
(2016) 01 DEL CK 0355

In the Delhi High Court

Case No : Review Pet. No. 216/2015 and CM No. 6743/2015 in LPA 393/2004

Jia Lal Kapur

APPELLANT

Vs

UOI and Others

RESPONDENT

Date of Decision : 27-01-2016

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 47 Rule 1, Order 47 Rule 2, Order 47 Rule 47, Section 114

Constitution of India, 1950 — Article 226

Citation : (2016) 3 ADDelhi 163 : (2016) 154 DRJ 698 : (2016) LIC 1574

Hon'ble Judges : Gita Mittal and I.S. Mehta, JJ.

Bench : Division Bench

Advocate : Arun Bhardwaj, Advocate, for the Appellant; Akshay Makhija, CGSC and Mahima Bahl, Advocates, for the Respondent

Final Decision : Dismissed

Judgement

Gita Mittal, J.—CM No. 6743/2015

For the reasons stated, the delay of 26 days in re-filing the review petition is condoned.

The application is disposed of.

Review Pet. No. 216/2015

1. By way of the present petition, the petitioner has sought review of the judgment dated 28th September, 2004 passed in the present appeal. Before setting out the essential facts, we may note the history of the litigation briefly, as is essential for the view we are taking.

2. A writ petition being W.P.(C) No. 2149/2001 was filed by the petitioner contending that office memorandums dated 29th August, 1984 and 1st May, 1987 were not brought to his notice. By these office memorandums, the government employees who had opted for receiving CPF benefits on retirement

were given an option to have their retirement benefits calculated under the pension scheme provided they refund to the government, certain benefits received at the time of settlement of CPF amount. The petitioner, therefore, claimed in the writ petition entitlement to exercise such option and shifting to the pension scheme.

3. This writ petition was rejected by a decision of the Single Judge dated 11th of February 2004. The petitioner assailed this decision against him by way of LPA No. 393/2004 which came to be rejected by the Division Bench by a judgment dated 28th September, 2004. The petitioner sought leave to appeal against these decisions by way of SLP(C) No. 1982/2005 which was dismissed in limine on the 7th of February 2005. The petitioner's Rev. Pet.(C) No. 727/2005 and Curative Petition(C) No. 62/2005 also came to be dismissed by the Supreme Court of India on 5th of April 2005 and 14th December, 2005 respectively.

4. The present petition seeking review of the judgment dated 28th September, 2004 was filed on 23rd of December 2014. It is admitted that the review petition has been filed belatedly, i.e., ten years after passing of the judgment on 28th September, 2004. Hence, by way of accompanying application being CM No. 6741/2015, the petitioner had sought condonation of delay in filing the review petition.

5. Both the review petition and the application for condonation of delay are premised on the same grounds i.e. that the review is predicated on discovery of "new facts which were not in existence earlier and to grant substantial justice to the petitioner". We may note that the application for condonation of delay came to be allowed by this court by an ex-parte and non-speaking order dated 17th April, 2015.

6. We note some essential facts hereafter. The petitioner joined services of the Government of India as an Assistant Coal Superintendent Grade-II w.e.f. 25th April, 1955 and at the time of joining service, he became a member of Contributory Provident Fund under the administrative control of the Coal Production and Development Commissioner. The petitioner was paid wages as per the Central Dearness Allowance (CDA) pay pattern. On the formation of the National Coal Development Corporation Ltd. (hereinafter referred to as "NCDC") on 1st October, 1956, services of all the employees including the petitioner stood transferred to this corporation.

7. As per the order dated 16th August, 1965 of the Government of India, the government transferred the ownership and management of the State Collieries to the NCDC w.e.f. 1st of October 1956. It was stated therein that the transferred employees in the NCDC would have the same tenure, remuneration, seniority, terms and conditions and the same rights and privileges as to pension etc., as would have been admissible to them, had the employee continued in government service.

8. On the 16th of March 1968, the petitioner joined the post of Chief Mining

Engineer in the Hindustan Zinc Ltd. (hereinafter referred to as "HZL") on terms and conditions mentioned in the letter dated 7th December, 1966 with permission to retain a lien on his permanent post in the NCDC for a period of only one year. The petitioner has placed heavy reliance on the following term and condition which were to govern his permanent absorption in the company :

"1. He will be eligible to same terms and conditions of service and benefits as are admissible to a Central Govt. officer of his status."

