
(1995) 03 GAU CK 0032
In the Gauhati High Court
Case No : Civil Review No. 62 of 1994

Haobam Sunil Singh

APPELLANT

Vs

State of Manipur and Others

RESPONDENT

Date of Decision : 09-03-1995

Acts Referred:

Constitution of India, 1950 — Article 226
Limitation Act, 1963 — Article 137

Citation : (1995) 3 GLR 390

Hon'ble Judges : P.K. Ghosh, J;H.K. Sema, J

Bench : Division Bench

Advocate : N. Koteswar Singh, for the Appellant; A. Nilamani Singh and H.S. Poonam, for the Respondent

Final Decision : Allowed

Judgement

H.K. Sema, J.—This Civil Review arises out of Civil Rule No. 1054/89 disposed of by a Division Bench of this Court on 20.8.1990. The Hon''ble Judges constituting the Bench are not now available in this Court and so the matter has been placed before this Bench for disposal.

2. We have heard Mr. Koteswar Singh, learned Counsel for the review applicant. Mr. A. Nilamani Singh, learned Counsel for Respondent No. 3 and Mr. H.S. Paonam counsel for the Respondent No. 1.

3. By the aforesaid judgment, following the principles laid down by the Apex Court in Direct recruitment of The Direct Recruit Class-II Engineering Officers' Association and others Vs. State of Maharashtra and others, has allowed the writ Petitioner (Ad-hoc) to count the benefit of entire period of service for pay, increment, seniority, pension and other pensionary benefit, while directing retrospective regularisation. The operative portion of judgment runs as under:

In the result, we allow the writ petition with the direction that the Petitioner shall be given the benefit of regularisation from the date of his ad-hoc appointment

provided it was continuous. In addition, we direct that if the ad-hoc appointment was made prior to attaining the qualifying service the regularisation shall be from the date of attaining the qualifying service.

Mr. Pramod Singh learned Govt. Advocate has an apprehension that, if no post was available regularisation may create problem. We see no force in the above submission inasmuch as, by giving retrospective effect to the order of regularisation the Petitioner shall be entitled to the benefit for pay i.e. increment, seniority, pension and other pensionary benefit.

(Emphasis supplied).

4. The review applicant was not made a party in the proceeding in Civil Rule No. 1054/89. While admitting the review application on 14.12.94, this Court formulates two points for decision. They are:

(1) Delay in filling the review petition.

(2) Whether the Petitioner being third party has the right to file a review application in view of the judgment passed by the Supreme Court in the case of Ramchandra Ganpat Shinde and Anr. Appellants v. State of Maharashtra and Ors. reported in (1993) 3 SCJ 452.

5. The grievance of the review applicant in this review petition is that, the review applicant is senior to the writ Petitioner made as Respondent No. 3 in this review application. However, while giving retrospective regularisation, the seniority has also been extended to the writ Petitioner (Respondent No. 3) and thereby allowing the Respondent No. 3 to supersede the review applicant by his junior, in seniority.

6. We now advert to the point No. 1 delay in filing the review petition. It is contended by Mr. A. Nilamani Singh that the present review application is barred by Limitation inasmuch as the Civil Rule was disposed of on 20.8.90 and the review application was filed on 13.12.94. In this connection, it is contended by Mr. Nilamani Singh that, no period has been prescribed under the Limitation Act with regard to the writ jurisdiction. In such cases, Article 137 of the Limitation Act which is a residuary power is applicable which prescribes three years as period of Limitation. In this connection Mr. Nilamani Singh has referred to the decision of the Apex Court rendered in The Kerala State Electricity Board, Trivandrum Vs. T.P. Kunhaliumma, which the Apex Court had held that:

Any other application under Article 137 would be petition or any application under any Act.

The Apex Court further held that:

Article 137 stands in isolation from all other Articles in Part-I of the third division. Article 137 includes petitions within the word "application". These petitions and applications can be under any special Act.

Therefore according to Mr. Nilamani Singh that the present review application is not maintainable being bailed by Article 137 of the: Limitation Act. According to him, the review application was filed after the expiry of three years.

7. We are unable to accept the submission made by Mr. Nilamani Singh because we find that in Annexure-P the Petitioner has filed Civil Rule No. 158/92, and this Court by an order dated 29.11.94 advised the Petitioner to file an application before the appropriate Court. We also find in Annexure-O that the Petitioner has filed Anr. Civil Rule No. 1250/94 and this Court on 29.11.94 disposed of an application with a liberty to the review applicant to (sic) a fresh application before an appropriate bench. As said earlier, review application was filed on 13.12.94. From the above circumstances, it appears that the review applicant was diligently prosecuting his case in a wrong forum. This would show there is no laches or negligence on the part of the review applicant. Under the circumstances, the review application filed on 13.12.94 is well within time.

