
(2019) 01 JH CK 0002
In the Jharkhand High Court
Case No : Civil Review Case No. 24 Of 2018

Thakur Das Mahato

APPELLANT

Vs

State Of Jharkhand And Ors

RESPONDENT

Date of Decision : 04-01-2019

Acts Referred:

Code Of Civil Procedure, 1908 — Order 47 Rule, Order 23 Rule 1(3), Order 47 Rule 1
Constitution Of India, 1950 — Article 226

Citation : (2019) 01 JH CK 0002

Hon'ble Judges : Sujit Narayan Prasad, J

Bench : Single Bench

Advocate : Harendra Kr. Mahato, Jayant Franklin Toppo

Final Decision : Dismissed

Judgement

1. Instant review petition has been preferred for review of order dated 17.12.2014 passed in W.P.(S) No.5722 of 2009 whereby and whereunder this Court has declined to interfere with the relief sought for by the petitioner in the writ petition by dismissing it.

2. The review petition is since barred by limitation, therefore, I.A. No.4437 of 2018 has been preferred for condoning the delay of 1239 days in filing the instant review petition for the reason that the order passed by the writ Court had been challenged under Letters Patent Appellate jurisdiction being L.P.A. No.51 of 2015 but the same was permitted to be withdrawn vide order dated 04.04.2018, the certified copy of the aforesaid order was obtained on 22.04.2018 and as such the delay has occurred in filing instant review petition.

3. This Court, after hearing learned counsel for the parties and after going through the reasons mentioned in the interlocutory application is of the view that the review petition needs to be decided on merit and as such deems it fit and proper to condone the delay so that the review petition may not be dismissed on technicalities. In view thereof, and for the reasons stated in the interlocutory

application, delay in filing instant review petition is condoned. Accordingly, I.A. No.4437 of 2018 stands allowed.

4. Before going into the issue of review of the order passed by the writ Court, it would be relevant to bring few facts, as has been raised by the writ petitioner before the writ Court wherein following prayers had been sought for:-

(i) For issuance of appropriate writ(s), order(s) and/or direction, particularly a writ in the nature of certiorari for quashing the letter no.912 dated 16.10.2009 (as contained in Annexure-8) by which the service of petitioners has been terminated.

(ii) For issuance of appropriate writ(s), order(s) and/or direction, particularly a writ in the nature of mandamus commanding upon the respondent authorities not to give effect to the impugned letter dated 16.10.2009 (as contained in Annexure-8) and allow the petitioners to continue along with all consequential benefits.

5. The petitioners have made an application in pursuance to an advertisement issued in the year 2003 by which the applications have been invited for appointment to the post of Assistant Teachers. They having all requisites qualifications, as they claim, have made application and accordingly appeared in the examination conducted by Jharkhand Public Service Commission on 27.05.2003, declared successful, called for verification of certificates and other documents wherein they have produced Teachers Training Certificate granted by Vidya Sagar University, West Bengal. After getting it verified, petitioners have been appointed as teachers and accordingly appointment letters were issued to them on 20th February, 2009. The petitioner have got B. Ed. Degree from Prabhat Kumar College, Contain, District Purbha, Medininagar, West Bengal in the session of 1997-98 and 1996-97 respectively. The aforesaid college established in the year 1926, was affiliated to Calcutta University but after creation of new University namely Vidya Sagar University with effect from 23rd May, 1995 the certificate was issued by the Registrar of the University on 25th June, 2004 by which Vidya Sagar University has been established by the Act of Vidyasagar University Act, 1981 passed by West Bengal Legislative Assembly and published in Calcutta Gazette, Extraordinary on 24th June, 1998.

The University has been recognised by UGC in 1990 and accredited and awarded three stars by NAAC in 2002.

The petitioners, in course of their service, have been issued with a show cause notice for cancellation of their appointment on the ground that the teachers training certificate having been produced by them are not of a recognised instituted. The aforesaid show cause has been responded by them but vide letter passed on 16th October, 2009 their services have been removed against which the writ petition has been filed mainly on the ground that the teachers training certificate obtained from Prabhat Kumar College, Contai, District Purbha, Medninagar, West Bengal in the session of 1997-98 and 1996-97 by virtue of an

order contained in order dated 8th December, 2006 the has been validated with retrospective effect also of the sessions 1997-97 and 1997-98 and hence ground as has been taken by the respondent authority in the show cause is absolutely illegal and contrary to the decision taken in the order dated 8th December, 2006.

6. The respondent-State by relying upon the averment made in the counter affidavit has taken the plea that the teachers training certificate was not obtained by the recognised institute on the date of consideration of the candidature of the petitioners and therefore the aforesaid certificate is not to be relied upon.

7. This Court, after taking into consideration the legal position and authority/eligibility of the candidature of the candidate is to be seen on the date of making an application, has rejected the plea of the petitioners and declined to interfere with the order of removal.