9. Mr. Arun Bhardwaj, learned counsel for the petitioner submits that the service rules of HZL stipulate that nothing in the rules shall apply to any government servant or any person who may be on any deputation or foreign service. We note that these very rules further stipulate that the rules shall apply to a person who has been appointed in the company on such terms and conditions as applicable to Central Government employees of his status or such employees appointed on contract basis thereafter.

10. Before us Mr. Arun Bhardwaj, learned counsel for the petitioner has heavily relied upon the letter dated 16th of March, 1968 confirming the services of the petitioner with the HZL Ltd. It is contended that this letter also confirmed that the petitioner was being employed on the same terms as a Central Government officer.

11. The respondents have contended that the petitioner was not posted on deputation with the HZL and in fact was appointed as a direct recruit by severing all his links with the Central Government and that he had accepted the service conditions of the company disentitling him to any differential benefits given by the Central Government to its employees. In this regard, the respondents have submitted that so far as Clause 1 of the letter dated 16th March, 1968 is concerned, the terms and conditions of the service and benefits, as were admissible to the petitioner at the time of his initial appointment with the HZL, were protected. There is no dispute at all that these benefits were protected when the petitioner entered service with the HZL. Once the petitioner came to be permanently appointed by the HZL, the terms and conditions of service, as applied to all other employees of the company, became applicable to the petitioner. The fact that the petitioner has fully accepted this position is evidenced from the facts noted hereafter. This position of the HZL has been accepted by the learned Single Judge in the judgment dated 11th of February, 2004 and upheld by the Division Bench of this court, review whereof has been sought by way of present petition.

12. On the 31st of December 1980, the Government of India had issued a circular conveying its approval to the revision of pay scales and other terms of employees of HZL. Consequently, the pay scales came to be revised and the proposal to shift from the Central Dearness Allowance (CDA) to Industrial Dearness Allowance (IDA) pattern came to be implemented w.e.f. 1979 upon giving effect to the 3rd Central Pay Commission. As a result, by an office order

dated 7th/8th January, 1981, the pay of the petitioner was also revised and he started receiving emoluments higher than what would be his entitlement if he was still in government service. The petitioner accepted these shifts to the IDA pattern as well as higher pay scale without any objection.

13. Further upward revision was effected to the pay scale of the petitioner by virtue of his being an HZL employee by an order dated 1st of January 1982 which was also accepted by the petitioner. This enhancement again did not apply to other government servants. Thus, till his retirement on 30th of April 1987, the petitioner has accepted the benefit of all pay revisions and higher pay, as were admissible only to employees of HZL Ltd. and not to government employees.

14. The record also shows that upon his retirement, the petitioner took all benefits admissible to him under the CPF scheme.

15. The learned Single Judge has noted the contentions of the parties in para 12 of the judgment. The above contention has been dealt with in paras 17 to 19 of the judgment.

16. It appears that on 1st May, 1987, the Government of India issued the circular OM No. 4/1/87 PIC-1 granting an option to Central Government employees to change over from the Contributory Provident Fund scheme ("CPF" hereafter) to pension scheme as part of the implementation of the recommendations of the 4th Central Pay Commission. As per this circular, such CPF beneficiaries "who were in service on 1st January, 1986 and who are still in service on the date of issue of these orders" would be deemed to be covered under the pension scheme. Even if it could have been held that the petitioner was entitled to the benefit of the option under this circular, however, the same has to be denied to him inasmuch as the petitioner was not in service on the 1st of May 1987, when this circular was issued.

Clauses 6.1 and 6.2 of this circular specifically clarified that this circular would not apply to those Central Government employees who on re-employment stood allowed to continue to CPF.

17. Before the learned Single Judge as well as in the writ appeal, the petitioner has placed reliance on the office memorandums bearing Nos. OM No. F 2(14)-EV(B)/63 dated 14.01.1964; OM No. F 16(1)-EV/68 dated 31.08.1968; and OM No. 7(5)-E(B)/72 dated 26.07.1972. We find that the learned Single Judge has, in para 9 of the judgment, also dealt with the contentions of the petitioner premised on the above as well as the circular of 1st of May 1987. The learned Single Judge has noted that in the year 1979, the petitioner had shifted to the IDA pay pattern and ceased to be governed by the CDA pay pattern. As such, inherently, the 4th Central Pay Commission recommendations would not apply to him.

