

(2019) 09 PAT CK 0191

In the Patna High Court

Case No : Civil Review No. 136 Of 2019 In Letters Patent Appeal No. 1852 Of 2016

Vijay Kumar

APPELLANT

Vs

State Of Bihar Through And Ors

RESPONDENT

Date of Decision : 30-09-2019

Acts Referred:

Constitution Of India, 1950 — Article 226

Citation : (2019) 09 PAT CK 0191

Hon'ble Judges : Amreshwar Pratap Sahi, CJ; Ashutosh Kumar, J; Rajeev Ranjan Prasad, J

Bench : Full Bench

Advocate : Sanjay Kumar, Prabhat Kumar Verma, Saroj Kr. Sharma

Final Decision : Dismissed

Judgement

I.A. No. 01 of 2019

1. There is a delay of 9 months and 21 days in filing of the application for review.
2. In the given facts and circumstances stated in the application, we condone the delay. The matter has been heard on merit.
3. This application has been preferred by the writ petitioner of Civil Writ Jurisdiction Case no. 10236 of 2013 which was heard analogous to the other two writ applications and has been disposed of by common judgment dated 02.05.2018 of which the review has been sought for.
4. In course of hearing learned counsel for the petitioner submits that while considering the conflict between the two set of judgments rendered by this Court in the matter of compassionate appointment, the judgment of this Hon'ble Court in C.W.J.C. No. 8956 of 2013 (Sunny Kumar Singh Vs. The State of Bihar & Ors.) ; C.W.J.C. No. 13787 of 2014 (Avinash Kumar Verma vs. The State of Bihar & Ors.) ; C.W.J.C. No. 15383 of 2014 (Gunjan Kumar vs. The State of Bihar &

Ors.) have not been considered. It is his submission that in all these judgments, the learned Single Judge had directed the respondent authorities to consider the claim of the petitioner for appointment on compassionate ground in the light of the guidelines of the General and Administration Department issued vide letter No. 16969 dated 30.10.2013. It is submitted that in the aforesaid writ applications the petitioners were directed to be considered despite the fact that one of the dependents of the deceased government servant was employed.

5. Learned counsel has further relied on a recent Division Bench judgment of this Court in the case of Sattan Das vs. The State of Bihar and others reported in 2019 (3) PLJR 41 in which while considering a review application arising out of judgment dated 06.08.2018 passed in L.P.A. No. 1079 of 2018 the Hon'ble Division Bench has held that the applicant who had also filed the writ petition was entitled to the same benefits as had been extended to those nine persons who were similarly situated. In the said case it was found that the respondents had extended the benefit of regularization to nine similarly situated persons in compliance of the directions issued by this Court in some of the writ applications.

6. Learned counsel for the State has opposed the review application on the ground that in fact the petitioner is looking for a rehearing of the writ application on a totally misconceived ground. Learned counsel submits that both the line of judgments have been considered by Hon'ble the Full Bench and the judgments which are being cited by learned counsel for the petitioner are based on the views which were not approved by this Bench. It is submitted that no error apparent on the face of the record has been pointed out in the judgment of which the review has been sought for.

7. It is submitted that the plea raised by the review petitioner amounts to rehearing the writ application afresh, it is not permissible in review jurisdiction. Learned counsel further submits that from a bare perusal of judgment of the Hon'ble Full Bench it would appear that the Full Bench was considering the conflict between the two set of judgments. In the case Santosh Kumar Vs. The State of Bihar & Ors. reported in 2013 (1) PLJR 454 a view was taken that the petitioner should be given the benefit of compassionate appointment but the same was in conflict with the judgment of this Court in the case of Vishal Kumar Vs. The State of Bihar & Ors. reported in 2004 (2) PLJR 453 and Ashok Kumar Chaudhary Vs. The State of Bihar & Ors. reported in 2004 (4) PLJR 651. The judgment in the case of Vishal Kumar (supra) and Ashok Kumar Chaudhary (supra) were followed in the case of Mahabir Paswan (C.W.J.C. No. 6668 of 2003) and Jai Prakash Chaudhary vs. The State of Bihar & Ors (C.W.J.C. No. 7044 of 2003).

CONSIDERATIONS

8. Having heard learned counsel for the parties and after perusal of the records, before proceeding to answer the submissions, this Court deems it just and proper to take note of some settled judicial pronouncements of the Hon'ble Apex

Court on the principles of review. It is well settled that a review is not a rehearing of the matter and the Court while hearing of review application does not act as an appellate court. In the case of *Sow Chandra Kante and Ors. Vs. Sheikh Habib* reported in (1975) 1 SCC 674, the Hon'ble Supreme Court has observed as follows:

"A review of a judgment 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. A mere repetition, through different counsel, of old and over-ruled arguments, a second trip over ineffectually covered ground or minor mistakes of inconsequential import are obviously insufficient. The very strict need for compliance with these factors is the rationale behind the insistence of counsel's certificate which should "not be a routine affair or a habitual step."

