

(2017) 01 JH CK 0246
In the Jharkhand High Court
Case No : 112 of 2015

Thakur Hansda

APPELLANT

Vs

Mukhodi Hembram, & Anr.

RESPONDENT

Date of Decision : 19-01-2017

Acts Referred:

Citation : (2017) 01 JH CK 0246

Hon'ble Judges : D. N. Patel, Ratnaker Bhengra

Bench : DIVISION BENCH

Advocate : Naresh Prasad Singh, Arvind Kumar Singh, Ramit Satender, Atanu Banerjee, Anoop Kumar Mehta, Amit Kumar Sinha

Judgement

1. This Civil Review application has been preferred for review of an order passed by the Division Bench of this Court in L.P.A. No. 472 of 2008 vide judgment and order dated 7th August, 2015, whereby, the Letters Patent Appeal preferred by these applicants has been dismissed and the order passed by learned Single Judge in W.P. (S) No. 5806 of 2002 dated 22nd October, 2008 has been held as a valid one, whereby, the pay parity sought for by these applicants viz-a-viz regular employees of Jharkhand State Mineral Development Corporation (for the sake of brevity hereinafter to be referred to as the "JSMDC") has not been accepted.

2. Learned counsel appearing for the applicants submitted that these applicants are daily wagers. The nature of the work being carried out by them is similar to that of the regular employees of JSMDC. This aspect of the matter has not been properly appreciated while dismissing the Letters Patent Appeal and, hence, it requires to be reviewed. It is further submitted by the learned counsel for the applicants that as per decisions rendered at Annexure-5, Annexure-6 and Annexure-6/1 to be read with the decision rendered by Hon'ble the Supreme Court reported in 2016 (4) JBCJ 305, these applicants should be given pay parity in comparison with the regular employees of JSMDC.

Learned counsel appearing for the applicants has also submitted that other similarly situated employees have been given regular pay-scale. On the basis of the aforesaid arguments, it is submitted that these aspects of the matter have not been properly appreciated by the Division Bench of this Court while dismissing the Letters Patent Appeal.

It is also submitted by learned counsel for the applicants that one Scheme has been floated by the State Government which is known as Service Regularisation of Staffs Irregularly Appointed and Working Subordinate to Jharkhand Government Rules, 2015 which is at Annexure-12 to the supplementary affidavit filed in this civil review application, these Rules have not been properly appreciated while dismissing the Letters Patent Appeal by the Division Bench of this Court.

3. Learned counsel appearing for the respondents submitted that the order passed by the Division Bench of this Court in L.P.A. No. 472 of 2008 has dealt with all the arguments canvassed by the learned counsel for the applicants. On merits, the applicants cannot argue in this civil review application. Even if the order passed by the Division Bench is erroneous, the jurisdiction under the civil review is very limited, otherwise, there will be no end of arguments, at all. Learned counsel appearing for the respondents further submitted that there is no prayer for regularization of these applicants. Without being regularised, these applicants are seeking pay parity in comparison with the regular employees.

Learned counsel for the respondents also submitted that pay parity can be given only when the work carried out by these applicants are similar in nature. To find out similarity in the nature of work and the duties to be performed, cogent and convincing evidences are to be taken. Moreover, these applicants cannot be equated with the regular employees.

Learned counsel for the respondents also submitted that all these aspects of the matter have been properly appreciated while dismissing the Letters Patent Appeal. The so-called Rules of the State of Jharkhand, which have been referred, have no applicability to the facts of the present case. It is also submitted by learned counsel for the respondents that there was no such prayer, at all in the writ petition that under the Rules, 2015 the services are to be regularised. Regularization is one thing and pay parity is altogether another thing and, hence, this civil review application may not be entertained by this Court.

REASONS

4. Having heard learned counsels for both the sides and looking to the facts and circumstances of the case, we see no reason to entertain this civil review application mainly for the following facts and reasons : (i) The prayer in the writ petition was to get pay parity by these applicants in comparison with the regular employees of JSMD. These

applicants, who are original appellants, were initially working with M/s Eastern Manganese and Minerals Private Limited, Koderma which was acquired by the erstwhile State of Bihar in the year 1986 and, thereafter, the said Mica Units have been closed in the year 2003. No mining operation is going on since then.

(ii) All these aspects have been properly appreciated in detail by this Court in Paragraph No.4 of the order passed by this Court in L.P.A. No. 472 of 2008 vide judgment and order dated 7th August, 2015. Pay parity ground has already been agitated. "Equal pay for equal work" is also not a new argument, canvassed in this civil review application. The same argument in different format has already been argued in the Letters Patent Appeal. It ought to be kept in mind that even if the order passed by the Division Bench in the Letters Patent Appeal is erroneous, no civil review application can be preferred and no such order can ever be modified. Civil review application has a very limited jurisdiction.

(iii) On merits, no fresh decision can be taken by the Division Bench of this Court, once the Letters Patent Appeal is already adjudicated upon. Civil review application is not an appeal in disguise. Like an appeal against the decision of the Letters Patent Appeal, this civil review application has been argued out at length and, hence, this civil review application deserves to be dismissed.

(iv) Much has been argued again in this civil review application about the pay parity, decisions rendered which are at Annexures-5, 6 and 6/1 of this civil review application to be read with the decision rendered by Hon"ble the Supreme Court reported in 2016 (4) JBCJ 305 to be read with Service Regularisation of Staffs Irregularly Appointed and Working Subordinate to Jharkhand Government Rules, 2015. None of these arguments is accepted by this Court mainly for the reason that the argument of "equal pay for equal work" has already been dealt with by this Court vide judgment and order dated 7th August, 2015 in L.P.A. No. 472 of 2008. Again, this argument cannot be re-open in this civil review application. This Civil Review application is not an appeal against the Letters Patent Appeal.

(v) The so-called Regularisation Scheme floated by the State of Jharkhand in the year 2015 are conditional in nature. If these conditions are to be fulfilled by these applicants, as mentioned in the Rules, 2015, they may be regularised and after getting regularization, they can seek pay parity with other regularly appointed employees of JSMD, otherwise not.

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

"3. The Judicial Commissioner gave two reasons for reviewing his predecessor's

order. The first was that his predecessor had overlooked two important documents Exs. A-1 and A-3 which showed that the respondents were in possession of the sites even in the year 1948-49 and that the grants must have been made even by then. The second was that there was a patent illegality in permitting the appellant to question, in a single writ petition, settlement made in favour of different respondents. We are afraid that neither of the reasons mentioned by the learned Judicial Commissioner constitutes a ground for review. 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)

(vii) 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 Tuleshwar 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)

(viii) It has further been held by Hon"ble the Supreme Court in the case of Parsion Devi v. Sumitri Devi, 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 Tuleshwar 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)

(ix) It has further been held by Hon"ble the Supreme Court in the case of Haridas Das v. Usha Rani Banik, 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 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, 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 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." (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 held that 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 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)

5. As a cumulative effect of the aforesaid facts, reasons and judicial pronouncements, there is no substance in this Civil Review application and, hence, the same is, hereby, dismissed.