

(2003) 01 RAJ CK 0041

In the Rajasthan High Court

Case No : Civil Review Petition No. 62 of 2002 and Civil Writ Petition No. 2799 of 1998

Dr. V.N. Pradhan

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 09-01-2003

Acts Referred:

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

Citation : (2003) 4 RLW 2108 : (2003) 2 WLC 699 : (2003) 1 WLN 104

Hon'ble Judges : Sunil Kumar Garg, J

Bench : Single Bench

Advocate : M. Mridul and R.N. Upadhaya, for the Appellant; Dinesh Maheshwari and Hemant Chaudhary, for the Respondent

Final Decision : Dismissed

Judgement

GARG, J.—This review petition under Order 47 Rule 1 C.P.C. has been filed by the petitioner through his counsel on 2.9.2002 to review the order dtd. 30.7.2002 passed by this Court in S.B. Civil Writ Petition No. 2799/1998 by which the writ petitioner No. 2799/1998 by which the writ petition filed by the petitioner was dismissed.

2. In the original writ petition which was decided by this Court on 30.7.2002, following prayers were made by the petitioner :

(1) it be declared that the proposed closure/closure of academic activities of Mohta Ayurveda College, Sadulpur (respondent No. 5) is illegal.

(2) alternatively and without prejudice respondent-State of directed to either take over Mohta Ayurveda College, Sadulpur (respondent No. 5) or to appoint an administrator to run the College.

(3) alternative, the respondent No. 6 Bhaskar Educational Society be directed to fulfill its undertaking of making finances available for the purpose of running the

college.

(4) the notice dtd. 21st July, 1998 (Annex. 1) informing the petitioner that his services stand terminated at the end of three months be declared to be invalid and be quashed and the respondents No. 4 and 5 be restrained from terminating services of the petitioner at the end of three months period as given in the notice dtd. 21.7.1998 (Annex. 1)

(5) if for any reason the termination is brought about the same be declared to be invalid and be quashed.

(6) alternatively the respondent state be directed to absorb the petitioner to the service of the respondent-state in terms of the Rajasthan Absorption of Surplus Personnel Service Rules.

3. It may be stated here that all the prayers made by the petitioner in the original writ petition were considered by this Court while deciding the writ petition vide order dtd. 30.7.2002.

4. In this review petition, it has been submitted by the learned counsel for the petitioner that the following submissions were raised during the course of arguments in the writ petition, but the same were not considered by this Court while deciding the writ petition vide order dtd. 30.7.2002 :

(1) That the petitioner had not been paid any amount by way of salary, PF and other benefits except that he was paid a sum of Rs. 50,000/-twice over and after the stay order was passed by this Court, work of Principal was taken from the petitioner but no payment was made to the petitioner.

(2) That the argument of estoppel raised by the respondent- College on the basis of fact that the petitioner was told that for officiating as Principal, he will be paid a sum of Rs. 1000/- was countered by the learned counsel for the petitioner by relying upon the judgment of Hon"ble Supreme Court reported in Secretary-cum-Chief Engineer, Chandigarh Vs. Hari Om Sharma and Others,

5. This review petition has been opposed by the learned counsel for the respondents.

6. Heard.

7. The prayer which was made by the petitioner in the original writ petition has already been quoted above.

8. In my opinion, this review petition deserves to be dismissed on following two grounds :

(i) From perusing the file of the writ petition, it appears that an application for amendment of the writ petition was filed by the petitioner on 12.4.99 and by that application following amendments were sought :

"X. The respondents have failed to pay to the petitioner emoluments of the post

of Principal of which post the work is being taken from him right from January 1998 upto date. The work of Principal has been taken from the petitioner right from the year 1994 and he has been paid emoluments of the post of Lecturer only with a petty amount of Rs. 1000/- as Principalship allowance. The work having been taken for the post of Principal the respondents are bound to pay to the petitioner the emoluments of the post of Principal and to so right from the year 1994 till date and thereafter till the Petitioner continues as Principal. The respondents cannot take work of the Principal from the petitioner and pay him salary of the post of Lecturer and Respondents cannot also keep back the emoluments payable to the petitioner. The denial of the emoluments of Principal from the year 1994 till December, 1997 by paying only the emoluments of the post of Lecturer and some allowance and failure to pay to the petitioner emoluments of the post of Principal from 1 st January 1998 upto date is clearly arbitrary, unfair and unreasonable besides being a case of depriving the petitioner of his property without authority of law so as to be violative of Article 300-A of the Constitution of India."

"I/q The respondents be directed to pay to the petitioner the difference of emoluments of the post of Principal and Lecturer from the year 1994 upto December 1997 and pay to the Petitioner emoluments of the posts of Principal from 1st of January 1998 onwards till date with interest @ 18% p.a. on and from and as and how same became due till same is paid and thereafter continue to pay the same."

9. However, this application was not allowed by this Court before passing the order dtd. 30.7.2002, in view of this fact, the so-called submissions made in the review petition carry no weight and the case of the petitioner as put forward in the writ petition was considered and all the points were decided while passing the order dtd. 30.7.2002 and the new grounds mentioned in the review petition were not in the original writ petition and therefore, on this ground alone, this review petition deserves to be dismissed.

(ii) Apart from this, there is no dispute on the point that before filing the present review petition against the order dtd. 30.7.2002, the petitioner had already filed a special appeal before Division Bench against the order dtd. 30.7.2002 and the same is pending before this Court. The position of law in this respect is very much clear and same can be summarized in the following manner :

If before moving an application for review, an appeal from the order/judgment/decree sought to be reviewed had already been filed and the same is pending, then the Court has no jurisdiction to entertain the application for review. In other words it can be held that the application for review is not maintainable after preferring appeal against the same judgment/order/decree.

10. In this respect following observations of Hon"ble Privy Council Raja Indrajil Pratap Bahadur Sahi v. Amar Singh (2), may be quoted hereunder :

"Under Order 47 Rule 1 which reproduces Section 623 of the Civil Procedure

Code, 1882, a party has a right to apply for a review of judgment to the Court that has decided the case before an appeal has been preferred.

"Where an appeal has been preferred, a review is out of question."

11. When this being the position, since in the present case, an appeal against the order dtd. 30.7.2002 had already been filed by the petitioner, therefore, the present review petition is not at all maintainable and the same deserves to be dismissed.

12. For the reasons mentioned above, this review petition stands dismissed as being not maintainable.

13. No order as to costs.