8. With regard to the second point, as to whether the review applicant being third party has the right to file a review application. It has been settled by the Apex Court in *Ram Janam Singh Vs. State of Uttar Pradesh* and another, This is what the Apex Court has to say in para 8 of its judgment:

Even if this stand is accented can it be said that persons who have been affected by the judgment of the High Court in the connected writ, application cannot Challenge the correctness thereof either by filing a Review petition before the High Court or by filing a SLP before this Court? According to us, the answer is in negative. The Appellant has a locus standi to challenge the said judgment, although he was not party to the same and the SLP filed on his behalf cannot be rejected on that ground. The delay in filing the SLP has also been fully explained in the facts and circumstances of the case, which is condoned.

9. Mr. Nilamani Singh in his usual fairness rightly submits that in view of various decisions of the Apex Court, the review applicant would be entitled to file a review application even if he was not made a party in a writ proceeding.

10. Having resolved the aforesaid two points, we now proceed to examine the case at hand. Mr. Nilamani Singh has opposed the application on the ground that the power of review may be exercised on the discovery of new and important matter or evidence which, after the exercise of due diligence was not within the knowledge of the person seeking the review or could not be produced by him at the time when the order was made and only where some mistakes or errors apparent on the face of the record is found. According to Mr. Nilamani Singh, there is no mistake or error apparent on the face of the record in the present case which would entitle this Court to review its own order. Referring to the decision of the Apex Court rendered in *Baboo alias Kalyandas and Others Vs. State of Madhya Pradesh*, where it has been held by the Apex Court that review may not be exercised on the ground that a decision was erroneous on merits, The Apex Court further held that, such cases would be the province of a Court of

appeal. A power of review is not to be confused with appellate power which may enable an appellate Court to correct all manner of errors committed by the Subordinate Court.

11. Mr. Nilamani Singh has also referred to Anr. decision rendered in Northern India Caterers (India) Ltd. Vs. Lt. Governor of Delhi, where the Apex Court had held:

A party is not entitled to seek a review of a judgment delivered by the Supreme Court merely for the purpose of a re-hearing and a fresh decision of the case. The normal principle is that a judgment pronounced by the Court is final, and departure from that principle is justified only when circumstances of a substantial and compelling character make it necessary to do so.

12. In the present case, as said already, the review applicant was not made party Respondent in writ proceeding and therefore there is no question of he discovering of new and important matter or evidence which after the exercise of due diligence was not within the knowledge of the review applicant seeking the review or could not be produced by him at time when the order was made. This situation would arise only when he is made party in a writ proceeding and the order of which has been seeking for review has been passed.

13. From the aforesaid judgments of the Apex Court as referred to above, it does not preclude the power of the High Court under Article 226 of the Constitution from exercising the power of review to prevent miscarriage of justice or to correct grave and palpable erroneous (sic, errors) committed by it.

14. Reverting to the facts of the case, admittedly the writ Petitioner (Respondent No. 3 herein) was an ad-hoc appointee. His service was directed to be regularised with retrospective effect with seniority. So far with regard to the retrospective regularisation of Respondent No. 3, the review applicant has not taken any grievance. His only grievance is with regard to the seniority. We are of the view that the case of the writ Petitioner (Respondent No. 3 herein) would be covered by the direction No. A in Direct Recruitment (Supra). The direction No. A runs as under:

(A) Once an incumbent is appointed to a post according to rule, his seniority has to be counted from the date, of his appointment, and not according to the date of his confirmation.

The corollary of the above rule is that where the initial appointment is only ad-hoc and not according to rules and made as a stopgap arrangement, the officiation in such post cannot be taken into account for considering the seniority.

(Emphasis supplied)

15. For the aforestated reasons, we are of the view that miscarriage of justice of grave consequences has been committed warranting this Court to review its own judgment. Accordingly, the judgment and order dated 20.8.90 is reviewed to the

extent that the seniority of the writ Petitioner (Respondent No. 3 herein) vis a vis the review applicant shall be determined in accordance with the guideline and instruction laid down from time to time in this regard.

16. In view of our order aforesaid, the impugned order dated 19.11.94 (Annexure-N) is hereby quashed.

Review application allowed. No costs.