

(2014) 07 PAT CK 0036

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 10658 of 2013

The Union of India

APPELLANT

Vs

Meena Devi

RESPONDENT

Date of Decision : 02-07-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 47 Rule 1
Constitution of India, 1950 — Article 226, 227

Citation : (2014) LabIC 3459 : (2015) 2 PLJR 69

Hon'ble Judges : I.A. Ansari, J;Anjana Mishra, J

Bench : Division Bench

Advocate : Anis Akhta, C.G.C, Advocate for the Appellant; Gautam Bose, Sr. Advocate, Vikas Jha and Ajay Kumar, Advocate for the Respondent

Judgement

Anjana Mishra, J.—The present writ application has been filed assailing the order, dated 16.12.2009 (Annexure-3), passed in O.A. No. 655 of 2008 and also the order dated 19.03.2013 (Annexure 9), passed in R.A. No. 11 of 2011, arising out of O.A. No. 655 of 2008, by the Central Administrative Tribunal Patna, Bench Patna (hereinafter referred to as "the learned Tribunal"), whereby and whereunder the order passed, in favour of respondent Smt. Meena Devi for considering her claim for compassionate appointment, has been upheld and the writ petitioners have been directed to consider the case of the sole respondent herein in the next vacancy available for compassionate appointment. The facts, out of which the present writ application has emanated, briefly stated, are thus:

(i) The husband of the respondent herein, Smt. Meena Devi, became traceless, on 15.5.1998, and, consequently, she filed an application, dated 03.07.2000, for consideration of her case for compassionate appointment on a group-D post. The respondent herein having received no response regarding her claim filed, on 16.06.2013 reminder, which was also kept pending till 13.11.2006. On 14.11.2006, the respondent herein was informed that her case was considered, but as there was no vacancy available, the same would receive due consideration

in the next year. Again, on 20.06.2007, a similar letter was sent to her by the writ petitioner and, finally, on 22.07.2008, she was informed that due to lack of vacancy, no appointment could be offered to her. Further, she was also informed by the said letter dated 22.07.2008 that the decision was guided by DOPT & TOM No. 14014/19/2-Estt. (D), dated 05-05-2003, by which a person's name can be kept under consideration for three years only and as her case had become three years old, the same was being closed.

(ii) The respondent herein, Meena Devi, being aggrieved by the aforementioned order, dated 27.07.2008, filed O.A. No. 655 of 2009, before the learned Tribunal, wherein she contended that though she filed an application in the year 2000, no positive step was taken by the writ petitioner herein to redress her hardship and the respondents sat over the matter for more than five years and it was only after she sent a reminder, in the year 2003, that her case was considered. She further contended that since the DOPT & Office, Memo No. 14014/19/2002 - Estt. (D), dated 05.05.2003, came into existence much after filing of her application in the year 2000, the above notification could not be applicable in her case and/or used retrospectively to defeat her request for compassionate appointment.

2. The writ petitioners herein, being respondents before the learned Tribunal, contested the matter and resisted her prayer stating that her case was considered from time to time, but due to non-availability of vacancy and also in view of Notification, dated 05.05.2003, she could not succeed. The writ petitioners herein further referred to the DOP & T Office Memorandum No. 14014/19/2002-Estt. (D), dated 05.05.2003, stating that the DOP & T has extended the time limit for considering the case of compassionate appointment for three years on the ground that the one year limit, prescribed for grant of compassionate appointment, is often resulting in depriving genuine case seeking compassionate appointments. They further contended that on account of regular vacancies not being available regarding the penurious condition of the claimant, within 5% of direct recruitment quota, the maximum time limit for which a person's name can be kept under consideration for offering compassionate appointment will be three years, subject to the condition that the prescribed Committee has certified, in the first and second year, to be offered to the claimant in the third year also, and if compassionate appointment is not possible, his/her case will be finally closed and will not be considered again.

3. It appears that the petitioner's case was finally closed after three years, though she fulfilled all the stipulated criteria.

4. The respondent herein, Meena Devi, further contended that the Office Memorandum of the year 2003 could not have been applied to her claim as she had filed her application in the year 2000 itself and she would be guided only by the then existing rules. No plausible explanation had been offered by the writ petitioners herein to explain as to whether the claim of the respondent herein was considered between the year 2000 and 2003 or, for that matter whether

there was any vacancy available or not in the compassionate quota between the aforesaid period.

