

(1976) 09 SHI CK 0004
In the High Court Of Himachal Pradesh
Case No : Civil Review No. 16 of 1976

The State of Himachal Pradesh	Vs	APPELLANT
Har Sukh Rai		RESPONDENT

Date of Decision : 29-09-1976

Acts Referred:

Central Civil Services (Classification, Control and Appeal) Rules, 1965 — Rule 20(2)
Civil Procedure Code, 1908 (CPC) — Order 47 Rule 1
Constitution of India, 1950 — Article 226, 227
Road Transport Corporations Act, 1950 — Section 3

Citation : (1976) 5 ILR HP 705

Hon'ble Judges : R.S. Pathak, C.J.; Chet Ram Thakur, J

Bench : Division Bench

Advocate : D.K. Khanna, for the Appellant; R.N. Malhotra and Pratima Malhotra, for the Respondent

Final Decision : Dismissed

Judgement

Chet Ram Thakur, J.—This petition for review of the Judgment dated October 21, 1975, in Letters Patent Appeal No. 16 of 1975 has been filed by the State of Himachal Pradesh.

2. Shri Harsukh Rai who was an employee of the Himachal Pradesh Government Transport Department was transferred to the Mandi-Kulu Road Transport Corporation u/s 3 of the Road Corporation Act, 1950, with effect from September 18, 1959. On June 1, 1962, he was promoted to the post of Chief Inspector in the Corporation. In the mean while the employees of the Corporation along with the present Petitioner filed a civil suit for a declaration to the effect that they were employees of the Government Transport Department and which suit was decreed. Subsequently an appeal was preferred but the same also was not pressed and, therefore, the decree became final. It appears that during the pendency of the suit Shri Harsukh Rai was transferred by the Corporation from Mandi to Pathankot but since he refused to comply with the orders, disciplinary proceedings were initiated against him. Since by the decree Shri Harsukh Rai was

held to be a Government servant, therefore, after the conclusion of the disciplinary proceedings the General Manager of the Corporation passed an order replacing the services of the present Respondent at the disposal of the Government Transport Department with immediate effect for the purposes of awarding punishment. He filed an appeal to the Lieutenant Governor in December, 1969, against the proceedings and in March 1970, the Lieutenant Governor quashed all the proceedings against the present Respondent and a direction was issued that he be re-instated. On representation of Shri Harsukh Rai to the Government it was asserted that he had been reverted to his parent Department for the purposes of imposing penalty and that the disciplinary proceedings having been quashed he was entitled to be reinstated in the Corporation. However, he was reinstated as Inspector in the service of the Government Transport Department. Against that order he filed an appeal before the Lt. Governor but the same was dismissed on November 18, 1970. Thereafter, he filed a writ petition challenging the validity of the order dated April 24, 1968, of the Corporation replacing his services at the disposal of the Government Transport Department, the order dated April 17, 1970, of the Government Transport Department reinstating him as an Inspector in its service, and the order of the Lt. Governor dismissing his appeal. He prayed for a direction to be issued to the Respondents in the writ petition to implement the order of the Lt. Governor to absorb him as Chief Inspector in the Government Transport Department or in the Corporation and to pay him the arrears of pay from March 17, 1967, when he was suspended. The learned single Judge dismissed the petition holding that he was on deputation with the Corporation and was a Government servant. The Corporation was entitled to order the reversion of the present Respondent to his parent Department. The Chairman of the Corporation had passed an order before June 1966 reverting the present Respondent and he had been reinstated by the Government Transport Department in its Service. He had no right to claim reinstatement in the service of the Corporation. The Lt. Governor had no jurisdiction to quash the order of reversion passed by the Corporation because he was not the Disciplinary Authority in respect of the Corporation nor was an appeal maintainable before him against an order of the Corporation. The appeal by Shri Harsukh Rai was preferred after he had reverted to his parent Department and assumed the status of Government servant and as such the reversion was not affected by the orders of the Lt. Governor allowing the appeal. It was further held that the Lt. Governor, could not quash the order of suspension, as that was an act done by the Corporation. His claim to remain in the post of Chief Inspector had to be determined on the basis of merit and he was not found fit for such promotion by the Departmental Promotion Committee. On reversion he was entitled to appointment to his substantive post merely.