18. So far as the present review petition is concerned, the main ground pressed in support of the review petition is that the fact that the office memorandum

dated 1st of May 1987 was not brought to the notice of the petitioner and its effect has not been noticed in the judgment. In support of the review, the petitioner also relies on the two judicial pronouncements which came to be pronounced after the adjudication in the petitioner's case in favour of two similarly placed government employees. The first of these is a decision dated 23rd August, 2011 passed in W.P.(C) No. 3306/2005, K.S.R. Chari v. Union of India & Ors. while the second is a decision dated 4th of April 2013 in W.P.(C) No. 11371/2006, R.K. Gupta v. Union of India & Ors. The petitioner asserts an entitlement to the relief granted to these persons by review of the judgments against him.

No rehearing on merits permissible in review

19. Mr. Uday Tiwari, learned counsel for respondent No. 2 has also adverted at some length on the scope of the review petition. It has been also contended that no re-hearing of the matter on merits of issues which was known to or available with the petitioner at the time of the original hearing is permissible. In support of this submission, Mr. Tiwari has placed reliance on the judicial pronouncement reported at , (1995) 1 SCC 170, Meera Bhanja v. Nirmala Kumari Choudhury, relevant extract is as follows :

"8. 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, CPC. 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 Tuleswar Sharma v. Aribam Pishak Sharma [, (1979) 4 SCC 389 : AIR 1979 SC 1047], speaking through Chinnappa Reddy, J., has made the following pertinent observations: (SCC p. 390, para 3)

"It is true as observed by this Court in Shivdeo Singh v. State of Punjab [, AIR 1963 SC 1909], 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 appellate power which may enable an appellate court to correct all manner of errors committed by the subordinate court."

9. 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 v. Mallikarjun Bhavanappa Tirumale* [, AIR 1960 SC 137 : (1960) 1 SCR 890] 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 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."

(Emphasis supplied)

20. Our attention has also been drawn to the following observations of the Supreme Court on this aspect in , (2008) 8 SCC 612 *State of W.B. v. Kamal Sengupta* :

"22. The term "mistake or error apparent" by its very connotation signifies an error which is evident per se from the record of the case and does not require detailed examination, scrutiny and elucidation either of the facts or the legal position. If an error is not self-evident and detection thereof requires long debate and process of reasoning, it cannot be treated as an error apparent on the face of the record for the purpose of Order 47 Rule 1 CPC or Section 22(3)(f) of the Act. To put it differently an order or decision or judgment cannot be corrected merely because it is erroneous in law or on the ground that a different view could have been taken by the court/tribunal on a point of fact or law. In any case, while exercising the power of review, the court/tribunal concerned cannot sit in appeal over its judgment/decision.

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27. In *Thungabhadra Industries Ltd. v. Govt. of A.P.* [, AIR 1964 SC 1372] it was held that a review is by no means an appeal in disguise whereof an erroneous decision can be corrected.

28. In *Parsion Devi v. Sumitri Devi* [, (1997) 8 SCC 715] it was held as under: (SCC p. 716)

xxx xxx xxx In exercise of the jurisdiction under Order 47 Rule 1 CPC it is not permissible for an erroneous decision to be "reheard and corrected". There is a

clear distinction between an erroneous decision and an error apparent on the face of the record. While the first can be corrected by the higher forum, the latter only can be corrected by exercise of the review jurisdiction. A review petition has a limited purpose and cannot be allowed to be "an appeal in disguise".

