

(2014) 01 AHC CK 0289
In the Allahabad High Court
Case No : Review Petition No. 744 of 2013

Sursari Tarang Misra

APPELLANT

Vs

U.P. Sainik School Society

RESPONDENT

Date of Decision : 13-01-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 47 Rule 1, 141
Constitution of India, 1950 — Article 226

Citation : (2015) 110 ALR 412 : (2014) 104 ALR 576 : (2015) 128 RD 287 :
(2014) 124 RD 98

Hon'ble Judges : Anil Kumar, J

Bench : Single Bench

Advocate : L.P. Misra, Advocate for the Appellant

Final Decision : Dismissed

Judgement

Anil Kumar, J.—Heard Dr. L.P. Misra, learned Counsel for the review petitioner and perused the record.

By means of the present review petition, the petitioner has prayed for review of the judgment and order dated 27.11.2013 passed by this Court in writ petition No. 3198 (SS) of 2003, Dr. Sursari Tarang Misra v. U.P. Sainik School Society and others.

Initially, Dr. Sursari Tarang Misra approached this Court by filing Writ Petition No. 3198 (SS) of 2003 with the prayer that an advertisement dated 1.3.2000 has been published in the daily newspaper i.e., Dainik Jagaran for regular appointment on various posts in the Institution known as U.P. Sainik School, Sarojini Nagar, Lucknow.

2. In response to the said facts, the review petitioner appeared before the interview/selection committee for appointment on the post of Hindi Teacher. The said committee has recommended the petitioner for giving an ad-hoc appointment and on 1.7.2000, he was appointed as a Master in Hindi in the

Institution (hereinafter referred to as the Institution). In the said capacity, he worked and discharged his duties uptill 10.5.2013. Thereafter, his services were terminated on the ground of contractual employee and a period of contractual appointment has come to an end.

3. In view of the above factual background, Dr. L.P. Misra, learned Counsel for the review-petitioner while pressing the review-petition submits that an advertisement in pursuant to which the petitioner has submitted his candidature for regular appointment, so he is entitled for regular salary and regular pay scale from the date of initial appointment w.e.f. 1.7.2000 including all other service benefits admissible to the post held by the review petitioner as he is working and discharging his duties. So, the action on the part of the official respondent thereby paying the consolidated amount to the review petitioner whereas the other teachers who are working in the Sainik School are being paid regular pay scale is arbitrary in nature.

4. Dr. L.P. Misra, learned Counsel for the petitioner while pressing the review petition submits that while passing the judgment and order dated 27.11.2013, this Court has not considered the matter in regard to the payment of regular salary to the review petitioner w.e.f. 1.7.2000 and not to pay the same regularly.

5. Needless to mention herein that after arguing at some length; Dr. L.P. Misra, learned Counsel for review petitioner admits that the fact in regard to payment of regular salary and regularization of the petitioner has not been argued/pressed when the matter was heard in Writ Petition No. 3198 (SS) of 2003.

6. Thus, after hearing learned Counsel for the review petitioner and going through the record before deciding review, petition, I feel it appropriate to state the ambit and scope under which the Court can review its earlier order.

7. In this regard Hon"ble the Apex. Court in the case of Thungabhadra Industries Ltd. Vs. The Government of Andhra Pradesh, held that a review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected, but lies only for patent error. We do not consider that this furnishes a suitable occasion for dealing with this difference exhaustively or in any great detail, but it would suffice for us to say that 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.

8. Hon"ble the Apex Court in Subhash Vs. State of Maharashtra and Another, the Apex Court emphasized that Court should not be misguided and should not lightly entertain the review application unless there are circumstances falling within the prescribed limits for that as the Courts and Tribunal should not proceed to re-examine the matter as if it was an original application before it for the reason that it cannot be a scope of review.

9. This Court in the case of Bhagwati Singh Vs. Deputy Director of Consolidation

and Another, rejected the review application filed on a ground which had not been argued earlier because the Counsel, at initial stage, had committed mistake in not relying on and arguing those points, held as under:

It is not possible to review a judgment only to give the petitioner a fresh inning. It is not for the litigant to judge of Counsel's wisdom after the case has been decided. It is for the Counsel to argue the case in the manner he thinks it should be argued. Once the case has been finally argued on merit and decided on merit, no application for review lies on the ground that the case should have been differently argued.

10. In *Shivdeo Singh and Others Vs. State of Punjab and Others*, in a review petition filed under Order XLVII, Rule 1, C.P.C. the Supreme Court held that the power of review under Article 226 of the Constitution of India, in reviewing its own orders, every Court including High Court inheres plenary jurisdiction, to prevent miscarriage of justice or to correct grave and palpable errors committed by it.

11. Further, the review lies only on the grounds mentioned in Order XLVII, Rule 1 read with section 141, C.P.C. The party must satisfy the Court that the matter or evidence discovered by it at a subsequent stage could not be discovered or produced at the initial stage though it had acted with due diligence. A party filing a review application on the ground of any other "sufficient reason" must satisfy that the said reason is analogous to the conditions mentioned in the said provision of C.P.C.

12. Thus, in view of the abovesaid facts, review can be allowed only on (1) discovery of new and important matter of evidence which, after exercise of due diligence, was not within the knowledge of the person seeking review, or could not be produced by him at the time when the order was made, or (2) when some mistake or error on the face of record is found, or (3) on any analogous ground. But review is not permissible on the ground that the decision was erroneous on merits as the same would be the province of an Appellate Court.

13. In View of the above discussion, the law of review can be summarized that it lies only on the grounds mentioned in Order XLVII, Rule 1, C.P.C. The party must satisfy the Court that the matter or evidence discovered by it at a subsequent stage could not be discovered or produced at the initial stage though it had acted with due diligence. A party filing a review application on the ground of any other sufficient reason must satisfy that the said reason is analogous to the conditions mentioned in Order XLVII, Rule 1, C.P.C. Under the garb of review, a party cannot be permitted to re-open the case and to gain a full-fledged inning for possible for the Court to take a view contrary to what had been taken earlier. Review lies only when there is error apparent on the fact of the record and that fallibility is by the over-sight of the Court.

14. Hon''ble Supreme Court in the case of *Zahira Habibullah Sheikh and Another etc. Vs. State of Gujarat and Others etc.*, after placing reliance on its earlier

judgments i.e., AIR 1980 808 (SC); Suthenthiraraja @ Santhan and Others etc. etc. Vs. State Through DSP/CBI, SIT, Chennai etc. etc., ; Ram Deo Chauhan @ Raj Nath Vs. State of Assam, and Devinder Singh and Others Vs. State of Himachal Pradesh, , observed that review applications are not to be filed for the pleasure of the parties or even as a device for ventilating remorselessness, but ought to be resorted to with a great sense of responsibility as well.

15. As stated above, Dr. L.P. Misra, learned Counsel for review petitioner very fairly admits that ground on which the present the review petition has been filed was neither pressed nor argued at the time when the Writ Petition No. 3198 (SS) of 2003 was argued. So, keeping in view the said fact as well as law on the point in issue that if any fact and ground taken in the writ petition have not been pressed and argued then on the basis of the same review petition cannot be allowed. (See Oriental Insurance Co. Ltd. v. Ram Nath, (2005) 10 SCC 596 and Union of India (UOI) and Others Vs. N.V. Phaneendran, .) So, I do not find any good ground for interference in the present matter.

For the foregoing reasons, the review petition is dismissed. However, as prayed, the petitioner is at liberty to approach the appropriate forum for redressal of his grievances, if any, if so advised.