

(2014) 10 GUJ CK 0040
In the Gujarat High Court

Case No : M.C.A. (For Review) No. 2768 of 2014 in S.C.A. No. 10262 of 2013

State of Gujarat and Others

APPELLANT

Vs

Vijaykumar B. Parmar

RESPONDENT

Date of Decision : 16-10-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 47 Rule 1
Constitution of India, 1950 — Article 226

Citation : (2015) 1 LLJ 342

Hon'ble Judges : Abhilasha Kumari, J

Bench : Single Bench

Advocate : D.M. Devnani, Learned Assistant Government Pleader, Advocates for the Appellant; Jigar D. Dave, Advocates for the Respondent

Judgement

Abhilasha Kumari, J.—Rule. Mr. Jigar D. Dave, learned advocate, waives service of notice of Rule for the respondent. This application has been preferred by the applicant-State of Gujarat and the concerned authorities of the State Government, with a prayer to review/clarify the order dated 28.02.2014, passed by this Court in Special Civil Application No. 10262 of 2013.

2. The respondent herein had filed the above-mentioned petition, being Special Civil Application No. 10262 of 2013, with a prayer to quash and set aside certain communications impugned in the said petition and to direct the respondent-authorities to consider his application for the grant of appointment on compassionate grounds. The learned advocate for the respondent (original petitioner) as well as the learned Assistant Government Pleader for the applicants (original respondents) were heard in the petition. The learned advocate for the respondent (original petitioner) made a statement that the interest of justice would be met if respondent No. 2 in the petition, that is, applicant No. 2 in the present application, is directed to consider and decide the application made by the petitioner on 21.09.2000, within a stipulated period of time. No objection was raised by the learned Assistant Government Pleader to

this request. Hence, the Court passed the following operative order:

"6. Hence the following order:

Respondent No. 2 Shall consider and decide the application of the petitioner dated 21.09.2000 for grant of compassionate appointment, keeping in view the aspect mentioned in the communication dated 27.09.2010 issued by respondent No. 4 that the application of the petitioner was received in the Department, but was not entered in the relevant Register, as it was mixed up with the pension papers of the deceased-father of the petitioner. The decision shall be taken, in accordance with law, and within a period of twelve weeks from the date of the receipt of a copy of this order. The petition is disposed of, in the above terms, without entering into the merits of the case. Direct Service of this order is permitted."

3. It is this order that is sought to be reviewed/clarified in the present application.

4. Mr. D.M. Devnani, learned Assistant Government Pleader, submits that when the representation of the petitioner was being considered, applicant No. 2 found that the application dated 21.09.2000 made by the respondent (original petitioner), could not have been made because in the said application, the respondent has stated that he has passed the XIIth standard, but the marksheet appears to have been issued in the year 2001.

4.1. It is next submitted that the respondent made a statement on 22.03.2002, wherein it is stated that he was pursuing his education, therefore, there was a delay in making application for compassionate appointment.

4.2. It is further submitted by the learned Assistant Government Pleader that the nature of the clarification sought by the applicants is to the effect that it would be open for them to consider whether the respondent could have made an application for compassionate appointment in the year 2000, at all.

4.3. Yet another clarification sought is whether the applicants could have rejected the application of the respondent, or not.

4.4. It is next contended that a clarification is required to be made that after the initial rejection of the application of the respondent in the year 2010, before filing of the petition in which the order of this Court came to be passed, whether the application of the petitioner dated 21.09.2000 was a genuine one, or not.

4.5. On the above grounds, it is submitted that the order of this Court dated 28.02.2014 may be reviewed clarified, accordingly.

5. Mr. Jigar D. Dave, learned advocate for the respondent, states that the application is delayed by 173 days. Though a prayer has been made to condone the delay, however, a perusal of the memorandum of the application reveals that there is no explanation, whatsoever, for the delay. Hence, the application may be rejected on the ground of delay.

5.1. It is further submitted that the submissions advanced before this Court during the hearing of the present application were never made when the main petition, that is, Special Civil Application No. 10262 of 2013, was decided. The said petition has been decided without entering into the merits of the case and the learned Assistant Government Pleader appearing in the matter had not raised any such objection. In fact, he had no objection if directions were issued to applicant No. 2 to decide the application dated 21.09.2000, made by the present respondent.

5.2. It is submitted that review jurisdiction is extremely limited and unless there is an error apparent on the face of the record, the order cannot be reviewed. In the present case, there is no error apparent on the face of the order sought to be reviewed.

5.3. It is next submitted that review jurisdiction does not mean that the matter can be reopened, re-argued and re-heard, especially, when the submissions sought to be made in the application for review were never raised before this Court during the hearing of the main petition.

5.4. Learned advocate for the respondent submits that the order passed by the Court is not an order on merits. Further, there is no necessity of clarifying the said order, as the said order is absolutely clear.

