Sri Samaresh Mandal Vs Sri Tarun Bandopadhyay & Ors

Court: Calcutta High Court (Appellate Side)

Date of Decision: Jan. 29, 2025

Hon'ble Judges: Rajarshi Bharadwaj, J

Bench: Single Bench

Advocate: Achyut Basu, Punam Basu, Rupchand Chakraborty, S.K. Chakraborty, Pritha Biswas, Tirtharaj Ghosal, A. Sengupta, Prosenjit Mukherjee, Jahangir Hossain, Suman Basu

Final Decision: Dismissed

Judgement

Rajarshi Bharadwaj, J:

1. The writ petitioner herein the respondent no. 1, formerly an Associate Professor of Mathematics at Berhampur College, retired on January 31,

2016. He also served as the Coordinator of Distance Education and Learning (DODL) at Kalyani University. Despite multiple requests, Respondent

no. 1 did not submit the necessary accounts related to his tenure as Coordinator, both before and after his retirement.

2. On September 6, 2016, respondent no. 1 alleged non-receipt of his retirement benefits and pension, requesting their immediate release. In response,

on September 23, 2016, the petitioner herein urged respondent no. 1 to submit the pending accounts from his role as DODL Coordinator, emphasizing

that this submission was essential for processing and releasing his pension and other retirement benefits.

3. Subsequently, respondent no. 1 filed a writ petition (W.P.A. No. 3039 of 2017) before the Hon'ble Court, seeking directives for the release of his

retirement benefits and associated documents. The writ petition was disposed of by an order dated April 24, 2017, wherein the Hon'ble Justice Subrata

Talukdar directed the relevant authorities to release the arrear and regular pensionary benefits to respondent no. 1 within four weeks. Additionally, the

petitioner was instructed to pay 50% of his salary for May 2017 to respondent no. 1 as cost and compensation.

4. Aggrieved by this decision, the petitioner herein filed an appeal (M.A.T. No. 976 of 2017) before the Hon'ble High Court, Calcutta. On November

24, 2017, the Division Bench set aside the directive for deducting half of the respondent no.1's net salary as compensation.

5. After multiple hearings and submission of written arguments by both parties, W.P.A. No. 3039 of 2017 was ultimately disposed of by an order

dated August 26, 2022, passed by Hon'ble Justice Lapita Banerji. Challenging this order, the petitioner filed the present review application.

6. The petitioner contends that the Learned Single Judge failed to recognize that the petitioner acted within the statutory framework and was not at

fault for processing and furnishing the pension papers of Respondent no. 1 instead gross illegality has been committed by respondent no. 1, who

suppressed material facts and approached the Court with unclean hands. The non-consideration of material facts on record, leading to the impugned

order without a prima facie adjudication of the writ petition's merits.

7. Moreover, the Learned Single Judge ignored the fact that the respondent no. 1, as DODL Coordinator, failed to submit necessary accounts despite

multiple requests, hindering the processing of his pension papers. The respondent no.1 also disregarded that the General Body also requested

Respondent no. 1 to submit the accounts to facilitate pension processing. In light of these points, the petitioner seeks a review of the judgment and

order dated August 26, 2022.

8. In the matter of S. Madhusudhan Reddy vs. V Arayana Reddy and Others reported in 2022 SCC OnLine SC 1034 ,HonÃ¢â‚¬â„¢ble Supreme

Court has summarized the principles for exercising of review jurisdiction as under:

Ã¢â‚¬Å“24. After discussing a series of decisions on review jurisdiction in Kamlesh Verma v. Mayawati, this Court observed that review proceedings have to be

strictly confined to the scope and ambit of Order XLVII Rule 1, CPC. As long as the point sought to be raised in the review application has already been dealt

with and answered, parties are not entitled to challenge the impugned judgment only because an alternative view is possible. The principles for exercising review

jurisdiction were succinctly summarized in the captioned case as below:

20. Thus, in view of the above, the following grounds of review are maintainable as stipulated by the statute:

20.1. 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.

Ã, The words Ã¢â‚¬Å“any other sufficient reasonÃ¢â‚¬ has been interpreted in Chajju Ram v. Neki, and approved by this Court in Moran Mar Basselios Catholicos v.

Most Rev. Mar Poulose Athanasius to mean Ã¢â‚¬Å“a reason sufficient on grounds at least analogous to those specified in the ruleÃ¢â‚¬. The same principles have been

reiterated in Union of India v. Sandur Manganese & Iron Ores Ltd.

20.2. 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 re-heard 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 negatived.Ã¢â‚¬â€‹

9. Earlier also the HonÃ¢â‚¬â„¢ble Supreme Court in the matter of Northern India Caterers (India) Ltd. v. Lt. Governor of Delh ireported in 1980 (2)

SCC 167 had held as under:

Ã¢â‚¬Å“8. It is well-settled that a party is not entitled to seek a review of a judgment delivered by this Court merely for the purpose of a rehearing and a fresh decision

of the case. The normal principle is that a judgment pronounced by the Court is final, and departure from that principle is justified only when circumstances of a

substantial and compelling character make it necessary to do so: Sajjan Singh v. State of Rajasthan. For instance, if the attention of the Court is not drawn to a

material statutory provision during the original hearing, the Court will review its judgment: G.L. Gupta v. D.N. Mehta. The Court may also reopen its judgment if

a manifest wrong has been done and it is necessary to pass an order to do full and effective justice: O.N. Mohindroo v. Distt. Judge, Delhi. Power to review its

judgments has been conferred on the Supreme Court by Article 137 of the Constitution, and that power is subject to the provisions of any law made by Parliament

or the rules made under Article 145. In a civil proceeding, an application for review is entertained only on a ground mentioned in Order 47 Rule 1 of the Code of

Civil Procedure, and in a criminal proceeding on the ground of an error apparent on the face of the record (Order 40 Rule 1, Supreme Court Rules, 1966). But

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 Ã¢â‚¬Å“where a glaring omission or patent mistake or like grave error has crept in earlier by

judicial fallibilityÃ¢â‚¬â€‹: Sow Chandra Kante v. Sheikh Habib.Ã¢â‚¬â€‹

10. The Supreme Court in Aribam Tuleshwar Sharma v. Aribam Pishak Sharma as reported in (1979) 4 SCC 389 speaking through Chinnappa

Reddy, J. has made the following pertinent observations:

''It is true 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 errors committed by it. But, there are definitive limits to the exercise of the

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 20 all manner of errors committed by the subordinate court.Ã¢â‚¬‹

11. Having regard to the aforesaid fact, this Court finds that there is no dispute to the said proposition but for seeking review, petitioner is required to

show error apparent on the face of record which he has failed in the present case. The grounds raised by the petitioner for review may be grounds

available in appeal, but could not furnish any ground to enter into a limited field of review. Therefore, as there is no apparent error on the face of the

record, no ground for review is made. Hence, the review petition and connected applications are dismissed.

12. There shall be no order as to costs.

13. Urgent Photostat certified copies of this judgment, if applied for, be supplied to the parties upon fulfilment of requisite formalities.