

(1996) 05 SHI CK 0011

In the High Court Of Himachal Pradesh

Case No : Civil Review No's. 21, 22 and 23 of 1995

H.P. University

APPELLANT

Vs

Dr. S.R. Mehrotra and Others
 Dr. S.R. Mehrotra and
Others Vs H.P. University
 Dr. Abha Malhrotra Vs Dr. Dr.
S.R. Mehrotra

RESPONDENT

Date of Decision : 31-05-1996

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 47 Rule 1, Order 47 Rule 1(2)
Constitution of India, 1950 — Article 136, 16, 226
Himachal Pradesh University First Ordinance, 1973 — Ordinance 35, Ordinance 35.11,
Ordinance 35.13, Ordinance 35.14, Ordinance 35.8

Citation : (1997) 2 ShimLC 89

Hon'ble Judges : L.S. Panta, C.J;Kamlesh Sharma, J

Bench : Division Bench

Advocate : Balram Gupta and D.C. Jishtu, in Civil Review No. 21 of 1995, R. K. Sharma and Devyani Kuthiala, in Civil Review No. 18 of 1995, Kuldip Singh, in Civil Review No. 22 of 1995, K.D. Sood, in Civil Review No. 23 of 1995, B.P. Sharma, in Civil Review No. 24 of 1995 and H.K. Paul, in Civil Review No. 43 of 1995, for the Appellant; Party-in Person, in Civil Review Nos. 18, 21, 23, 24 and 43 of 1995, B.P. Sharma, for Respondent 6, 8 and 12 in Civil Review No. 21 of 1995, for Respondent 6 to 9 in Civil Review No. 18 of 1995, for Respondent 6 to 8 in Civil Review No. 22 of 1995 and for Respondent 6 to 8 and 12 in Civil Review Nos. 23 and 43 of 1995, Kuldip Singh, for Respondent 13 in Civil Review No. 21 of 1995, for Respondent 3 in Civil Review No. 23 of 1995 and for Respondent 4 in Civil Review Nos. 24 and 43 of 1995, K.D. Sood, for Respondent 2 in Civil Review No. 18 of 1995, D.C. Jishtu, for Respondent 15 in Civil Review No. 18 of 1995, for Respondent 1 in Civil Review No. 22 of 1995 and for Respondent 2 in Civil Review Nos. 23, 24 and 43 of 1995, Devyani Kuthiala, for Respondent 10 and 12 in Civil Review No. 22 of 1995, for Respondent 9 and 11 in Civil Review No. 23 of 1995, for Respondent 7 to 11 in Civil Review No. 24 of 1995 and for Respondent 9 to 11, 13 and 14 in Civil Review No. 43 of 1995 and R.D. Kaundhal, vice Counsel for Respondent 6 in Civil Review No. 24 of 1995, for the Respondent

Final Decision : Dismissed

Judgement

Kamlesh Sharma, J.—In these Review Petitions (Civil Review No. 21 of 1995, 18 of 1995, 22 of 1995, 23 of 1995, 24 of 1995 and 43 of 1995) review of the judgment dated 21-12-1994 passed by a Division Bench of this Court in C.W.P. No. 222 of 1987 is sought. Review Petition No. 21 of 1995 has been filed by the H.P. University which was impleaded as Respondent No. 1 in the writ petition. Review Petition No. 23 of 1995 has been filed by Dr. Abha Malhotra, who was Respondent No. 2 in the writ petition. Dr. Meera Massey, Respondent No. 3 in the writ petition has not filed review petition in this Court as she has preferred Special Leave to Appeal (C) No. 5235 of 1995 in the Supreme Court of India. Review Petition No 22 of 1995 has been filed by Sh. Shiv Raj Singh Panwar, who is Respondent No. 16 in the writ petition. Review Petitions No. 18, 24 and 43 have been filed by private individuals who were Respondents No. 5 to 14 in the writ petition. S/Shri S. C. Bhadwal and Shri Ram Sharma, Respondents No. 4 and 15 in the writ petition, have neither filed review petition nor Special Leave to Appeal in the Supreme Court.

