
(2010) 11 JH CK 0003
In the Jharkhand High Court
Case No : Civil Review No. 45 of 2009

Rajeev Kumar

APPELLANT

Vs

State of Jharkhand and Jharkhand High Court

RESPONDENT

Date of Decision : 26-11-2010

Acts Referred:

Constitution of India, 1950 — Article 21, 215, 311(2)

Citation : (2011) 1 JCR 212 : (2011) 1 JLJR 218

Hon'ble Judges : Bhagwati Prasad, C.J.; J.C.S. Rawat, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. The present review petition is filed by the Petitioner feeling aggrieved by the decision of this Court in W.P.(S) No. 2529 of 2006, dated 20.03.2007. The present judgment against which the review has been filed was also assailed in SLP before the Hon''ble Supreme Court. The SLP filed by the Petitioner has been dismissed by the Hon''ble Supreme Court in following terms:

Upon hearing counsel the Court made the following Order:

The SLP is dismissed.

2. The counsel for the Petitioner submits that notwithstanding dismissal of his Special Leave Petition, he is entitled to file the review petition because the order, aforesaid, as passed by the Hon''ble Supreme Court is not a speaking order and thus, the present review is maintainable. The present review petition is filed in relation to the decision, which was rendered in writ petition in which the Petitioner has prayed, inter alia, the following:

That the instant writ application is being filed for issuance of a writ of or in the nature of certiorari, quashing the notification dated 11.3.06 issued by Respondent N.1 by the orders of the Governor of Jharkhand on the recommendation of Respondent No. 2, so far as it relates to imputation of

adverse remark "Service found unsatisfactory", without affording any opportunity of hearing as to the reason for coming to such conclusion though the Petitioner has rendered more than four years of unblemished career for the entire period of four years:

And

For payment of GPF, arrears of salary, leave salary dues which has not yet been paid for the reasons best known leading to financial crunch.

3. The prayer, aforesaid, clearly demonstrates that the Petitioner has simply asked for expunging of remarks "service found unsatisfactory" and he has not asked for setting aside the order of his dispensation of service. The other prayers, however, are of no greater importance as the only emphasis of the Petitioner, while arguing, was on expunging of remarks from the order of dispensation of service in the following terms.

4. The argument of the Petitioner, who has appeared in person is that the order is arbitrary as there was no foundation laid to pass the order impugned because the unsatisfactory service cannot be said to be one thing which can be determined without there being a full fledged inquiry. Such inquiry following the mandate of Article 311(2) having not been held, it should be construed that the order impugned is arbitrary and therefore, deserves to be set aside.

5. Further argument of the Petitioner was that his appointment was made pursuant to a selection held for regular post of Additional District Judge. However, he was not posted on regular Additional District Judge post, but, was posted on adhoc temporary post of Fast Track Court. However, certain individuals were appointed on the post of adhoc Additional District Judges pursuant to the advertisement issued who were not qualified and their appointment was against Rule 18 of the Rules. In that view of the matter, the Petitioner deserved to be appointed regularly. That having not been done, the termination is malafide. Because Petitioner has challenged the wrong appointment made and therefore, the order of dispensation of the service of the Petitioner was an act of legal malafides.

6. The Petitioner has further contended that the affidavit filed on behalf of the High Court contained wrong averments and those averments were with malafide intention. Affidavit being filed with wrong averments shows that there was an inbuilt bias of the High Court administration against the Petitioner and, therefore, the judgment under review is a judgment passed in colourable exercise of powers.

7. The Petitioner has further urged that he has right to reputation, which is a fundamental right as enshrined in the Constitution covered by Article 21 and news papers have contained such news items thereby his reputation has been damaged because wrong facts have been mentioned in the affidavit filed. The judgment is based on such mistaken representations. The High Court, being a

Court of record, is under obligation as mandated under Article 215 to correct its mistakes and, thus, emphasis of the Petitioner was that following the mandate of Article 215 the Court should correct its record and expunge the remarks as prayed.

