

(2001) 08 RAJ CK 0034

In the Rajasthan High Court

Case No : Civil Special Appeal (Writ) No. 120 of 1999

K.C. Bajaj

APPELLANT

Vs

State of Rajasthan and Another

RESPONDENT

Date of Decision : 09-08-2001

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 47 Rule 1, 114
Constitution of India, 1950 — Article 226, 227
Criminal Procedure Code, 1973 (CrPC) — Section 345 , 346
Penal Code, 1860 (IPC) — Section 193
Rajasthan Civil Services (Service Matters Appellate Tribunal) Act, 1976 — Section 22(3), 5, 6, 6(1)
Rajasthan Civil Services (Service Matters Appellate Tribunal) Rules, 1976 — Rule 28
Rajasthan Service of Engineers (Public Health Branch) Rules, 1968 — Rule 25(11A)

Citation : (2001) 3 RLW 1794 : (2001) 3 WLC 556

Hon'ble Judges : Ar. Lakshmanan, C.J;K.S. Rathore, J

Bench : Division Bench

Advocate : Ratan Lal Jain, for the Appellant; Manish Bhandari, for the Respondent

Final Decision : Allowed

Judgement

Lakshmanan, C.J.

(1). This appeal is directed against the judgment/order dated 11.11.98 passed in S.B. Civil Writ Petition No. 5540/98 filed under Articles 226 and 227 of the Constitution of India. As the order under appeal is a short one. We reproduce the translated version of the said order as under:-

1. The learned counsel for the petitioner white challenging the order of R.C.S.A.T. Jaipur dated 8.6.98 has argued that seniority list cannot be issued in accordance with the judgment dated 3.10.96 of Hon"ble Supreme Court in Civil Appeal No. 14985/95 read with SLP (C) No. 21784/96 and the order passed by Tribunal is in conformity with the order passed by the Apex Court.

I considered the arguments of the learned counsel in the light of order dated 8.6.98. Section 5 of the R.C.S.A.T. Act, 1976 (which will be referred to as Tribunal) is as follows:-

"5 (1) subject to any rules that may be made in this behalf, the tribunal shall follow such procedure as it may think."

A perusal of the section shows that tribunal has powers to prescribe procedure deemed fit by it for disposal of appeal. In rule 28 of the rules power of review of Ex-parte orders has been given but if rule 28 is read with Section 5 the jurisdiction of the tribunal gets expanded. u/s 6 powers have been given which are available to civil court for disposal of civil suits. It includes powers under Order 47. In such a situation the tribunal has powers to review its earlier orders. Section 6(1) is as given below:-

"6(1) The Tribunal shall, for the purpose of the disposal of the appeal under this Act, have the powers of a Civil Court while trying a suit under the Code of Civil Procedure, 1908."

Although powers u/s 6 have been limited but if it is read with Section 5 it can be inferred that the tribunal is free to adopt such procedure as deemed fit. I am of the definite view that the tribunal has not properly applied the Hon'ble Supreme Court judgment and this can be brought to notice of tribunal and all those arguments put forth before be in the writ petition can be included in the review petition to be filed before the tribunal.

3. In all those cases, where ex-parte order/judgment is passed by the Hon'ble Tribunal or where any error is apparent on the face of record, in the interest of justice, the tribunal can review its order.

4. This writ petition is disposed of with these directions."

(2). The correctness of the above judgment is questioned in this appeal.

(3). Before proceeding to deal with the case on merits it is beneficial to study the some relevant facts. The appellant was selected by the Rajasthan Public Service Commission for the post of Junior Engineer in the year 1967 and was appointed on the post of Junior Engineer on 5.8.67. The Chief Engineer, Public Health Engineering Department issued a provisional Seniority List of Engineering Subordinate (Mechanical) on 16.5.70 and the appellant was placed in the seniority list at Serial No. 27 and his qualification was shown as B.E. Mechanical.

(4). It is stated that the appellant was confirmed by the Chief Engineer w.e.f. 1.9.1969 and was appointed as Assistant Engineer on ad hoc basis on 18.9.79 and was regularly selected for the post of Assistant Engineer (Mechanical) by the Departmental Promotion Committee and the order to this effect was issued on 15.2.82 by the Deputy Secretary to Government, Public Health Engineering Department.

(5). The appellant was also selected on the basis of seniority cum merit and his

order of allotment is of 1979. According to the appellant he became eligible to the post of Executive Engineer in the year 1984 on the basis of his year of allotment i.e. 1979 allotted in the cadre of Assistant Engineer in view of Rule 25(11- A) of the Rajasthan Services of Engineers (Public Health Branch) Rules, 1968.

