
(2016) 06 JH CK 0084
In the Jharkhand High Court
Case No : Civil Review No. 83 of 2015

Rajesh Ravidas

APPELLANT

Vs

M/s. Central Coal Fields Limited

RESPONDENT

Date of Decision : 15-06-2016

Acts Referred:

Citation : (2016) 3 AIRJharR 563 : (2016) 4 JCR 567

Hon'ble Judges : Mr. D.N. Patel and Ratnaker Bhengra, JJ.

Bench : Division Bench

Advocate : Mr. Yogendra Prasad, Advocate, for the Appellant; Mr. Kaustav Panda and Mr. Nagmani Tiwari, Advocates, for the Respondent

Final Decision : Dismissed

Judgement

Mr. D.N. Patel, J.(Oral)—This Civil Review application has been preferred for review of an order passed by the Division Bench of this Court in L.P.A. No. 478 of 2014 dated 14th May, 2015.

2. Having heard learned counsels for both the sides and looking to the facts and circumstances of the case, it appears that the main ground for challenging the order passed by the Division Bench of this Court is that there was no delay on the part of this petitioner for raising demand of compassionate appointment. During the course of reference under Section 10 of the Industrial Disputes Act, 1947, this petitioner came to know that his application for getting compassionate appointment was rejected on 28th September, 2000. The father of this petitioner expired on 10th April, 1991 and, thereafter, mother of this petitioner expired in the year 1995. The petitioner was of 14 years of age in the year 1991. Thus, there was no delay on the part of this petitioner in approaching this Court.

3. It is submitted by the learned counsel for the petitioner that the claim of this petitioner for getting compassionate appointment has been rejected without assigning any reasons. These facts are not properly appreciated by this Court while dismissing the Letters Patent Appeal and, hence, this Civil Review

application has been preferred.

4. It appears that the Letters Patent Appeal preferred by this petitioner was dismissed by this Court considering all the aforesaid aspects of the matter. Father of this petitioner expired on 10th April, 1991. The name of this petitioner was deleted from the roll of Kuju Colliery on 23rd/25th November, 1991 because the age of this petitioner was 10 years as on 1st April, 1987. Mother of this petitioner was in fact entitled to the compassionate appointment or she was entitled to monetary compensation. The application for compassionate appointment was never preferred by mother. She expired on 10th May, 1995 i.e. after approximately 4 years of the death of father of the petitioner. Thereafter, dispute was raised by this petitioner under Section 10 of the Industrial Disputes Act, 1947 and the reference was rejected by the appropriate Government in the year 2000 and, thereafter, writ petition was preferred in the year 2010. All these facts have been considered by this Court while dismissing the Letters Patent Appeal. No new facts have been stated before this Court. The whole case is argued as if this Civil Review application is an appeal against the order passed by the Division Bench of this Court in L.P.A. No. 478 of 2014. This Civil Review application is not an appeal in disguise.

5. It has been held by Hon"ble the Supreme Court in the case of Aribam Tuleswar Sharma v. Aribam Pishak Sharma, as reported in (1979) 4 SCC 389, at paragraph 3 as under:

"3. The Judicial Commissioner gave two reasons for reviewing his predecessor's order. The first was that his predecessor had overlooked two important documents Exs. A-1 and A-3 which showed that the respondents were in possession of the sites even in the year 1948-49 and that the grants must have been made even by then. The second was that there was a patent illegality in permitting the appellant to question, in a single writ petition, settlement made in favour of different respondents. We are afraid that neither of the reasons mentioned by the learned Judicial Commissioner constitutes a ground for review. It is true as observed by this Court in Shivdeo Singh v. State of Punjab there is nothing in Article 226 of the Constitution to preclude a High Court from exercising the power of review which inheres in every court of plenary jurisdiction to prevent miscarriage of justice or to correct grave and palpable errors committed by it. But, 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 appellate powers which may enable an appellate court to correct all manner of errors committed

by the subordinate court."