8. The Petitioner has further asserted that law and important facts have escaped the notice of the Court and, therefore, are required to be corrected and in curative exercise of jurisdiction the review should be allowed. The Petitioner has further asserted that his appointment, though said to be on adhoc temporary basis, but it should be construed to be one on probation and probation period being of two years as provided in the Rules, he should have been deemed to have been confirmed and without following the mandate of Article 311(2), he should not have been asked simply to go home. During his tenure, he was transferred frequently and that frequent transfers also is a demonstration of underlying current, which prevailed against him in the Court while passing the order of his dispensation.

9. Per contra, the learned Counsel for the Respondent submitted that the entire argument of the Petitioner is misconceived and based on wrong presumptions. Though the Petitioner was appointed after selection, but that selection was held for regular Additional District judges and the Petitioner having not been found suitable to be placed in the post advertised as having lacked on merits, can not be considered to be a regularly selected candidates. When the vacancy of Additional District Judge Fast Track occurred, the list of remaining candidates was operated, therefore, his appointment in no way can be said to be an appointment, which was regular appointment. It was further contended by the learned Counsel for the Respondents that the purpose of his appointment was for a limited period on a scheme which was by itself for a limited period. That being the position, a person appointed not against a cadred post cannot claim to continue on said post if his performance is not found satisfactory. If his services are dispensed with having not been found satisfactory, he can not claim any special status. The order passed does not mean that this causes stigma and fastens the Petitioner with any evil consequences. In that view of the matter, it cannot be said that the dispensation of the services of the Petitioner was against the principles of law.

10. It would be justifiable to ask this Court to review its order which has even been confirmed by the Hon''ble Supreme Court. No such defect of law and facts have been indicated by the Petitioner which requires to be noticed. What has been contended is that there are wrong averments made on behalf of the Respondents in the affidavit. It is not correct to say that any wrong facts have been made in the affidavit. The facts mentioned in the affidavit are the facts which are available on record. If the Petitioner feels that they are false in his opinion that does not make the said facts to be false. In that view of the matter, the allegation of the Petitioner that the order is malafide is unsustainable.

11. The right of reputation as contended cannot be invoked here. The Petitioner

can invoke the remedies which are available in law if those reports are in any way of the character which gives him the right to prestige against the persons responsible for publishing such news paper report.

12. The Petitioner claims that the appointment on the post of regular Additional District Judges was contrary to the rules and, therefore, he has been removed to which no inference to be drawn because such inference cannot be drawn as he had not come in merit and therefore, he was not appointed on the post advertised. He was appointed on temporary adhoc post of Additional District Judge Fast Track Court and that does not give him any right to the post.

13. As regards the foundation for the order, it was for the Court to look into the material, which was looked into by the Court after calling for the entire records and the court had come to a conclusion that is supported by the materials on record that the services of the Petitioner are not satisfactory and therefore, it cannot be said that there is no foundation for the order.

14. The Petitioner has in support of his arguments relied on following decisions urging that the judgment under review was obtained by fraud:

- (i) A.V. Papayya Sastry and Others Vs. Government of A.P. and Others,
- (ii) United India Insurance Co. Ltd. Vs. Rajendra Singh and Others,
- (iii) Indian Bank Vs. M/s. Satyam Fibres (India) Pvt. Ltd.,

15. The law regarding fraud has been clearly stated by the Hon"ble Supreme Court in the aforesaid decisions. If the law as relied by the Petitioner is given a thoughtful consideration, it would be worthwhile to mention that the facts which are considered to be forming fraud are not such which can be said to be of the character which would brand the argument of the Petitioner sustainable and in that view of the matter, the argument that a fraud has been committed is of no substance, and, therefore, it cannot be said that reply affidavit of the Respondents was of a character where it can be said that a fraud has been committed. The fact of grant of bail is not denied and that being the position, there is no inherent averment of fraud in the allegations and therefore, the argument of the Petitioner that fraud has been committed is mere of a character where it can be said that the Petitioner had shown a little more sensitiveness to the arguments in this regard.