(emphasis added)

29. In *Haridas Das v. Usha Rani Banik* [, (2006) 4 SCC 78] this Court made a reference to the Explanation added to Order 47 by the Code of Civil Procedure (Amendment) Act, 1976 and held: (SCC p. 82, para 13)

"13. In order to appreciate the scope of a review, Section 114 CPC has to be read, but this section does not even adumbrate the ambit of interference expected of the court since it merely states that it "may make such order thereon as it thinks fit". The parameters are prescribed in Order 47 CPC and for the purposes of this lis, permit the defendant to press for a rehearing "on account of some mistake or error apparent on the face of the records or for any other sufficient reason". The former part of the rule deals with a situation attributable to the applicant, and the latter to a jural action which is manifestly incorrect or on which two conclusions are not possible. Neither of them postulate a rehearing of the dispute because a party had not highlighted all the aspects of the case or could perhaps have argued them more forcefully and/or cited binding precedents to the court and thereby enjoyed a favourable verdict. This is amply evident from the Explanation to Rule 1 of Order 47 which states that the fact that the decision on a question of law on which the judgment of the court is based has been reversed or modified by the subsequent decision of a superior court in any other case, shall not be a ground for the review of such judgment. Where the order in question is appealable the aggrieved party has adequate and efficacious remedy and the court should exercise the power to review its order with the greatest circumspection."

30. In *Aribam Tuleshwar Sharma v. Aribam Pishak Sharma* [, (1979) 4 SCC 389 : AIR 1979 SC 1047] this Court considered the scope of the High Courts' power to review an order passed under Article 226 of the Constitution, referred to an earlier decision in *Shivdeo Singh v. State of Punjab* [, AIR 1963 SC 1909] and observed: (*Aribam Tuleshwar* case [, (1979) 4 SCC 389 : AIR 1979 SC 1047], SCC p. 390, para 3)

"3. ... It is true as observed by this Court in *Shivdeo Singh v. State of Punjab* [, AIR 1963 SC 1909], there is nothing in Article 226 of the Constitution to preclude a 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 appellate powers which may enable an appellate court to correct all manner of errors committed by the subordinate court."

(Emphasis by us)

21. The above discussion would show that all contentions which have been pressed before us, were placed before the learned Single Judge and considered and in the detailed judgment dated 11th February, 2004. The same issues were pressed before this court when the judgment dated 28th September, 2004 was passed. The review has been sought of the decisions on the very grounds on merits which stand heard and decided. It is trite that the petitioner stand precluded from seeking review of the judgment dated 28th September, 2004 on these very grounds on merits.

Whether change in law or a subsequent judicial pronouncement permits filing of a review petition?

22. Yet another ground on which the maintainability of the present review is pressed before us. It has been submitted that the review jurisdiction has to be confined only to the error apparent on the face of the record. It is contended that merely because there is a change in law after the judgment in a litigant's case, be it statutory or by a subsequent pronouncement under review, taking a contrary or different view cannot be treated as an error apparent on the face of the record. Therefore, this would be no ground at all for review of the prior judgment.

23. In this regard, our attention is drawn to the explanation to sub-rule (2) of Rule 1 of the Order XLVII which reads thus :

"1. Application for review of judgment.-- xxx xxx xxx

Explanation : The fact that the decision on a question of law on which the judgment of the court is based has been reversed or modified by the subsequent decision of a superior court in any other case, shall not be a ground for the review of such judgment."

24. This issue has arisen for consideration in two judicial pronouncements before the Supreme Court reported at , (2014) 51 SCC 75, Subramanian Swamy v. State of T.N. and State of W.B. v. Kamal Sengupta

25. We may set out the authoritative enunciation of law in State of W.B. v. Kamal Sengupta on the issue of when a review petition would lie (para 35); whether a subsequent contrary judgment would constitute an error apparent on the face of the record (paras 19 and 20); and consideration of the explanation to sub-rule 2 of Rule 1 under Order XLVII of the CPC, extract whereof is reproduced in extenso

which is in the following terms :

"19. Before proceeding further, we consider it proper to mention that there was divergence of opinion among the High Courts on the question whether the subsequent contra judgment by the same or a superior court on a point of law can be treated as an error apparent on the face of the record for the purpose of review of an earlier judgment. In *Lachhmi Narain Balu v. Ghisa Bihari* [, AIR 1960 Punj 43] the learned Single Judge of the then Punjab High Court held that the court cannot review its judgment merely because in a subsequent judgment different view was expressed on the same subject-matter. In *Patel Naranbhai Jinabhai v. Patel Gopaldas Venidas* [, AIR 1972 Guj 229] the learned Single Judge of the Gujarat High Court considered the question whether the Court can revise its view on the question of pecuniary jurisdiction simply because the same has been rendered doubtful in the light of subsequent decision of the High Court and answered the same in the negative. However, a contrary view was expressed in *Pathrose v. Kuttan* [, AIR 1969 Ker 186]. In that case, the learned Single Judge of the Kerala High Court opined that a subsequent decision authoritatively declaring the law can be made the basis for reviewing an earlier judgment. The Law Commission took cognizance of these divergent opinions and suggested amendment of Order 47. That led to insertion of the Explanation below Rule 2 of Order 47 by the Civil Procedure Code (Amendment) Act, 1976. The same reads as under:

