H.A. Mohan Kumar and Others Vs P. Muralidhar and Others

Court: Andhra Pradesh High Court

Date of Decision: Feb. 4, 2005

Acts Referred: Civil Procedure Code, 1908 (CPC) â€" Order 47 Rule 1
Constitution of India, 1950 â€" Article 137, 145, 187
Supreme Court Rules, 1996 â€" Order 40 Rule 1

Citation: (2005) 5 ALD 552

Hon'ble Judges: P.S. Narayana, J; G. Bikshapathy, J

Bench: Division Bench

Advocate: Nooty Rama Mohana Rao, for the Appellant; Srinivasa Rao Bodduluri, for the Respondent No. 1, M. Vijaya Kumar, for the Respondent No. 2, Government Pleader for Services II for the Respondent No. 3 and Anand Kumar Kapoor, for the Respondent No. 4, for the Respondent

Final Decision: Dismissed

Judgement

G. Bikshapathy, J.
All the review petitions can be disposed of by a common order.

2. The issue relate to recruitment to Group-II posts consisting of both Executive and non-Executive cadres in pursuance of the notification issued

by the Andhra Pradesh Public Service Commission by Advertisement No. 10 of 1999, dated 28-12-1999.

3. The recruitment was being prolonged from time to time on one ground or the other. However, after countless somersaults coupled with

serpentine rounds, this Court passed the following orders in W.P. No. 20106 of 2004 and Batch, dated 27-12-2004:

(a) The finding of the tribunal that the selection process has to be in accordance with the G.O. Ms. No. 124, dated 8-8-2002 cannot be said to

be erroneous of contrary to law.

(b) But, however, the direction that the entire select list has to be reviewed clubbing the appointments under 1st round selection is not sustainable

and accordingly the procedure as contemplated under G.O. Ms. No. 124 has to be followed only in respect of the candidates excluding the

appointments already made in 2001 and 2002 namely Asst. Municipal Commissioners Grade-III, Asst. Commercial Tax officers, Asst. Labour

Officers and Asst. Section Officers in non-executive cadre in view of the peculiar facts and circumstances of this case.

(c) The inter se seniority between the 1st round appointees and later inducted persons under second round selection in the same cadre if any shall

be decided by the appropriate authority in accordance with rules, depending on the merit ranking obtained by them.

(d) The Reservation to PHC category wherever it is not provided under the Special Rules cannot be claimed and hence the findings of the tribunal

do not call for any interference.

4. These review petitions were filed seeking review of the directions in Clause (b) supra. The review petitioners are Asst. Section Officers, who

were selected and appointed under the aforesaid notification during the period 15-4-2002 to 30-4-2002. It is pertinent to mention that initially the

Service Commission has advertised recruitment to the various posts 10 falling in executive cadre and 17 in non-executive cadre. However, in non-

executive cadre, the notifications specified, the posts under Assistant Section Officer category at 141, in respect of the other cadres, it was stated

in the column relating to vacancies as ""AWAITED"". But, however, subsequently the posts of Assistant Section Officers were withdrawn by the

Government on 7-8-2002. Aggrieved by the said withdrawal, an application was filed before the Andhra Pradesh Administrative Tribunal. The

learned tribunal by an Order dated 21-12-2002 passed Orders directing the Andhra Pradesh Public Service Commission to make selections of

the candidates to 141 Assistant Section Officers and accordingly they were selected and appointed. Simultaneously in respect of the executive

cadre post, the notification only specified the number of vacancies in respect of three categories namely Assistant Municipal Commissioners

Grade-Ill, Asst. Commercial Tax Officers, Assistant Labour Officers. In respect of the other cadres, it was left blank. Therefore, in respect of the

unspecified posts, matters were carried in W.P. Nos. 2868 of 2002 and 2904 of 2002 and this Court by an order dated 8-7-2003 disposed of

the writ petitions with the following directions:

(a) The Government shall assess the vacancy position in respect of the posts covered by Notification No. 10/1999 as on 30-8-2002 and fill up

the same by candidates who were selected by A.P.P.S.C. duly observing the rule of reservation.

