

(2023) 12 SHI CK 0010

In the High Court Of Himachal Pradesh

Case No : Criminal Miscellaneous Petition (Main) No. 1392 Of 2023

State Of H.P

APPELLANT

Vs

Chaman Lal Bali And Others

RESPONDENT

Date of Decision : 05-12-2023

Acts Referred:

Citation : (2023) 12 SHI CK 0010

Hon'ble Judges : M.S. Ramachandra Rao, CJ; Jyotsna Rewal Dua, J

Bench : Division Bench

Advocate : Anup Rattan, Pranay Pratap Singh, Arsh Rattan, Sidharth Jalta

Final Decision : Dismissed

Judgement

Jyotsna Rewal Dua, J

1. This petition seeking review of the judgment passed on 17.11.2022 in LPA No. 517 of 2012 is barred by 207 days.

2. Background/facts

2(i) Respondent No. 1 was the writ petitioner. His writ petition being CWP(T) No. 16150 of 2008 was allowed by the learned Single Judge on 04.11.2011. The review petitioner was directed to take over respondent No.1's services as a Lecturer (College Cadre) in the subject of Economics w.e.f. 14.09.2006 with all consequential benefits.

2(ii) LPA No 517 of 2012 was preferred by the review petitioner against the aforesaid judgment. The appeal was disposed of on 30.10.2018 alongwith other connected matters with certain modifications in the relief allowed to respondent No. 1.

2(iii) The State (present review petitioner) filed review petition No. 101 of 2019 seeking review of the judgment passed on 30.10.2018 in LPA No. 517 of 2012. The sole ground was that respondent No. 1 (writ petitioner) did not possess

educational qualification required under the R&P Rules, hence was not entitled to the relief granted to him. In view of the ground urged, review was allowed on 20.08.2021 and consequently LPA No. 517 of 2012 was restored to its original number.

2(iv) The LPA, after its restoration, was taken up for hearing on 17.12.2022 when it was submitted by the learned Deputy Advocate General for the State (present review petitioner) that the respondent(original writ petitioner) in fact possessed the required qualification for the post of college Lecturer. Taking note of the submissions made for the State, the LPA was disposed of on 17.11.2022 with directions to the review petitioner to implement the judgment dated 30.10.2018 passed in LPA No. 387 of 2012 alongwith other connected cases, including LPA No. 517 of 2012 and release admissible benefits in terms thereof to the respondent (writ petitioner) within a period of four weeks. Cost of Rs. 20,000/- was also imposed upon the review petitioner payable to respondent No. 1. The judgment dated 17.11.2022 which is now being sought to be reviewed, is extracted hereinafter :-

"The petitioner was appointed as Lecturer in the subject of Economics in DAV College, Daulatpur Chowk on adhoc basis on 19.07.2000. After his suitability to the post was adjudged by a duly constituted selection committee, his services were regularized on 18.01.2005. The Himachal Pradesh University also approved his appointment. The college was taken over by the State on 14.09.2006. Vide notification dated 04.01.2007, services of its staff were also taken over. The service of the petitioner, however, was not taken over on the ground that his salary was paid out of Self Financing Scheme.

2. Aggrieved, petitioner preferred CWP(T) No.16150/2008. This writ petition was decided by the learned Single Judge on 04.11.2011. It was held that the lecturers appointed in the college in question constituted a homogeneous class and there could not be any invidious discrimination amongst them only on the basis of mode of payment of salary. The writ petition was accordingly allowed alongwith two other connected writ petitions. The respondents were directed to take over the services of the petitioner as Lecturer (College Cadre) in the subject of Economics w.e.f. 14.09.2006 alongwith all consequential benefits.

3. The State filed Letters Patent Appeal No.517 of 2012 against the aforesaid judgment passed by the learned Single Judge. This appeal was heard alongwith eleven other appeals, involving same issue and similar judgments. LPA No.517 of 2012 was decided on 30.10.2018 alongwith this bunch of eleven other appeals, with lead case LPA No.387 of 2012. The Division Bench held that the mode of payment of salary will not have any significance in respect of taking over of services of the writ petitioners; that the issue had rightly been determined by the learned Single Judge in favour of the teachers; the Bench observed that it is beyond the reach of a teacher to ascertain as to whether the salary being paid to him was coming out from the grant-inaid or from the funds generated by the Management. While affirming the findings of the learned Single Judge, with

respect to the admissibility of arrears to the writ petitioners/teachers, whose services were taken over, following was observed in paras-19 and 20 of the judgment:

"19. Faced with this, learned Advocate General urges that since there were contentious issues involved with regard to the claim of the respondent(s) for their absorption in Government service on taking over the College, learned Single Judge ought not to have granted the consequential benefits or 9% interest (as awarded in some of the cases). 20. We find merit in this contention. Notification dated 25.8.1994 lays down general terms and conditions for taking over all privately managed Colleges alongwith Teaching and Non-Teaching Staff. As there was grey area as to whether the respondents in these cases fulfill all the eligibility conditions, there arose necessity for adjudication of dispute by this Court. In such like situation, it appears that ends of justice would be adequately met by directing that though the will stand absorbed from the date when the College was taken over, however, such absorption will be on notional basis and they will be entitled to salary from the date of their actual appointment. In other words, respondents shall not be paid the arrears of salary from the date the College was taken over till a formal order of their absorption is passed hitherto within a period of two months from the date of receipt of copy of this judgment. They shall, however, be entitled to notional pay fixation without any interest or arrears, as awarded by the learned Single Judge."

