
(2013) 02 AHC CK 0272

In the Allahabad High Court

Case No : Review Application No. 162987 of 2010 in Special Appeal (D) No. 151 of 2010

Prem Raj

APPELLANT

Vs

State of U.P. and Another

RESPONDENT

Date of Decision : 01-02-2013

Acts Referred:

Citation : (2013) 4 ALJ 696 : (2013) 3 AWC 2266

Hon'ble Judges : Ashok Bhushan, J; Amreshwar Pratap Sahi, J

Bench : Division Bench

Advocate : V.S. Chauhan, Dilip Kumar Upadhyay and Randhir Jain, for the Appellant;

Final Decision : Dismissed

Judgement

Ashok Bhushan and Amreshwar Pratap Sahi, JJ.

Review Application No. 162987 of 2010:

1. The review seeks reconsideration of the judgment dated 30.4.2010 on the ground that the error deserves to be corrected in view of two subsequent Judgments of the Apex Court and another Division Bench pronouncement of our Court. The appellant, aggrieved by the cancellation of his selection as a Police Recruit Constable on account of a wrong declaration in his affidavit about a criminal case, approached this Court challenging the order of the Senior Superintendent of Police. The petition was dismissed on 30.10.2009 by a learned single Judge relying on several judgments including the decision in the cases of Kendriya Vidyalaya Sangathan and Others Vs. Ram Ratan Yadav, and A.P. Public Service Commission Vs. Koneti Venkateswarulu and Others, .

2. The appeal preferred before the Division Bench was dismissed on 30.4.2010 relying on the Full Bench decision of the Rajasthan High Court in the case of Dharam Pal Singh v. State of Rajasthan, 2001 (4) ESC 1837, the relevant extract whereof has been quoted in the judgment under review. The Court further

observed:

...The employer is even otherwise entitled to know about the shady antecedents of a candidate before admitting him to service. It is a question of security of the State....

3. This application is supported by an affidavit where the review sought is by an attempt to distinguish the applicability of the judgment of the Full Bench of the Rajasthan High Court on the ground, that in the said case, the decision had been taken after an enquiry whereas in the instant case there was a violation of principles of natural justice. In our opinion this cannot be a ground for review as it is not an error apparent on the face of record and secondly the fact of not disclosing the trial of the criminal case, even though ending in acquittal, remains undisputed. The facts were already contained in the judgment of the learned single Judge that were noticed whereafter the judgment was upheld.

4. Sri Randhir Jain learned counsel then urged that this application be treated sympathetically as a merciful plea keeping in view the subsequent decisions that have been referred to by him. This plea of compassion or clemency is no doubt regarded as the highest attributes of humanity but the severity of law that binds society restricts any approach of undue leniency in law. Sympathy cannot be stirred to contradict law and also cannot be the basis of legally permissible limits of review or else justice may suffer on that count.

5. We may reemphasize that review is not rehearing. It is not akin to the retake of a film scene or a second helping in a buffet. Similarly, a subsequent decision on the same point of law either by this Court or by the higher Court cannot be a mistake or an error apparent in a judgment rendered earlier in point of time. Thus the same cannot be a ground for review. It may serve as a ground for a reference in a subsequent case or a ground to be taken in a higher Court of appeal.

6. Nonetheless we may advert to the decisions as cited by Sri Jain to support his submissions. The first decision is in the case of Commr. of Police and Others Vs. Sandeep Kumar, . The Apex Court noticing a minor offence of stealing bread being punished as a brandishment for life, in a celebrated work of fiction by Victor Hugo, opined that errors committed In youth should be sympathetically weighed in the scales of justice for which reliance was placed further on the observations of Lord Denning in an English case where some Welsh students were let off by the Court of appeals having served for one week against a sentence of three months. The misdemeanour of the students however was criticised, and the punishment was found to be justified. The said decision proceeds on a consideration of proportionality on the severity of a punishment for the commission of an offence. It seeks to observe that youthful indiscretion should be pardoned as that displays wisdom.

7. The second decision in the case of Civil Appeal No. 7106 of 2011 Ram Kumar Vs. State of U.P. and Others, , in similar circumstances examined the facts of

that case and observed that the withholding of information should have been enquired into and the authority should have satisfied itself before dispensing the services of the candidate. The appeal was, therefore, allowed as compliance of the procedure provided in a Government order was not adhered to.

8. The third decision is a Division Bench judgment of this Court in the case of Special Appeal No. 1991 of 2011, *Satendra Singh v. State*, decided on 18.4.2012, which follows the decision in the case of *Ram Kumar* (supra).

9. Sri Jain has also cited the decision of the Apex Court in the case of AIR 2000 1706 (SC) which in our opinion is besides the point in issue.

The aforesaid three decisions have been delivered in 2011-12, long after the judgment in this case. As observed above, these decisions, therefore, cannot be made the basis of review as the same cannot be termed as an error apparent in the judgment of this Court. What Sri Jain desires is, therefore, a rehearing on the basis of later decisions which proposition is outside the scope of review. The discovery of a new judgment is not a ground for review.

10. We may however add that a learned single Judge of our Court has taken a view that is well considered and is sound in reasoning in the case of *Shimbhu Singh Vs. State Of U.P. And Others*, . The said decision has been affirmed by a Division Bench in Special Appeal No. 1995 of 2012, decided on 3.12.2012.

11. Another single Judge judgment has been cited being Writ Petition No. 1882 of 2007, decided on 19.7.2010 where the following observations have been made:

However, in view of the subsequent development which indicates an advantage in favour of the petitioner, in my opinion, requires the matter to be reconsidered in the light of the order of acquittal. The petitioner after having been acquitted will be presumed to have never been involved in any criminal case. A perusal of the judgment indicates that it was a clean acquittal. The stain having been erased on a judicial verdict by the competent court washes out the effect of involvement. This has to be viewed from another angle. A person if falsely implicated runs the risk of losing the opportunity to get a job and it is here that injustice should not be allowed to dislodge an otherwise valid claim.

The aforesaid observations cannot be made a ground to review the judgment.

12. We may at the same time hasten to add to the benefit of the applicant and Sri Jain that the correctness and conflict has been noticed by the Apex Court in the views expressed in its several judgments, including the one's noted above, as per the reference made to a Larger Bench in the case of *Jainendra Singh Vs. State of U.P. Tr. Prinl. Section Home and Others*, . The appellant-applicant can avail of the benefit of the said reference, but not through a review, but by approaching the appropriate forum of appeal. The application for the reasons aforesaid is hereby rejected.