

(2008) 12 CAL CK 0048
In the Calcutta High Court

Case No : R.V.W. No. 2395 of 2007 in W.P.C.T. No. 51 of 2005 and CAN No. 9622 of 2007

Union of India (UOI) and Others

APPELLANT

Vs

Hari Singh and Others

RESPONDENT

Date of Decision : 23-12-2008

Acts Referred:

Administrative Tribunals Act, 1985 — Section 19
Civil Procedure Code, 1908 (CPC) — Order 47 Rule 1
Constitution of India, 1950 — Article 226
Limitation Act, 1963 — Section 5
Railways Act, 1989 — Section 130, 132

Citation : (2008) 12 CAL CK 0048

Hon'ble Judges : S.P. Talukdar, J;Aniruddha Bose, J

Bench : Division Bench

Advocate : N.C. Roy Chowdhury, P.K. Mallick, A.K. Gayen and Saptarshi Roy, for the Appellant; Biswarup Kukherjee and Malay Basu, for the Respondent

Final Decision : Dismissed

Judgement

S.P. Talukdar, J.—This relates to an application for review of the order dated 2nd March, 2005 passed in W.P.C.T. No. 51 of 2005.

2. The backdrop of the present application may briefly be stated as follows:

Respondent No. 1, Hari Singh, and 14 others as applicants, approached the learned Central Administrative Tribunal with an application u/s 19 of the Administrative Tribunal Act. They sought for direction upon the authorities for giving them the Overtime Allowance for working beyond the normal duty hours. Direction was also sought for payment of Overtime Allowance 3 hours per day and 5 days a week for their performing 12 hours per day. They also sought for other reliefs in the said application. Learned Tribunal by its judgment and order dated 2nd September, 2004 allowed the said application and directed the authorities to make payment of Overtime Allowance to the employees working as

"Chowkidars" within a period of three months from the date of receipt of the copy of the said order.

3. This order of the learned Tribunal was challenged by the respondents authorities by filing an application under Article 226 of the Constitution. The Division Bench of this Court by its order dated 2nd March, 2005 dismissed the application upon finding that the impugned order of the learned Tribunal does not suffer from any infirmity. By filing the present application, the said order dated 2nd March, 2005 had been sought to be reviewed.

4. The applicants claimed that being dissatisfied with the said order dated 2nd March, 2005, a SLP was preferred before the Hon'ble Apex Court being SLP (Civil) CC No. 10085 of 2006 (Union of India and Ors. v. Hari Singh and Ors.) The Apex Court upon hearing Counsel made the following order:

Inordinate delay of 498 days has not been explained properly. Application for condonation of delay is rejected. Consequently, SLP is dismissed. The question of law is, however, kept open.

5. The Apex Court thus did not have any occasion to deal with the merits of the case and all points of law and fact have thus been left for adjudication. This prompted the applicants to approach this Court with an application for review. It had been alleged that the question of law, which was required to be adjudicated, was not considered. The applicants, thus, sought to highlight some relevant aspects, which could not be referred to at the time of hearing due to inadvertence on the part of the Railway advocate.

6. The respondents in the present application were the Chowkidars, working under Senior Divisional Electrical Engineer (TR-D), Eastern Railway, Howrah Division. They preferred one original application being O.A. No. 856 of 2002 with the grievance over alleged denial of Overtime Allowance for working beyond the normal duty hours i.e., 9 hours per day and 5 days in a week. In the reply filed in the said application pending before the learned Tribunal the authorities raised dispute regarding jurisdiction of the learned Tribunal. It was contended that under Indian Railway Act, 1989, Railway Labour Tribunal had been formed to determine issues involving disputes with regard to hours of Employment Regulations. It was clearly stated in the relevant Circular No. E/523/O/pt.I dated 25.6.1974 that no other Court or Tribunal except Labour Commissioner could adjudicate those type of issues. This significant aspect was ignored by the learned Tribunal despite being repeatedly mentioned.

7. It was thus claimed that since the Administrative Tribunal did not have jurisdiction, the order passed, is a nullity in the eye of law. The Railway-authorities thereafter filed an application under Article 226 of the Constitution before the High Court praying for setting aside of the said order.