(6). In view of the Departmental Promotion Committee having not been convened, the respondent-State appointed ad hoc temporary basis several Assistant Engineers on the post of Executive Engineer after 1.4.87 but the appellant was not appointed to the post of Executive Engineer. Aggrieved by this, he filed an appeal No. 67/94 before the Rajasthan Civil Services Appellate Tribunal, Rajasthan on 28.3.1994. During the pendency of the appeal the Tribunal in Appeal No. 508/1987 vide its order dated 26.3.1997 directed the respondent-State to prepare and finally publish the inter-se seniority list in the Public Health Engineering Department in the light of the directions given by the Apex Court in the judgment i.e. Vijay Singh Devra etc. v. State (1). The Tribunal keeping in view its earlier judgment allowed the appeal of the appellant partially vide its order dated 8.6.98 with the directions to the respondent-State that the case of the appellant may also be considered on the basis of the fresh seniority list to be prepared by the State and in case the appellant is found suitable then he may be given all consequential benefits from the date the same were allowed to his juniors.

(7). The State aggrieved against the said order preferred the writ petition No. 5804/98 before this court which was disposed of by the learned Single Judge with the directions that the tribunal can review its order since according to the learned Single Judge, the Tribunal has not properly applied the Hon''ble Supreme Court judgment which can also be brought to the notice of the Tribunal and all those arguments put forth before the learned Single Judge in the writ petition can also be included in the review petition to be filed before the Tribunal.

(8). Aggrieved by the said decision the present appeal has been filed by the respondent in the writ petition.

(9). We have perused the entire pleadings and the order impugned in this writ petition. It is the grievance of the learned counsel for the appellant herein, the respondent in the writ petition that the learned single Judge has decided the law point behind the back of the appellant at the admission stage and without even issuing notice the learned Judge decided a law point that u/s 5 and 6 of the Rajasthan Civil Services (Service Matters Appellate Tribunal) Act, 1976, the Tribunal is empowered to review its earlier judgment/order. The learned Judge was also of the opinion that the Tribunal has not followed correctly the judgment of the Supreme Court in Vijay Singh Devra v. State decided on 3.10.1996 (supra).

(10). Pursuant to the directions issued by the learned single Judge the State filed a review petition No. 7/98 and the same is pending but stay is granted and notices of show cause were issued. Now the question which arises for

consideration in this appeal is as to whether the Rajasthan Civil Services Appellate Tribunal which is quasi judicial authority has any power to review its earlier judgment.

(11). The above Act was enacted in the year 1976 and received the assent of the President on the 7th May, 1976, the object of the Act was to provide for the constitution of Appellate Tribunals for service matters and mailers incidental thereto. Further the object is that in view of the need for satisfactory and early final decision and to stop a flood of litigation in the civil courts, the State Government has decided to constitute administrative Tribunals to decide appeals from the order of Competent Authority and to bar the jurisdiction of the Civil Court in service matters. These Tribunals would provide an independent forum for decision in service matter and would be more economical both to the Government servant and the Government. It will also lessen the burden of judicial courts and enable them to concentrate on other judicial matters.

(12). Section 5 of the Act deals with the procedure to be followed by the Tribunal. This section reads as under:-

"5. Procedure of Tribunal-(1) subject to any rules that may be made in this behalf, the Tribunal shall follow such procedure as it may think fit.

2. At least two of the members of the Tribunal will hear and decide the matters before the Tribunal.

3. The decision of the Tribunal shall be the decision of the majority of the members present and hearing the matter. Where such members are equally divided in their opinion, the matter would be referred to the another member and decided by the opinion of the majority of the members including such other members who heard it,"

(13). Section 6 deals with the powers of the tribunal which runs as follows:-

"6. Powers of Tribunal. (1) The tribunal shall, for the purpose of me disposal of the appeal under this Act, have the powers of a Civil Court while trying a suit under the Code of Civil Procedure, 1908 (central Act 5 of 1908) in respect of the following matters, namely:-

(a) summoning and enforcing the attendance of any person;

(b) requiring the discovery and production of any documents: and

(c) issuing commission for the examination of witness of documents.

2. The Tribunal may examine on oath any person supposed to be acquainted with the matter under probe or any fact relevant thereto and may record his evidence.

3. The proceedings before the Tribunal shall be deemed to be a judicial proceeding within the meaning of Section 193 of Indian Penal Code, 1860.

4. The Tribunal shall be deemed to be a Civil Court for the purpose of Section

345 and 346 of the Code of Criminal Procedure, 1973 (Central Act 2 of 1974) and the Contempt of Courts Act, 1971 (Central Act 70 of 1971).

