

(2015) 03 PAT CK 0094

In the Patna High Court

Case No : Civil Review No. 144 of 2014 in CWJC No. 3428 of 2010

Ravi Prakash "Babloo" and Others

APPELLANT

Vs

The Jai Prakash University and Others

RESPONDENT

Date of Decision : 25-03-2015

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2015) 3 PLJR 893

Hon'ble Judges : Kishore Kumar Mandal, J.

Bench : Single Bench

Advocate : Anil Kumar Sinha, for the Appellant

Final Decision : Dismissed

Judgement

Kishore Kumar Mandal, J.—The writ petitioners of CWJC No. 3428 of 2010 have filed the present review application under Article 226 of the Constitution of India for review of order dated 12.11.2013 passed in the aforesaid writ application. It may be noticed at the outset that aggrieved by the order dated 12.11.2013 passed in CWJC No. 3428 of 2010 the writ petitioners filed a writ appeal being LPA No. 105 of 2014 which was disposed of on 21.4.2014 (Annexure-R/6) granting leave to the appellant to withdraw the appeal with liberty to file appropriate application seeking review of the order passed on the writ petition in the light of the decision made in LPA No. 1438 of 2011. Hence, the present review petition.

2. Heard Mr. Anil Kumar Sinha in support of the review petition, the counsel(s) who have appeared on behalf of the private respondents as well as the counsel for the J.P. University, Chapra (for short "the University").

3. Unsuccessful candidates in the selection process for the post of Principal in Colleges under the University filed a writ application for a declaration that the selection/recommendation by the Selection Committee of the University for appointment to the post of Principal was illegal being contrary to the mandatory/

statutory provision of the Act. They sought for setting aside the appointment of the private respondents of the writ petition as Principals in various constituent colleges under the University. A preliminary objection was raised by the private respondents that considering the nature of dispute and the facts involved therein the petitioners be relegated to the alternative and efficacious remedy of ventilating their grievance(s) before the Chancellor in terms of Section 9(4) of the Bihar Universities Act, 1976 (for short "the Act"). The same was opposed by the writ petitioner relying on an order passed in the case of Dr. Bimal Prasad Singh and Others Vs. The State of Bihar and Others--> . This Court considering the rival submissions of the parties and appreciating the peculiar facts of the case as also the conspectus of the case based on which the case of Dr. Bimal Pd. Singh (supra) was considered and disposed of, upheld the contention of the private respondents for the reasons stated therein and refused to exercise its discretion in hearing the matter on merit relegating the petitioner to invoke the jurisdiction of the Chancellor for the relief prayed for in the writ application in terms of Section 9(4) of the Act. The writ application was accordingly disposed of. Be it noted here that while the writ application was pending consideration, on the submissions of the parties that LPA No. 1438 of 2011 is pending consideration before a Division Bench of this Court involving identical issue, the writ court under order dated 3.7.2012 had postponed the consideration of the writ application until disposal of the aforesaid appeal. The said appeal being LPA No. 1438 of 2011 was disposed of on 4.4.2013 (Annexure-R/5). However, neither of the parties at the time of final hearing and disposal of the writ application considered it advantageous or necessary to refer to and rely on the order dated 4.4.2013 passed in LPA No. 1438 of 2011.

4. Mr. Anil Kr. Sinha the counsel for the review petitioners submitted that the present application has been filed precisely on two grounds. Firstly, despite due diligence the order passed in LPA No. 1438 of 2011 was not brought to the notice of the Court wherein identical issue relating to different University was raised, considered and allowed. Secondly, the review petitioners preferred writ appeal against the order passed by the writ Court vide LPA No. 105 of 2014 which was disposed of on 21.4.2014 (Annexure-R/6) permitting the appellant to withdraw the appeal and approach the writ Court for review. Relying on Shivdeo Singh and Others Vs. State of Punjab and Others, , it has been argued that Article 226 of the Constitution of India does not 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 him. Such jurisdiction however has certain limitation. Discovery of new and important matter or evidence which after exercise of due diligence was not within the knowledge of the person seeking the review and/or if there is/are some mistake(s) or error(s) apparent on the face of the record.