(b) The personnel who are to be deployed and adjusted from Surplus Man Power Cell have already been reflected in the Annexure and the total

vacancy position was arrived at after giving credit to the number of persons deployed in the direct recruitment quota, however, if there is any

surplus man power still unadjusted as on 30-8-2000, the Government shall work out the same and deploy those personnel and the appointment

shall be made to the remaining vacancies.

(c) The persons who were promoted and posted on temporary basis or ad hoc basis in the vacancies earmarked for direct recruitment shall be

reverted back to their original posts.

(d) The Government shall strictly observe the rule relating to the ratio to be maintained between the direct recruits and the promotees in

accordance with the quota prescribed in the relevant Service Rules and neither excess intake shall be allowed to be crept in or the deficiency is

allowed to persist except in exceptional or unavoidable circumstances.

(e) The entire exercise shall be done within a period of six months from the date of receipt of a copy of this Order.

5. Consequent on this, the vacancies were assessed once again and on account of the review 973 vacancies in executive cadre and 193 vacancies

in nonexecutive category became available for filling up under the notification. While the process was being undertaken by the Public Service

Commission, Government issued G.O. Ms. No. 124 GAD, dated 7.3.2003. At this point of time, some of the candidates, who were selected, but

who were not given the posting as per their options filed the O.As., before the tribunal. Similarly, some other candidates approached the tribunal

seeking directions to select the candidates according to the procedure prescribed under G.O. Ms. No. 124. The tribunal, however, in a batch of

O.As., held that the selections ought to be made in accordance with the G.O. Ms. No. 124 and consequently directed the Public Service

Commission to review the selection list duly following the Presidential Order. Aggrieved by the said order of the tribunal, the writ petitions were

filed before this Court in W.P. No. 20106 of 2004 and Batch. This Court finally disposed of the writ petitions recording the conclusions as

referred to above.

6. The review petitions were filed stating that the directions issued in Clause (b) cannot be made applicable to Assistant Section Officers in non-

executive cadre on the ground that the said post is not covered by the Presidential Order. It is also further stated that after the batch of writ

petitions were disposed of by this Court on 8-7-2003, the Public Service Commission again conducted the interviews of some more candidates to

fill up the additional vacancies which became available consequent on the order passed by this Court. It was also submitted that Assistant Section

Officers, who were already appointed in 2002 consequent on the order passed by the tribunal were also subjected to interview and as the

selection to executive posts was on written test marks and interview and basing on their performance, they became eligible for the posts in

executive cadre and in fact they were selected for executive posts. But, however, the appointments were kept in abeyance on account of the

direction issued in Clause (b) above and therefore, the direction so far as it relates to Assistant Section Officer in the non-executive is required to

be deleted from the aforesaid directions. To that extent, they seek the review of the order passed in the batch of writ petitions.

7. The learned Counsel appearing for the review petitioners Mr. Adinarayana Rao, Mr. Ram Mohan Rao submit that this Court in fact in the main

text of the judgment has clearly indicated that the appointments made in 2001 and 2002 in respect of executive posts should not be again reviewed

to fall in conformity with G.O.Ms.No. 124. But, however, in the directions Clause (b), the post of Assistant Section Officer had inadvertently crept

in which was not the intention of this Court. It was further submitted, the first round of the appointment only covers the candidates in the category

of Assistant Municipal Commissioners Grade-Ill. Asst. Commercial Tax Officers and Assistant Labour Officers in the executive cadre and

therefore, the error has crept in the direction and the same has to be rectified. It is further submitted that action taken by the Public Service

Commission by selecting the candidates who were already working as Assistant Section Officers right from 2002 on their overall merit, taking into

consideration the interview conducted subsequent to the date of the judgment of this Court on 8-7-2003. Their merit has to be properly

recognised by offering the posts in the executive cadre and therefore, persons, who acquired merit cannot be allowed to brought down by bringing

them to the nonexecutive posts. The resultant effect is that less meritorious candidates got appointment in the executive cadre and more meritorious

candidates were made to continue in the non-executive cadre in the post of Assistant Section Officer. Since the inclusion of the post of Assistant

Section Officer was brought in Clause (b) inadvertently and this being error apparent on the face of the record, the review has filed under Order

47 Rule 1 of CPC is maintainable.

8. On the other hand, the learned Counsel appearing for the unofficial respondents Mr. J.R. Manohar Rao, Mr. M. Surender Rao and Mr. A.K.

