

(2007) 10 KL CK 0006
In the High Court Of Kerala
Case No : R.P. No. 801 of 2007

The State of Kerala and Another	Vs	APPELLANT
N. Gopalakrishna Karnavar and Others		RESPONDENT

Date of Decision : 05-10-2007

Acts Referred:

Constitution of India, 1950 — Article 136, 226

Citation : (2008) 1 KLJ 56

Hon'ble Judges : T.R. Ramachandran Nair, J; J.B. Koshy, J

Bench : Division Bench

Advocate : Noble Mathew, GP, for the Appellant; C. Rasheed, for the Respondent

Final Decision : Dismissed

Judgement

J.B. Koshy, J.—In the judgments under review, we noticed that the writ appeals were filed with a delay of more than 400 days. We found that no valid grounds were urged for condonation of delay and no satisfactory reasons were stated to condone the long delay of more than one year. Incidentally, we noted that some of the identical writ petitions were dismissed by the court and as far as the question of law is concerned, the matter was already decided by the Division Bench and appeals filed in the Supreme Court were dismissed. One of the appeals is Civil Appeal No. 2018 of 2000. The order is quoted below:

The High Court has consistently taken the view that the period of training treated as period spent on duty for the purpose of scale of pay, increments and other consequential benefits. This view was expressed by the High Court in the case of Lakshmanan v. State of Kerala 1995 (1) KLT 115 and that decision in turn follows other decisions in Louis v. Kerala Public Service Commission 1965 KLT 1282 and Haridasan v. State of Kerala 1987 (2) KLT 486. As this has been the consistent view and the orders in those cases not having been challenged before this court, we do not think that it is a fit case for our interference under Article 136 of the Constitution. The appeal is, therefore, dismissed.

2. Therefore, civil appeals filed from the earlier decisions were upheld. We also noticed that the amounts due to those petitioners were already paid. Even though the legal issue involved is already settled, we have dismissed the writ appeal only because of the long delay in filing the same. There is no apparent error in the judgment. There are no generally accepted grounds for filing the review petition in the matter. It is admitted that delay of more than 400 days occurred in filing the writ appeals and we have considered the delay condonation petitions and no valid satisfactory reasons are given for condoning the delay of more than 400 days. The judgment was pronounced in open court. Only one question of law was involved which was decided against the Government by the earlier decisions which were upheld by the Hon'ble Apex Court. In any event, preparation of appeals is of no difficult task and, therefore, delay of over 400 days in preparing the appeal is not justifiable.

3. The only reason argued before us was that W.A. No. 1132 of 2007 and connected case were allowed on 18-6-2007 by another Division Bench and the judgment of the above Division Bench was shown to us. It is seen that the above writ appeals were allowed setting aside the judgment of the learned single Judge only because petitioners in those cases approached the Government very late claiming the relief and not on the legal point argued by the Government.

4. Counsel for the respondent submitted that once the writ petitions are admitted and kept pending for long time and finally decided on merits exercising discretionary jurisdiction under Article 226 of the Constitution, the above discretionary relief granted cannot be taken away in appeal especially when the legal position is settled in favour of the petitioners. Scope of interconnected writ appeals is also very limited as held by the Apex Court in Smt. Asha Devi Vs. Dukhi Sao and Another, , Manjunath Anandappa Urf. Shivappa Hanasi Vs. Tammanasa and Others, and Uttar Pradesh Co-operative Federation Ltd. Vs. Sunder Brothers of Delhi, . It is also submitted that a reading of the above judgment would show that in the above writ appeals court was more concerned with the amount involved in the case as mentioned by the Government Pleader which is also not correct as large number of similarly placed persons were already paid the benefits on the basis of the earlier orders of the court. It was also contended that when the law was fairly declared by the court even without acting as a model employer, Government ought to have paid the amount legally due to the employees. We are not sitting in appeal over the judgment in W.A. No. 1132 of 2007. It is for the aggrieved party to approach the High Court. We are only concerned with the review petitions in these cases. Judgment in W.A. No. 1132 of 2007 which refused the relief prayed for by the petitioners due to delay was delivered only on 18-6-2007. Even if the judgments ought to be reviewed is overruled subsequently, it is not a ground for reviewing the decision as held by the Supreme Court in Shanti Devi v. State of Haryana 2000(1) KLT 697. For reviewing the judgment there should be discovery of some mistake or error apparent on the face of the record or there should be some document which in the exercise of diligence appellants were not able to produce. Here, there is no

apparent error on the face of the record. Admittedly, writ appeals were filed with more than 400 days delay. Therefore, though writ appeals were dismissed, the remedy of the appellant is to file appeal if the judgment under review is erroneous in law. A review is no means an appeal, in disguise as held by the Supreme Court in *Thungabhadra Industries Ltd. Vs. The Government of Andhra Pradesh*, . The above view was again reiterated by the Supreme Court in *Smt. Meera Bhanja Vs. Smt. Nirmala Kumari Choudhury*, holding that review proceedings are not by way of appeal proceedings or re-hearing of the matter or it is to be strictly on finding the settled ground of review. The Supreme Court in *Promoters and Builders Association of Pune v. Pune Municipal Corporation and Ors.* 2007 AIR SCW 3540 held as follows:

11. As was observed by this Court in *S.L. Sachdev and Another Vs. Union of India (UOI) and Others*, review is not a routine procedure. A review of an earlier order is not permissible unless the court is satisfied that material error, manifest on the face of the order undermines its soundness or results in miscarriage of justice. A review of judgment in a case 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.

5. The same view was expressed by the Apex Court in *Devender Pal Singh Vs. State, N.C.T. of Delhi and Another*, in paragraph 16. Since there is no apparent error on the face of the record and no grounds are made out to condone the delay, the delay condonation petitions were already dismissed. Hence, the review petitions are dismissed.