3. Against this Judgment dismissing the petition a Letters Patent Appeal was filed. This Court formulated three points for consideration which are as under:

(1) The order of the Corporation replacing the Appellant at the disposal of the Government Transport Department was a part of the disciplinary proceedings

initiated against the Appellant, and the order of the Lieutenant Governor, allowing the appeal filed by the Appellant had the effect of quashing all the proceedings, including the order of replacement.

(2) It is not open to the Corporation, by way of defence to the writ petition, to challenge the validity of the order of the Lieutenant Governor allowing the appeal filed by the Appellant.

(3) The promotion of junior officers in preference to the Appellant to the post of Chief Inspector was invalid, being vitiated by malafides and as proceeding on wrong assumptions.

In respect of the point No. 1 it was held that Shri Harsukh Rai was entitled to a declaration, that the effect of the Lt. Governor's order was to put him back in the position which he occupied in the Corporation before he was suspended on March 17, 1967, and the order dated April 17, 1970, reinstating him in the Government Transport Department was invalid. Shri Harsukh Rai was entitled to all the benefits of the consequences of this declaration, including arrears of salary and other dues. With regard to point No. 2 it was held that in view of the findings on point No. 1 it was not necessary to enter into the second point. In respect of point No. 3 it was held that from the material on the record there did not appear to be any justification for the assertion made by Shri Harsukh Rai that the presence of Shri Ajit Kumar as a Member of the Committee prejudiced his case on account of bias. Therefore, the result was that the appeal was allowed, the Judgment and order of the learned single Judge dismissing the writ petition with costs was set aside and a declaration was granted and the Appellant was held entitled to all consequential benefits flowing from the decision.

4. A preliminary objection has been raised by Shri R.N. Malhotra, learned Counsel for Shri Harsukh Rai Respondent, to the effect that a review against the Judgment of the Letters Patent Bench is not maintainable and he further submitted that the provisions of Order 47, Rule 1 were not applicable for review of an order passed in a petition under Article 226 of the Constitution. For this submission of his he relied on Patel Narshi Thakershi and Others Vs. Shri Pradyumansinghji Arjunsinghji, where in a case under the Saurashtra Land Reforms Act, the order passed by the Government was set aside by the Commissioner of Rajkot taking the view that the Government had no competence to make the order under the provisions of Sub-section (2) of Section 63 of the aforesaid Act. This order of the Commissioner was challenged before the High Court of Gujarat by means of a writ petition under Articles 226 and 227 of the Constitution. The High Court set aside that order taking a view that the Commissioner could not have passed the order which he passed on October 22, 1956, u/s 63(2) of the Act. It also quashed the order of April 29, 1958, and further directed the Gujarat Revenue Tribunal to dispose of the matter in accordance with law. As against that order an appeal was preferred on the strength of a certificate issued by the Gujarat High Court to the Supreme Court. The Supreme Court held that the Commissioner was functioning as a delegate of

the State Government. The order passed by the Commissioner in law amounted to a review of the order made by the Saurashtra Government. It is well settled that the power to review is not an inherent power. It must be conferred by law either specifically or by necessary implication. No provision in the Act was brought to their Lordships' notice from which it could be gathered that the Government had power to review its own order. If the Government had no power to review its own order, it was, obvious that its delegate could not have reviewed its order. But this authority will not be applicable in this case as it was a special statute and there was no provision of review by the delegate of the Government to review its order. It was held by their Lordships of the Supreme Court in *Shivdeo Singh and Others Vs. State of Punjab and Others*, that "it is sufficient to say that 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" and this Court relying on this authority in civil Review No. 3 of 1975 connected with civil Reviews Nos. 4 and 5 of 1975 titled: *Mr. Sat Pal Sabharwal v. The II. P. Financial Corporation and Ors.* decided on January 16, 1976, held that the High Court in a petition under Article 226 had the inherent power to review its Judgment and in that case reliance was also placed on *Manohar Lal Verma v. State of Madhya Pradesh* AIR 1970 Madhya Pradesh 131, for this proposition that an order under Article 226 of the Constitution of India can be reviewed is no longer open to debate.