(14). In this context we may now usefully refer to the rules and in particular Rule 28 which gives the jurisdiction to the Tribunal to review of ex parte orders passed by it on sufficient grounds and that without even hearing the appellant may rescind its ex parte order. It is thus seen from Section 6 of the Act that the Tribunals have the power of Civil Court only in respect of Clauses (a) to (c) of Sub-section (1) of Section 6 as aforesaid and not otherwise.

(15). As [he Tribunal is a quasi judicial authority and not a court therefore unless a provision is made in the statute itself the tribunal in our opinion has no inherent power to review its earlier judgment.

(16). Mr. Ratan Lal Jain in support of his contention cited certain rulings of this Court and also of the Supreme Court.

(17). In *Nathulal v. Collector, Sawai Madhopur* (2) a Division Bench of this Court held as under:-

"It is a well-settled principle of law that when a matter is finally disposed of by a judicial or quasi judicial authority, that authority in the absence of any statutory provision becomes functus officio and is left with no authority to rehear and give a fresh decision unless such authority is given to it by law. And further apart from correcting clerical mistakes or errors arising from an accidental slip or omission there is no inherent power vested in the appellate authority exercising its appellate jurisdiction u/s 12 to review a final decision given on merits inter parties."

(18). In *Jaikishan v. State of Rajasthan* (3), the Bench held that there can be no review of final orders passed in quasi judicial proceedings unless there is specific provision to that effect in the law. The learned Judges have followed and affirmed the view taken by another Division Bench of this Court reported in *Nathulal Vs. Collector, Sawai, Jaipur*,

(19). In *Grindlays Bank Ltd. v. The Central Government Industrial Tribunal and Ors.* (4), the Apex Court held as under:-

"That where a party is prevented from appearing at the hearing due to a sufficient cause, and is faced with an ex parte award, it is as if the party is visited with an award without a notice of the proceedings. An award without notice to a party is nothing but a nullity. In such circumstances, the Tribunal has not only the power but also the duty to set aside the ex parte award and to direct the matter to be heard afresh. The Supreme Court also held that it is a well known rule of statutory construction that a Tribunal or body should be considered to be endowed with such ancillary or incidental powers as are necessary to discharge its functions effectively for the purpose of doing justice between the parties."

(20). We have also noticed a provision in the Rajasthan Civil Services Matter Appellate Tribunal Act 1976 namely Section 5 which authorise the tribunal to follow such procedures as it may think fit. While considering identical provision in the Industrial Disputes Act and considering the words "shall follow such procedure as the Arbitrator or other authority may think fit", the Supreme Court in 1981 SC 610 (supra) held that they are all the widest amplitude and confer ample power upon the Tribunal and other authorities to devise such procedure as the justice of the case demands. It is also useful to extract a portion of Paragraph 13 which deals with the expression "review" which is used in two distinct senses namely: (1) a procedural review which is either inherent or implied in a court or tribunal to set aside a palpably erroneous order passed under a misapprehension by it, and (2) a review on merits when the error sought to be corrected is one of law and is apparent on the face of the record. It is in the latter sense that the Court in *Narshi Thakershi*'s case held that no review lies on merits unless a statute specifically provides for it, obviously when a review is sought due to a procedural defect, the inadvertent error committed by the Tribunal must be corrected *ex debito justitiae* to prevent the abuse of the its process, and such power inheres in every court or Tribunal."

(21). In *Meera Bhanja v. Nirmala Kumari Choudhary* (5), the Apex Court held as under:-

"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, C.P.C. 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 *Babboo alias Kalyandas and Others Vs. State of Madhya Pradesh*, speaking through Chinnappa Reddy, J., has made the following pertinent observations:

"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 the 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."

(22). In the case *Ajit Kumar Rath v. State of Orissa* (6), the Supreme Court

considering the scope of Order 47 Rule 1 of C.P.C. has observed as follows:-

"The provisions of Section 22(3) (f) indicate that the power of review available to the Tribunal is the same as has been given to a court u/s 114 read with Order 47, C.P.C. The power is not absolute and is hedged in by the restrictions indicated in Order 47. The power can be exercised on the application of a person on the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the order was made. The power can also be exercised on account of some mistake or error apparent on the face of the record or for any other sufficient reason. A review cannot be claimed or asked for merely for a fresh hearing or arguments or correction of erroneous view taken earlier, that is to say, the power of review can be exercised only for correction of a patent error of law or fact which stares in the face without any elaborate argument being needed for establishing it. It may be pointed out that expression ""any other sufficient reason" used in Order 47 Rule 1 means a reason sufficiently analogous to those specified in the rule. Any other attempt, except an attempt, to correct an apparent error or an attempt not based on any ground set out in Order 47, would amount to an abuse of the liberty given to the Tribunal under the act to review its judgment.

