

(2015) 03 MAD CK 0233

In the Madras High Court

Case No : Rev. A. Nos. 236, 237 of 2014 in W.P. Nos. 20076 and 21873 of 2010

P. Ramaraj

APPELLANT

Vs

The Registrar General and Others

RESPONDENT

Date of Decision : 27-03-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 47 Rule 1, Order 47 Rule 9
Constitution of India, 1950 — Article 226, 32

Citation : (2015) 03 MAD CK 0233

Hon'ble Judges : P.R. Shivakumar, J.;V. Ramasubramanian, J.

Bench : Division Bench

Final Decision : Dismissed

Judgement

V. Ramasubramanian, J.—These applications are for review of a common order passed by this Court on 9.5.2012, dismissing two writ petitions filed by the applicant herein.

2. We have heard Mr. R. Sankarasubbu, learned counsel for the applicant, Mr. R. Sureshkumar, learned counsel appearing for the High Court and Mr. R. Ravichandran, learned Additional Government Pleader appearing for the State.

3. The applicant was appointed as a Judicial Magistrate on 2.3.1998. While he was working at Thiruthuraipoondi, he was placed under suspension by an order dated 25.1.2006. Subsequently, two charge memos were issued on 6.4.2006 and 24.1.2007. Thereafter, the petitioner was slapped with an order of compulsory retirement on 13.7.2007 and he was relieved from service on 1.8.2007.

4. Challenging the order of compulsory retirement, the applicant filed a writ petition in W.P. No. 34351 of 2007. The writ petition was dismissed on 10.3.2008. The Special Leave Petition filed by the applicant in S.L.P.(Civil) No. 12035 of 2008 was dismissed by the Supreme Court in limine on 8.9.2008.

5. Thereafter, the applicant filed an application for review in Rev. A. No. 94 of 2009. But the review application was dismissed by a Division Bench on

17.8.2009. The applicant filed another application in the form of petition for clarification, but the same was also dismissed on 27.11.2009.

6. On parallel lines, the applicant had also filed a petition before the Government of Tamil Nadu seeking a review of the order of compulsory retirement dated 13.7.2007. That petition came to be dismissed by the Government by an order in G.O.Ms. No. 720 Home Department, dated 20.6.2008.

7. Alongside, the applicant also gave a representation to the Registrar General to regularise the period of suspension. That representation was rejected by an order dated 7.5.2009.

8. Therefore, challenging the order dated 7.5.2009 of the Registrar General rejecting his request for regularisation of the period of suspension, the applicant filed a writ petition in W.P. No. 20076 of 2010. Similarly challenging the dismissal of his review petition by the Government under G.O.Ms. No. 720 dated 20.6.2008, the applicant filed a writ petition in W.P. No. 21873 of 2010.

9. Both the writ petitions namely W.P. Nos. 20076 and 21873 of 2010, challenging the refusal to regularise the period of suspension and challenging the refusal to review the order of compulsory retirement, came to be dismissed by a Division Bench by an order dated 9.5.2012. It is against the said order that the applicant has come up with the above review applications.

10. The main plank of the argument of the applicant is that his first writ petition W.P. No. 34351 of 2007 was dismissed by a Division Bench that was headed by a Hon'ble Judge who was part of the Administrative Committee that decided to impose the penalty of compulsory retirement upon him. Therefore, the petitioner contends that the dismissal of his first writ petition was contrary to the law laid down by the Supreme Court in A.U. Kureshi Vs. High Court of Gujarat and Another, .

11. It is also the contention of the applicant that another Judicial Officer by name Kulamani was also imposed with a similar penalty and that his writ petition was also dismissed by a Division Bench presided over by a learned Judge who was a party to the Administrative Committee. Therefore, the said Judicial Officer by name Kulamani filed an application for review and the review was allowed by another Division Bench. The writ petition filed by the said Judicial Officer Kulamani now stands reopened. Therefore, the applicant contends that his case also deserves the same treatment.

12. But, at the outset, we are obliged to point out that the case of the applicant herein stands on a different footing from the case of the other Judicial Officer. In the case of the said Kulamani, the review allowed by this Court was in respect of the dismissal of his first writ petition itself. But in the case of the applicant herein, this is the third round of litigation. This can be seen from the following events:--

"(i) The applicant's original writ petition in W.P. No. 34351 of 2007 challenging

the order of compulsory retirement was dismissed on 10.3.2008.

(ii) The appeal filed by the applicant in SLP (Civil) No. 12035 of 2008 was dismissed by the Supreme Court on 8.9.2008.

(iii) In the meantime, the applicant filed a petition for review before the State Government and the same was also dismissed under G.O.Ms. No. 720 Home Department dated 30.6.2008.

(iv) After the dismissal of the Special Leave Petition by the Supreme Court on 8.9.2008, the applicant did not file any writ petition against the order of the State Government dated 20.6.2008 passed on his review petition. On the contrary, he filed an application for review in Review Application No. 94 of 2009 seeking a review of the order in W.P. No. 34351 of 2007. This review application was dismissed on 17.8.2009.

(v) Not satisfied with the dismissal of his review application, the applicant filed a petition in M.P. No. 2 of 2009 in Review Application No. 94 of 2009, virtually for a second review. But this petition was dismissed on 27.11.2009.

(vi) It is only thereafter, that the applicant chose to file W.P. No. 21873 of 2010, challenging the original order of compulsory retirement dated 13.7.2007 and the order passed by the Government on his review petition on 20.6.2008."