8. The petitioner, thereafter, has filed intra court appeal being L.P.A. No.51 of 2015 but the same has been withdrawn and thereafter the instant review application has been filed mainly on the ground that the judgment rendered by the Full Bench of this Court has not been taken into consideration.

9. Before going into the merit of the instant review application, the scope of review needs to be considered.

It is not in dispute that power to review is creation of the statute but it must be conferred by law either specifically or by necessary implication. Review is not an appeal in disguise, it cannot be denied that justice is a virtue which transcends errors and the rules of procedures or technicalities of law cannot stand in the way of administration of justice. Law has to bend before justice. If the court finds that the error pointed out in the review petition was under mistake and the earlier judgment would not have been passed for erroneous assumption which in fact did not exists and its perpetration had resulted in miscarriage of justice and then certainly this can be said to be a ground for review but mere fact of different views of the same subject are possible, cannot be said to be a ground to review the earlier judgment passed by a Court of Law.

10. This Court has considered the judgment of Hon'ble Apex Court regarding authorities and scope of power of review, as has been rendered in the case of M.M.B. Catholicos Vrs. M.P. Athanasius reported in A.I.R. 1954 S.C. 526 wherein at para 32 it has been held as under:-

"32. Before going into the merits of the case it is as well to bear in mind the scope of the application for review which has given rise to the present appeal. It is needless to emphasise that the scope of an application for review is much more restricted than that of an appeal. Under the provisions in the Travancore Code of Civil Procedure which is similar in ters to Order 47, Rule 1 of our Code of Civil Procedure, 1908, the Court of review has only a limited jurisdiction circumscribed by the definitive limits fixed by the language used therein.

It may allow a review on three specific grounds, namely (I) discovery of new and

important matter or evidence which, after the exercise of due diligence, was not within the applicant's knowledge or could not be produced by him at the time when the decree was passed, (ii) mistake or error apparent on the face of the record, and (iii) for any other sufficient reason.

It has been held by the Judicial Committee that the words "any other sufficient reason" must mean "a reason sufficient on grounds, at least analogous to those specified in the rule""

11. In the case of Shivdeo Singh Vrs. State of Punjab reported in A.I.R. 1963 SC 1909 in petition filed under Order 47 Rule 1 C.P.C. the Hon'ble Supreme Court has held that the power to review its own order by the High Court inheres in every Court of plenary jurisdiction to prevent miscarriage of justice to correct grave and palpable errors committed by it. In doing so, the Court was only upholding the principles of natural justice. This decision indicates that the Court's power of review while exercising jurisdiction under Article 226 of Constitution of India extends to correct the errors to prevent miscarriage of justice.

12. In the judgment rendered by Hon'ble Apex Court in the case of Sow. Chandra Kanta Vrs. Sheik Habib reported in AIR 1975 SC 1500 it has been held that review of judgment is a serious step and reluctant resort to it is proper only where a glaring omission or patent mistake or like grave error has crept in earlier by judicial fallibility. A mere repetition through different counsel of old and overruled arguments, a second trip over ineffectually covered ground or minor mistakes of inconsequential import are obviously insufficient.

13. Thus, as has been held by Hon'ble Apex Court in the judgments discussed hereinabove, the scope of review which can only be done in case of discovery of new and important material obtained much after the exercise of review was not within the knowledge or could not be produced by him at the time when the decree was passed, mistake or error apparent on the face of record and for any other sufficient reason and in the light of this legal position, the facts of this case legal position needs to be appreciated whether the petitioner has been able to make out a case for review of the order passed by this Court ?

14. Here, in the instant case, the petitioner has sought for review of the order of removal which has been passed by the authority after taking into consideration the fact that the certificate of teachers training certificate basis upon which he has been appointed has been found to be not obtained from a recognised institute and therefore, considering the settled legal position that on the due date of submission of application the legality of a candidate is to be seen and if any condition is prescribed in the advertisement inviting applications, the candidate is supposed to fulfill the same, declined to interfere with the order of removal.

Petitioner's whole case is that the judgment rendered by the Full Bench has not been taken into consideration and therefore, the instant review application has been filed but before filing the instant review petition, Letters Patent Appeal has also been filed being L.P.A. No.51 of 2015 wherein following order has been

passed:-

"1. Counsel appearing for the appellant seeks permission to withdraw this Letters Patent Appeal.

2. Permission, as sought for, is granted.

3. This Letters Patent Appeal is disposed of as withdrawn."

15. Now, it is in the light of the factual aspect that once the Letters Patent Appeal has been withdrawn it is to be seen whether the instant review application can be entertained by the writ Court for review of the order passed under the writ jurisdiction which was subject matter of intra court appeal in

L.P.A. No.51 of 2015 ?

