

(1997) 09 AHC CK 0199

In the Allahabad High Court

Case No : Review Application No. 16372 of 1996

U.P. Co-operative Sugar Factories Federation Ltd. APPELLANT

Vs

The Administrator, U.P. Co-operative Sugar Factories Federation Ltd. and Others RESPONDENT

Date of Decision : 29-09-1997

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1997) 3 UPLBEC 1908

Hon'ble Judges : S.P. Srivastava, J

Bench : Single Bench

Advocate : A.K. Misra, for the Appellant; B.N. Misra, for the Respondent

Final Decision : Disposed Of

Judgement

S.P. Srivastava, J.—Heard the learned counsel for the applicant and the learned counsel for the petitioner/opposite party.

2. Perused the record.

3. The writ petition filed by R. N. Misra the petitioner/opp. party challenging the order dismissing him from service dated 18-4-87 was quashed vide the judgment and order dated 28-8-95 allowing the writ petition. It was also provided that the petitioner will be entitled to have half of his salary for the period during which the writ petition remained pending Since the order dismissing the petitioner/opp. party was being quashed on the ground that the same had been passed in violation of Regulation 87 of U. P. Co-operative Society Employees Service Regulations, 1975, the employer was left free to initiate fresh proceedings against the petitioner/respondent in accordance with law.

4. The judgment and order disposing of the Civil Misc. Writ petition No, 16381 of 1988 was an appealable order and although a special appeal lay against the same, the employer-applicant did not choose to file a special appeal but instead filed a SLP challenging the-aforesaid judgment and order dated 28-8-95 before

the Apex Court which was, however, dismissed on 19-1-96, While dismissing the SLP the Hon"ble Supreme Court observed that the petitioner relied upon several new facts which were not brought to the notice of the High Court. It was observed that it will be open to the employer to approach the High Court, if it is so advised, in accordance with law and bring the same to the notice of the High Court.

5. The applicant has asserted that the certified copy of the order dismissing the SLP was made available to him on 30-1-96, Thereafter, the present application seeking review of the final order dated 28-8-95 disposing of the Civil Misc. Writ Petition No. 16381 of 1988 was filed on 18-3-96. This review application was crossly belated. The employer-applicant moved a separate application seeking condonation of delay in moving application seeking review. What has been asserted is that after 30ih January, 1996 time, was taken for getting necessary sanction permission etc. This is the only vague ground on which the delay in filing the review application is sought to be condoned.

6. The application seeking review of the final order deposing of the writ petition was listed for hearing on 17-7-97. On that date the case hart been marked peremptorily None appeared to press the application seeking review or the application seeking condonation delay in filing the same. Shri A.K. Mishra, learned counsel for the applicant was reported to be ill on that date, however, no alternative arrangement had been made inspite of the knowledge of the order dated 29-5-97 passed in his presence directing the listing of the case making it peremptorily.

7. Taking into consideration the aforesaid facts and circumstances and the ration of the decision of this Court in the case of Committee of Management of Sri Gandhi Ashram Vidyapeeth and Anr. v. District Inspector of Schools and Ors. (Civil Misc. Restoration Application No. 35305 of 1995 in Civil Misc. Writ petition No. 28512 of 1993) decided on 17 1-96 in regard to the implications arising under the circumstances when the case is listed for disposal marking it peremptorily, the application was dismissed. Thereafter, an application praying for the recall of the order dated 17-7-97 was filed on 21st July, 1997. In this application it has been asserted that the case had been taken up at about 3.30 P M and was dismissed ex-parte. It was asserted that there was no deliberate laches or negligence on the part of the applicant in pursuing the application.

8. A perusal of the final order dated 28-8-96 indicates that the writ petition was allowed holding that the U. P. Cooperative Society Employees Service Regulations, 1975 stood attracted to the case of the petitioner employee and the punishment had been imposed in violation of Regulation 87 without obtaining the prior approval from the Institutional Service Board.

9. In the counter affidavit filed by the applicant in opposition to the writ petition, m paragraph 8 thereof it had been asserted that the UP. Cooperative Sugar Factories Federation Ltd. was not within the preview of the Regulations of 1975

This paragraph was, however, not sworn at all, meaning thereby that the deponent of the counter affidavit was not prepared to take the responsibility of the correctness of the assertions made in the paragraph 8. Before the learned Single Judge who disposed of the writ petition no effort whatsoever was made by the respondent-employer to substantiate the assertions made in paragraph 8 of the counter affidavit. Now for the first time in support of the application for review reliance is sought to be placed on a notification dated 31st March, 1987 which according to the learned counsel for the applicant took out the employer U P. Co-operative Sugar Factories Federation Ltd. from the purview of the U.P., Cooperative Societies Employees Service Regulations 1975. It may be noticed that the chargesheet was served on the petitioner-opposite party on 25-4-1986 and the punishment had been imposed on 18-4 1987. Learned counsel for the applicant-employer has based his submission on the notification dated 31st March, 1987. The learned counsel for the employer asserts that the very basis of the final order passed by the learned Single Judge disposing of the writ petition is non-existent and the review deserves to be allowed.

10. Learned counsel for the respondent/employee however, asserts that the writ petition remained pending in this Court during the period 26-8-1988 to 28 8 1995. In the counter affidavit filed by the employer on 22-9-1988 inspite of a plea having been taken in paragraph 8 of the counter affidavit no effort was made to substantiate the said plea by filing the copy of the notification now sought to be relied upon after the disposal of the writ petition, a copy of which has been filed alongwith the application for review which itself has been filed with inordinate delay. Learned counsel for the employee respondent has asserted that taking into consideration the ratio of the decision this Court in the case of S.D. Ladha and Company, Kanpur v. IInd Additional District Judge, Kanpur and Anr., reported in 1993 (1) ARC 498 the application seeking review of the order at the most could have been filed within 30 days of the order but this was not done It is further asserted that the decision of the learned Single Judge disposing of the writ petition is based on the materials which were placed on the record and when inspite of ample opportunity the employer-applicant could not substantiate the allegations made in paragraph 8 of the counter affidavit he cannot be allowed to come forward and take up the plea that the decision suffers from a palpable error although the document which is sought to be relied upon had been suppressed by the employer himself and not brought to the notice of the Court.