13. Therefore, what we have on hand is actually an application for review of an order passed in a second round of litigation, after the review applicant lost the battle at all stages, first in the form of a writ petition, then in the form of a Special Leave Petition, later in the form of a review application and ultimately in the form of dismissal of a miscellaneous petition for clarification of the order passed in the first review application. Therefore, the decision reopening of the case relating to the other Judicial Officer by name Kulamani cannot be taken advantage of by the review applicant.

14. Mr. R. Sankarasubbu, learned counsel for the review applicant submitted that the jurisdiction of this Court under Article 226 of the Constitution of India is very wide and that an injustice can always be set right by this Court. The learned counsel relies upon the decisions of the Supreme Court in:--

"(i) Lingala Vijay Kumar and Others Vs. The Public Prosecutor, .

(ii) Harbans Singh Vs. State of Uttar Pradesh and Others, .

(iii) Rupa Ashok Hurra Vs. Ashok Hurra and Another, .

(iv) Remdeo Chauhan @ Rajnath Chauhan Vs. Bani Kant Das and Others, "

15. We have carefully considered the above submissions.

16. The contention that a gross injustice has been done to the review applicant, arises out of the fact that the applicant was ordered to be compulsorily retired without any enquiry into the allegations of gross misconduct, though two charge

memorandum were pending at that time. The challenge to the compulsory retirement was rejected by a Division Bench presided over by a learned Judge who was a member of the Administrative Committee that took a decision to compulsorily retire the review applicant. Therefore, the contention of the applicant is that there was a gross violation of 2 principles of natural justice namely (i) that he was compulsorily retired without holding an enquiry and (ii) that the rule that no man can be a Judge in his own cause was also violated.

17. But, we cannot sustain the said contention. The order of compulsory retirement was passed at the stage of review of the case of the petitioner for continuance in service beyond 50 years of age. The High Court took into account the confidential reports, work done statements and other relevant materials including the Vigilance Reports and took a decision not to continue the applicant in service beyond the age of 50 years. In fact, the decision to retire the applicant compulsorily, though taken first by the Administrative Committee in its meeting held on 3.4.2007, was also approved by the Full Court on 11.4.2007. The order of compulsory retirement was not by way of penalty imposed in terms of Rule 8 read with Rule 17(b) of the Tamil Nadu Civil Service (Disciplinary and Appeal) Rules. Therefore, the question of violation of the first principle of natural justice did not arise.

18. The alleged violation of the second principle of natural justice namely that no man can be a judge in his own cause and that therefore, the decision rendered in the first writ petition by a Division Bench comprising of a member of the Administrative Committee was tainted, cannot also hold good. In so far as the case of the applicant is concerned, the Administrative Committee nevertheless took a decision on 3.4.2007 to compulsorily retire the applicant from service. But the said decision was not final. The decision of the Administrative Committee was put up before the Full Court in its meeting held on 11.4.2007. The Full Court resolved to approve the minutes of the Administrative Committee. Therefore, if the ratio laid down by the Supreme Court in A.U. Kureshi is understood in the manner in which the applicant wants it to be understood, all learned Judges who participated in the deliberations of the Full Court on 11.4.2007 would be disqualified in hearing the writ petition challenging the order of compulsory retirement. Such a situation is not the prescription contained in A.U. Kureshi. Therefore, the applicant cannot pitch his claim on the ground of gross violation of the principles of natural justice, so as to seek a review of the dismissal of the second writ petition filed after suffering one order of the Supreme Court, one order in the review application and another order by way of a clarification petition.

19. The reliance placed by the learned counsel for the applicant in Lingala Vijay Kumar, is of no relevance. The passage in the said decision giving an exposition to the expression "ends of justice", will not apply to the case on hand.

20. The decision in Harbans Singh arose out of the circumstances that were very shocking. The said case arose out of the conviction of three persons for various

offences. All the three were sentenced to death. One of the three persons was executed after the dismissal of his Special Leave Petition. Another person got his death sentence commuted to life imprisonment. The Special Leave Petition of Harbans Singh was dismissed, without taking note of the commutation of the death sentence of the other prisoner. Therefore, he filed a writ petition under Article 32 of the Constitution. Hence, the said decision cannot be imported into service jurisprudence.

21. The decision in Rupa Ashok Hurra was confined to the practice and procedure prevailing in the Supreme Court. The Supreme Court was concerned with the question as to whether a second review petition would be maintainable before the Supreme Court. Therefore, the principles laid down therein cannot be invoked to the jurisdiction of High Court under Article 226 of the Constitution.

22. The decision in Ramdeo Chauhan dealt with the question whether review of criminal judgments was possible. Even in this case, the Supreme Court observed in para 91 that following the discipline of order 47 Rule 1 of the Code, the Court cannot pronounce in a review petition on a question, which was open to be raised in the original proceedings but not raised. Therefore, the said decision is also of no assistance to the case of the applicant.

23. There can be no second opinion about the fact that the principles analogous to those underlying Order 47 Rule 1 of CPC can also be applied to the proceedings under Article 226. There is a clear bar under Rule 9 of Order 47 for review of an order made on an application for review or a decree or order passed on review. The case on hand is virtually the review of a judgment in the second round of litigation on the same set of facts, after the exhaustion of the remedies in the first round.

24. Therefore, the Review Applications are rejected. There will be no order as to costs.