
(2011) 02 AHC CK 0237
In the Allahabad High Court
Case No : Review Petition No. 22 of 2006

Krishna Devi

APPELLANT

Vs

State Bank of India and Others

RESPONDENT

Date of Decision : 03-02-2011

Acts Referred:

Administrative Tribunals Act, 1985 — Section 22(3)
Civil Procedure Code, 1908 (CPC) — Order 47 Rule 1, 114
Constitution of India, 1950 — Article 226
Penal Code, 1860 (IPC) — Section 427, 506(2)

Citation : (2011) 02 AHC CK 0237

Hon'ble Judges : Shabihul Hasnain, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Shabihul Hasnain, J.—Heard Ms. Madhurima Bhargava for the Petitioners and Sri D.P. Dwivedi for the Respondents.

2. This is a review petition against the judgment and order dated 31.8.2005, passed by His Lordship, Hon''ble Rakesh Sharma, J. in Writ Petition No. 7867 (SS) of 1987, in re: Smt. Krishna Devi and Ors. v. State Bank of India and Ors. The writ petition was dismissed.

3. This review petition was listed before His Lordship on 24.1.2006. Notices were accepted by Sri D.P. Dwivedi on behalf of opposite parties No. 1 to 3. The delay in filing the review petition was also condoned by His Lordship. This review petition has come before me, due to retirement of Hon''ble Rakesh Sharma, J.

4. Since the delay has been condoned and notices have been issued, I proceed to hear the matter on merits.

5. The first and the foremost objection raised by Sri D.P. Dwivedi is that the review petition in the present format, by the Petitioners is not maintainable. He says that there is no error apparent on the face of the record.

6. Review has been defined in Section 114 of Cr.P.C., which reads as under:

114. Review-Subject as aforesaid, any person considering himself aggrieved-(a) by a decree or order from which an appeal is allowed by this Code, but from which no appeal is allowed, by this Code, or (b) by a decree or order from which no appeal is allowed by this Code, or (c) by a decision on a reference from a Court of Small Causes, may apply for a review of judgment to the Court which passed the decree or made the order, and the Court may make such order thereon as it thinks fit.

7. Order XLVII Rule 1 CPC further lays down:

1. Application for review of judgment. -(1) Any person considering himself aggrieved -

(a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred,

(b) by a decree or order from which no appeal is allowed, or

(c) by a decision on a reference from a Court of Small Causes, and who, from 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 decree was passed or order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgment to the Court which passed the decree or made the order.

8. As such, Sri D.P. Dwivedi says that the review petition fails the test of the aforesaid provisions. Hence, the review petition may be dismissed at the very outset.

9. Ms. Madhurima Bhargava has contested this contention and has argued that the Hon"ble Supreme Court has interpreted the scope of these provisions in different decisions and the legal position as it stands today is, that this Court sitting under Article 226 is fully capable and authorized to look into the matter.

10. The Hon"ble Supreme Court has also interpreted the meaning of "error apparent on record". There are several judgments which have been cited by both the sides.

11. Learned Counsel for the Petitioners has referred to a judgment of the Hon"ble Supreme Court in the case of Rajender Singh Vs. Lt. Governor, Andaman and Nicobar Islands and Others, Their Lordships in para-15 laid down as under:

15. We are unable to countenance the argument advanced by learned Additional Solicitor General appearing for the Respondents. A careful perusal of the impugned judgment does not deal with and decide many important issues as could be seen from the grounds of review and as raised in the grounds of SLP /

appeal.

The High Court, in our opinion, is not justified in ignoring the materials on record which on proper consideration may justify the claim of the Appellant. Learned Counsel for the Appellant has also explained to this Court as to why the Appellant could not place before the Division Bench some of these documents which were not in possession of the Appellant at the time of hearing of the case. The High Court, in our opinion, is not correct in overlooking the documents relied on by the Appellant and the Respondents. In our opinion, review jurisdiction is available in the present case since the impugned judgment is a clear case of an error apparent on the face of the record and non-consideration of relevant documents. The Appellant, in our opinion, has got a strong case in his favour and if the claim of the Appellant in this appeal is not countenanced, the Appellant will suffer immeasurable loss and injury. Law is well settled that the power of judicial review of its own order by the High Court inheres in every court of plenary jurisdiction to prevent miscarriage of justice

12. Their Lordships further observed in para-16, which reads as under:

The power in our opinion, extends to correct all errors to prevent miscarriage of justice. The courts should not hesitate to review their own earlier order when there exists an error on the face of the record and the interest of justice so demands in appropriate cases. The grievance of the Appellant is that though several vital issues were raised and documents placed, the High Court has not considered the same in its review jurisdiction. In our opinion, the High Court's order in the revision petition is not correct which really necessitates our interference