2. In order to appreciate the respective contentions of the parties, we will first deal with the scope of review, especially in writ matters. In the latest judgment of the Supreme Court in Smt. Meera Bhanja Vs. Smt. Nirmala Kumari Choudhury, the learned Judges of the Supreme Court in para 8 have held:

It is well settled that the review proceedings are not by way of an appeal and have to be strictly confined to the scope and ambit of Order 47, Rule 1, Code of Civil Procedure. In connection with the limitation of the powers of the Court under Order 47, Rule 1, while dealing with similar jurisdiction available to the High Court while seeking to review the orders under Article 226 of the Constitution of India, this Court in the case of Aribam Tuleshwar Sharma v. Aribam Pishak Sharma AIR 1979 SC 1047, speaking through Chinnappa Reddy, J., has made the following pertinent observations (Para 3):

It is true there is nothing in Article 226 of the Constitution to preclude the High Court from exercising the power of review which inheres in every Court of plenary jurisdiction to prevent miscarriage of justice or to correct grave and palpable errors committed by it. But there are definitive limits to the exercise of the power of review. 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; it may be exercised where some mistake or error apparent on the face of the record is found; it may also be exercised on any analogous ground. But it may not be exercised on the ground that the decision was erroneous on merits. That would be the province of a Court of Appeal. A power of review is not to be confused with the appellate power which may enable an Appellate Court to correct all manner of errors committed by the Subordinate Court.

Now it is also to be kept in view that in the impugned judgment, the Division Bench of the High Court has clearly observed that they were entertaining the

review petition only on the ground of error apparent on the face of the record and not on any other ground. So far as that aspect is concerned, it has to be kept in view that an error apparent on the face of record must be such an error which must strike one on mere looking at the record and would not require any long drawn process of reasoning on points where there may conceivably be two opinions. We may usefully refer to the observations of this Court in the case of Satyanarayan Laxminarayan Hegde and Others Vs. Millikarjun Bhavanappa Tirumale, wherein K.C. Das Gupta, J., speaking for the Court has made the following observations in connection with an error apparent on the face of the record:

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. Where an alleged error is far from self evident and 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.

3. Dr. Balram Gupta, learned Counsel appearing for the Himachal Pradesh University, has referred to Para 23 of the Supreme Court judgment in Hari Vishnu Kamath Vs. Syed Ahmad Ishaque and Others, , wherein while replying to the question: "When does an error cease to be a mere error and become an error apparent on the face of the record ?" the learned Judges observed, ".....no error could be said to be apparent on the face of the record if it was not self-evident and if it required an examination or argument to establish it This test might afford a satisfactory basis for decision in the majority of cases But there must be cases in which even this test might break down because judicial opinions also differ and an error that might be considered by one Judge as self evident might not be so considered by Anr. The fact is that what is an error apparent on the face of the record cannot be defined precisely or exhaustively, there being an element of indefiniteness inherent in its very nature, and it must be left to be determined judicially on the facts of each case.

4. Dr. Balram Gupta has further referred to the judgment of the Supreme Court in S. Nagaraj and Ors. v. State of Karnataka and Anr. 1993 (5) SLR. 1, wherein in Paras 18 and 19, the learned Judges have observed that:

...If the Court finds that the order was passed under a mistake and it would not have exercised the jurisdiction but for the erroneous assumption which in fact did not exist and its perpetration shall result in miscarriage of justice then it cannot on any principle be precluded from rectifying the error. Mistake is accepted as a valid reason to recall an order Difference lies in the nature of mistake and scope of rectification, depending on if it was of fact or law. Bat the root from which the power flows is the anxiety to avoid injustices. It is either statutory or inherent The latter is available where the mistake is of the Court.

Review literally and even judicially means re-examination or reconsideration. Basic philosophy inherent in it is the universal acceptance of human fallibility. Yet in the realm of law, the Courts and even the statutes lean strongly in favour of finality of decision legally and properly made. Exceptions both statutorily and judicially have been carved out to correct accidental mistakes or miscarriage of justice. Even when there was no statutory provisions; and no rules were framed by the highest court indicating the circumstances in which it could rectify its order the courts culled out such power to avoid abuse of process or miscarriage of justice....Rectification of an order thus stems from the fundamental principle that justice is above all. It is exercised to remove the error and not for disturbing finality....