"Explanation.--The fact that the decision on a question of law on which the judgment of the court is based has been reversed or modified by the subsequent decision of a superior court in any other case, shall not be a ground for the review of such judgment."

20. In *Nalagarh Dehati Coop. Transport Society Ltd. v. Beli Ram* [, AIR 1981 HP 1] a Full Bench of the Himachal Pradesh High Court considered the above reproduced Explanation and held that a subsequent judgment of the Supreme Court or a larger Bench of the same Court taking a contrary view on the point covered by the judgment does not amount to a mistake or error apparent on the face of the record. In *Gyan Chandra Dwivedi v. ADJ* [, AIR 1987 All 40] the learned Single Judge of the Allahabad High Court took cognizance of the Explanation, referred to the judgment of this Court in *Aribam Tuleshwar Sharma v. Aribam Pishak Sharma* [, (1979) 4 SCC 389 : AIR 1979 SC 1047] and held: (*Gyan Chandra Dwivedi case* [, AIR 1987 All 40], AIR p. 43, paras 9-10)

"9. It will thus be seen that while power of review may be inherent in the High Court to review its own order passed in a writ petition, the same has to be exercised on well-recognised and established grounds on which judicial orders are reviewed. For example, the power may be exercised on the discovery of some new and important matter or evidence which was not within the knowledge of the parties seeking review despite due exercise of diligence when the order was made. Review can also be sought when the order discloses some error apparent on the face of record or on grounds analogous thereto. These are all

grounds which find mention in various judicial pronouncements right from the earliest time as well as in the Rules of Order 47 of the Civil Procedure Code as permissible grounds of review.

An Explanation was added to Order 47 Rule 1 by the amendment of the Civil Procedure Code by Central Act 104 of 1976. It reads:

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10. This Explanation was added on the recommendation of the Law Commission to put an end to the controversy which had arisen as regards whether a judgment could be reviewed merely on the ground that the decision on a question of law on which the same was founded has been reversed or modified by the subsequent decision of a superior court. Almost all the High Courts, save for the solitary exception of the Kerala High Court, were unanimous in their opinion that the fact that the view of law taken in a judgment has been altered by a subsequent decision of a superior court in another case could not afford a valid ground for the review of the judgment."

26. After the detailed discussion in para 35, the Supreme Court has concluded as follows :

"35. The principles which can be culled out from the abovenoted judgments are:

(i) The power of the Tribunal to review its order/decision under Section 22(3)(f) of the Act is akin/analogous to the power of a civil court under Section 114 read with Order 47 Rule 1 CPC.

(ii) The Tribunal can review its decision on either of the grounds enumerated in Order 47 Rule 1 and not otherwise.

(iii) The expression "any other sufficient reason" appearing in Order 47 Rule 1 has to be interpreted in the light of other specified grounds.

(iv) An error which is not self-evident and which can be discovered by a long process of reasoning, cannot be treated as an error apparent on the face of record justifying exercise of power under Section 22(3)(f).

(v) An erroneous order/decision cannot be corrected in the guise of exercise of power of review.

(vi) A decision/order cannot be reviewed under Section 22(3)(f) on the basis of subsequent decision/judgment of a coordinate or larger Bench of the tribunal or of a superior court.

(vii) While considering an application for review, the tribunal must confine its adjudication with reference to material which was available at the time of initial decision. The happening of some subsequent event or development cannot be taken note of for declaring the initial order/decision as vitiated by an error apparent.

(viii) Mere discovery of new or important matter or evidence is not sufficient ground for review. The party seeking review has also to show that such matter or evidence was not within its knowledge and even after the exercise of due diligence, the same could not be produced before the court/tribunal earlier."