16. Three paragraphs in the reply affidavit have been made the basis of the allegations of fraud, namely, paragraph 11 wherein the discussion is in relation to the probation period. The question regarding the Petitioner being in the probation is of no consequences as he was appointed on ex-cadre post on adhoc temporary basis and he had not figured in the select list in the regular candidates. In paragraph 14 the facts are regarding the naming of the accused in the first information report which on facts can be made a subject matter of debate, but it cannot be said that the accused was not named in the first information report. In fact, he has been named as held by the Court. The Petitioner entered into a

lengthy argument that the name is not as stated as required to be, but that is not of a character which can be said to be playing fraud. The third paragraph indicated is paragraph 18, which related to his mid term transfers and some kind of small advance withdrawn of money and without sanction remaining on leave. These are also not the facts, which can be said to be absolutely of a character by virtue of which it can be said that the same are unfounded. If a fact is required to be proved false then if arguments are required to establish those facts to be of incorrect character, then it can not be a self established fact. The fraud has to be noticed on the face of it. Therefore, the argument of the Petitioner cannot be said to be of any consequence and, therefore, for reviewing a judgment holding that the judgment is based on representation of fraud is not made out.

17. The Petitioner besides the above decisions has relied on the decision of the Supreme Court in the matter of Board of Control for Cricket, India and Another Vs. Netaji Cricket Club and Others, wherein the Hon"ble Supreme Court has held that subsequent events, if any, should be taken into consideration for reviewing its decision and in that view, the Supreme Court has observed:

90. Thus, a mistake on the part of the court which would include a mistake in the nature of the undertaking may also call for a review of the order. An application for review would also be maintainable if there exists sufficient reason there for. What would constitute sufficient reason would depend on the facts and circumstances of the case. The words "sufficient reason" in Order 47 Rule 1 of the Code are wide enough to include a misconception of fact or law by a court or even an advocate. an application for review may be necessitated by way of invoking the doctrine "act us curiae neminem gravabit."

18. But, even if the aforesaid law is taken into consideration there are no events indicated which can show that the subsequent events necessitated notice because nothing has happened after the dispensation of services, in any way, which would necessitate this Court to review its own order. Therefore, this argument of the Petitioner and the law relied upon being not applicable to the facts is discarded.

19. The next decision of the Hon"ble Supreme Court as relied upon by the Petitioner is in the matter of State of Bihar Vs. Lal Krishna Advani and Others, and has urged that right of reputation is a facet of right to life as enshrined in Article 21. We do not think that from the remarks, that services were unsatisfactory, it can be said that the Respondents in passing the order has caused any damage to the reputation of the Petitioner. The argument and the law relied upon by the Petitioner is of no consequence to the Petitioner and hence discarded.

20. Since we have entertained the merits of petition, there it would be of no purpose to go into the question whether the dismissal of the SLP is a bar to consider the review application and therefore, the law as stated by the Hon"ble supreme Court and reported in the case of Kunhayammed and Others Vs. State

of Kerala and Another, is not commented upon.

21. The Petitioner has further laid emphasis on a case decided by the Hon''ble Supreme Court in the matter of M.M. Thomas Vs. State of Kerala and Another, wherein the Hon''ble Supreme Court has held:

17. If such power of correcting its own record is denied to the High Court, when it notices the apparent errors its consequence is that the superior status of the High Court will dwindle down. Therefore, it is only proper to think that the plenary powers of the High Court would include the power of review relating to errors apparent on the face of the record.

22. The power of review as has been defined by the Hon''ble Supreme Court is the power available to the Court, but, then we have not been able to find any error apparent on the face of the record and the other argument of the Petitioner have also not found favour with us because he was a plain adhoc employee who was recruited on the adhoc temporary scheme because he had failed to qualify for the post advertised. His adhoc appointment was for a particular scheme of Fast Track Courts and from the records this Court found that his services are not satisfactory, the amount of labour put in by the Petitioner was not sufficient to persuade us to conclude that there was any error on the face of record and therefore, we find that there is no force in the claim of the Petitioner for review of the order, hence, there being no merit, we dismiss this petition.