Referring to the expression "for any other sufficient reason" used in Order 47, Rule 1, Civil Procedure Code, the learned Judges have observed that this clause has been given an expanded meaning and a decree or order passed under misapprehension of true state of circumstances has been held to be sufficient ground to exercise the power.

5. Coming to the judgment dated 21-12-1994, which is sought to be reviewed, the first error apparent on the face of the record, as pointed out by Dr. Balram Gupta, learned Counsel appearing for the H P. University, and the learned Counsel for Dr. Abha Malhotra Respondent No. 2 in the writ petition, is that the observations made by the Division Bench at page 13 of the judgment that, ".....Respondent No. 2 is admittedly the close relation of the Vice-Chancellor of the University, Sh. K C. Malhotra ..." are factually incorrect. Neither in the writ petition such allegations were made nor is there any material on record of the writ petition from which it could be inferred nor during the course of arguments it was stated so by any of the counsel on the basis of which the Court could make this observation. We find substance in this submission and it is accepted. We order that the first sentence of the Para beginning with the words, "As regards particulars cases....." and ending with the word, ".....Respondent Dr. S. S. Chauhan," at page 13 of the judgment be considered as deleted.

6. However, we find that this observation had no effect on the decision by the Division Bench that the appointment of Dr. Abha Malhotra was not legal and valid being violative of law. Admittedly, her appointment as Research Associate in the Department of History as per Office Order dated 25-1-1983 (Annexure R-2/2 to her reply to the writ petition) was temporary/stop gap arrangement whereas the creation of one post of Research Associate in the Department of History was notified on 7-1-1984 (Annexure R-2/3 to her reply to the writ petition). In the absence of filling up the post created vide notification dated 7-1-1984, in accordance with Ordinance No. 35 of the First Ordinances of the H.P. University, 1973, it is held that the appointment of Dr. Abha Malhotra, Respondent No. 12 in the writ petition, as Research Associate in the Department of History was void and she could not be given benefit of resolution dated 16-1-1986 of the Executive Council to continue as Research Associate and thereafter of resolution

dated 3-5-1986 to regularize her as such. So far taking benefit of Para 4 of the Resolution dated 16-1-1986 is concerned, being violative of Ordinance No. 35, it cannot be availed of by her, as such, her appointment as Lecturer in the Department of History by the Executive Council, vide its resolution dated 27-12-1986 accepting the recommendations of the Selection Committee is rightly held to be bad. We do not find any error/mistake apparent on the face of the record to interfere in these findings.

7. So far Dr. Meera Massey, Respondent No. 3 in the writ petition, is concerned, she has filed Special Leave to Appeal (C) in the Supreme Court but the H.P. University in its Review petition has sought review of the whole of the judgment including the findings pertaining to her. Therefore, the question arises whether the Review petition of the University pertaining to Dr. Meera Massey, Respondent No. 3 in the writ petition, is maintainable In view of the pendency of her SLP in the Supreme Court. For answering this question, reference to Order 47 Rule 1(2) CPC is necessary which provides that a party who is not appealing from a decree or order may apply for a review of judgment notwithstanding the pendency of an appeal by some other party except where the ground of such appeal is common to the applicant and the Appellant, or when, being Respondent, he can present to the Appellate Court the case on which he applies for the review There is no dispute that the ground taken in the SLP to challenge the judgment pertaining to Dr. Meera Massey, Respondent No. 3 in the writ petition, are common to the present Review petition of the H.P. University but unless the SLP is allowed and the appeal is registered, it cannot be said that her appeal is pending in the Supreme Court. Special Leave to Appeal as provided under Article 136 of the Constitution does not confer a right of appeal upon the party but merely vests a discretion in the Supreme Court to interfere in exceptional cases. (Please see: Bengal Chemical and Pharmaceutical Works Ltd., Calcutta Vs. Their Workmen, and The State of Bombay Vs. Rusy Mistry and Another,

8. Moreover, in the present case, the learned Judges of the Supreme Court in their order dated 13-11-1995 passed in the said Special Leave to Appeal petition have clarified that the interim order staying the operation of the impugned judgment would not stand in the way of this Court to hear and dispose of the Review petition filed by the Himachal Pradesh University and the Special Leave to appeal petition would be heard after decision of the Review petition. In these circumstances, we are considering the Review petition of the H. P. University in respect of Dr. Meera Massey, Respondent No. 3 in the writ petition.