Kapoor submit that the review petitions are not maintainable and they do not conform that the requirement as laid down under Order 47 Rule 1

Civil Procedure Code. They further, contended that the Court has correctly decided the issue keeping in view the facts and circumstances of the

case. It is also submitted that the Court was aware of the consequences of the implementing G.O. Ms. No. 124 retrospectively by which it

completely unsettles the settled position and therefore, in order not to allow further deteriorating situation in the selection process, this Court being

aware of the fat that three categories of posts in the executives cadre and one category of posts namely Assistant Section Officer in the non-

executive cadre, which were already filled up by the date of the judgment should no be disturbed and the procedure contemplated under the said

G.O. should be applied to the selections other than the aforesaid categories. It is also contended that since the posts of Assistant Section Officers

were filled up in 2002 and the selections were made prior to the G.O. Ms. No. 124 and the appointments might have been issued just after

issuance of G.O. that will not have the effect as the selections have not been finalized prior to G.O. Ms. No. 124. Mr. Kapoor, specifically

contended that review as such is completely barred and he refers to the decision of the"" Supreme Court reported in Rai Shivendra Bahadur Vs.

The Governing Body of the Nalanda College, , Sow Chandra Kante and Another Vs. Sheikh Habib, , Swaran Lata Vs. Union of India and

Others, , Northern India Caterers (India) Ltd. Vs. Lt. Governor of Delhi, , Parsion Devi and Others Vs. Sumitri Devi and Others, , Bank of India

and Others Vs. O.P. Swaranakar etc., and Ram Chandra Singh v. Savitri Devi, 2004 (6) ALD 31 (SC).

9. The learned Standing Counsel for the Andhra Pradesh Public Service Commission, however, submits that in order to recognize the merit, the

review of the appointments made in the cadre of Assistant Section Officers was undertaken. During the pendency of the batch of writ petitions, in

view of the directions of this Court, the selection process is required to be confined only to the post other than the three category of posts in

executive category and one category of posts in non-executive cadre as referred to above.

10. The issue that arises for consideration is whether the review petitions are maintainable or whether there is any error apparent on the face of the

record?

11. It is pertinent to note that under writ rules, no separate procedure has been prescribed for review of the Orders of this Court. Therefore, the

procedure as contemplated under CPC has to be followed. In fact, the review petitions themselves were filed under Order 47 Civil Procedure

Code, which reads thus:

Order XLVII

Review

1. Application for review of judgment :--(1) Any person considering himself aggrieved:

(a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred,

(b) by a decree or order from which no appeal is allowed; or

(c) by a decision on reference from a Court of Small Causes,

and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or

could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the

face of the record, or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a

review of judgment to the Court which passed the decree or made the order.

(2) A party who is not appealing from a decree or order may apply for a review of judgment notwithstanding the pendency of an appeal by some

other party except where the ground of such appeal is common to the applicant and the appellant, or when, being respondent, he can present to

the Appellate Court the case on which he applies for the review.

Explanation :--The fact that the decision on a question of law on which the judgment of the Court is based has been reversed or modified by the

subsequent decision of a superior Court in any other case, shall not be a ground for the review of such judgment.

(2) to (9) xxx xxx xxx

A reading of the aforesaid provisions clearly indicate that the review is required to be confirmed to the grounds mentioned therein. This Court while

disposing of the batch of writ petitions, has taken note of the situation that by the date of the issue of G.O. Ms. No. 124, the selection process was

already completed in respect of the three category of posts namely Assistant Municipal Commissioners Grade-Ill, Asst. Commercial Tax Officers

and Assistant Labour Officers under the executive cadre and Assistant Section Officers in the non-executive cadre and they had also joined

respective posts. This Court also took the note of the situation that as on the date of the delivery of the judgment, first round appointees had

already joined in the respective posts and the second round appointees are yet to be inducted in their respective services. This Court observed that

if G.O. Ms. No. 124 is to be applied retrospectively, it would unsettle the entire settled situation and in order to salvage the situation, a specific

direction was issued to apply the process as stipulated in G.O. Ms. No. 124 to the appointments to be made excluding the appointments made

supra. Therefore, it cannot be said that either there is any mistake or error apparent on the face of the record. Added to this, we also find that the

review petitions themselves are not maintainable on the ground that they lack the requirement stipulated for entertaining the review petition and

Order 47 Rule 1 of Civil Procedure Code.

