
(2020) 02 UK CK 0027

In the Uttarakhand High Court

Case No : Writ Petition (S/B) No. 517 Of 2018

Rajendra Singh Negi

APPELLANT

Vs

State Of Uttarakhand & Others

RESPONDENT

Date of Decision : 14-02-2020

Acts Referred:

Code Of Civil Procedure, 1908 — Order 47 Rule 1

Citation : (2020) 02 UK CK 0027

Hon'ble Judges : Ramesh Ranganathan, CJ; Ramesh Chandra Khulbe, J

Bench : Division Bench

Advocate : D. Barthwal, BPS Mer, Bhupesh Kandpal

Final Decision : Dismissed

Judgement

Ramesh Ranganathan, CJ

Delay Condonation Application (CLMA) 8169 of 2019

1. Delay in preferring the review petition is not opposed by Mr. BPS Mer, learned Brief Holder and Mr. Bhupesh Kandpal, learned Counsel for

respondent nos.4 and 5. Therefore, the delay is condoned. Delay condonation application stands disposed of accordingly.

Review Application (MCC 534 of 2019)

2. Heard.

3. This application is filed seeking review of the order passed by us in WPSB No.517 of 2018 dated 12.02.2019. The petitioner had filed WPSB

No.517 of 2018 seeking a writ of certiorari to quash the proceedings dated 29.6.2018, received by the petitioner on 2.7.2018, and the order dated

3.8.2018 passed by the Joint Secretary, Technical Education; to further direct the respondents to forthwith release the other retiral benefits treating the

petitioner to have retired from the post of Deputy Registrar of the Institution; and a writ of mandamus directing respondent no.4 to reimburse the

petitioner the recovered amount of Rs.41,600/- which had been made by the respondent in violation of the law laid down by the Supreme Court in

Rafiq Masih v. State of Punjab (2015) 4 SCC 334.

4. We had, in the order under review, observed that the petitioner was appointed as a Deputy Registrar by the officiating Principal, against whom

disciplinary proceedings had been initiated; he was not appointed by the Board of Governors themselves; as his promotion as a Deputy Registrar was

contrary to the bye-laws and was illegal, he was not entitled to continue in the said post; his reversion to the substantive post of Senior Administrative

Officer could not be construed as a punishment, much less a major punishment warranting adherence to the procedure prescribed for imposing major

punishment including conducting a departmental inquiry, furnishing a copy of the inquiry report, permitting the employee to submit his objections

thereto, and for a punishment to be imposed thereafter; the contention, that failure to furnish a copy of the inquiry report to the petitioner is fatal, was

therefore not tenable; and we saw no reason to interfere with the impugned order to the extent the petitioner was directed to be reverted to his

substantive post of Senior Administrative Officer.

5. We had, thereafter opined that the law laid down by the Supreme Court in State of Punjab & others v. Rafiq Masih (White Washer) and others;

(2015) 4 SCC 334, was only for payments mistakenly made by the employer, on the employee's retirement, which is prohibited from recovery

from retired employees or employees who are due to retire within one year of the order of recovery; the higher emoluments paid to the petitioner as a

Deputy Registrar was in terms of an illegal promotion order made by the Principal and could not be construed as a mistake, in which case alone would

it fall within the exceptions carved out by the Supreme Court in Rafiq Masih (Supra); and there was no reason to interfere with the order of the

respondent authorities in having recovered Rs.41,600/- from the petitioner. We had further observed that the petitioner was entitled for all such

emoluments which he would have received if he had continued to discharge the functions of a Senior Administrative Officer, which he did not because

of his illegal promotion as a Deputy Registrar. The respondents were directed to

examine whether the petitioner is entitled for the Assured Career

Progression benefits as a Senior Administrative Officer, if he had continued to function in the said post, but for his illegal promotion as a Deputy

Registrar; and, if he is found entitled to such benefits, to then extend to him the said benefits, along with all other retiral benefits due to him as a Senior

Administrative Officer till date.