16. There is no dispute about the position of law as has been held by Hon'ble Supreme Court in the case of M/s Hulas Rai Vrs. K.B. Bass & Co. reported in AIR 1968 SC 111 wherein after considering the provision of Order XXIII Rule 1 C.P.C. and particularly Sub Rule 3 thereof wherein it has been stipulated that where plaintiff withdraws from a suit without permission of the Court, he is precluded from instituting of a suit in the same subject matter against the same parties.

17. Further, in the case on Sarguja Transport Service Vrs. State Transport Appellate Tribunal, M.P., Gwalior and Others reported in (1987) 1 SCC 5 wherein the Hon'ble Supreme Court has held in para 8 as under:-

"8. The question for our consideration is whether it would or would not advance the cause of justice if the principle underlying Rule 1 of Order XXIII of the Code is adopted in respect of writ petitions filed under Articles 226/227 of the Constitution of India also. It is common knowledge that very often after a writ petition is heard for some time when the petitioner or his counsel finds that the court is not likely to pass an order admitting the petition, request is made by the petitioner or by his counsel to permit the petitioner to withdraw from the writ petition without seeking permission to institute a fresh writ petition. A Court which is unwilling to admit the petition would not ordinarily grant liberty to file a fresh petition while it may just agree to permit the withdrawal of the petition. It is plain that when once a writ petition filed in a High Court is withdrawn by the petitioner himself he is precluded from filing an appeal against the order passed in the writ petition because he cannot be considered as a party aggrieved by the order passed by the High Court. He may as stated in *Daryao v. State of U.P.* In a case involving the question of enforcement of fundamental rights file a petition before the Supreme Court under Article 32 of the Constitution of India because in such a case there has been no decision on the merits by the High Court. The relevant observation of this Court in *Daryao* case is to be found at para 593 and it is as follows:

If the petition is dismissed as withdrawn it cannot be a bar to a subsequent petition under Article 32, because in such a case there has been no decision on

the merits by the court. We wish to make it clear that the conclusions thus reached by us are confined only to the point of res judicata which has been argued as a preliminary issue in these writ petitions and no other."

18. In view of the above categorical pronouncement of the Honb'le Apex Court, in the considered view of this Court that once the Letters Patent Appeal against the order passed by the writ Court which is subject matter of the instant review, has been withdrawn without reserving the liberty, subsequent petition on the same issue is not maintainable.

19. In the judgment reported in 1998 (1) CTC 25 at paragraph 9 Hon'ble Apex Court has held that Under Order XLVII Rule 1 C.P.C. A judgment may be open to review inter alia a mistake or an error apparent on the face of the record and error which is not as evident and has to be detected by a process of reasoning and hardly be said to be error apparent on the face of the record justifying courts to exercise its power of review under Order XLVII Rule 1 C.P.C., it is not permissible for erroneous decision to be re-heard and corrected. A review petition, it must be remembered has a limited purpose and cannot be allowed to be an appeal in disguise.

20. In the case of Kabari Pvt. Ltd. Vrs. Shivnath Shroff and Others reported in (1996) 1 SCC 690 the Hon'ble Supreme Court has held that the court cannot entertain an application for review even before making the review applications no superior court has been moved for getting the same relief, so that for the selfsame relief two parallel proceedings before two forums are not taken.

21. In the case of State of Maharashtra Vrs. Prabhakar Bhikaji Ingle reported in (1996) 3 SCC 463 Hon'ble Supreme Court has been pleased to hold that when Special Leave Petition against the order of Tribunal was dismissed by non-speaking, the main order was confirmed by the Court and thereafter the power of review cannot be exercised by the Tribunal as it would be deleterious to the judicial discipline. Same view has been reiterated by Hon'ble Supreme Court in the case reported in (1997) 16 SCC 78

22. In the case of Abbai Maligai Partnership Firm Vrs. Santhakumaran reported in (1998) 7 SCC 386 the Hon'ble Supreme Court has considered the issue afresh and held that filing of the review application after dismissal of the Special Leave Petition by Supreme Court against the selfsame revisional order amounted to abuse of process of the court and entertainment of the review petition, in the circumstances, was an affront to the order of the Supreme Court and against the judicial discipline.

23. In the light of aforesaid proposition of law, it is to be seen by this Court as to whether instant review application can be entertained.

24. Admittedly, the order has been passed by the writ court declining to interfere with the order against which Letters Patent Appeal has been preferred which has been withdrawn vide order dated 4th April, 2018 passed in L.P.A. No.51 of 2015

without any leave to prefer a review and thereafter the instant review application has been filed.

25. Accordingly, considering the settled position of law, as discussed hereinabove, in the considered view of this Court, instant review application cannot be entertained.

26 Instant review application can also not be entertained for the reason that the judgment rendered by the Full Court judgment cannot be said to be a new fact, for the reasons if the instant review application will be allowed, it will amount to over-reaching the order of withdrawal passed by the intra court appeal.

27. In view of above discussions and on the basis of reasons given hereinabove, instant review application deserve to be dismissed and the same is dismissed.