5. Having held that a review is maintainable even against an order passed in a petition under Article 226, now the Court has to see as to whether the order sought to be reviewed really suffers from an error apparent on the face of the record. According to learned Counsel for the Petitioner there are wrong facts in the Judgment and so on the basis of that he contends that it is an error apparent on the face of the record. In order to consider whether there are errors apparent on the face of the record the Court has to scrutinize the pleadings and the Judgment and to see whether the Court considered all the points raised and the Court had assumed wrong facts which it could not have done. If a new and important matter had been discovered and which after exercise of due diligence was not within the knowledge of the Petitioner or could not be produced by him at the time when the order was made, then certainly an application for review will lie. Learned Counsel has given instances which, according to him, show that the Court overlooked important material relevant to the decision of the case.

6. The first contention of learned Counsel is that the Court has omitted to consider that in the writ petition the Respondent had concealed material facts, and instances of such suppression are given in Clauses (i) to (xvi). This Court specifically considered the plea that the Respondent was guilty of material suppression, and in paragraph 24 of its Judgment held, after broadly referring to the facts said to have been suppressed, that they were of no material consequence so far as the decision of the writ petition was concerned. This ground for review must fail.

7. The second contention of learned Counsel is that this Court has failed to consider two documents, the letters dated October 27, 1967, and November 29, 1967, copies of which had been placed by him on the record of the Letters Patent Appeal during the course of arguments, and that if regard was had to the contents of those letters it was apparent that the writ petition would have been dismissed. The two letters mentioned by learned Counsel are to the following effect. The letter dated October 27, 1967, is addressed by the Corporation to the Respondent stating that it had been decided to send him back to the Himachal Pradesh, Government Transport Department in view of the stand taken by him that he was an employee of the latter Department and that he was being given one month's notice dispensing with his services in the Corporation. The letter dated November 29, 1967, again, is from the Corporation to the Respondent and referring to the notice of one month dispensing with the Respondent's services it mentions that the notice would not be withdrawn and the services were liable to be terminated in accordance with that notice. It further informs the Respondent that if he so desires he could continue to work with the Corporation on his existing post but this was without prejudice to the right of the Corporation to terminate his services at any time without any further notice of one month. It seems to me that by reason of subsequent events these two letters lost their significance. It is not disputed that the Respondent continued to work under the Corporation. Subsequently, as the documents on the record, including annexure X-2, X-2/1 and X/4, show the Corporation proceeded with reference to Rule 20(2) (ii) of the Central Civil Services (Classification, Control and Appeal) Rules. In the Judgment, this Court has observed:

The material on the record amply demonstrates that although originally the Corporation had expressed the desire that the Appellant should be received by his parent department...yet the actual order replacing the services of the Appellant at the disposal of the Government Transport Department proceeded entirely on the basis of Clause (ii) of Sub-rule (2) of Rule 20 of the Central Civil Services (Classification, Control and Appeal) Rules, that is to say, for the purpose of imposing a major penalty on the Appellant. The letters Annexures X-2, X-2/1 and X-4 as well as the letter informing the Appellant that his services had been replaced with his parent department in view of Clause (ii) of Sub-rule (2) of Rule 20 conclusively show that both the Corporation and the Government Transport Department were acting on that view in the Appellant's replacement. Whatever may have been the position originally, when the moment arrived to take the necessary steps for replacing the services of the Appellant at the disposal of the Government Transport Department the action was motivated entirely by the desire to impose a major penalty on him.

It is clear from this that the letters dated October 27, 1967, and November 29, 1967, were covered by the aforesaid observation. The second ground for review is also rejected.