5. The learned Tribunal upon considering the case of the respondent herein, in O.A. No. 655 of 2008, vide order, dated 16.12.2009, allowed O.A. No. 655 of 2008, and further directed the petitioners herein to consider the case of the in the next vacancy available for compassionate appointment.

6. Against the aforementioned direction dated 16.12.2009, contained in Annexure-3, the writ petitioners preferred a belated review application, bearing R.A. No. 11 of 2011, and introduced therein several new facts and submissions which were not brought earlier on record before the learned Tribunal. The aforementioned review application, upon careful consideration, has been dismissed, on 19.03.2013, stating therein that no further consideration could be given to the contentions of the writ petitioners in a review application as the learned Tribunal could not act as an appellate authority of a Co-ordinate Bench.

7. Consequently, the writ petitioners have preferred the present writ application and challenged the order, dated 16.12.2009, passed by the learned Tribunal and also the order of rejection of the review application, dated 19.03.2013.

8. In the present writ application, it was argued by the writ petitioners that on the ground of non-consideration of the documents, which include guidelines issued in DOPT Letter No. 14014/8/97 Estt. (D), dated 31.10.1997, and also that entertaining the application of the claimant, in the next vacancy available for the compassionate appointment, will open a flood gate for consideration of cases of others.

9. The writ petitioners further contended that the petitioners case of the respondent herein, having been considered on three occasions, any further consideration of the same would be contrary to the department's Circular, as contained in DOP & T.O.M. No. 14014/19/2002 Estt. (D), dated 05.05.2003, which indicated that applicant's case could be considered only for consecutive three years, and the period of three years has already exhausted, and since no vacancy was available in the compassionate quota, the claimant could not be offered a post on compassionate ground. This fact has clearly been mentioned in the order dated, 20.07.2008, passed by the writ petitioners while closing the case of the present respondent, Meena Devi.

10. The present writ petitioners seek to negate the order passed by the learned Tribunal, inasmuch as the only direction which has been issued vide order, dated 16.12.2009, is to consider the respondent's case in the next vacancy available for compassionate appointment.

11. It is admitted position that the writ petitioners before this Hon'ble Court had all occasions to satisfy the learned Tribunal, at stage of original application by bringing on record the documents, which were well within their reach and extending 5% quota formula as it existed in the earlier policy decision/guidelines,

but having failed to do so, have come before this Court seeking to set aside the said direction issued by the learned Tribunal.

12. It is well settled principle of law, as has been referred to by the learned Tribunal, that subsequent policy decision or guidelines cannot affect the prospect of an applicant to a compassionate appointment and any consideration, made in the context of a person, should be made in accordance with the then existing rules, policy decision or guidelines, as the case may be, and not retrospectively, unless and until the amending rule, guidelines, or policy decision, is retrospective in nature.

13. Learned counsel for the sole respondent has placed reliance to the case of *State Bank of India and Others Vs. State Bank of India Canteen Employees' Union and Others*, , to demonstrate that the High Court would not, ordinarily, go into the veracity of a fact in a writ jurisdiction. Further learned counsel has also referred to a decision of the Supreme Court to the case of *Chandavarkar Sita Ratna Rao Vs. Ashalata S. Guram*, which reads, at para. 21, as under:--

"21. It is true that in exercise of jurisdiction under Article 227 of the Constitution the High Court could go into the question of facts or look into the evidence if justice so requires it if there is any misdirection in law or a view of fact taken in the teeth of preponderance of evidence. But the High Court should decline to exercise its jurisdiction under Arts. 226 and 227 of the Constitution to look into the fact in the absence of clear and cut down reasons where the question depends upon the appreciation of evidence. The High Court also should not interfere with a finding within the jurisdiction of the inferior tribunal except where the findings were perverse and not based on any material evidence or it resulted in manifest of injustice (See *Trimbak Gangadhar Telang (supra)*). Except to the limited extent indicated above, the High Court has no jurisdiction. In our opinion, therefore, in the facts and circumstances of this case on the question that the High Court has sought to interfere, it is manifest that the High Court has gone into questions which depended upon appreciation of evidence and indeed the very fact that the learned trial Judge came to one conclusion and the appellate Bench came to another conclusion is indication of the position that two views were possible in this case. In preferring one view to another of factual appreciation of evidence, the High Court transgressed its limits of jurisdiction under Art. 227 of the Constitution. On the first point, therefore, the High Court was in error."

