

(2023) 02 DEL CK 0122

In the Delhi High Court

Case No : Civil Writ Petition No. 8030 Of 2012

Harcharan Singh

APPELLANT

Vs

Director Of Education And Ors.

RESPONDENT

Date of Decision : 17-02-2023

Acts Referred:

Code Of Civil Procedure, 1908 — Section 114, 151, Order 47 Rule 1

Citation : (2023) 02 DEL CK 0122

Hon'ble Judges : Suresh Kumar Kait, J

Bench : Single Bench

Advocate : Karan Preet Singh, Latika Chaudhary, K.P Sundar Rao, Udesb Puri

Final Decision : Disposed Of

Judgement

Suresh Kumar Kait, J

REVIEW PET. 289/2019 & CM APPL. 44620-621/2022

1. Present review petition has been filed on behalf of the respondent no.2/review petitioner against the order dated 10.01.2019 passed by this Court whereby the review petitioner/respondent No.2/School herein were directed to reinstate the respondent (petitioner herein) in the School with all his consequential benefits. Moreover, he was not working after the impugned order dated 20.10.2010, therefore, he would be entitled for 50% of the wages.

2. Learned counsel for the review petitioner/respondent no.2/School submits that the reinstatement of the respondent (petitioner herein) after a long period of more than 10 years could not be ordered and the same is also against the various precedents of the Apex Court. In addition, he further submits that petitioner has never challenged the order passed by the learned Delhi School Tribunal in which the petitioner was permitted to lead his evidence only and no other witness.

3. The learned Tribunal, by way of its order dated 27.07.2010, granted one

opportunity to the respondents (petitioner herein) to lead his evidence and that too within a period of a fortnight from the date of the order. Thereafter, with the consent of the parties, the learned Tribunal again passed order on 20.09.2010 that the respondents (petitioner herein) would be examined himself before the inquiry officer on 23.09.2010 at 2:00 p.m. and after his examination in chief, review petitioner/respondent no.2/School was at liberty to cross-examine the respondent(petitioner herein).

4. In the said order, it was further mentioned that, that was the only grievance the respondent (petitioner herein) intended to lead. The Inquiry Officer was directed to submit his report after taken into consideration the statement of the respondent (petitioner herein) as defence witness and no further opportunity for leading the evidence was allowed either to the respondent (petitioner herein) or to the review petitioner/respondent no.2/School.

5. On the other hand, learned counsel for the respondent (petitioner herein) has strongly opposed the averments made by the counsel for the review petitioner and has placed reliance upon the case of Ram Sahu (Dead) through L.Rs. and Ors. vs. Vinod Kumar Rawat and Ors. in Civil Appeal No. 3601/2020 decided on 03.11.2020 and the relevant paras 9 & 10 are reproduced herewith:

"9. To appreciate the scope of review, it would be proper for this Court to discuss the object and ambit of Section 114 CPC as the same is a substantive provision for review when a person considering himself aggrieved either by a decree or by an order of Court from which appeal is allowed but no appeal is preferred or where there is no provision for appeal against an order and decree, may apply for review of the decree or order as the case may be in the Court, which may order or pass the decree. From the bare reading of Section 114 CPC, it appears that the said substantive power of review under Section 114 CPC has not laid down any condition as the condition precedent in exercise of power of review nor the said Section imposed any prohibition on the Court for exercising its power to review its decision. However, an order can be reviewed by a Court only on the prescribed grounds mentioned in Order 47 Rule 1 CPC, which has been elaborately discussed hereinabove. An application for review is more restricted than that of an appeal and the Court of review has limited jurisdiction as to the definite limit mentioned in Order 47 Rule 1 CPC itself. The powers of review cannot be exercised as an inherent power nor can an appellate power can be exercised in the guise of power of review.

10. Considered in the light of the aforesaid settled position, we find that the High Court has clearly overstepped the jurisdiction vested in the Court under Order 47 Rule 1 CPC. No ground as envisaged under Order 47 Rule 1 CPC has been made out for the purpose of reviewing the observations made in para 20. It is required to be noted and as evident from para 20, the High Court made observations in para 20 with respect to possession of the plaintiffs on appreciation of evidence on record more particularly the deposition of the plaintiff (PW1) and his witness PW2 and on appreciation of the evidence, the High Court found that the plaintiff is in

actual possession of the said house. Therefore, when the observation with respect to the possession of the plaintiff were made on appreciation of evidence/material on record, it cannot be said that there was an error apparent on the face of proceedings which were required to be reviewed in exercise of powers under Order 47 Rule 1 CPC. At this stage, it is required to be noted that even High Court while making observations in para 20 with respect to plaintiff in possession also took note of the fact that the defendant nos. 1 and 2 – respondents herein themselves filed an application being I.A. No.1267 of 2012 which was filed under Section 151 CPC for getting the possession of the disputed house from the appellants and the said application was dismissed as withdrawn. Therefore, the High Court took note of the fact that even according to the defendant nos. 1 & 2 the appellants were in possession of the disputed house. Therefore, in light of the fact situation, the High Court has clearly erred in deleting para 20 in exercise of powers under Order 47 Rule 1 CPC more particularly in the light of the settled preposition of law laid down by this Court in the aforesaid decisions.”

6. It is not in dispute that after the said order, the writ petitioner was examined on 23.09.2010 at 2:00 p.m. and he was cross examined. After his statement, he sought liberty from the inquiry officer to lead his defence evidence, however, that was not allowed, submitting that learned Tribunal has not granted any such liberty.

7. It is trite that once the statement of the charge officer/accused is recorded at the end, he would be asked whether he would like to lead defence evidence or not. If the answer is in affirmative, then the Court or inquiry officer is bound to give opportunity to the said person to lead defence evidence. Admittedly, the petitioner was not allowed to lead the defence evidence and accordingly, this Court vide para 44 & 56 of order dated 10.01.2019 recorded as under:

“44. After hearing learned counsel for the parties, it is established that material witnesses were not examined by the Inquiry Officer. Earlier plea of the petitioner to examine the material witnesses was totally ignored and disallowed by the Inquiry Officer and only after the petitioner approached the Tribunal the defence evidence was allowed to be led. However, the learned Tribunal failed to appreciate that opportunity to lead defence evidence was given only after the directions issued. Moreover, the order of the Tribunal was misinterpreted by the Inquiry Officer and allowed petitioner to lead evidence but disallowed any other defence witnesses, which is in fact, in my considered view, is against the principles of natural justice.

45. xxxxxxxx

46. xxxxxxxx

56. As discussed above, even documents in the disciplinary inquiry were not furnished and the petitioner was not allowed to examine defence witnesses. Thus, the department proceedings against the petitioner is vitiated, malafide,

arbitrary and against the principles of natural justice. Consequently, I hereby set aside the order dated 30.10.2012 of Delhi School Tribunal passed in Appeal No.78/2012 and order dated 20.10.2010 passed by the disciplinary committee.”

8. In view of the law discussed in the case referred above and the paras 44 and 56 of order dated 10.01.2019, the review petitioner has failed to make any ground to review the said order.

9. On perusal of the review petition and after hearing learned counsel for the parties, I am of the considered opinion that the present review petitioner amounts to reargue the case.

10. Finding no ground to interfere with the order dated 10.01.2019, review petition is dismissed and disposed of.

11. The respondents are, accordingly, directed to comply with order dated 10.01.2019 in its letter and spirit within a period of four weeks from today.