13. Further reliance has been placed on following judgments:

1. M.M. Thomas Vs. State of Kerala and Another,
2. Board of Control for Cricket, India and Another Vs. Netaji Cricket Club and Others,
- 3 Food Corporation of India and Another Vs. SEIL Ltd. and Others,

14. On the other hand counsel for the opposite party Sri D.P. Dwivedi has submitted that power of review is controlled by the provisions given in Civil Procedure u/s 114 read with Order 47 Rule 1. He has placed reliance on the case of The State of West Bengal and Others Vs. Kamal Sengupta and Another, (2008) 8 SCC 612). This was a case where the powers of Administrative Tribunal were considered. In paragraph 35 of the said judgment the Hon"ble Court has pronounced as follows:

Power of an Administrative Tribunal to review its decision u/s 22(3)(f) of the Administrative Tribunals Act, 1985, can be summarized in the following points:

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

1 Code of Civil Procedure

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 u/s 22(3)(f).

v. An erroneous order / decision can not be corrected in the guise of exercise of power of review.

vi. A decision / order can not be reviewed u/s 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.

15. It is abundantly clear that this judgment relates to the power of Administrative Tribunal and not that of High Court. High Court sitting under Article 226 of the Constitution of India. Beyond the powers of review by the High Court will, therefore, be governed by the case laws cited by the Petitioners counsel as already mentioned above. Another case law cited by Sri D.P. Dwivedi is (2009) 10 SCC 464 in the matter of S. Bhagirathi Ammal v. Palani Roman Catholic Mission (2009) 10 SCC 464. On reading of this judgment it appears that the powers of High Court has been left intact. Only the Guidelines have been enumerated in the following manner. In paragraph 11 their Lordships have stated as follows:

A reading of the above provision makes it clear that review is permissible:

(a) from the discovery of new and important matter or evidence which, after the exercise of due diligence could not be produced by the party at the time when the decree was passed.

(b) on account of some mistake

(c) where error is apparent on the face of the record or is a palpable wrong

(d) any other sufficient reason.

If any of the conditions satisfy, the party may apply for a review of the judgment or order of the court which passed the decree or order. The provision also makes it clear that an application for review would be maintainable not only upon discovery of a new and important piece of evidence or when there exists an error apparent on the face of the record but also if the same is necessitated on account of some mistake or for any other sufficient reason."

16. And in paragraph 12 it has been further laid down as follows:

An error contemplated under the Rule must be such which is apparent on the face of the record and not an error which has to be fished out and searched. In other words, it must be an error of inadvertence. It should be something more than a mere error and it must be one which must be manifest on the face of the record. When does an error cease to be mere error and becomes an error apparent on the face of the record depends upon the materials placed before the court. If the error is so apparent that without further investigation or inquiry, only one conclusion can be drawn in favour of the applicant, in such circumstances, the review will lie. Under the guise of review, the parties are not entitled to rehearing of the same issue but the issue can be decided just by a perusal of the records and if it is manifest can be set right by reviewing the order. With this background, let us analyse the impugned judgment of the High Court and find out whether it satisfies any of the tests formulated above.

17. The ratio of the judgment again strengthens the case of the Petitioner. It has been laid down in the case referred above that review will be permissible if there is a mistake or an error on the face of the record. After considering the arguments and the case laws the court very safely comes to the conclusion that ultimately it is the interest of justice which will prevail as a guiding factor for review of any judgment or final order passed by the High Court. The court comes to the conclusion with conviction that the review petition would be maintainable under the laws declared by the Hon. Supreme Court as well as the factual matrix and the arguments raised by the Petitioner counsel.

18. While considering the review on merits of the case it will be necessary to narrate the facts in brief.

19. The Petitioner had applied in pursuance of an advertisement in the year 1979 for the post of Cashier-cum-clerk in the establishment of opposite party No. 1 the State Bank of India. It took a long time for the Bank to declare the result. Meanwhile, the Petitioner being desperate for a job was able to obtain an employment as "Chief Security Officer" in the establishment of "Sindh Resettlement Corporation" Adipur, Kuchh, Gujarat. The Petitioner joined in the middle of 1980. It may be worthwhile to mention that the Petitioner belongs to Lucknow. While working as Security Officer with "Sindh Re-settlement Corporation, Adipur, Kuchh, Gujarat he was required by the management to take steps for removal of unauthorized encroachments who were on corporation land

and in response thereto as a part of his duty he ordered his subordinates to remove the encroachment. The orders were accordingly carried out much to the displeasure of the effected local people.