11. I have considered the submissions made by the learned counsel for the parties and have carefully perused the record.

12. A Full Bench of this Court in its decision in the case of Udai Bhan Singh alias Babban Singh and Ors. v. Board of Revenue, U.P. and Ors., reported in 1974 RD 107 , while relying upon the decisions of the Supreme Court in the case of Ramesh and Another Vs. Seth Gendalal Motilal Patni and Others, and in the case of Ahmedabad Mfg. and Calico Ptg. Co. Ltd. Vs. Ram Tahel Ramnand and Others, , held that a proceeding under Article 226 of the Constitution of India is

not a continuation of the suit or proceeding giving rise to it. It further held that if a writ petition is not a continuation of the original suit or proceeding unlike an appeal or revision, the inference is not only reasonable but inevitable that the orders passed in the original suit or proceeding or in an appeal or revision arising therefrom do not merge in the orders passed in such petition.

13. In the case of The Ahmedabad Manufacturing and Calico Printing Co. Ltd., (Supra), the Constitution Bench of Hon"ble Supreme Court had made it clear that an appeal or revision is a continuation of the original suit or proceedings and while explaining the nature of jurisdiction envisaged under Article 226 of the Constitution of India, the Apex Court had observed as follows :-

".....Under that jurisdiction, the High Court does not hear an appeal or revision.....The controversy in the High Court, in a proceeding arising under Article 226 of the Constitution of India ordinarily is, whether a decree or a proceedings before a Court or Tribunal or Authority should be allowed to stand or should be quashed for want of jurisdiction or on account of errors of law apparent en the face of the record....."

14. I am of the clear opinion that an order finally disposing of a writ petition terminating the proceedings under Article 226 of the Constitution of India deciding the controversy raised in a writ petition involving the jurisdiction of this Court envisaged under the aforesaid provision on the basis of the materials and evidence placed on the record ought not be recalled permitting reopening of the proceedings on the basis of an evidence which could be produced during the pendency of the case but the production whereof was withheld by the concerned party indicating lack of diligence I am further of the view that an order of this Court finally disposing of the writ petition cannot be taken to have developed an error apparent on the face of the record on the strength of an evidence which never formed part of the record till the termination of The proceedings with the final order passed therein.

15. In this case, I am of the clear opinion that the judgment and order dated 28-8-1995 finally disposing of the writ petition cannot be said to be vitiated by any such grave and palpable error which may justify the review of the same. If a party sits over his right and inspite of having full knowledge in regard to documentary evidence fails to utilize the same at the proper time and invites a decision of the Court on the basis of the evidence and the materials already on the record cannot be heard to make a complaint that the judgment and order is vitiated in law as the document in the possession of the party was not taken into consideration The fault in such a case lies squarely with the party itself. In this case, there is no pleading to the effect that the evidence in support of the assertions made in paragraph 8 of the counter affidavit filed by the employer was not available during the pendency of the writ petition or it was discovered later on In fact taking into consideration the plea taken in the paragraph 8 of the counter affidavit it can be legitimately inferred that the employer had with him the material which was not proposed to be utilised to substantiate his plea. If he

deliberately chose not to bring the said material on record and invited the decision which went against him he cannot be permitted to seek a review of the said judgment on the ground that the said material was not taken into consideration by the Court.

16. So far as the contention in regard to the limitation urged by the learned counsel for the opposite party petitioner noted hereinabove is concerned, it may be observed that the ratio of the decision in the case of S.D. Ladha & Company (Supra) stands clearly attracted to an application seeking review of the final order terminating a proceeding under Article 226 of the Constitution of India which has to be taken to fall in the category of such independent proceeding, referred to therein.

17. Taking into consideration the ratio of the aforesaid decision the limitation for filing such an application for review should be computed on the same lines as provided for computing the period of limitation for filing an application for review contemplated under the provisions of Civil procedure Code. It is to be remembered that such applications cannot be allowed to become instruments to delay justice or to create hurdles in the administration of law. It is in the fitness of things to impose such procedural restrictions to prevent the abuse of the process of the Court and keep the affected party vigilant,

18. The present case is an instance showing gross negligence on the part of the applicant and indicates that he has not been acting with diligence so as to warrant an intervention of equity exercising the jurisdiction which inheres in every court of plenary jurisdiction to prevent miscarriage of justice or to correct grave and palpable errors committed by it.

19. Considering the totality of the circumstances and vague allegations made in paragraph 9 of the affidavit filed in support of the application seeking condonation of delay, I am clearly of the opinion that no sufficient cause has been made out for the condonation sought for Further, taking into consideration the facts and circumstances and the nature of the proceedings wherein the order sought to be reviewed had been passed, I am of the, considered opinion that the proceedings cannot be reopened on the strength of an additional evidence which never formed part of the record though the respondent applicant had full knowledge of the same and withheld its production. The final judgment and order passed by this Court sought to be reviewed is based on the evidence and materials which were placed on the record and on those materials it cannot be held that the final order stands vitiated on account of any grave or palpable error which may justify recalling of the same.

20. In view of the facts and circumstances noticed and conclusions indicated hereinabove, the final order disposing of the writ petition dated 28-8-1995 shall stand maintained.