

(2022) 10 DEL CK 0033

In the Delhi High Court

Case No : Civil Writ Petition No. 11727 Of 2019

Rajpal Singh

APPELLANT

Vs

Commissioner Of Police & Ors

RESPONDENT

Date of Decision : 12-10-2022

Acts Referred:

Constitution Of India, 1950 — Article 226

Code Of Civil Procedure, 1908 — Section 114, 151, Order 47 Rule 1

Citation : (2022) 10 DEL CK 0033

Hon'ble Judges : Siddharth Mridul, J;Anup Jairam Bhambhani, J

Bench : Division Bench

Advocate : M. K. Bhardwaj, Alisha Saini, Avnish Ahlawat, Nitesh Kr. Singh, Laavanya Kaushik, Aliza Alam

Final Decision : Dismissed

Judgement

Anup Jairam Bhambhani J

REVIEW PET. No. 248/2022

1. By way of the present petition under Order XLVII Rules 1 and 2 read with section 151 of the Code of Civil Procedure, 1908 ('CPC' for short) the petitioner seeks review of order dated 06.11.2019 made in the matter, whereby this court had disposed of the writ petition in the following terms :

"9. After some hearing, learned counsel for the petitioner submits that the petitioner would not contest the matter on merits if the Appellate Authority is directed to reconsider the order of punishment, having regard to the fact that the petitioner had an unblemished service record of 25 years of service on the date of dismissal. It is also urged that the petitioner is the sole bread-earner in a family comprising a wife and three children, including one school going daughter. Petitioner has no other source of livelihood and in case the order of dismissal is not modified, the family of the petitioner would seriously suffer.

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11. We have heard learned counsels for the parties.

12. Since the matter is not pressed on merits, we dispose of the writ petition with liberty to the petitioner to make a representation to the Appellate Authority; and while disposing of the representation, the Appellate Authority is directed to take into consideration the previous service record of the petitioner; the fact that he was acquitted in the criminal case; and the fact that a young family is dependent entirely on the petitioner.

13. We make it clear that any order passed on the representation will not give to the petitioner a fresh cause of action.”

(emphasis supplied)

2. Mr. M. K. Bhardwaj, learned counsel appearing on behalf of the review petitioner submits that the Appellate Authority has failed to reconsider the order of punishment as was directed by this court, inasmuch as the Appellate Authority has not appreciated that the petitioner had an unblemished record of 25 years of service and that he is the sole breadwinner of the family comprising a wife and three children and has no other source of livelihood. It is submitted that consequently, the petitioner’s family would suffer seriously since the order of dismissal is not modified.

3. Mr. Bhardwaj further submits, that in view of the observation made by this court in the order under review, to the effect that any order passed on the petitioner’s representation will not give to him a fresh cause of action, the petitioner is also now unable to challenge the decision taken by the Appellate Authority.

4. Issue notice.

5. Mrs. Avnish Ahlawat, learned Standing Counsel for GNCTD appears on advance copy; and accepts notice.

6. We have heard Mr. Bhardwaj at-length on the review petition. We have also heard Mrs. Ahlawat in opposition.

7. Mr. Bhardwaj’s main contention is that the Appellate Authority has not considered or decided the petitioner’s representation in accordance with the mandate of order dated 06.11.2019, which was the basis for the petitioner not contesting the matter on merits and for disposal of the writ petition. Counsel submits that the Appellate Authority has failed to appreciate the long and unblemished service put-in by the petitioner; nor has the Appellate Authority given due consideration to the fact that the petitioner was acquitted in the criminal case filed against him; nor has the Appellate Authority taken a sympathetic view of the disproportionate punishment meted-out to the petitioner in the backdrop of the fact that the petitioner has to support a wife and three children, with no other source of livelihood.

8. On the other hand, Mrs. Ahlawat points-out that consequent upon disposal of

the writ petition by order dated 06.11.2019, the department duly considered and decided the petitioner's representation vide order dated 31.01.2020; whereafter the petitioner also preferred before this court an application bearing CM APPL. No. 14454/2022 purporting to seek directions "... to execute the order dated 06.11.2019 in WP(C) No. 11727/2019 in true letter and spirit"; which was subsequently withdrawn vide order dated 24.03.2022; and now the petitioner has filed the present review petition on 24.09.2022 after more than 1000 days of the impugned judgment.

9. That apart, Mrs. Ahlawat submits that a perusal of order dated 31.01.2020 will show that the Appellate Authority has reconsidered the petitioner's case, taking due notice of the petitioner's past service; his acquittal in the criminal matter; as also the fact that the petitioner has (had) a young family to support. In these circumstances, Mrs. Ahlawat submits that no ground is made-out for review of order dated 06.11.2019.

10. We have considered the averments made in the petition; have carefully perused the order made on the petitioner's representation by the Appellate Authority; and have also weighed the rival contentions of the parties.

11. Order dated 31.01.2020 made by the Commissioner of Police (Operations), Delhi Police on the representation made by the petitioner inter-alia records as follows :

"Consequently, Ex. Constable Raj Pal Singh, No. 3516/PCR has submitted his representation dated 11.12.2019 in which he pleaded that the criminal case was registered on the same allegations on which the departmental enquiry was ordered against him vide order dated 18.05.2012 and in the said criminal case he has been acquitted vide judgement dated 30.01.2017 for want of any evidence against him, the penalty order deserves to be set aside in the interest of justice and keeping in view the law laid down by the Hon'ble Supreme Court in the case of Captain M. Paul Anthony Vs. Bharat Gold Mines, JT 1999 (2) 456. He has never been subjected to any major penalty on account of commission of any misconduct, except the impugned proceedings made basis to impose penalty of dismissal from service. His unblemished service of more than 25 years speaks volume about his honesty, sincerity and devotion to duty. Just one unfortunate incident which happened with him due to misconception of raiding party could not have been made basis to impose extreme penalty of dismissal. Because after dismissal from service, not only he, but his entire family has suffered a lot. It has become difficult for him to meet both ends of his family and his young daughter who has just passed 12th and approaching marriageable age may also be affected in case indulgence is not shown by the Appellate Authority. The Hon'ble High Court has also viewed that the competent Appellate Authority shall consider the effect of said acquittal in criminal case, unblemished service of 25 years and the dependents in the family including young daughter. He has further prayed to set aside the dismissal order and give him another chance to serve in Delhi Police to prove his worth by rendering honest and sincere service.