27. On this very issue in the pronouncement in , (2014) 51 SCC 75, Subramanian Swamy v. State of T.N., the court had held thus :

"52. The issue can be examined from another angle. The Explanation to Order 47 Rule 1 of the Code of Civil Procedure, 1908 (hereinafter referred to as "CPC") provides that if the decision on a question of law on which the judgment of the court is based, is reversed or modified by the subsequent decision of a superior court in any other case, it shall not be a ground for the review of such judgment. Thus, even an erroneous decision cannot be a ground for the court to undertake review, as the first and foremost requirement of entertaining a review petition is that the order, review of which is sought, suffers from any error apparent on the face of the order and in absence of any such error, finality attached to the judgment/order cannot be disturbed. (Vide Rajender Kumar v. Rambhai [, (2007) 15 SCC 513 : (2010) 3 SCC (Cri) 584 : AIR 2003 SC 2095].)"

28. It is trite therefore, that review of an order can be sought only if there is an error apparent on the face of the record. A contrary view in a subsequent judgment is not an error apparent on the face of the record. As a result, the present petition seeking review of the judgment dated 28th September, 2004 on the ground of the subsequent pronouncements in K.S.R. Chari and R.K. Gupta is not maintainable in view of the explanation to sub-rule 2 of Rule 1 of Order XLVII of CPC.

29. Mr. Tiwari, learned counsel has submitted that in any case, there is no parity between these persons and the petitioner. Shri R.K. Gupta had joined as Assistant Coal Superintendent Grade II in the Coal Department under the Ministry of Production wherefrom he went to the office of the Coal Production and Development Commissioner. Therefrom he had proceeded to the National Coal Development Corporation (NCDC) wherefrom only he had retired as a government employee. Shri R.K. Gupta has placed reliance on the circular dated 29th June, 1981, benefit whereof was extended only to those railway employees who had joined the NCDC in 1956.

30. Shri K.S.R. Chari was employed with the railways wherefrom he moved to the NCDC and thereafter to the Ministry of Steel. He had also retired from government service alone. The circular relied upon by Shri K.S.R. Chari gave an option only to persons who had been employed with the railways to changeover to the pension scheme. Clearly the petitioner's service has no parity with either of these two persons.

31. It is contended by Mr. Arun Bhardwaj, learned counsel for the petitioner that in both these writ petitions, the circular dated 1st of May 1987 was not brought to the notice of Shri Gupta and Shri Chari and the courts were of the view that

there was an obligation on the part of the National Coal Development Corporation to have ensured that the information with regard to the change of option was provided to all employees including those like the petitioners who had been sent on deputation to other government departments. For this reason, Shri Gupta and Shri Chari were held entitled to exercise of the option for changeover to the pension scheme despite much time having been lapsed since the date of their retirement. The courts specifically rejected the respondent's argument premised on delay in seeking the relief against them. However, in the case of K.S.R. Chari, the grant of monetary relief was curtailed to pension being granted w.e.f. 1st of January 2002. Similarly, R.K. Gupta was granted pension for the last three years only keeping in view the delay which had ensued.

32. It has been pointed out by Mr. Uday N. Tiwari, learned counsel for respondent No. 2 that so far as Shri K.S.R. Chari was concerned, he had remained an employee of the railways. Shri K.S.R. Chari was employed in the coal department of the railways and was subsequently employed with the NCDC and remained a government employee. Similarly, Shri R.K. Gupta was an employee of Coal India and was in government service till his retirement. Neither of these two persons had moved from government employment to a corporation like the petitioner who had joined service with the HZL. There is nothing on record also which would show that either Shri K.S.R. Chari or Shri R.K. Gupta had at any time received a salary other than what was admissible to government employees unlike the petitioner who had drawn a higher pay scale on account of his employment with the HZL Ltd. As noted above, the circular dated 1st May, 1987 would clearly apply only to government employees and therefore, the case of the petitioner cannot be held to be on parity with either that of K.S.R. Chari or R.K. Gupta. The review of the judgment dated 28th September, 2004 sought by the petitioner premised on the relief granted to such persons is therefore, devoid of any legal merit.