8. The learned Division Bench of this Court at the time of hearing of the said application did not take it into consideration that all disputes relating to hours of

employment and Overtime Allowance can only be determined and/or adjudicated by Labour Commissioner, a statutory body constituted under Industrial Disputes Act, 1947. There was further failure in appreciation of the fact that the respondents before the Hon'ble Supreme Court had an efficacious alternative remedy available. The order of this Court, without considering those aspects, thus, suffers from illegality and procedural infirmity. In such circumstances, the Railway-authorities filed the application for review of the said order. This was contested by the opposite Parties/applicants by filing affidavit-in-opposition.

9. The Railway-authorities also filed an application being CAN No. 9622 of 2007 praying for condonation of delay in filing the review application. Prayer for condonation of delay of 190 days in filing of the review application was also opposed by and on behalf of the applicants.

10. According to Mr. Roy Chowdhury, appearing as learned Senior Counsel for the applicants-authorities, the High Court and the Apex Court being courts of records, their authority to exercise jurisdiction is undeterred until and unless it is expressly or impliedly barred. It was contended that any procedural law/rule could not in any way take away or infringe upon legal right of an individual. Reference was made to Writ Rule 53 while submitting that the court is required to take into consideration the convenience of an individual who due to reasons properly explained could not approach the court at the appropriate time. It was further contended that being a court of equity, this Court consistently took lenient views and/or liberal approach while entertaining an application under Order 47 Rule 1 of the CPC in connection with any proceeding under Article 226 of the Constitution. In this context, an earlier unreported decision of this Bench, in the case of Kanchan Oil Industries Ltd. and Ors. v. The State of West Bengal and Ors. (Ref: WPTT 246 of 2003) was referred. It was then submitted by Mr. Roy Chowdhury that it was not just and proper on behalf of the learned Administrative Tribunal to entertain and then decide the case since it had no jurisdiction to do so.

11. It was then contended that it is for any Railway servant or Railway Administration aggrieved by a decision of the Regional Labour Commissioner to approach within a specified time the Secretary to the Government of India in the Ministry of Labour. Thus, it was submitted on behalf of the Railway Authorities that there could be no scope for the Administrative Tribunal for entertaining the application and that dispute raised therein could only be adjudicated upon by the Railway Labour Commissioner and then, in case of an appeal, by the Secretary to the Government of India in the Ministry of Labour. In view of such inherent lack of jurisdiction, it was not right or just on the part of the Administrative Tribunal to proceed with the application before it and in such circumstances, the order passed by such Tribunal deserves to be reviewed. In support of such application for review and condonation of delay, Mr. Roy Chowdhury seems to have laid emphasis on the point that cause of justice does not deserve to be sacrificed for some technical and procedural formalities. According to him, the Notified Rule

dated 26.6.1992 read with Railway Board's letter dated 13.06.1974 clearly laid down that Chowkidars being essentially intermittent job workers, their normal working/roster hours of work is standard 8 hours plus additional 4 hours a day. In this context, attention of the court was invited to Sections 130, 132 of the Railways Act, 1989, Report of Railway Labour Tribunal 1969, Circular No. E/487/Vol.IV, dated 26th June, 1992 as well as other materials.

12. Deriving inspiration from the decisions in the case of Mangalore Ganesh Bedi Works Vs. The State of Mysore and Another, and the case of Ramachandra Reddy and Co. Vs. State of Andhra Pradesh and Others, , it was submitted by Mr. Roy Chowdhury that when the court finds that there is a legal proposition which forms the basis of the order and such proposition is patently erroneous, the remedy lies in reviewing the said order.

13. Much was argued by Mr. Roy Chowdhury in support of his contention that mere belated approach by itself cannot stand in the way of this Court's entertaining the review application after condonation of delay. It was contended that this is more so, when it can be patently found that the Railway Circular or the provisions of the Act were not placed before the court and the order passed thus, suffers from inherent legality. He further added that non-consideration of the fact that there is exclusive statutory provision for taking care of the disputes in the nature of the one raised by the present opposite parties, the learned Tribunal did not have the jurisdiction and in absence of jurisdiction, the order passed by the learned Tribunal is a nullity.