20. Aggrieved by the action of the corporation one Keshar Hepi Manka lodged a FIR with the Police Station Gandhi Dham against four employees of the corporation who had carried on the operation. The Petitioner was never named in the FIR. However, as a measure of precaution the corporation through its legal advisors moved an application in the Sessions Court, Bhuj in pursuance of FIR No. 154/80 lodged with the police on 12.8.1980 for anticipatory bail for the Petitioner which the court allowed. The Petitioner was never arrested because he was not named in the FIR and further he had obtained anticipatory bail. It is relevant to point out here that the FIR on performance of official duty and his action was in performance of his official capacity and nothing personal. There was never any doubt in the mind of the Petitioner that there was any individual or private responsibility of the Petitioner to find out about the case or to do anything about it. The corporation had taken the whole responsibility upon it. The Petitioner left the State of Gujarat on 25.9.1980. No action was taken by the police in connection with the aforesaid FIR before he left the State. There was also no occasion for any action having been taken in the sessions court because the offence u/s 427 and 506(2) IPC lay within the jurisdiction of lower courts.

21. When the Petitioner got selected with the State Bank he was required to fill up a form. The said form had a column for the incumbent to declare that whether he was ever arrested and whether any criminal case was pending against him. The Petitioner did not mention anything against the said column as he did not think it necessary to give details of a matter in which he has was not ever questioned, detained, arrested or proceeded against. Later, only when the charge-sheet was given to the Petitioner he became aware of this fact. This is one of the main charges on which the services of the Petitioner have been dismissed.

22. Apart from this charge there were two other charges one of embezzling Rs. 14.40 paise and the other about misbehaviour with the customer of the Bank. The inquiry officer has held charge No. 1 and 3 proved against the Petitioner while he has exonerated him of the second charge. However, the disciplinary authority disagreeing with the Enquiry Officer found all the three charges proved and passed the order of dismissal. The contention of the Petitioner is that the main charge against the Petitioner was of concealment of material information from the Bank. Specifically speaking the Petitioner has been charged with concealing the fact that criminal proceedings were pending against the Petitioner at the time of his joining in the State Bank. It is abundantly clear that a specific finding whether any criminal proceeding was pending against the Petitioner on the date of his joining or not shall be of greatest importance for deciding the merits of dismissal of the Petitioner from services.

23. The review-applicant has filed this application against the judgment of Hon.

Single Judge arguing that an erroneous finding by the Hon''ble Single Judge on this point led to the dismissal of the writ petition against the dismissal of service. On charge No. 2 the Petitioner has two grievances, one that the charge was never substantially proved and further opportunity to place material witness was denied which also led to the dismissal of the writ petition. Thirdly, with regard to misbehaviour with the customer of the Bank the Hon''ble Single Judge failed to appreciate the fact that the charge No. 3 was subsequently leveled against the Petitioner after seven months from the date of initial charge-sheet. Hon. Single Judge also failed to appreciate the letter written by the said customer to the Bank stating clearly that the Petitioner had never misbehaved with the said customer. These documents were on record and the oversight by the learned Single Judge led to the dismissal of the writ petition. The points for consideration before this Court can be enumerated as follows:

(a) Whether the finding returned by the Hon''ble Single Judge to the effect that the Petitioner was named in the FIR and he was arrested was an error apparent on the face of the record?

(b) Whether the Petitioner committed misconduct of concealment of material facts from the employer at the time of joining as held by the Single Judge resulting in injustice to the Petitioner?

(c) Whether review of this finding can alter the judgment in favour of the Petitioner?

(d) Whether the finding of the Hon''ble Single Judge that full opportunity was given to the Petitioner while inquiring charge No. 2 materially changed the judgment ?

(e) Whether review of this finding can exonerate the Petitioner of charge No. 2?

(f) Whether taking into account the letter of the customer written to the Bank will alter the outcome of charge No. 3?

(g) Whether the review of the finding that Petitioner had never misbehaved with the customer of the Bank will result in materially changing the punishment?

24. The Petitioner has painstakingly demonstrated that the findings by the Hon''ble Single Judge on all the three charges mentioned in the charge-sheet were erroneous and based on cursory reading of the case.