33. Additionally, so far as R.K. Gupta's case is concerned, the order therein has been assailed by the government and a letters patent appeal bearing LPA No. 640/2013 is still pending in this court.

The present review petition premised on the subsequent judgments in K.S.R. Chari and R.K. Gupta is not only not maintainable but also devoid of legal merit.

Whether review petition can be filed after dismissal of special leave petition?

34. Mr. Tiwari, learned counsel for respondent No. 2 has strongly objected to the maintainability of the present review petition contending that the petitioner's submission that the review petition would be maintainable even after the dismissal of the SLP in limine is wholly erroneous. It is contended that the review would have been maintainable if it had been filed either before or during the pendency of the SLP. In support of this submission, reliance is placed on the pronouncement of the Supreme Court reported at , (2001) 5 SCC 37, K. Rajamouli v. A.V.K.N. Swamy and , (2010) 8 SCC 383, Meghmala v. G.

Narasimha Sengupta.

35. In K. Rajamouli, the Supreme Court has held as follows :

"4. Following the decision in the case of Kunhayammed [, (2000) 6 SCC 359] we are of the view that the dismissal of the special leave petition against the main judgment of the High Court would not constitute res judicata when a special leave petition is filed against the order passed in the review petition provided the review petition was filed prior to filing of special leave petition against the main judgment of the High Court. The position would be different where after dismissal of the special leave petition against the main judgment a party files a review petition after a long delay on the ground that the party was prosecuting remedy by way of special leave petition. In such a situation the filing of review would be an abuse of the process of the law. We are in agreement with the view taken in Abbai Maligai Partnership Firm [, (1998) 7 SCC 386] that if the High Court allows the review petition filed after the special leave petition was dismissed after condoning the delay, it would be treated as an affront to the order of the Supreme Court. But this is not the case here. In the present case, the review petition was filed well within time and since the review petition was not being decided by the High Court, the appellant filed the special leave petition against the main judgment of the High Court. We, therefore, overrule the preliminary objection of the counsel for the respondent and hold that this appeal arising out of special leave petition is maintainable."

(Emphasis supplied)

36. On the same issue, in Meghmala, our attention is drawn to the following binding principles laid down by the Supreme Court :

"23. In K. Rajamouli v. A.V.K.N. Swamy [, (2001) 5 SCC 37 : AIR 2001 SC 2316] this Court considered the ratio of the judgment in Kunhayammed [, (2000) 6 SCC 359 : AIR 2000 SC 2587] and Abbai Maligai Partnership Firm [, (1998) 7 SCC 386 : AIR 1999 SC 1486] and held that if a review application has been filed before the High Court prior to filing the special leave petition before this Court and review petition is decided/rejected, special leave petition against that order of review would be maintainable. In case the review application has been filed subsequent to dismissal of the special leave petition it would amount to abuse of process of the court and shall be governed by the ratio of the judgment in Abbai Maligai Partnership Firm [, (1998) 7 SCC 386 : AIR 1999 SC 1486]. The said judgment has been approved and followed by this Court in Green View Tea & Industries v. Collector [, (2004) 4 SCC 122 : AIR 2004 SC 1738].

xxx xxx xxx

25. Thus, the law on the issue stands crystallised to the effect that in case a litigant files a review petition before filing the special leave petition before this Court and it remains pending till the special leave petition stands dismissed, the review petition deserves to be considered. In case it is filed subsequent to

dismissal of the special leave petition, the process of filing review application amounts to abuse of process of the court."

(Emphasis by us)

37. It is noteworthy that even the pronouncement in K.S.R. Chari came on 23rd August, 2011 which is relied upon as the main plank in support of the review. Therefore, the present review petition has been filed after more than four years of the judgment in K.S.R. Chari.

There is no dispute at all in the present case that the special leave petition was dismissed in limine on 7th of February 2005. This review petition filed in 2015 i.e. more than 10 years after the dismissal of the SLP, is completely misconceived. In view of the law declared by the Supreme Court, it is clearly an abuse of the process of the court.

38. For the foregoing reasons, the review petition is dismissed with costs. Even though, heavy costs are warranted for the abuse of process, inasmuch as the petitioner is an aged retired employee without any pension even, we are imposing token costs of Rs. 1,000/- only to be paid to the Delhi High Court Legal Services Committee.