4. It is not in dispute that the judgment passed by the Division Bench on 30.10.2018, stands implemented in respect of eight connected appeals.

5. After the disposal of LPA No.517 of 2012, the State filed Review Petition No.101 of 2019, seeking review of the judgment passed by the Division Bench on 30.10.2018 in CWP(T) No.16150 of 2008. The ground put forth was that the writ petitioner was not qualified for the post of college Lecturer as he did not possess the qualification required under the Rules. The review petition was allowed on 20.08.2021 with observations that whether the writ petitioner was qualified or not is a matter to be decided by the Appellate Court. Hence, the appeal was restored to its original number.

6. During hearing of the appeal today, learned Deputy Advocate General fairly submitted that he has instructions to state that the writ petitioner possesses the required qualifications for the post of college Lecturer; that the sole ground available with the appellants in this appeal for opposing the prayer made in the writ petition is that writ petitioner was engaged in the college in question on the basis of Self Financing Scheme.

7. The Division Bench in its judgment dated 30.10.2018 has already affirmed the decision of learned Single Judge that Lectures cannot be discriminated on the basis of mode of payment of salary to them, be it under Self Financing Scheme or grant-in-aid etc. This aspect has attained finality. Judgment to this effect stands implemented by the State in eight other connected appeals. That being

the position, we really fail to understand the reason for filing review petition by the State. In case the petitioner was fully qualified for the post as is being projected now by the appellants/State, then instead of filing review on the alleged ground of petitioner's being unqualified, the State as a model employer should have implemented the judgment dated 30.10.2018 at the appropriate time in favour of writ petitioner. By not implementing the judgment at the appropriate stage, the appellants/State wrongly denied the benefits flowing from the judgment to the writ petitioner. Therefore, in such circumstances, and in light of the submissions of the learned Deputy Advocate General, it has to be held that the writ petitioner will also be governed by the judgment dated 30.10.2018, passed by the Division Bench in LPA No.387 of 2012 alongwith other connected cases. The appeal is accordingly disposed of with directions to the appellants to implement the judgment dated 30.10.2018 passed in LPA No.387 of 2012 alongwith other connected cases and release admissible benefits in terms thereof to the writ petitioner within a period of four weeks from today. The petitioner shall also be entitled to costs of Rs.20,000/- to be paid by the appellants within the aforesaid period."

3. The State seeks review of above judgment dated 17.11.2022 on the ground that the respondent did not possess the qualifications as per Recruitment & Promotion Rules, hence was not entitled to the relief allowed to him.

4(i) The ground urged now for reviewing the above extracted judgment dated 17.10.2022 is the same which was specifically given up by the review petitioner during hearing of the LPA No. 517/2012. Not only that, the ground presently being pressed by the review petitioner is the same on which review of judgment dated 30.10.2018 passed in LPA No. 517/2012 was earlier sought for and had been allowed accordingly. But, during hearing of the Letters Patent Appeal on its restoration, the statement was made for the review petitioner that the ground taken was factually incorrect. Rather it was specifically put forth for the review petitioner that the respondent (writ petitioner) in fact possessed the required qualification for the post of College Lecturer. On that basis, the LPA was again decided on 17.11.2022. That being the position, we fail to understand as to how the review petitioner has filed this second review petition on the same ground which it had already taken and given up during hearing of the appeal. The power of review can be exercised by the Court for correction of a mistake, within four corners of law, but not to give undue latitude to a litigant to abuse the process of Court by filing successive review petitions for repetitively urging a point which was the sole basis for allowing the earlier review petition but later on assertively given up during re-hearing. Such kind of virtually the second review petition on same ground that was given up earlier, cannot be entertained. A litigant cannot be permitted to take inconsistent, contradictory & shifting stands in the same case at his whims & fancies. It is not open for a litigant to keep re-thinking back and forth after the pronouncement of the judgment in order to have it reviewed multiple times on the same ground. No case for review is made out.

4(ii) There is delay of 207 days in instituting the review petition. As per the pleadings, the certified copy of the judgment dated 17.11.2022 was available with the review petitioner on 04.01.2023, but it was decided to file the review petition on 01.04.2023, which was eventually filed on 13.09.2023. There is no explanation for the period between 04.01.2023 to 01.04.2023 and from 01.04.2023 to 13.09.2023.

5. In view of the above, the application seeking condonation of delay in filing the review as well as the review petition are dismissed.

Looking to the conduct of the review petitioner in filing multiple review petitions on same factual ground which was assertively given up by it during hearing of the appeal after its restoration as a consequence of allowing of first review petition, we impose a costs of Rs. 50,000/- upon the review petitioner to be deposited within three weeks in the 'Chief Minister Apada Rahat Kosh'.