25. In the present case it is an admitted position that the Petitioner was not named in the FIR which was lodged on 12.8.1980. He was performing an official duty and there was no private dispute or enmity between him and the informant. The Petitioner belongs to Lucknow and his place of posting in Gujarat was the outcome of necessity of employment. There was no private property dispute. This is the reason why he was not initially named in the FIR. The Petitioner was granted anticipatory bail on 18.8.1980. The sureties were provided by the corporation itself and the departmental colleagues stood surety for the Petitioner.

Question of his arrest does not arise because the Petitioner was granted anticipatory bail. He left Gujarat on 25.9.1990. It is but natural that the proceedings, if any pending in the criminal case were not in the knowledge of the Petitioner. The whole edifice on which the charges were leveled falls down. The Hon''ble Court by holding that the Petitioner was named in the FIR committed a mistake which was an error apparent on the face of the record. But for this finding, the result of the writ petition would have been different. The whole case of misconduct of concealment of fact stands rebutted. The Petitioner only stated the truth. He did not disclose about the criminal proceedings because it was an official work and nothing to do with his personal character. This type of information is required to judge the suitability of the person for the job. In the present case it was not the Petitioner rather it was the Chief Security Officer who was doing a job in which altercation arose. The judgment was passed on the basis of paragraph Nos. 8 and 10 of the counter affidavit which states the story of pending criminal cases against the Petitioner and the fact that he was absconding from the court and his sureties were punished to deposit the surety amount. This finding has come on page 3 of the judgment, in last but one paragraph. This story does not find place either in the findings of the inquiry officer at page 21 and 22 of the writ petition or in departmental proceedings at page 26 to 30 to the writ petition. Thus, the review on this score has to be allowed.

26. In paragraph No. 6 of the judgment at page 1 the Hon''ble Court rejected the plea of the Petitioner that he had asked for the documents on which the departmental charge sheet was based. The Hon''ble Judge observed that this was an after thought and he presumed that full opportunity was given to the Petitioner in the inquiry. The Petitioner has annexed copies of the documents on page 14-15 of the writ petition and Annexure S-1 of the Supplementary Affidavit to the review petition is the rejection order by the disciplinary authority. This rejection order proves the existence of the applicant demanding the said documents. This document was not initially available with the Petitioner, hence could not be annexed. It was later on recovered by her and as stated above a review is maintainable on the basis of such documents. The finding of the Hon''ble Single Judge totally alters the decision against the Petitioner. The court feels that a case has been made out and the review of this ground should be allowed. Following case law have been relied:

1. (1993) 1 UPLBEC 25 State Bank of India and Ors. v. D.C. Agarwal and Anr. Relevant para No. 4 & 5 at page 28, 29.
2. Indrani Bai (Smt) Vs. Union of India (UOI) and Others,
3. Committee of Management, Kisan Degree College Vs. Shambhu Saran Pandey and Others,

27. I hasten to add that even if the inquiry was unblemished the charge of misusing the postage stamps amounting Rs. 14.40 paise was not a charge grave

enough to warrant dismissal. The counsel for the Petitioner has relied upon the case of Kailash Nath Gupta Vs. Enquiry Officer, (R.K. Rai), Allahabad Bank and Others,

28. That on the point of charge No. III(b) the Petitioner has filed Annexure S-2 of the Supplementary Affidavit to the review petition to show that this charge should not be stand proved. At page 35 of writ petition at Para No. 3 the Petitioner has already mentioned about this document which was not considered by the Disciplinary and Appellate Authorities. In judgment at page 4 in para 3 of the Hon''ble Court considered this charge proved. Review of this finding will materially change the outcome of the inquiry and consequent punishment. There was an error on the face of the record and review should be allowed.

29. In view of what has been stated above the review petition is allowed. The earlier order dated 31.8.2005, passed by His Lordship, Hon''ble Rakesh Sharma, J., in Writ Petition No. 7867 (SS) of 1987, in re: Smt. Krishna Devi and Ors. v. State Bank of India and Ors. Writ Petition No. 7867 (SS) of 1987 is recalled. The review petition as well as the writ petition is allowed. The impugned order of dismissal dated 8.1.1987 and 8.4.1987 passed by the Regional Manager (III) Disciplinary Authority are hereby quashed. The court decides that late Tribhuvan Nath Srivastava was entitled for reinstatement in service, however, without any back wages. It transpires from the record that the employee late Tribhuvan Nath Srivastava has died during this period. The review is being pursued by the legal heirs of the deceased employee.

30. Substitution has already been made in the petition. The first Petitioner is the wife, rest are sons and daughters of the deceased employee.

31. Accordingly, it is directed that the legal heirs shall be entitled for all the benefits which would have accrued to late Tribhuvan Nath Srivastava had he been alive.