5. Per contra, Mr. Amresh Kumar Singh who advanced the lead argument on behalf of the respondents relying on Kamlesh Verma Vs. Mayawati and Others, submitted that the present review application in fact seeks rehearing of the writ

petition which is not permissible in law. The disposal of LPA No. 1438 of 2011 was very much within the knowledge of the review petitioners when the writ petition was disposed of but the writ petitioner did not think it proper to refer to the said judgment wherein the writ petition was decided on merit and plea of alternative remedy was neither taken nor decided. On their own showing the present review of the order is not prayed on accepted theory of an error apparent on the face of the record which the writ Court committed in disposing of the writ petition. The other counsels on behalf of the private respondents also supported the contention of Mr. Amresh Kumar Singh.

6. In *Aribam Tuleshwar Sharma Vs. Aribam Pishak Sharma and Others*, the Apex Court while considering the legality of the order of Judicial Commissioner allowing the review appreciated the reasonings for reviewing the order. Noticing the ratio laid down in *Shivdeo Singh (supra)* the Apex Court did not approve the review order passed by the Judicial Commissioner emphasizing the well crystallized limits on the power of review. It was held that the power of review is not to be confused with the appellate powers which may enable an appellate court to correct all manner of errors committed by the court below. In *Kamlesh Verma (supra)* the similar view was expressed when the Apex Court held that a review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected. In paragraph 18 of the said report the Apex Court held as under:--

"18. Review is not rehearing of an original matter. The power of review cannot be confused with appellate power which enables a superior court to correct all errors committed by a subordinate court. A repetition of old and overruled argument is not enough to reopen concluded adjudication. This Court in *Jail Studios Ltd. vs. Shin Satellite Public Co. Ltd.*, held as under: (SCC pp. 504-505, paras 11-12)

"11. So far as the grievance of the applicant on merits is concerned, the learned counsel for the opponent is right in submitting that virtually the applicant seeks the same relief which had been sought at the time of arguing the main matter and had been negatived. Once such a prayer had been refused, no review petition would lie which would convert rehearing of the original matter. It is settled law that the power of review cannot be confused with appellate power which enables a superior court to correct all errors committed by a subordinate court. It is not rehearing of an original matter. A repetition of old and overruled argument is not enough to reopen concluded adjudications. The power of review can be exercised with extreme care, caution and circumspection and only in exceptional cases.

12. When a prayer to appoint an arbitrator by the applicant herein had been made at the time when the arbitration petition was heard and was rejected, the same relief cannot be sought by an indirect method by filing a review petition. Such petition, in my opinion, is in the nature of "second innings" which is impermissible and unwarranted and cannot be granted".

7. The counsel for the respondents has argued that facts of the present case are quite different and distinct from the facts of LPA No. 1438 of 2011 arising out of CWJC No. 2103 of 2009.

8. In the case at hand this Court while disposing of the writ petition considered the rival submissions of the parties on the point of alternative remedy and noticing the salient feature appearing from the case exercised its discretion in permitting the writ petition to invoke the alternative statutory remedy available to them. It is settled beyond cavil that alternative remedy is not rule of law but rule of discretion. Once such discretion is invoked the writ Court would not be justified in reviewing the order and thereafter considering the writ petition on its merit and deciding the same. The second submission of Mr. Anil Kumar Sinha in support of the review application is also of not much consequence. The writ appeal court passed an order on the submission which the appellant made before the Court. It is a matter of common knowledge that any petition or appeal is first argued on merit and if the Court is not satisfied then alternative arguments are made. The present application therefore has to be considered strictly on the touchstone of the principles which govern the exercise of such jurisdiction by the writ court. This Court at this stage may reiterate that disposal of LPA No. 1438 of 2011 on 4.4.2013 was not discovery of a new and important matter or evidence which after exercise of due diligence was not within the knowledge of writ petitioners. If that be the case then the present application is bound to fail considering the narrow confines of the jurisdiction invoked by the petitioners. The discussions made hereinabove persuade me to find no merit in the present application. It is accordingly dismissed.