5.5. On the above grounds, it is prayed that the application be rejected.

6. This Court has heard Mr. D.M. Devnani, learned Assistant Government Pleader and Mr. Jigar D. Dave, learned advocate for the respondents and perused the averments made in the application.

7. The first prayer made by the applicants is for the review of the order dated 28.02.2014. It is a settled position of law, reiterated by this Court and the Supreme Court in a catena of judgments, that unless and until the order does not suffer from any error apparent on the face of the record or some other ground as mentioned in Order 47 Rule 1 of the Code of Civil Procedure, 1908, the exercise of review jurisdiction is not called for.

8. Upon perusal of the application, it is seen that in the entire memorandum of the application, there is not a single word regarding there being any error apparent on the face of the order sought to be reviewed. No other ground for review of the order is either stated in the application or argued before the Court, therefore, no grounds for review of the said order are made out by the applicants.

9. A perusal of the said order further reveals that no mistake or error has been committed by the Court, while passing the said order. While making submissions, learned Assistant Government Pleader has not raised any submission regarding there being an error apparent on the face of the order. Hence, in the view of this Court, as the order dated 28.02.2014 does not suffer from any error apparent on the face of it, the prayer for review of the said order cannot be granted.

10. As rightly submitted by the learned advocate for the respondent (original petitioner), review jurisdiction does not permit that the matter be reopened, re-argued and heard on merits, as though in appeal. This aspect has been clearly stated by the Supreme Court in *Smt. Meera Bhanja Vs. Smt. Nirmala Kumari Choudhury*, . The relevant extract of the judgment is reproduced hereinbelow:

"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, C.P.C. 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 Tuleshwar Sharma Vs. Aribam Pishak Sharma and Others*, , speaking through CHINNAPPA REDDY, J., has made the following pertinent observations (para 3):

"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."

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 and Others Vs. Millikarjun 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."

(emphasis supplied)

11. The averments made in the present application and the submissions advanced by the learned Assistant Government Pleader, during the hearing of this application, are such that touch upon the merits of the case. None of these submissions were advanced when the main petition was being heard and decided. The order of the Court has been passed after hearing the learned counsel for the respective parties with no objection by the applicants. As the applicants did not raise any objection during the hearing of the said petition, they are precluded from raising them now, at this stage.

12. It is an admitted position, which is not denied by the learned Assistant Government Pleader, that the order of this Court dated 28.02.2014, is not an order on merits. By way of this order, applicant No. 2 was directed to consider and decide the application of the petitioner dated 21.09.2000, for grant of appointment on compassionate grounds, keeping in view the aspect mentioned in the communication dated 27.09.2010, issued by respondent No. 4 in the petition, who is applicant No. 4 in the present application.

13. It was incumbent upon applicant No. 2 to take an appropriate decision in the matter. How, and in what manner the decision was to be taken and what aspects were to be considered, was left to applicant No. 2.

14. The submissions advanced by Mr. D.M. Devnani, learned Assistant Government Pleader, in support of the present application, are submissions on the merits of the petition. Whether the application of the petitioner dated 21.09.2000 could have been made or not, whether it was genuine or not, or whether the applicants could have rejected the application on any of the grounds submitted by the learned Assistant Government Pleader, are not matters that can be looked into in the present application. The task of considering the application of the respondent was the responsibility of applicant No. 2. How such consideration was to take place was to be decided by applicant No. 2.

15. It is clear that by way of the present application, the applicants are trying to put words into the mouth of the Court, in order to justify some aspect of the matter that may have occurred to them after the petition was disposed of. The Court refuses to be drawn into such type of a snare. The submissions advanced by the learned Assistant Government Pleader, which are based upon the averments made in the application, are a result of hindsight, gained after the passing of the order dated 28.02.2014. Hence, this Court, having not decided the petition on merits, can have nothing further to say regarding such submissions, except that they deserve outright rejection.

16. There remains the issue regarding the clarification of the order dated

28.02.2014. Though it is not specifically mentioned in the application which part of the order is required to be clarified, however, during the course of hearing learned Assistant Government Pleader has stated that paragraph-6 of the order may be clarified. The said paragraph has already been reproduced hereinabove.

17. A perusal of the same does not indicate that any clarification is required regarding the said order. The order is clear and unambiguous and couched in simple language; therefore, in the view of this Court, it does not require any clarification at all.

18. There is another aspect of the matter. The present application has been made after a delay of 173 days. A cursory prayer has been made in the application for condonation of delay, after the prayer for review and clarification of the order. However, not a single word has been stated in the entire application, regarding the reason for the delay. It is a settled position of law that even a large delay can be condoned if the applicant shows sufficient cause for condonation thereof. However, a small delay may not be condoned if there is no explanation for it and sufficient cause for condonation of delay has not been shown. In the present case, there is no explanation for the delay, therefore, it can hardly be said that sufficient cause has been shown.

19. Considered from every angle, the present application is devoid of merit. The application is, therefore, rejected. Rule is discharged. There shall be no orders as to costs.