6. The jurisdiction of this Court has been invoked by the petitioner seeking review of the aforesaid order contending that others were also promoted by

the same very In-charge Principal pursuant to the selection process undertaken by the Departmental Promotion Committee; the petitioner had been

singled out for adverse treatment and no action was taken against others; even with regards recovery of the amounts paid to retired employees, no

such action, as was taken against the petitioner, was taken against other retired employees; and since the petitioner has alone been singled out for

adverse treatment, this Court should exercise its review jurisdiction to interfere.

7. When we asked Mr. Dharmendra Barthwal, learned Counsel for the petitioner, whether any such plea was taken before this Court when the writ

petitioner was heard, learned Counsel would fairly state that no such plea was taken earlier; and it is for the first time, in this review proceedings, have

these pleas taken.

8. The scope of interference in review proceedings is extremely limited. In review proceedings the contentions, urged on merits, are, ordinarily, not

examined as these are all matters within the purview of an appellate Court. There are definitive limits to the exercise of the power of review. The

power of review may be exercised on the discovery of new and important matter or evidence which, after the exercise of due diligence, was not

within the knowledge of the person seeking the review or could not be produced by him at the time when the order was made; it may be exercised

where some mistake or error apparent on the face of the record is found; it may also be exercised on any analogous ground. But it may not be

exercised on the ground that the decision was erroneous on merits. That would be the province of a Court of Appeal. A power of review is not to be

confused with the appellate power which may enable an Appellate Court to correct all manner of errors committed by the Subordinate Court. [Aribam

Tuleshwar Sharma v. Aribam Pishak Sharma and others : AIR 1979 SC 1047;

Shivdeo Singh and others vs. State of Punjab and other : AIR 1963 SC

1909; Smt. Meera Bhanja vs. Smt. Nirmala Kumari Choudhury : AIR 1995 SC 455.]Review proceedings are not by way of an appeal, and should be

strictly confined to the scope and ambit of Order 47 Rule 1 C.P.C. (Smt. Meera Bhanja vs. Smt. Nirmala Kumari Choudhury : AIR 1995 SC 455).

9. A party is not entitled to seek review of a judgment merely for the purpose of a rehearing and a fresh decision of the case. [Sajjan Singh vs. State

of Rajasthan : AIR 1965 SC 845; M/s Northern India Caterers (India) Ltd. vs. Lt. Governor of Delhi : (1980) 2 SCC 167.]A review proceeding

cannot be equated with the original hearing of the case, and the finality of the judgment delivered by the Court will not be reconsidered except

â??where a glaring omission or patent mistake or like grave error has crept in earlier by judicial fallibility.â? [Sow Chandra Kante & another vs.

Sheikh Habib : (1975) 1 SCC 674; M/s Northern India Caterers (India) Ltd. vs. Lt. Governor of Delhi : (1980) 2 SCC 167]. In review proceedings,

this Court would interfere only if the order under review suffers from an error apparent on the face of the record.

10. It is only if the order under review suffers from a mistake or error apparent on the face of record, would this Court then exercise its jurisdiction to

review its earlier order. Review is not a re-hearing on merits, and this Court cannot be said to have committed a mistake or an error apparent on the

face of record relying on material placed for the first time in review proceedings, and which were not placed before the Court earlier when the writ

petition was heard.

11. While it is true that review can also be sought on discovery of a new and important matter or evidence which, after the exercise of due diligence

was not within the knowledge of the petitioner, and could not be produced by him when the order was passed, no plea has been taken, even in the

affidavit filed in support of the review application, regarding the due diligence exercise undertaken by the petitioner, and as to how he had discovered

these facts which he now seeks to place reliance upon.

12. Viewed from any angle, we see no reason to review the order passed in Writ Petition (S/B) No.517 of 2018 dated 12.02.2019. The review petition

fails and is, accordingly, dismissed. No costs.