(emphasis supplied)

6. It has also been held by Hon"ble the Supreme Court in the case of Meera Bhanja v. Nirmala Kumari Choudhary, as reported in (1995) 1 SCC 170, at paragraph nos. 8, 9 and 15 as under:

"8. It is well settled that the review proceedings are not by way of an appeal and have to be strictly confined to the scope and ambit of Order 47. Rule 1. CPC. In connection with the limitation of the powers of the court under Order 47. Rule 1. while dealing with similar jurisdiction available to the High Court while seeking to review the orders under Article 226 of the Constitution of India, this Court, in the case of Aribam Tuleswar Sharma v. Aribam Pishak Sharma. speaking through Chinnappa Reddv, J. has made the following pertinent observations: (SCC p. 390, para 3)

"It is true as observed by this Court in Shivdeo Singh v. State of Punjab, there is nothing in Article 226 of the Constitution to preclude the High Court from exercising the power of review which inheres in every Court of plenary jurisdiction to prevent miscarriage of justice or to correct grave and palpable errors committed by it. But, 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 appellate power which may enable an appellate court to correct all manner of errors committed by the subordinate court. "

9. Now it is also to be kept in view that in the impugned judgment, the Division Bench of the High Court has clearly observed that they were entertaining the review petition only on the ground of error apparent on the face of the record and not on any other ground. So far as that aspect is concerned, it has to be kept in view that an error apparent on the face of record must be such an error which must strike one on mere looking at the record and would not require any long-drawn process of reasoning on points where there may conceivably be two opinions. We may usefully refer to the observations of this Court in the case of Satyanarayan Laxminarayan Hegde v. Mallikarjun Bhavanappa Tirumale wherein, K.C. Das Gupta, J., speaking for the Court has made the following observations in connection with an error apparent on the face of the record:

An error which has to be established by a long-drawn process of reasoning on points where there may conceivably be two opinions can hardly be said to be an error apparent on the face of the record. Where an alleged error is far from self-

evident and if it can be established, it has to be established, by lengthy and complicated arguments, such an error cannot be cured by a writ of certiorari according to the rule governing the powers of the superior court to issue such a writ.

15. In our view the aforesaid approach of the Division Bench dealing with the review proceedings clearly shows that it has overstepped its jurisdiction under Order 47, Rule 1 CPC by merely styling the reasoning adopted by the earlier Division Bench as suffering from a patent error. It would not become a patent error or error apparent in view of the settled legal position indicated by us earlier. In substance, the Review Bench has re-appreciated the entire evidence, sat almost as court of appeal and has reversed the findings reached by the earlier Division Bench. Even if the earlier Division Bench's findings regarding C.S. Plot No. 74 were found to be erroneous, it would be no ground for reviewing the same, as that would be the function of an appellate court. Learned counsel for the respondent was not in a position to point out how the reasoning adopted and conclusion reached by the Review Bench can be supported within the narrow and limited scope of Order 47, Rule I CPC. Right or wrong, the earlier Division Bench judgment had become final so far as the High Court was concerned. It could not have been reviewed by reconsidering the entire evidence with a view to finding out the alleged apparent error for justifying the invocation of review powers. Only on that short ground, therefore, this appeal is required to be allowed. The final decision dated 8-7-1986 of the Division Bench dismissing the appeal from Appellate Decree No. 569 of 1973 insofar as C.S. Plot No. 74 is concerned as well as the review judgment dated 5-9-1984 in connection with the very same plot, i.e., C.S. Plot No. 74, are set aside and the earlier judgment of the High Court dated 3-8-1978 allowing the second appeal regarding suit Plot No. 74 is restored. The appeal is accordingly allowed. In the facts and circumstances of the case, there will be no order as to costs."

(emphasis supplied)

7. It has further been held by Hon'ble the Supreme Court in the case of Parsion Devi v. Sumitri Devi, as reported in (1997) 8 SCC 715, at paragraph nos. 7, 8 and 9 as under:

"7. It is well settled that review proceedings have to be strictly confined to the ambit and scope of Order 47, Rule 1 CPC. In Thungabhadra Industries Ltd. v. Govt, of A.P. (SCR at p. 186) this Court opined:

"What, however, we are now concerned with is whether the statement in the order of September 1959 that the case did not involve any substantial question of law is an 'error apparent on the face of the record?'. The fact that on the earlier occasion the Court held on an identical state of facts that a substantial question of law arose would not per se be conclusive, for the earlier order itself might be erroneous. Similarly, even if the statement was wrong, it would not follow that it was an 'error apparent on the face of the record?', for there is a

distinction which is real, though it might not always be capable of exposition, between a mere erroneous decision and a decision which could be characterised as vitiated by 'error apparent'. A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected, but lies only for patent error."