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"I have perused the entire record available on file. The plea/contentions put-forth by the representationist are not acceptable. 25 years of unblemished service record, if presumed, does not give a license to indulge in misconducts. He has been awarded a Censure in the past for riding without number plate, which is very unusual for a policeman to do. In the present case too, he was caught alongwith his associates in a Maruti Car in which 11 Carton/Boxes of illicit liquor with labels of Bonny Scott Special Malted Whisky for sale in Rajasthan (total 528 quarters of illicit liquor) were recovered. In the said Maruti Car, he was sitting in the driver seat. Accordingly, a case FIR No. 671/03 u/s 61/1/14 Excise Act, PS Mangol Puri, Delhi was registered against the representationist and his associates. In the case of Kendriya Vidyalaya Sangathan & Ors. Vs. T. Srinivas (AIR 2004 SC, 4127), the Hon'ble Supreme Court has held that the standard of proof, the mode of enquiry and the rules governing the enquiry and trial in both the cases are distinct and different. Although, he has been acquitted in the criminal case by the Hon'ble Trial Court but during in-house enquiry, the charges are fully proved against the representationist. Being a member of disciplined police force, his prime duty was to protect crime but contrary to this he misused his official position and mixed up with the bootleggers for smuggling the illicit liquor. His connivance with the bootleggers duly proved during the course of DE proceedings clearly indicates that he had committed gravest act of misconduct and involves moral turpitude which is unpardonable. The acquittal in the case has been made as the Judge has recorded that "prosecution has failed to prove its case against the accused beyond reasonable doubt. Accused are entitled to the benefit of doubt".

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"The other fact that a young family is dependent entirely on the representationist, tolerating a grave misconduct such as smuggling of liquor by a policeman, due to his young family, will send a wrong message to the entire force.

"Therefore, keeping in view the overall circumstances I do not find any mitigating circumstances to differ with the reasoned and comprehensive punishment order passed by the disciplinary authority. Hence, the representation submitted by Ex. Constable Raj Pal Singh, No. 3516/PCR (PIS No.28883729) is hereby rejected."

(emphasis supplied)

12. At this point it would be beneficial to recount the principles governing review of an order as enunciated by the Hon'ble Supreme Court in Ram, Sahu (Dead) Through LRs & Ors. vs. Vinod Kumar Rawat & Ors. 2020 SCC OnLine SC 896:

"26. In the case of Haridas Das v. Usha Rani Banik (Smt.), (2006) 4 SCC 78 while considering the scope and ambit of Section 114 CPC read with Order 47 Rule 1 CPC it is observed and held in paragraph 14 to 18 as under:

"14. In *Meera Bhanja v. Nirmala Kumari Choudhury*, (1995) 1 SCC 170 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*, (1979) 4 SCC 389 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.'"

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"34. To appreciate the scope of review, it would be proper for this Court to discuss the object and ambit of Section 114 CPC as the same is a substantive provision for review when a person considering himself aggrieved either by a decree or by an order of Court from which appeal is allowed but no appeal is preferred or where there is no provision for appeal against an order and decree, may apply for review of the decree or order as the case may be in the Court, which may order or pass the decree. From the bare reading of Section 114 CPC, it appears that the said substantive power of review under Section 114 CPC has not laid down any condition as the condition precedent in exercise of power of review nor the said Section imposed any prohibition on the Court for exercising its power to review its decision. However, an order can be reviewed by a Court only on the prescribed grounds mentioned in Order 47 Rule 1 CPC, which has been elaborately discussed hereinabove. An application for review is more restricted than that of an appeal and the Court of review has limited jurisdiction as to the definite limit mentioned in Order 47 Rule 1 CPC itself. The powers of review cannot be exercised as an inherent power nor can an appellate power can be exercised in the guise of power of review."

(emphasis supplied)

13. As discussed above, the writ petition was disposed-of granting to the petitioner liberty to make a representation to the Appellate Authority limited to reconsidering the order of punishment meted-out to the petitioner, viz. the order dismissing him from service. Since this order was made upon the petitioner urging that he would not contest the matter on merits if the Appellate Authority would reconsider his representation as regards the punishment awarded, this court also expressly recorded that the order passed on such representation would not give to the petitioner a fresh cause of action.

14. The petitioner has not placed before the court any new material, fact or evidence that may not have been within his knowledge earlier-on; or that may have escaped the attention of the court; or that may be seen as a mistake or error apparent on the face of the record.

15. Though section 114 and Order XLVII of the Code of Civil Procedure, 1908 do not per-se apply to proceedings under Article 226 of the Constitution of India, the principles enumerated therein would apply; but even so, we do not see any error apparent on the face of the record; nor any new and important material having become available subsequently, necessitating a re-look into the matter; nor any other manifest error or failure of the court to consider the material on record.

16. In our opinion therefore, no ground or basis is made-out for review of order dated 06.11.2019 made in the matter.

17. The present review petition is accordingly dismissed; without however, any order as to costs.