(23). In *Kuntesh Gupta v. Management of Hindu Kanya Mahavidyalaya Sitapur* (7), the Apex Court held as under:-

"It is now well established that a quasi judicial authority cannot review its own order, unless the power of review is expressly conferred on it by the statute under which it derives its jurisdiction. The Vice- Chancellor in considering the question of approval of an order of dismissal of the Principal acts as a quasi judicial authority. The provisions of the U.P. State Universities Act, 1973 or of the Statutes of the University do not confer any power of review on the Vice-Chancellor. In the circumstances, it must be held that the Vice-Chancellor acted wholly without jurisdiction in reviewing the order and the order is a nullity.

Further, it is well established that an alternative remedy is not an absolute bar to the maintainability of a writ petition, when an authority has acted wholly without jurisdiction, the High Court should not refuse to exercise its jurisdiction under Article 226 of the Constitution on the ground of existence of an alternative remedy. In the instant case, the Vice Chancellor had no power of review and the exercise of such a power was absolutely without jurisdiction. Indeed, the order passed by the Vice-Chancellor on review was a nullity: such an order could be challenged before the High Court by a petition under Article 226 of the Constitution and the High Court was not justified in dismissing the writ petition on the ground that an alternative remedy was available to the appellant u/s 68 of the U.P. State Universities Act. Decision of Allahabad High Court Revised."

(24). In *Patel Narshi Thakershi v. Pradyumansinghji* (9), the Apex Court has held as under:-

"It must be remembered that Mr. Mankodi was functioning as the delegate of the State Government. The order passed by Mr. Mankodi, in law amounted to a review of the order made by Saurashtra Government. It is well settled that the power to review is not an inherent power. It must be conferred by law either specifically or by necessary implication. No provision in the Act was brought to our notice from which it would be gathered that the government had power to review its own order. If the government had no power to review its own order, it is obvious that its delegate could not have reviewed its order. The question whether the Government's order is correct or valid in law does not arise for consideration in these proceedings so long as that order is not set aside or declared void by a competent authority. Hence, the same cannot be ignored. The Subordinate Tribunals have to carry out that order. For this reason alone the order Mr. Mankodi was liable to be set aside."

(25). In Harbhajan Singh v. Karam Singh and Ors. (9), the Apex Court has held as under:-

"There is no provision in the East Punjab Holdings (Constitution and Prevention of Fragmentation) Act granting express power of review to the State Government with regard to an order made u/s 42 of the Act. In the absence of any such express power, the Director, Consolidation of Holdings, cannot review his previous order of dismissing the application of the petitioner u/s 42 of the Act. Hence, the subsequent review order of the Director is ultra vires and without jurisdiction. The High Court is right in quashing that order by the grant of a writ under Article 226 of the Constitution."

(26). The Apex Court in Patel Chunibhai Dajibha etc. v. Narayanrao Khanderao Jambekar and Ors. (10), held as under:-

"There orders passed by the Collector in the exercise of its revisional powers were quasi judicial, and were final. The Act does not empower the Collector to review an order passed by him u/s 76A. In the absence of any power of review, the Collector could not subsequently reconsider his previous decisions and hold that there were grounds for annulling or reversing the Mahalkari's order".

(27). We have given our thoughtful consideration to the rival submission made by both the parties and have carefully analysed the judgments cited before us. In our opinion, the Tribunal certainly does not have any plenary jurisdiction and therefore it cannot exercise the power of review in absence of statutory provision for the same, nor can it equate itself to the writ court in this regard. Similar view was also taken by Hon"ble Dr. Justice B.S. Chouhan in S.B. Civil Writ Petition No. 2529 of 1999 dated 10th April 2000 (11).

(28). Unfortunately, none of the above judgments have been brought to the notice of Hon"ble Single Judge who disposed of the writ petition by order dated 11.11.1998.

(29). For the foregoing reasons we hold that the Tribunal which is not a court and

is quasi judicial authority has no inherent power to review its earlier judgment except to review ex parte order is exercise of its jurisdiction under Rule 28 of the Rules.

(30). Accordingly, the appeal is allowed. The order of the learned single Judge is set aside. The matter is remanded back to the concerned Hon"ble Judge to dispose of the same on merits after affording an opportunity of hearing to both the parties.

(31). The review petition filed before the Tribunal has become infructuous in view of this Order. The State Government is free to withdraw the same. No costs.