8. Again, in *Meera Bhanja v. Nirmala Kumari Choudhury* while, quoting with approval a passage from *Aribam Tuleshwar Sharma v. Aribam Pishak Sharma* this Court once again held that review proceedings are not by way of an appeal and have to be strictly confined to the scope and ambit of Order 47, Rule 1 CPC.

9. Under Order 47, Rule 1 CPC a judgment may be open to review inter alia if there is a mistake or an error apparent on the face of the record. An error which is not self-evident and has to be detected by a process of reasoning, can hardly be said to be an error apparent on the face of the record justifying the court to exercise its power of review under Order 47, Rule 1 CPC. In exercise of the jurisdiction under Order 47, Rule 1 CPC it is not permissible for an erroneous decision to be "reheard and corrected". A review petition, it must be remembered has a limited purpose and cannot be allowed to be "an appeal in disguise".

(emphasis supplied)

8. It has further been held by Hon^{ble} the Supreme Court in the case of *Haridas Das v. Usha Rani Banik*, as reported in (2006) 4 SCC 78, at paragraph nos. 13 to 18 as under:

"13. In order to appreciate the scope of a review, Section 114 CPC has to be read, but this section does not even adumbrate the ambit of interference expected of the court since it merely states that it "may make such order thereon as it thinks fit". The parameters are prescribed in Order 47 CPC and for the purposes of this lis, permit the defendant to press for a rehearing "on account of some mistake or error apparent on the face of the records or for any other sufficient reason". The former part of the rule deals with a situation attributable to the applicant, and the latter to a jural action which is manifestly incorrect or on which two conclusions are not possible. Neither of them postulate a rehearing of the dispute because a party had not highlighted all the aspects of the case or could perhaps have argued them more forcefully and/or cited binding precedents to the court and thereby enjoyed a favourable verdict. This is amply evident from the Explanation to Rule 1 Order 47 which states that the fact that the decision on a question of law on which the judgment of the court is based has been reversed or modified by the subsequent decision of a superior court in any other case, shall not be a ground for the review of such judgment. Where the order in question is appealable the aggrieved party has adequate and efficacious remedy and the court should exercise the power to review its order with the greatest circumspection. This Court in *Thungabhadra Industries Ltd. v. Govt. of A.P* held as follows: (SCR p. 186)

"There is a distinction which is real, though it might not always be capable of

exposition, between a mere erroneous decision and a decision which could be characterised as vitiated by 'error apparent'. A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected, but lies only for patent error. ... where without any elaborate argument one could point to the error and say here is a substantial point of law which stares one in the face, and there could reasonably be no two opinions entertained about it, a clear case of error apparent on the face of the record would be made out."

14. In *Meera Bhanja v. Nirmala Kumari Choudhury* it was held that:

"8. It is well settled that the review proceedings are not by way of an appeal and have to be strictly confined to the scope and ambit of Order 47, Rule 1 CPC. In connection with the limitation of the powers of the court under Order 47, Rule 1 while dealing with similar jurisdiction available to the High Court while seeking to review the orders under Article 226 of the Constitution, this Court, in *Aribam Tuleswar Sharma v. Aribam Pishak Sharma* speaking through Chinnappa Reddy, J. has made the following pertinent observations:

"It is true there is nothing in Article 226 of the Constitution to preclude the High Court from exercising the power of review which inheres in every court of plenary jurisdiction to prevent miscarriage of justice or to correct grave and palpable errors committed by it. But, 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 appellate power which may enable an appellate court to correct all manner of errors committed by the subordinate court." (SCC pp. 172-73. para 8)

15. A perusal of Order 47, Rule 1 shows that review of a judgment or an order could be sought: (a) from the discovery of new and important matters or evidence which after the exercise of due diligence was not within the knowledge of the applicant; (b) such important matter or evidence could not be produced by the applicant at the time when the decree was passed or order made; and (c) on account of some mistake or error apparent on the face of the record or any other sufficient reason.