9. Dr. Balram Gupta, learned Counsel for the H.P. University, has pointed out that had the affidavit dated 5-3-1988 of the then Vice-Chancellor, Dr. K.C. Malhotra, been considered, alongwith other material on record, the decision of the Division Bench would have been different in respect of the appointment of Dr. Meera Massey, Respondent No. 3 in the writ petition, as Lecturer in Education. The Division Bench in its judgment has held that Respondent No. 3 in the writ petition cannot be permitted entry through back-door method as admittedly

being an Evaluator in sociology, she could not be appointed as Lecturer in Education on the basis of the resolution dated 27-12-1986 as her case was not that of regularization as claimed by the University but a case of appointment to an altogether new post in a different discipline which can be done by following the procedure under Ordinance 35 of the Ordinances. We have perused the affidavit dated 5-3-1988 of Dr. K. C. Malhotra, the then Vice Chancellor, and find that it does not improve the case of the Petitioner in any manner. It is stated in the affidavit, in respect of Dr. Meera Massey, Respondent No 3 in the writ petition, that, "The observations of the Selection Committee that she should face the Selection Committee in sociology was because of the fact that she was Evaluator in Sociology and the Selection Committee was considering her for the post of Lecturer in Education on the basis of her Qualification and work on that side .. The recommendations were accepted by the Executive Committee and she was offered the appointment of Lecturer in Education." This statement does not seem to be correct. Had Dr. Massey, Respondent No 3 in the writ petition, been recommended for appointment as Lecturer in Education, there was no occasion for the Executive Council to pass resolution dated 27-12-1986 in respect of her appointment in the following terms:

...The Executive Council was informed that Dr. (Mrs.) Meera Massey is M.Ed., M.Phil (Edu.) (Gold Medalist) and Ph.D. in Education and there is a documentary evidence to prove that she has been associated with the teaching of postgraduate classes in Education through Correspondence Courses and she had been evaluating the assignment of the M.Ed. students, taking classes through Personal Contact Programmes just like other teachers of the Education Department of the D.C.C. This fact was not known to the Selection Committee. The Selection Committee, however, found her competent to be a Lecturer and as per the decision of the Executive Council with regard to the Research Associates/ Evaluators, the Research Associates/ Evaluators are to fulfill the formality to face the Statutory Selection Committee and as per the observations of the Selection Committee about her competence to be a Lecturer, Dr. (Mrs) Meera Massey be appointed as Lecturer in Education in the D.C.C Her existing post of Evaluator stand abolished.

Looking to her qualifications, she was competent to be Lecturer but for her appointment as Lecturer in Sociology, she was to face the Selection Committee in that subject and admittedly as stated in the resolution the case for her appointment as Lecturer in Education alongwith her credentials was not before the Selection Committee considering appointment in the subject of Education in the D.C.C. Therefore, even if the Division Bench had considered the affidavit dated 5-3-1988 of Dr. K.C. Malhotra, its decision would have remained the same in respect of Dr. Meera Massey, Respondent No. 3 in the writ petition. It is rightly observed that the University failed to place before the Division Bench the original proceedings of the Selection Committee which would have put an end to the controversy whether she was interviewed for appointment as Lecturer in Education but from the totality of material on record, especially the resolution

dated 27-12-52986, the only conclusion possible is that she was not considered and recommended by the Selection Committee for appointment as Lecturer in Education irrespective of her possessing the qualification and experience for the said post, may be because she was working as Evaluator in Sociology at the relevant time.

