

(2015) 05 PAT CK 0027

In the Patna High Court

Case No : Civil Review No. 187 of 2014 in LPA 2 of 2014

Nizamuddin

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 12-05-2015

Acts Referred:

Constitution of India, 1950 — Article 14, 141, 142, 226, 32

Citation : (2015) 05 PAT CK 0027

Hon'ble Judges : I.A. Ansari, J;S.P. Singh, J

Bench : Division Bench

Advocate : Binoy Kumar, for the Appellant; Ajay Bihari Sinha, Advocates for the Respondent

Final Decision : Dismissed

Judgement

I.A. Ansari, J.—The petitioner seeks review of the order, dated 15.05.2014, passed in L.P.A. No. 2 of 2014, whereby the appeal against the order, dated 11.9.2013, passed in C.W.J.C. No. 4270 of 2006, was disposed of with a direction to the respondent State to calculate the dues payable in accordance with the law relevant thereto and has been clarified by the order, dated 15.05.2014, aforementioned.

2. The appellant-petitioner, who was a Government Pleader for the Civil Court, Patna, from 23.8.1996 to 20.7.2005, filed a writ application bearing C.W.J.C. No. 4270 of 2006 for a direction to the respondents to pay his pending bills along with interest.

3. Before the writ court, a dispute arose whether the petitioner was entitled to fees as per terms and conditions contained in his appointment letter, dated 23.08.1996, read with Bihar Practice and Procedure Manual, 1958, as contended by the Government or as per Rule 426 of Civil Court Rules as claimed by the petitioner.

4. Since all efforts of reconciliation pursued by the learned Single Judge failed,

the matter was remitted to the Civil Court inasmuch as the writ petition involved disputed questions of fact. Being aggrieved by the order of the learned single Judge, the writ petitioner preferred an appeal bearing L.P.A. No. 2 of 2014.

5. On consideration of materials on record as well as rival submissions, we were of the considered view, in the appeal, that the issue, as to what rate would govern the claim of the fees of Government Pleader, is an issue of law and does not involve disputed question of facts and the issue can be answered under Article 226 of the Constitution of India. This Court further observed that even in the case of contractual obligations, if the action of the State does not withstand the tests of Article 14, the constitutional remedy of Article 226 would be available to the aggrieved person.

6. The appeal was, therefore, partly allowed and the impugned order, to the extent mentioned above, was set aside. However, this Court, on the merit of the case, observed that the fee, payable to a Government Pleader, in the State of Bihar, shall be governed by the terms of his appointment and also by Rule 118 of Bihar Practice and Procedure Manual, 1958. This Court further held that Bihar Practice and Procedure Manual, 1958, makes no distinction between the fees payable to Government Pleader appointed for Patna district and other districts of the State of Bihar. On the other hand, Rule 426 of Civil Court Rules deals with the power of the Court to pay a fee of Government Pleader and empowers the Civil Court to include in a decree, while allowing decree, the Government Pleader's fee as cost and while deciding as to what would be the fees of Government Pleader, the Civil Court is required to bear in mind the terms and conditions of the appointment of Government Pleader.

7. In the present case, the petitioner, as already indicated above, seeks review of the order, dated 15.05.2014, passed in L.P.A. No. 2 of 2014, whereby this Court has held that the petitioner would be entitled to fees payable as per terms and conditions of his appointment letter read with Rule 118 of Bihar Practice and Procedure Manual, 1958. The review, sought for, is to a limited extent and the prayer of the review petitioner is that the declaration of law made by this Court by the order, dated 15.05.2014, aforementioned be made prospective.