12. In the words of Justice Krishna Iyer in Chandra Kanta''s case (supra), has observed that when once an order has been passed by the Court a

review thereof must be subject to the rules and cannot be lightly entertained. 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 had crept in earlier by judicial fallibility. In the inmitable slight of

expression, he stated that ""mere repetition through different Counsel of old and overruled 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.

13. Again in Northern India Caterers case (supra), the Supreme Court observed in Paras 8 and 9 thus :

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 Vs. State of Rajasthan, . For instance,

if the attention of the Court is not drawn to a material statutory provision during the original gearing, the Court will revise its judgment. Girdhari Lal

Gupta Vs. D.H. Mehta and Another, . 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 Vs. The District Judge, Delhi and Another, . 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 XLVII, Rule

1 of the CPC and in a criminal proceeding on the ground of an error apparent on the face of the record. (Order XL 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 recognised except "where a glaring omission or patent mistake or like grave

error has crept in earlier by judicial fallibility". Sow Chandra Kante and Another Vs. Sheikh Habib, .

9. Now, besides the fact that most of the legal material so assiduously collected and placed before us by the learned Additional Solicitor General,

who has now been entrusted to appear for the respondent, was never brought to our attention when the appeals were heard, we may also examine

whether the judgment suffers from an error apparent on the face of the record. Such an error exists if of two or more views canvassed on the point

it is possible to hold that the controversy can be said to admit of only one of them. If the view adopted by the Court in the original judgment is a

possible view having regard to what the record states, it is difficult to hold that there is an error apparent on the face of the record.

However, Justice Krishna Iyer concurring with the majority view has noted thus :

A plea for review, unless the first judicial view is manifestly distorted, is like asking for the moon. A forensic defeat cannot be avenged by an

invitation to have a second look, hopeful of discovery of flaws and reversal of result.

14. In Parsion Devi''s case (supra), the Supreme Court held that under Rule 47 Rule 1 Civil Procedure Code, a judgment is open to review inter

alia, there is a mistake 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 under Order 47, Rule 1 C.P.C.

In exercise of the jurisdiction under Order 47, Rule 1 C.P.C. it is not permissible for an erroneous decision to be ""reheard and corrected"". There is

a clear distinction between an erroneous decision and an error apparent on the face of the record. While the first can be corrected by the higher

forum, the latter only can be corrected by exercise of the review jurisdiction. A review petition has a limited purpose and cannot be allowed to be

an appeal in disguise"" (See also Thungabhadra Industries Ltd. Vs. The Government of Andhra Pradesh, , Smt. Meera Bhanja Vs. Smt. Nirmala

Kumari Choudhury, , Aribam Tuleshwar Sharma Vs. Aribam Pishak Sharma and Others, .

15. In Lily Thomas, Vs. Union of India and Others, , the Supreme Court observed as follows:

52. The dictionary meaning of the word "review" is "the act of looking, offer something again with a view to correction or improvement". It cannot

be denied that the review is the creation of a statute. This Court in Patel Narshi Thakershi and Others Vs. Shri Pradyumansinghji Arjunsinghji, ,

held that the power of review is not an inherent power. It must be conferred by law either specifically or by necessary implication. The review is

also not an appeal in disguise. It cannot be denied that justice is a virtue which transcends all barriers and the rules of procedures or technicalities

of law cannot stand in the way of administration of justice. Law has to bend before justice. If the Court finds that the error pointed out in the

review petition was under a mistake and the earlier judgment would not have been passed but for erroneous assumption which in fact did not exist

and its perpetration shall result in a miscarriage of justice nothing would preclude the Court from rectifying the error. This Court in Patel Narshi

Thakershi and Others Vs. Shri Pradyumansinghji Arjunsinghji, .

19. Review literally and even judicially means re-examination or reconsideration. Basic philosophy inherent in it is the universal acceptance of

human fallibility. Yet in the realm of law the Courts and even the statutes lean strongly in favour of finality of decision legally and properly made.

