the record".

9. Mistakes or errors can generally be of two types. One is of positive type, and the other is of the negative type. The third type of error would be an inadvertent mistake which mostly falls within the category of a negative type of error.

10. Now when a judge considers some provisions of law, or a piece of evidence recorded in the case, and commits an error in appreciating the same, the error in

question is of a positive type. Such errors are mostly not capable of being branded as those committed "on the face of the record" because they are based on some sort of reasoning which requires to be exposed by some counter-reasoning, and if a mistake is required to be exposed by counter-reasoning it is obvious that it cannot be considered to be a mistake which is apparent on the face of the record. This is, however, not to say that positive errors can never be apparent on the face of the record. For instance, if a judge takes a particular view in clear and open defiance of a positive provision of law or of a piece of evidence which admits of no debate, his error, even though positive in its nature, would be apparent on the face of the record. Such instances would, however, be very few.

11. The real debate, therefore, arises when the error in question is of a negative type. Such errors are committed when a judge has omitted to consider some provisions of law or some piece of evidence recorded in the case. But every omission of this type does not necessarily become an error apparent on the face of the record. Omissions which are relevant to the point in dispute would necessarily have some bearing on the ultimate decision. But even so, they would not be errors apparent on the face of the record unless they are such that there would be no difficulty in arriving at the conclusion that they are of such material importance that their consideration is reasonably likely to tilt the balance on the other side. Therefore, whenever it is found that the concerned judge has not taken into account a particular provision of law, or a particular piece of evidence, and even though it is further revealed that such omitted provision of law or piece of evidence would have strengthened the case of the other side, the omission in question would not amount to an error apparent on the face of the record so long as it is not found that the omitted thing is so potent in its effect that it is reasonably likely to change the nature of the decision sought to be reviewed. This particular view can be fortified by plethora of case law. But the position being well settled, we don't propose to refer to many decisions on this point.

12. In *Satyanarayan Laxminarayan Hegde and Others Vs. Millikarjun Bhavanappa Tirumale*, the Supreme Court has pointed out that an error which has to be established by a long drawn process of reasoning on points where there may conceivably be two opinions can hardly be said to be an error apparent on the face of the record, and where an error is far from self evident and if it can be established, it has to be established, by lengthy and complicated arguments, such an error cannot be cured by a writ of certiorari according to the rule governing the powers of the superior court to issue such a writ. It need not be emphasised that the same considerations which would rule in the case of a writ of certiorari would be the considerations by which this Court will be governed while interpreting the provisions of law contained in Order 47, Rule 1 Civil Procedure Code. In *Thungabhadra Industries Ltd. Vs. The Government of Andhra Pradesh*, the Supreme Court has again emphasised that review is by no means an appeal in disguise and it lies only in cases where a patent error is committed. In *The Income Tax Officer, Alwaye Vs. The Asok Textiles Ltd., Alwaye*, the

Supreme Court has pointed out a restrictive operation of the power of review contemplated under Order 47, Rule 1, CPC in comparison with Section 35 of the Income Tax Act (1922) which contemplates "mistake apparent from the record". Our attention has also been drawn to a recent decision given by the Supreme Court in *Sow Chandra Kanta and Anr. v. Sheik Habib* reported in 1975 (1) S.L.R. 773, wherein Krishna Iyer J. has observed that a review of a judgment is a serious step and reluctant resort to it is proper only where a glaring omission or patent mistake or like grave error crept in earlier judgment by judicial fallibility.

13. It is in light of these principles that we shall now proceed to dispose of the contentions raised by the learned Advocate of the Petitioner in this review petition.

14. As already noted above, the moot question which this Court considered in its judgment was whether the Petitioner was functioning in the correspondence department or in the educational department of the University. If it was the latter, the Petitioner would have perhaps had a better case. But on consideration of the evidence which was recorded in the case this Court found that his appointment was confined in the Directorate of Correspondence, and therefore he had no claims in the Department of Education of the University. Now in order to assail this position, Miss Sharma, the learned Advocate of the Petitioner, contended that as a matter of fact the department of the Correspondence Courses had no legal existence as this Course was not opened pursuant to the specific provisions contained in law. In this connection, she drew our attention to Sections 22 and 30 and other relevant provisions, and tried to establish that the Department of Correspondence Courses had not any legal existence, and if that was so, the appointment of the Petitioner should have been treated as an appointment in the Education Department of the University. We find that the Petitioner had never raised this point in the main petition, and therefore, that point was never an issue between the parties when the writ petition was heard and disposed of. The point being not in issue at all, this Court was not called upon to give a decision on this point, and has in fact not given any decision. It is difficult to comprehend how the want of that decision can be construed as an error apparent on the face of the record. In fact, that issue was never forming part of the record itself. Under the circumstances, we find that, irrespective of the merits of the proposition as to whether the Department of Correspondence Courses had legal existence or not, it is not now open to the Petitioner to raise this contention in form of a review.

15. In order to show that the Petitioner was entitled to hold the post of Professor in the Department of Education of the University, Miss Sharma has drawn our attention to certain provisions of the Statutes and has contended that had the Court given its proper attention to these provisions it would have come to a different conclusion. According to her, therefore, this Court has committed an error which was apparent on the face of the record by ignoring the specific and material provisions of law. In this connection, she has also put reliance upon the

decision given by the High Court of Travancore and Cochin in Narayanan and Ors. v. Raman AIR 1953 Tra-Co. 306, The facts of that case reveal that the court in the original judgment which was sought to be reviewed had omitted to take into consideration certain specific and material provisions contained in Section 25 of Cochin Thiyya Act (8 of 1107 M.E.). This Act provided some rule of inheritance and the court held that omission to take specific provisions of the Act which were very material for the decision must be construed as an error apparent on the face of the record.