8. We are afraid that the petitioner has not been able to make out any case for review of the order, dated 15.05.2014, passed in LPA No. 02 of 2014. The jurisdiction of review application is limited to reviewing an error apparent on the face of the record and it is not permissible to allow a party to re-argue the point over and over again and/or raise the same issue, which has been argued earlier. The right of review is distinct from right of appeal, which confers a wider power on the Court. The issue is no more *res integra* and has been authoritatively considered in the case of *Lily Thomas, Vs. Union of India and Others*, AIR 2000 SC 1650 : (2000) CriLJ 2433 : (2000) 2 DMC 1 : (2000) 5 JT 617 : (2000) 4 SCALE 176 : (2000) 6 SCC 224 : (2000) 2 UJ 1113 : (2000) AIRSCW 1760 : (2000) 3 Supreme 601 . Incorporating the scope and power of review, the Supreme Court observed, in *Lilly Thomas (supra)*, that the power of review can

be exercised for correction of a mistake and not to substitute a view. Such a power can be exercised within the limits of statutes dealing with the exercise of powers. Mere possibility of two views on the subject cannot be a ground for review and can be treated to be an appeal in disguise.

9. In the present case, the appellant has not been able to point out any error apparent on the face of the record, which requires correction.

10. In view of principles of law, governing exercise of power relating to review, this Court finds no ground for reviewing its earlier order, dated 15.05.2014, passed in L.P.A. No. 2 of 2014.

11. We may point that it was in *I.C. Golak Nath and Others Vs. State of Punjab and Another*, AIR 1967 SC 1643 : (1967) 2 SCR 762 , that the question arose as to whether the Constitution of India permits declaration of law with prospective effect. Dealing with this issue, Subba Rao, C.J., speaking for the majority, observed, in *L.C. Golak Nath (supra)*, that our Constitution does not, expressly or by necessary implication, speak against the doctrine of prospective overruling; rather, Articles 32, 141 and 142 of the Constitution of India are couched in such wide and elastic terms that these constitutional provisions enable the Supreme Court to formulate legal doctrines to meet the ends of justice and the only limitation on this power is reason, restraint and injustice. It was also pointed out, in *L.C. Golak Nath (supra)*, that under Article 32 of the Constitution of India, the Supreme Court has the power to issue, for the enforcement of the fundamental rights, suitable directions or orders or writs. It was further pointed out, in *L.C. Golak Nath (supra)*, that Article 141 of the Constitution of India makes it clear that the law, declared by the Supreme Court, shall be binding on all courts and Article 142 enables the Supreme Court to pass, or make, in the exercise of its jurisdiction, such decree or order as is necessary for doing complete justice in any cause or matter pending before it.

12. The Supreme Court, therefore, held, in *L.C. Golak Nath (supra)*, that Articles 32, 141 and 142 of the Constitution of India are designedly made comprehensive to enable the Supreme Court to declare law and to give such directions or pass such orders as are necessary to do complete justice.

13. The Supreme Court has pointed out, in *L.C. Golak Nath (supra)*, that the expression "declared", appearing in Article 141 of the Constitution of India, is wider than the words "found or made" inasmuch as the impression "declare" is tantamount to announcing opinion. The Supreme Court has further pointed out, in *L.C. Golak Nath (supra)*, that as it had been called upon to apply the doctrine of prospective overruling, it (Supreme Court) would like to move warily in the beginning laid down, therefore, that laying down, therefore, that the doctrine of prospective overruling can be invoked only in matters arising under the Constitution of India; this doctrine can be applied only by the highest court of the country, i.e., the Supreme Court, inasmuch as the Supreme Court has the constitutional jurisdiction to declare law binding on all the courts in India; and

the scope of the retroactive operation of the law, declared by the Supreme Court superseding its "earlier decisions" is left to its discretion to be moulded in accordance with the justice of the cause or matter before it.