8. The learned Counsel has further contended that this Court did not consider the

effect of F. R. 125 and 126 in the case of the Petitioner. It may be stated that the Judgment shows that the effect of these provisions is already discussed although it is not stated in so many words specifically making a mention of the aforesaid Rules. It has been discussed that the services of Har-sukh Rai were placed at the disposal of the Government with a desire to impose a major penalty on him and reference is made to this letter Annexure "C" which makes a reference to the letters dated 27-10-1967 and 29-11-1967. It is further held that the Lt. Governor quashed all the proceedings taken against Shri Harsukh Rai. He must be considered to have quashed all the orders replacing the present Respondent at the disposal of his parent Department. Therefore, in these circumstances, there remains nothing as to whether on his replacement in terms of F.R. 125 and 126 he had reverted from his foreign service; rather the effect of the findings is that even the replacement order was quashed by the Lt. Governor which had the effect of again sending him back on deputation with the Corporation. Therefore, it would impliedly follow that these Rules although not specifically referred to have been taken note of. Hence there does not appear to be any error apparent on the face of the record.

9. The further submission is that it had erroneously been presumed that the Mandi-Kulu Road Transport Corporation was a Corporation to which the Lt. Governor Himachal Pradesh could issue any direction or order. The Mandi-Kulu Road Transport Corporation, it is pointed out, was constituted by the Governor of Punjab u/s 3 of the Road Transport Corporations Act and the State Government which could give directions to this Corporation was the Government of Punjab. This is also a point which was not at all argued by learned Counsel for the Petitioner and he has sought to raise this point for the first time in this review petition and which he cannot be permitted to do. Further it would appear from paras 16 and 20 of the Judgment that this matter whether the Governor had the jurisdiction to hear the appeal and to quash the order and order reinstatement to his original post in the Corporation has been dealt with and, therefore, it is wrong to say that his point had escaped the notice of the Court which necessitated a review of the Judgment and that it was an error apparent on the face of the record.

10. The further submission that the order passed by the Lt. Governor on March 30, 1970, nowhere stated that the proceedings taken against the Appellant had been quashed and this has erroneously been so presumed appears to be wholly incorrect. This matter has been discussed at length and there is no question of presumption. Annexure X-5 which was placed on the record of the Letters Patent Appeal makes the matter quite clear. Hence there is no question of overlooking that matter.

11. It had also been submitted that the Corporation had paid all the amounts due to the Appellant i.e. Harsukh Rai upto 25-4-1968 and thereafter also the dues had already been paid by the Government and reference in that connection had been made to Annexure R.G. This matter also should not detain us for long.

Annexure X-5 places the liability for the payment of the dues on the Corporation and it has also been discussed in the Judgment and it is a consequence of the quashing of the order and his reinstatement to the original post of Chief Inspector that he was holding at the time of suspension in the Corporation.

12. It had further been contended that the Judgment in the Letters Patent Appeal was vague and contradictory but this point also does not appear to be correct. The Judgment is quite clear and if there is any erroneous finding on the interpretation of the documents then his remedy lies elsewhere and not by way of review petition which review is filed just to reopen the case and re-hear the appeal on all the facts. According to Sir Hari Shankar Pal and Anr. v. Amar Nath Mitter and Ors. AIR (36) 1949 FC 106, if the Court has decided a point and decided it erroneously, the error could not be one apparent on the face of the record or even analogous to it. When, however, the Court disposes of a case without advertent to or applying its mind to a provision of law which gives it jurisdiction to act in a particular way that may amount to an error analogous to one apparent on the face of the record and then it is sufficient to bring the case within the purview of Order 47 Rule 1, but it would be apparent that this condition is not satisfied in the case inasmuch as all the points which were raised by learned Counsel for the Petitioner before this Court have been discussed and considered and if the Court has come to a wrong finding then there cannot be said to be an error apparent on the face of the record so as to attract the applicability of Order 47, Rule 1 of the Code of Civil Procedure.

13. These were the only points argued before this Court, and there does not appear to be any substance. In these circumstances the review petition fails and is hereby dismissed with costs.

R.S. Pathak, C.J.

14. I agree.