16. So far as the instant case is concerned, we have applied our mind to the relevant provisions which are said to have been omitted from being taken into consideration in the previous judgment, and we find that the ratio of the Travancore-Cochin decision has no application to the facts of this case.

17. Miss Sharma drew our attention to the fact that the second proviso of Statute 3 which refers to the Deans of Faculties says that if in any Faculty there is no Professor, the senior-most Reader shall act as Dean and if there is no Reader the Vice-Chancellor shall act as the Dean. According to Miss Sharma the legal effect of this proviso is that when the Petitioner was actually functioning as the Dean of the Education Department it must follow that he was doing so because he was functioning as a Professor in the Education Department. On these lines, she has also drawn our attention to Statute 13 (1)(v) according to which the University shall have such faculties as may be prescribed by the Statutes and each department shall consist of:

- (1) teachers of the department concerned;
- (2) persons appointed to conduct research in the department;
- (3) Dean of the Faculty concerned; and
- (4) such other persons as may be members of the department in accordance with, the provisions of the Ordinances.

Clause (vi) of Statute 13 (1) further provides that each department shall have a Head who may be a Professor, or, if there is no Professor, a Reader and whose duties, functions and terms and conditions of appointment shall be prescribed by the Ordinances. This is controlled by one proviso which says that if there is more than one Professor or, as the case may be, Reader in any department, the Head of the Department, shall be appointed by the Vice-Chancellor. It was contended that had the Court, during the course of the rendition of the previous judgment, taken into account all these provisions it would have come to the conclusion that the Petitioner was functioning as a Professor in the Education Department of the University and was, therefore, entitled to hold all the three posts from which he was removed on the appointment of Prof. Mathur. In this connection, she also drew our attention to Statute 17 which speaks of Selection Committees, and has drawn our attention to the table which shows that a Professor shall be the Head of the Department concerned and would be a member of the Selection

Committee.

18. We find that none of these provisions gives a statutory direction that whenever a person functions on the post of a Professor in Education Department and acts as a Dean he should necessarily be statutorily presumed to be a Dean, and as such entitled to the post. The provisions to which the reference is made would, at the most, have given one more argument to the Petitioner in support of his case. Therefore, even if these provisions are considered as relevant provisions, the pertinent question which arises for consideration is whether non-consideration of these provisions would likely have made any difference in the ultimate decision which is given by the Court. We find that it cannot be said that any of these provisions would have been so material as to be likely to tilt the balance of the decision in favour of the Petitioner for the simple reason that a perusal of the judgment which is sought to be reviewed would at once show that the Court has come to the conclusion by reference to the various other materials which were produced in the case, and was so much impressed by that material that it came to the conclusion to which it arrived. Even if it is believed that a further argument which was available to the Petitioner, and which was relevant to the case was not considered, the error in not considering that argument would not be an error on the face of the record, so long as it is not found that it would have made any change in the basic conclusion which is arrived at by the Court.

19. It was further contended that the Court has proceeded on the basis that there were no two posts of Professors in the Department of Education, and therefore, the fact that on that post there was once an appointment of Dr. Sinha, clearly suggests that the Petitioner as well as Dr. Sinha could not have filled in the only one post which was sanctioned for the Department of Education. According to Miss Sharma, this finding is erroneous because evidence which is recorded in the case shows that there were two posts of Professors in the Department of Education. For this purpose, she has not directed our attention to any specific notification or evidence clearly going to show that there were two posts of Professors in the Department of Education, but has relied upon Annexure RJ dated 23-2-1974 and Annexure S. 4 which contains a statement indicating that there was one post of Professor in the Department of Education. According to Miss Sharma, appreciating these two Annexures along with the other evidence recorded in the case, the inevitable conclusion would be that there were two posts of Professors in the Department of Education, and not one as held by the Court. Obviously, the contention of Miss Sharma rests on appreciation of evidence, and in absence of any specific piece of evidence going to show that there were two sanctioned posts in the Department of Education it cannot be said that an error, even if the same is presumed to have been committed, was such which was apparent on the face of the record. Therefore, we see no force even in this contention of the Petitioner.

20. Miss Sharma further contended that this Court has omitted to take into consideration Section 37 of the Himachal Pradesh University Act which speaks

about the annual report. She pointed out that the annual report published by the University also shows that the Petitioner was holding the post of Professor in the Department of Education. Now if we make a reference to Section 37, it merely speaks about the necessity for the preparation of the annual reports, but does not say that whatever is found stated in the annual report should carry a statutory presumption about its correctness or truth. In fact this Court has in its judgment, which is sought to be reviewed, considered the annual report as well as the fact that the name of the Petitioner is show-therein as Professor of Education. But even after considering these facts, the Court has come to its own conclusion on consideration of the whole of the evidence on record which was produced before it. Therefore, here also we find that it cannot be said that the Court has committed an error which was apparent on the face of the record.

21. In our opinion, after having considered all the arguments advanced on behalf of the Petitioner, the Petitioner wants to reagitate the same points which were already agitated during the course of the hearing on the main petition. This is obviously, therefore, not the case for a review. It is surely not the case of an error which can bear the characteristic of being an error apparent on the face of the record. Under these circumstances, we are of the opinion that this review petition is incompetent. The same is, therefore, dismissed without any order as to costs.