10. Coming to Dr. Shiv Raj Singh Panwar, Respondent No. 16 in the writ petition, it is correct that while deciding his case, the Division Bench did not take specifically refer to the stand of the Respondent University in its reply filed on the affidavit dated 27-6-1988 of Sh. A.R. Chauhan, the then Registrar, that Post Graduate Classes in the subject of Public Administration were being run in the H. P. University Evening College, Shimla, which was an undergraduate College at the time when the post was advertised and the Selection Committee recommended Sh. Shiv Raj Singh, Respondent No. 16 in the writ petition, alongwith Ors. . For this reason, it was specifically mentioned in the advertisement No. 8/86 dated 3-7-1986 that for Lecturer in Public Administration and two other subjects, the qualification was as prescribed by the University Grants Commission for the post of Lecturers for Post-graduate Classes. Before the appointments could be made, the Academic Council, in its meeting held on 27-10-1986 under Item No. 23 accepted the proposal to shift M.A. teaching in the subject of Public Administration from H. P. Evening College to H.P. University campus which decision was further approved by the Executive Council on the same date, that is, under Item No. 15 and accordingly Statute No. 13(1)(iii)2 was amended under item No. 8 in its meeting held on 27-2-1987 and the post of Reader, Lecturer except one post of Lecturer were transferred from H.P. University. Evening College to the Department of Public Administration. It was in these circumstances that Sh. Shiv Raj Singh, Respondent No. 16 in the writ petition, was appointed as Lecturer in the Department of Public Administration in May 1987. Though it is correct that this material on record has not been referred to while deciding the case of Sh Shiv Raj Singh, Respondent No. 16 in the writ petition, yet, it cannot be denied that for appointment as lecturer in the Department of Public Administration in the university, the selection committee constituted under Statute 17 of the First Statutes of H. P. University, is required to make recommendations to the Executive Council whereas in the case of Sh. Shiv Raj Singh, Respondent No. 16 in the writ petition, recommendations were made by the Selection Committee meant for appointment of Lecturers in the H.P. University Evening College. It is not denied before us that Sh. Shiv Raj Singh, Respondent No. 16 in the writ petition, was placed at Sr. No. 1 and one Sh S K Mahajan at Sr. No. 2 and on transfer of one post of Lecturer to the Department of Public Administration, Sh. Shiv Raj Singh, Respondent No. 16 in the writ petition, was appointed as Lecturer in the University whereas Sh. S.K. Mahajan was appointed in the H.P. University Evening College. In this view of the matter, this Court has rightly quashed the appointment of Sh. Shiv Raj Singh, Respondent No. 16 in the writ petition, being illegal. But since h3 has been appointed as Reader by way of direct recruitment in the Department of Public Administration

of the University, in March 1989, the decision of this Court will not have any effect.

Lastly, so far Respondents No. 4 to 15 in the writ petition are concerned, their appointment has been found violative of Ordinance 35 of the First Ordinances of the University and Article 16 of the Constitution of India but since, admittedly, they possess the requisite qualifications, they were permitted to continue pending their selection in accordance with Ordinance 35 by applying the law laid down in *Mrs. Rekha Chaturvedi v. University of Rajasthan* and Ors. 1993 (1) SLR 544. Dr. Balram Gupta as well as other learned Counsel appearing for the Review Petitioners have not been able to point out any error apparent on the face of the record or any other sufficient reason for reviewing the judgment in respect of them, except that Ordinance 35 of the First Ordinances of the University did not apply in their case as their appointments were neither direct nor by promotion. Though they cannot be permitted to reargue their case in this review petition, yet, in the interest of justice and fair play, we have examined this point and have come to the conclusion that it is without any force and deserves to be rejected. A joint reading of Ordinances 35.8, 35.11, 35.13 and 35.14 makes it clear that only two modes for appointment, that is by direct recruitment and by promotion, are envisaged by these provisions and the mode adopted by the University was not called for.

11. The result of the above discussion is that we do not find any merit in these review petitions and these are dismissed except that the first sentence of the Para beginning with the words "As regards particulars cases ." and ending with the words, "-...Respondent Dr. S.S. Chauhan", at page 13 of the judgment be considered as deleted. No costs.