9. In the *Aribam Tuleswar Sharma Vs. Aribam Pishak Sharma and Ors.* reported in (1979) 4 SCC 389 the Hon'ble Supreme Court while relying upon its own judgment in the case of *Shivdev Singh and Ors. v. State of Punjab* reported in AIR 1963 SC 1909 observed as follows:

"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. But, there are definitive limits to the exercise of power of review. The power of review may be exercised on the discovery of new and important matter or evidence which, after the exercise of due diligence was not within the knowledge of the person seeking the review or could not be produced by him at the time when the order was made; it may be exercised where some mistake or error apparent on the face of the record is found; it may also be exercised on any analogous ground. But, it may not be exercised on the ground that the decision was erroneous on merits. That would be the province of a Court of appeal. A power of review 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."

10. Again in the case of *Northern India Caterers (India) Ltd. Vs. Governor of Delhi* reported in AIR 1980 SC 674 their Lordships of the Hon'ble Supreme Court observed as under:

"whatever the nature of the proceeding, it is beyond dispute that a review proceeding cannot be equated with the original hearing of the case, and the finality of the judgment delivered by the Court will not be reconsidered except "where a glaring omission or patent mistake or like grave error has crept in earlier by judicial fallibility."

11. In the present case, it appears that the writ petitioners in the Full Bench matters had relied upon the Hon'ble Division Bench judgment of this Court in the case of *Anil Kumar Vs. The State of Bihar & Ors.* reported in 2007 (4) PLJR 511 ; *Santosh Kumar (supra)* and on the views expressed by the learned Writ Court in

C.W.J.C. No. 11487 of 2002 (Kauslendra Kumar Vs. The State of Bihar & Ors.). The parties had relied upon the various judgments of the Hon'ble Supreme Court and taking into consideration of these case laws, the Hon'ble Full Bench proceeded to consider the guidelines as contained in Memo No. 15783 dated 19.11.2014 issued by the Government in its General Administration Department. Clause (d) of the said guidelines which was provided by way of clarification was considered.

12. The grievance of the review petitioner that the judgments in the case of Sunny Kumar Singh (supra), Avinash Kumar Verma (supra) and Gunjan Kumar (Supra) were not considered by the Hon'ble Full Bench is wholly misconceived, inasmuch as, it would appear from perusal of those judgments that they have relied upon one set of judgment such as Santosh Kumar (supra) and Ashok Kumar Chaudhary (supra) which had taken a view that the claim of the petitioners be considered in the given facts and circumstances of their own case.

13. We find from a reading of those judgments that the line of cases which have been referred and relied upon in those cases by the learned Single Judge have been fully discussed in the judgment of the Hon'ble Full Bench. The judgment of this Court in the case of Santosh Kumar (supra) and Ashok Kumar Chaudhary (supra) as also Vishal Kumar (supra) and Anil Kumar (supra) have been discussed in detail.

14. Concluding his arguments, learned counsel for the review petitioner submitted that this Court should have directed at least an inquiry to be conducted in the matter of gainful employment of the brother of the petitioner. We find from the judgment of the Hon'ble Full Bench that there is a categorical finding with regard to the pleadings in the writ application and we extract the same hereunder:

"In none of these writ applications, the petitioners have pleaded that their other siblings are in such an employment by which they are unable to get sufficient money so as to provide the both ends meet to these petitioners, therefore, we find no error in the impugned order rejecting the application of the petitioner(s) on the ground that their other siblings are in employment. I would, therefore approve the judgment dated 22.08.2016 passed by the learned Single Judge in CWJC No. 10236 of 2013 which has followed the judgment of the Hon'ble Division Bench in the case of Vishal Kumar (supra)."

15. In paragraph 48 of the judgment of the Hon'ble Full Bench has held that the competent authority shall on receipt of information that other siblings of the applicant are in employment objectively look into the nature of the employment. Paragraph 48 of the judgment is quoted herein for a ready reference:

"48. In terms of the clarification offered by the department, on receipt of information that other siblings of the applicant are in employment, the competent authority would be required to objectively look into the nature of the employment and the resources being generated by the employed sibling from

such employment. On an objective consideration where it is found that other sibling of the applicant is gainfully employed in such an employment from which he/she is in a position and has capacity to provide sustenance/maintenance to the other dependents, the application for appointment on compassionate ground would not fit in the scheme in terms of the clarification at Annexure-?A? referred above but where it is found that the employment of the other siblings of such a nature that it is not generating resources so as to make him able to provide both ends meet, for sustenance/maintenance to the other dependents of the deceased government employee and despite gainful employment of one of the dependents but because of his poor income from such employment he is not in a position to provide two ends meet to the other dependents, therefore they are on the verge of starvation, destitution and penury, the authorities of the State would be liable to consider the application of other dependent for appointment on compassionate ground. No other plea in any form whatsoever would be a ground to provide the benefit of the scheme of compassionate appointment."

16. We further find that reliance placed by the learned counsel for the review petitioner on the case of Sattan Das (supra) would not be helpful to him for the reason that these matters which were placed before the Hon'ble Full Bench required a decision by resolving the conflict between the two set of judgments rendered by the Hon'ble Division Bench of this Court and while doing so the Hon'ble Full Bench has taken a view after discussing both the line of cases. The facts of the case have already been taken note of by the Hon'ble Full Bench and thus, on being satisfied, one of the views of the Hon'ble Division Bench of this Court have been held to be the correct law.

17. We therefore, find that in fact the review petitioner is looking for a rehearing of the matter. No error apparent on the face of the record could be pointed out to us. In ultimate analysis, we find no reason to review the judgment. The review application is, thus, dismissed.