14. On the other hand, learned Senior Counsel, Mr. Malay Basu, while resisting the two applications i.e., the review application as well as one for condonation of delay, submitted that admittedly the SLP was rejected on the ground of inordinate delay. There is no explanation for such delay of an embarrassingly long period. Relying upon the decision in the case of K. Rajamouli Vs. A.V.K.N. Swamy, , it was submitted that mere pendency of a SLP by itself cannot be a sufficient ground for condonation of delay.

15. It was submitted that the Railway authorities could not specify any acceptable reason so as to justify the prayer for review. The ground as taken in order to substantiate the claim for review has hardly any relevance so far the order under reference of the Division Bench is concerned. It was emphatically mentioned while resisting the prayer for review that rehearing a matter for detecting an error in an earlier decision and then correcting the same do not fall within the ambit of review jurisdiction. Review jurisdiction cannot be used as appellate jurisdiction. In this contest, reference was made to the decision in the case of Parsion Devi and Others Vs. Sumitri Devi and Others, . Relying upon the decision in the case of Haridas Das Vs. Smt. Usha Rani Banik and Others, , it was submitted that the review is only permitted when there is a some mistake or an error apparent on the face of the records or for any other sufficient reasons. It was held that 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 enjoy a favourable verdict. While observing the same, the Apex Court in the case of Haridas Das (*supra*) observed that this is amply evident from the Explanation to Order 47 Rule 1.

16. A review is by no means an appeal in disguise. Such review is justified when there is an error apparent on the face of the record.

17. It may be said that 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 error committed by it. But, there are definite limits to the exercise of the power of review. Such a power 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.

18. It was further contended that the application for review does not even mention any convincing ground so as to justify review.

19. In course of submission, Mr. Roy Chowdhury relied upon the decision in the case of *State of Haryana Vs. Chandra Mani and others*, as well as in the case of *Collector, Land Acquisition, Anantnag and Another Vs. Mst. Katiji and Others*, . This was in support of his contention that courts while dealing with an application u/s 5 of the Limitation Act, should adopt liberal approach. Those applications are required to be considered with pragmatism in justice-oriented manner. Referring to the status of the applicant, it was submitted that certain amount of latitude within reasonable limits is permissible having regard to the impersonal bureaucratic set-up involving red tapism

20. It appears from the materials on record that the Railway-authorities approached the Division Bench with an application under Article 226 of the Constitution thereby challenging the order dated 2nd September, 2004 passed by the learned Administrative Tribunal. The said application was dismissed by order dated 2nd March, 2005. It was then challenged by way of filing special leave petition. An application for condonation of delay u/s 5 of the Limitation Act was also filed. The Apex Court, however, did not find enough of explanation so as to condone the inordinate delay of 498 days. Consequently, the SLP was also dismissed.

21. Mr. Roy Chowdhury, on behalf of the Railway-authorities submitted that the Apex Court kept question of law open. He thereby sought to submit that the Apex Court impliedly left the matter open for proper adjudication. We are afraid, this would be an attempt to read something more than what meets the eyes. Significantly, there had been further delay of 190 days in approaching this Court with an application for review from the date of dismissal of special leave petition. Here also, the explanation given miserably fails to inspire confidence of the court.

22. True, this Court in an earlier case of Kanchan Oil Industries Ltd. and Ors. v. The State of West Bengal took the view that Section 5 of the Limitation Act is not applicable in the writ jurisdiction but, that by itself, does not suggest that no explanation so as to justify inordinate delay is necessary. In absence of any ground worth mentioning or any material inspiring confidence of the court, we find it difficult, if not impossible, to entertain the application for review. Moreover, what has essentially been urged in the review application is directed against the order of the learned Tribunal. It also by no stretch of imagination can be said to be an error apparent on the face of the record. Unless the review application is entertained after condonation of delay, this Court cannot re-appreciate the grievances relating to absence of jurisdiction of the learned Tribunal, as has been sought to be established on behalf of the Railway authorities.

23. We are, thus, unable to appreciate the points taken in the application for review as well as the application for condonation of delay. Both the said applications being R.V.W. No. 2395 of 2007 in W.P.C.T. No. 51 of 2005 and the application being CAN No. 9622 of 2007 fail and be dismissed. There is no order as to costs.

24. Xerox certified copy of this judgment, if applied for, be supplied to the parties upon due compliance of the legal formalities.

25. I agree.