16. In *Aribam Tuleswar Sharma v. Aribam Pishak Sharma* this Court held that there are definite limits to the exercise of power of review. In that case, an application under Order 47, Rule 1 read with Section 151 of the Code was filed which was allowed and the order passed by the Judicial Commissioner was set aside and the writ petition was dismissed. On an appeal to this Court it was held as under: (SCC p. 390, para 3)

"It is true as observed by this Court in *Shivdeo Singh v. State of Punjab* there is nothing in Article 226 of the Constitution to preclude a High Court from exercising the power of review which inheres in every court of plenary jurisdiction to prevent miscarriage of justice or to correct grave and palpable errors committed by it. But, 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 appellate powers which may enable an appellate court to correct all manner of errors committed by the subordinate court."

17. The judgment in *Aribam* case has been followed in *Meera Bhanja*. In that case, it has been reiterated that an error apparent on the face of the record for acquiring jurisdiction to review must be such an error which may strike one on a mere looking at the record and would not require any long-drawn process of reasoning. The following observations in connection with an error apparent on the face of the record in *Satyanarayan Laxminarayan Hegde v. Millikarjun Bhavanappa Tirumale* were also noted: (AIR p. 137)

"An error which has to be established by a long-drawn process of reasoning on points where there may conceivably be two opinions can hardly be said to be an error apparent on the face of the record. Where an alleged error is far from self-evident and if it can be established, it has to be established, by lengthy and complicated arguments, such an error cannot be cured by a writ of certiorari according to the rule governing the powers of the superior court to issue such a writ." (SCR pp. 901-02)

18. It is also pertinent to mention the observations of this Court in *Parsion Devi v. Sumitri Devi*. Relying upon the judgments in *Aribam* and *Meera Bhanja* it was observed as under: (SCC p. 719, para 9)

"9. Under Order 47, Rule 1 CPC a judgment may be open to review inter alia if there is a mistake or an error apparent on the face of the record. An error which is not self-evident and has to be detected by a process of reasoning, can hardly be said to be an error apparent on the face of the record justifying the court to exercise its power of review under Order 47, Rule 1 CPC. In exercise of the jurisdiction under Order 47, Rule 1 CPC it is not permissible for an erroneous decision to be reheard and corrected. A review petition, it must be remembered has a limited purpose and cannot be allowed to be an appeal in disguise."

(emphasis supplied)

9. Learned counsel for the petitioner has relied upon decisions reported in AIR 2006 SC 75, (2004) 4 SCC 122 and (1990) 2 SCC 396. None of these decisions are helpful to this petitioner because first judgment is about if any material document is ignored by the Court then civil review can be entertained, second judgment is about any new relevant facts have been pointed out then civil review application can be entertained and third judgment is about regularisation of daily rated worker. None of these facts are compatible to the facts of the present case. No new facts have been pointed out, no material facts have been ignored nor this is a case of regularisation. Hence, all the judgments are not helpful to the petitioner for reviewing the judgment delivered by this Court in L.RA. No. 478 of 2014 vide order dated 14th May, 2015.

10. In view of the aforesaid facts, reasons and judicial pronouncements, there is no substance in this Civil Review application. It ought to be kept in mind that compassionate appointment is not a matter of right, at all. There is no vested right in this petitioner to get the compassionate appointment which can be exercised at any time in future, after the death of his father in the year 1991. The compassionate appointment is an exception to Articles 14 and 16 of the Constitution of India. Other competent candidates will not get appointment, if compassionate appointment is given to the legal heirs of the deceased employee. Compassionate appointment cannot be given after 5 years, 10 years, 15 years or 20 years. The very purpose of compassionate appointment is frustrated by now. The very philosophy of the compassionate appointment as has been mentioned in the decision rendered by Hon"ble the Supreme Court, as reported in (2014) 13 SCC 583 in paragraphs 6, 7, 8, 9 and 13, has already been referred in the judgment of this Court while dismissing L.P.A. No. 478 of 2014 vide order dated 14th May, 2015. By now, period of quarter of century is already over after the death of father of this petitioner, hence, very purpose of compassionate appointment will not be achieved. All these facts and reasons have been mentioned in the judgment delivered by this Court while dismissing L.P.A. No. 478 of 2014. We, therefore, see no reason to review the order passed by this Court in L.P.A. No. 478 of 2014 vide order dated 14th May, 2015.

11. Accordingly, this Civil Review application is, hereby, dismissed.