
(2019) 01 JH CK 0079
In the Jharkhand High Court
Case No : Civil Review No. 63 Of 2016

State Of Jharkhand

APPELLANT

Vs

Ramdular Dehri And Ors

RESPONDENT

Date of Decision : 29-01-2019

Acts Referred:

Citation : (2019) 01 JH CK 0079

Hon'ble Judges : Pramath Patnaik, J

Bench : Single Bench

Advocate : Dhananjay Kumar Dubey, Arshad Hussain

Final Decision : Dismissed

Judgement

Pramath Patnaik, J.

1. The present Civil Review application has been preferred for modification/ review of the order dated 10.12.2013, passed in W.P. (S) No. 1175 of 2013, whereby this Court disposed of the writ petition with liberty to the petitioner to file representation regarding his claim, before the Secretary, Human Resources Development Department, Government of Jharkhand, Ranchi alongwith a copy of the decision of the Court in Zahid Hussain and others (supra) and on receipt of the said representation, the said respondent shall consider the petitioner's claim and pass appropriate order in accordance with law, within six weeks from the date of receipt of representation. It has further been directed that if the said respondent finds that the petitioner's case is identical to the case of Zahid Hussain and others (supra), he shall pass similar order regarding payment of arrears of salary to the petitioner for the period from 16.05.2001 till the date of his absorption in the service i.e. 20.02.2008 within six weeks thereafter. If the amount (s) found payable to the petitioner is not paid within the aforesaid period, the same shall carry interest @ 10 per cent per annum from the date the amount (s) was/were payable till final payment.

2. It has been averred in the Review application that the petitioner has filed the

writ application bearing W.P. (S) No. 1175 of 2013 and the order was passed by the Hon'ble High Court on 10.12.2013 in terms of judgment passed in Zahid Hussain & Others by Hon'ble High Court. In identical case bearing W.P. (S) No. 729 of 2004, Asgar Ali & others-Vs.- State of Jharkhand, the Hon'ble High Court vide order dated 04.01.2010 has directed to pay the salary for the period during which the petitioners were retrenched. The State Government after dismissal of L.P.A. preferred S.L.P. (C) No. CC-10361-10364 of 2014, State of Jharkhand Vs. Asgar Ali vide order dated 18.07.2014 has modified the order as mentioned above. It has further been submitted that in compliance of the order dated 18.07.2014 passed in S.L.P. (C) No. CC-10361-10364 of 2014 by the Hon'ble Apex Court, more than 13 crores and 32 lacs have been allotted to different D.D.O. in financial year 2015-2016 and more than 2 crores 32 Lacs have been allotted to different DDO for payment of salary in financial year 2016-2017. It has further been submitted that the Orders and Judgments including the order dated 10.12.2013, passed in W.P. (S) No. 1175 of 2013 is fully covered by the order dated 18.07.2014 passed by the Hon'ble Supreme Court of India vide Annexure-1 to the Review application. In the said SLP, the Hon'ble Apex Court has been pleased to direct that the payment of arrears of salary shall be done in a phased manner within a period of two years. It has further been submitted that many writ petition as well as in many Contempt cases were clubbed together bearing case no. 222 of 2010 vide order dated 16.01.2015 and the payment of arrears to the employees shall be done in a phased manner and it has not directed to pay any interest so on, as per Annexure-2 to the Review application. Further, it has been submitted that on the ground of equity also the order dated 10.12.2013, passed in W.P. (S) No. 1175 of 2013 needs to be modified since in many cases, no interest has been paid to petitioners.

3. Mr. Dhananjay Kumar Dubey, learned Sr. S.C. I. appearing for the review petitioner-State submits that since the arrears of principal amount has already been paid to the petitioners, the direction with regard to the payment of interest be waived, since as per the decision of the Hon'ble Apex Court in the case of similarly placed employees, the payment was to be made in a phased manner.

4. Learned counsel for the Opposite parties/writ petitioner vehemently opposes the prayer for entertaining the review application on the ground that the scope of entertaining Review is very-very limited.

5. Having heard the learned counsel for the respective parties, and on perusal of the records, I find no reason for entertaining the Civil Review application, mainly for the following facts and reasons:-

(i) Admittedly, against the order dated 10.12.2013, passed in W.P. (S) No. 1175 of 2013, a Contempt Case (C) No. 117 of 2014 was filed by the writ petitioner. As per the order passed by this Court, admittedly, there has been delay in payment of admissible arrears of salary, which has been paid in the year 2016 and in order to wriggle out the contempt application, this Review application has been filed, but the respondents have not shown their promptitude in filing the Review

application. Since the order 10.12.2013, passed in W.P. (S) No. 1175 of 2013 has attained its finality and there is absolutely no illegality or infirmity in the order passed by this Court. Moreover, the present civil review application is not an appeal in disguise. Like appeal against the decision of the writ petition, this civil review application has been argued out at length, hence civil review application deserves to be dismissed in limine. Much has been argued in the civil review application about the parity/equality in different decisions as per Annexure-1 and 2 of the Review application, but none of these arguments is accepted by this Court mainly for the reason that the matter cannot be reopened in this civil review application.

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

"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."

(emphasis supplied)

(iii) 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 Reddy, 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 reappreciated 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 1 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)

(iv) It has further been held by Hon'ble the Supreme Court in the case of Parsion Devi and Ors. v. Sumitri Devi and Ors., 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 Tuleswar 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)

(v) The Hon'ble Apex Court also has dealt with the scope of review in the case of Haridas Das v. Usha Rani Banik and Ors., 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 of 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 1CPC. 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 orto 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 byhim 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 Tuleshwar Sharma v. Aribam Pishak Sharma* this Court heldthat 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 10 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)

6. In view of the facts stated in the foregoing paragraphs coupled with the dictum of the Hon'ble Apex Court (*supra*), there is no substance in the civil review application and, hence, the same is hereby dismissed.