14. The relevant observations, appearing at paragraph Nos. 50 and 51, in L.C. Golak Nath (supra), are reproduced hereinbelow:

"50. Our Constitution does not expressly or by necessary implication speak against the doctrine of prospective overruling. Indeed, Articles 32, 141 and 142 are couched in such wide and elastic terms as to enable this Court to formulate legal doctrines to meet the ends of justice. The only limitation thereon is reason, restraint and injustice. Under Article 32, for the enforcement of the fundamental rights the Supreme Court has the power to issue suitable directions or orders or writs. Article 141 says that the law declared by the Supreme Court shall be binding on all courts: and Art. 142 enables it in the exercise of its jurisdiction to pass such decree or make such order as is necessary for doing complete justice in any cause or matter pending before it. These articles are designedly made comprehensive to enable the Supreme Court to declare law and to give such directions or pass such orders, as are necessary to do complete justice. The expression "declared" is wider than the words "found or made". To declare is to announce opinion. Indeed, the latter involves the process, while the former expresses result. Interpretation, ascertainment and evolution are parts of the process, while that interpreted, ascertained or evolved is declared as law. The law declared by the Supreme Court is the law of the land. If so, we do not see any acceptable reason why it, in declaring the law in supersession of the law declared by it earlier, could not restrict the operation of the law as declared to future and save the transactions, whether statutory or otherwise that were effected on the basis of the earlier law. To deny this power to the Supreme Court on the basis of some outmoded theory that the Court only finds law but does not make it is to make ineffective the powerful instrument of justice placed in the hands of the highest judiciary of this country.

51. As this Court for the first time has been called upon to apply the doctrine evolved in a different country under different circumstances, we would like to move warily in the beginning. We would lay down the following propositions: (1) The doctrine of prospective overruling can be invoked only in matters arising under our Constitution; (2) it can be applied only by the highest, court of the country, i.e., the Supreme Court as it has the constitutional jurisdiction to declare law binding on all the courts in India; (3) the scope of the retroactive operation of the law declared by the Supreme Court superseding its "earlier decisions" is left to its discretion to be moulded in accordance with the justice of the cause or matter before it.

(Emphasis is supplied)

15. From what have been observed and laid down, in L.C. Golak Nath (supra), it becomes abundantly clear that the power to declare a law "with prospective

effect" is vested in the Supreme Court alone and not to be exercised by the High Courts.

16. It was pointed out, in *Managing Director, ECIL, Hyderabad and others v. B. Karunakar and others*, (1993 (4) SC 727) , that prospective overruling is a part of the principles of constitutional canon of interpretation and can be resorted to by the Supreme Court, while superseding law declared by the Supreme Court earlier and that it is a device innovated to avoid reopening of settled issues, to prevent multiplicity of proceedings and to avoid uncertainty and avoidable litigation or, in other words, actions taken - contrary to the law declared prior to the date of declaration - are validated in larger public interest. [See also *Ashok Kumar Gupta and Another Vs. State of U.P. and Others*, (1997) 4 JT 251 : (1997) 3 SCALE 289 : (1997) 3 SCALE 288 : (1997) 5 SCC 201 : (1997) SCC(L&S) 1299 : (1997) 3 SCR 269 , *Baburam v. C.C. Jacob*, (1999) 3 SCC 362 and *M.A. Murthy Vs. State of Karnataka and Others*, AIR 2003 SC 3821 : (2003) 185 CTR 194 : (2003) 264 ITR 1 : (2003) 8 JT 292 : (2003) 7 SCALE 154 : (2003) 7 SCC 517 : (2003) SCC(L&S) 1076 : (2003) 3 SCR 327 Supp : (2004) 1 SLJ 241 : (2004) 1 UJ 381 : (2003) AIRSCW 4377 : (2003) 6 Supreme 424 .

17. In view of the above, the prayer of the review petitioner that the pronouncement of law, as regards the fee structure of a Government Pleader, at Patna, be made prospective, cannot be acceded to.

18. In view of foregoing discussions, this review application has, in our considered view, no merit and it is accordingly dismissed. However, the respondents would make payment to the petitioner expeditiously in the light of the order, dated 15.05.2014, passed in L.P.A. No. 2 of 2014, but not later than three months from the date of receipt/production of a copy of this order before respondent No. 2.

S.P. Singh, J.

I agree.