Exceptions both statutorily and judicially have been carved out to correct accidental mistakes or miscarriage of justice. Even when there was no

statutory provision and no rules were framed by the highest Court indicating the circumstances in which it could rectify its order the Courts culled

out such power to avoid abuse of process or miscarriage of justice. In AIR 1941 1 (Federal Court) , the Court observed that even though no rules

had been framed permitting the highest Court to review its order yet it was available on the limited and narrow ground developed by the Privy

Council and the House of Lords. The Court approved the principle laid down by the Privy Council in Rajunder Narain Rae v. Bijai Govind Singh,

1836 (1) Moo PC 117, that an order made by the Court was final and could not be altered :

...nevertheless, if by misprision in embodying the judgments, errors have been introduced, these Courts possess, by common law, the same power

which the Courts of record and statute have of rectifying the mistakes which have crept in.... The House of Lords exercises a similar power of

rectifying mistakes made in drawing up its own judgments, and this Court must possess the same authority. The Lords have however gone a step

further, and have corrected mistakes introduced through inadvertence in the details of judgments, or have supplied manifest defects in order to

enable the decrees to be enforced, or have added explanatory matter, or have reconciled inconsistencies.

Basis for exercise of the power was stated in the same decision as under :

It is impossible to doubt that the indulgence extended in such cases is mainly owing to the natural desire prevailing to prevent irremediable injustice

being done by a Court of last resort, where by some accident, without any blame, the party has not been heard and an order has been

inadvertently made as if the party had been heard.

Rectification of an order thus stems from the fundamental principle that justice is above all. It is exercised to remove the error and not for

distributing finality. When the Constitution was framed the substantive power to rectify or recall the order passed by this Court was specifically

provided by Article 137 of the Constitution. Our Constitution- makers who had the practical wisdom to visualize the efficacy of such provision

expressly conferred the substantive power to review any judgment or order by Article 187 of the Constitution and Clause (c) of Article 145

permitted this Court to frame rules as to the conditions subject to which any judgment or order may be reviewed. In exercise of this power Order

40 had been framed empowering this Court to review an order in civil proceedings on grounds analogous to Order 47, Rule 1 of the Civil

Procedure Code. The expression, or any other sufficient reason in the clause has been given an expanded meaning and a decree or order passed

under misapprehension of true state of circumstances has been held to be sufficient ground to exercise the power. Apart from Order 40, Rule 1 of

the Supreme Court Rules this Court has the inherent power to make such orders as may be necessary in the interest of justice or to prevent the

abuse of process of Court. The Court is thus not precluded from recalling or reviewing its own order if it is satisfied that it is necessary to do so for

sake of justice. ""The mere fact that two views on the same subject are possible is no ground to review the earlier judgment passed by a Bench of

the same strength.

Thus, it is clear that power of review can be exercised for correction of the mistakes and not to substitute a view. Further, the review powers ought

to be exercised within four corners of the statute dealing with the power. The review is not analogous to that of an appeal and it cannot be treated

as an appeal in disguise. Even if there is possibility of two views on the subject, yet it is not a ground for review. The Parties are not permitted to

begin fresh litigations because of new views they may entertain of the law of the case, or new versions which they present as to what should be a

proper apprehension by the Court of the legal result.... If this view is permitted litigation would have no end, except when legal ingenuity is

exhausted (See: Hoystead v. Commissioner of Taxation, 1926 A.C. 155 per Lord Shaw).

16. Chief Justice Gwyer, speaking for the Federal Court in Raja Prithwi Chand Lall Choudhary v. Sukrai, 1941 FC 1, observed thus:

This Court will not sit as a Court of appeal from its own decisions, nor will it entertain applications to review on the ground only that one of the

parties in the case conceives himself to be aggrieved by the decision. It would in our opinion be intolerable and most prejudicial to the public

interest if cases once decided by the Court could be re-opened and reheard: ""There is a salutary maxim which ought to be observed by all Courts

of last resort -- Interest reipublicae ut sit finis litium. (It concerns the State that there be an end of law suits. It is in the interest of the State that there

should be an end of law suits.) Its strict observance may occasionally entail hardship upon individual litigants, but the mischief arising from that

source must be small in comparison with the great mischief which would necessarily result from doubt being thrown upon the finality of the

decisions of such a Tribunal as this.

17. Thus, we find that the review petitions do not conform to the strict compliance of the statutory requirement as contained in Order 47 Rule 1 of

Civil Procedure Code. The review applications accordingly stand dismissed. No costs.