14. The petitioners herein, had sought to raise a new plea and bring on record new facts by way of review petition filed by them belatedly in the year 2011 before the learned Tribunal. However, the learned Tribunal has rejected the review application on the ground that they could not be impressed to take note of some new facts or submissions which had not been dealt with previously by the learned Tribunal.

15. We are also of the view that taking note of new facts and appreciation of new

plea would cause a great disadvantage to the respondent herein, as no opportunity had been granted to her to answer the new pleas in the original application. This issue has been decided in a catena of decisions, including the case of J.P. Srivastava and Sons Pvt. Ltd. and Others Vs. Gwalior Sugar Co. Ltd. and Others, , where the Supreme Court has discouraged the permissibility of raising new plea for the first time before the Supreme Court. The relevant observation of the Supreme Court in J.P. Srivastava (supra), reads as under:

"22. To allow a party to take grounds not urged earlier would not only result in taking the other party by surprise but it would deprive such party of any adjudication on the issue by the different courts - a right to which each party is otherwise entitled. It would also place such party at a great disadvantage as no opportunity would have been granted to it to meet the new plea."

15A. The review petition filed by the writ petitioners before the learned Tribunal clearly reveals that it is meant as an appeal in disguise, whereby new facts have been brought in for correcting and altering a decision by resorting to a fresh hearing. The Supreme Court, in AIR 2013 SC 3302, at para. 8, has clearly dealt with scope of review and stated that the power of review cannot be equated to an appeal and have to be strictly confined to the scope and ambit of Order XLVII Rule 1 of C.P.C. The relevant observations read as follows:

"8. The jurisdiction and scope of review is not that of an appeal and it can be entertained only if there is 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. A review is by no means an appeal in disguise whereby an erroneous decision is re-heard and corrected, but lies only for patent error. Error contemplated under the rule must be such which is apparent on the face of the record and not an error which has to be fished out and searched. It must be an error of inadvertence. The power of review can be exercised for correction of a mistake but not to substitute a view. The mere possibility of two views on the subject is not a ground for review. Review proceedings are not by way of an appeal and have to be strictly confined to the scope and ambit of Order XLVII, Rule 1 of Code of Civil Procedure. In view jurisdiction, mere disagreement with the view of the judgment cannot be the ground for invoking the same. As long as the point is already dealt with and answered, the parties are not entitled to challenge the impugned judgment in the guise that an alternative view is possible under the review jurisdiction.

Thus, the following grounds of review are maintainable as stipulated by the statute:

(A) When the review will be maintainable:

(i) Discovery of new and important matter or evidence which, after the exercise of due diligence, was not within knowledge of the petitioner or could not be produced by him;

(ii) Mistake or error apparent on the face of the record;

(iii) Any other sufficient reason.

(B) When the review will not be maintainable:--

(i) A repetition of old and overruled argument is not enough to reopen concluded adjudications.

(ii) Minor mistakes of inconsequential import.

(iii) Review proceedings cannot be equated with the original hearing of the case.

(iv) Review is not maintainable unless the material error, manifest on the face of the order, undermines its soundness or results in miscarriage of justice.

(v) A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected but lies only for patent error.

(vi) The mere possibility of two views on the subject cannot be a ground for review.

(vii) The error apparent on the face of the record should not be an error which has to be fished out and searched.

(viii) The appreciation of evidence on record is fully within the domain of the appellate Court, it cannot be permitted to be advanced in the review petition.

(ix) Review is not maintainable when the same relief sought at the time of arguing the main matter had been negative."

16. Ordinarily, the Courts should not interfere unless the finding of fact is so perverse or there is an error of law. In the present case, we have seen that the finding arrived at by the learned Tribunal was based on the own contentions of the writ petitioners in the O.A., which they have sought to upset by way of review. In view of above facts and the proposition of law, we have come to the considered conclusion that the orders, passed by the learned Central Administrative Tribunal Patna, Bench, contained in Annexures-3 and 9, are wholly legal and valid and, thus, they raise no ground for issuance of a writ for setting aside the same. The writ application is dismissed. The interim order, dated 06.01.2014, thus, stands vacated and it is open to the learned Central Administrative Tribunal, Patna Bench, to proceed in accordance with law.