

IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision : January 22nd, 2008

WP(C) No.2565/2001

I.D.Chaudhury PETITIONER
! Through: Mr.Shyam Moorjani, Advocate.

Versus

\$ STC of India Ltd & Others RESPONDENTS
^ Through : Mr.M.M. Sudan, Advocate for
respondent No.1.

CORAM :-

*** HON'BLE MR. JUSTICE ANIL KUMAR**

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| 1. Whether reporters of Local papers may be allowed to see the judgment? | YES |
| 2. To be referred to the reporter or not? | NO |
| 3. Whether the judgment should be reported in the Digest? | NO |

ANIL KUMAR, J. (Oral)

CM No.3198 of 2006

1. This is an application by the petitioner under Section 151 of the Code of Civil Procedure for seeking modification/review of order dated 3rd August, 2004 to the effect that the petitioner is entitled for retiral dues such as gratuity, leave encashment and other benefits and a direction to the respondent to release all the retiral dues including gratuity, leave encashment, etc.

2. By order dated 3rd August, 2004, the application of the petitioner being CM No.3511/2002 was dismissed. While dismissing the said application, this Court passed the following order:-

CM No.3511/2002

“By this application, petitioner seeks directions to respondents to supply copies of the documents mentioned in paras 2 to 4 of the application. Learned counsel states that this direction has been complied with. Petitioner has also prayed for release of gratuity, leave encashment and other benefits mentioned in para 5 of the said application. In reply, respondents have stated that a case has been registered for which the petitioner is being prosecuted under the Prevention of Corruption Act and it is on account of pending prosecution that the payment of gratuity has not been released. It is stated by learned counsel for respondents that the case pertains to the period of employment with respondents. FIR specifically stated that petitioner while working with respondent No.1 during the period from 1979 till date amassed assets to the tune of Rs.1,06,16,939/- disproportionate to his known sources of income. In this circumstance, it is stated that gratuity has not been released pending disposal of the case. It is further stated that under sub-section (6) of Section 4 of the Payment of Gratuity Act, 1972, the gratuity of an employee shall be forfeited to the extent of the damage or loss so caused.

Learned counsel for the petitioner submits that there was an amendment in Rule 30A of STC Employees (Conduct, Discipline and Appeal) Rules, 1975 which envisages that Disciplinary Authority may withhold payment of gratuity if an employee is found guilty in a disciplinary proceedings or judicial proceedings as mentioned in sub-Section (6) of Section

4 of the Payment of Gratuity Act, 1972.

In these circumstances, as noted above, I am not inclined, in the exercise of writ jurisdiction to grant an interim direction for payment of gratuity when the FIR has allegations pertaining to the period of employment with respondent No.1 during which he is alleged to have amassed assets to the tune of Rs.1.06 crores. Application as far as this prayer is concern, is dismissed.”

3. While dismissing the application, it was held that the writ jurisdiction is not to be exercised for an interim direction for payment of gratuity when the FIR has allegation pertaining to the period of employment during which the petitioner is alleged to have amassed assets to the tune of Rs.1.06 crores.

4. Learned counsel for the petitioner has contended that while disposing of the application being CM No.3511/2002, the court was swayed and misled by the arguments of the respondent as if the petitioner is guilty of having disproportionate assets to the tune of Rs.1,06,16,939/- as the statement of the respondent was ex facie wrong as the figures were deliberately exaggerated just to prejudice the mind of this court because even in the charge sheet filed in the criminal case before the Trial Court, the figure shown was Rs.36,19,965/-.

5. The petitioner in the facts and circumstances is seeking

review of the order dated 3rd August, 2004. The applicant in the facts and circumstances is not entitled for review of the order dated 3rd August, 2004 on the ground that while passing the order dated 3rd August, 2004, the Court was misled by the arguments of the respondent about the amount allegedly due from the petitioner on the ground that according to the charge sheet the amount claimed is much less. The plea of the review of the order dated 3rd August, 2004 in any case is barred by time. If the order is to be challenged on the ground as has been alleged by the petitioner, the other remedy available to him was to file an appeal, if provided against the said order. On the ground that the court was misled by the arguments of the respondent, the petitioner/applicant is not entitled for alleged modification seeking review of the said order. There is neither any error apparent on the face of the record nor there is such an error which is liable to be corrected in exercise of review jurisdiction by this Court.

6. Learned counsel for the applicant have also relied on an order of the Criminal Court dated 11th November, 2005 whereby the CBI was directed to write a letter to the Post Office directing the Post Office to encash the NSCs on maturity when presented to the Post Office by the NSCs holder. The petitioner has also relied on the

order of the Criminal Court dated 28th November, 2005 where the account holder, Shri I.D. Chaudary, petitioner in the present case was allowed to operate the bank account as per the banking rules.

7. While dismissing the application of the petitioner for the release of the gratuity amount, this court had held that in view of the FIR filed against him and the allegations made, the same cannot be allowed and it was dismissed. Admittedly, the proceedings arising out of the FIR against the petitioner are still pending and a criminal case against the petitioner has not been dismissed on the basis of the criminal court's order passed directing release of NSCs and allowing the petitioner to operate the bank account. The order dated 3rd August, 2004 is not liable to be modified thereby directing the respondents to release the gratuity of the petitioner especially as the Rule 30(A) STC Employees (Conduct & Discipline) Rules, 1975 envisages that the Disciplinary Authority may withhold payment of gratuity if any employee is found guilty in a disciplinary proceeding or judicial proceedings as mentioned in sub-Section (6) of Section 4 of Payment of Gratuity Act, 1972.

8. Learned counsel for the petitioner has also relied on a letter dated 16th February, 2006 issued by the Personnel Manager to the petitioner intimating him that the Finance & Accounts Division had

informed that all the recoveries of outstanding amount has been made from his leave encashment payment and nothing is due from him.

9. The gratuity was ordered not to be paid to the petitioner pursuant to his application on the ground that the criminal case arising from an FIR is still pending against him. It will be pertinent to note that the present writ petition is pending seeking a declaration that the petitioner was appointed/promoted to the post of Director (Personnel) and that he continued up to the date of superannuation and seeking a Writ of Mandamus that the respondents be restrained from removing the petitioner from the post of Director (Personnel) till the age of his superannuation.

10. It has also been contended by the respondents that the petitioner being a Board level appointee, the respondent had requested the Ministry of Commerce to give vigilance clearance for the release of gratuity to the petitioner. It is stated that the Ministry of Commerce by their letter dated 18th February, 2002 had directed the respondent No.1 not to release the gratuity to the petitioner in view of the pendency of a CBI case against him for possession of disproportionate assets to the source of his income during the period of his services with respondent No.1 and,

therefore, the gratuity was withheld and has not been released nor any communication has been received from the Ministry of Commerce changing its earlier stand.

11. On the basis of the objections raised by the respondent, the application of the petitioner for release of gratuity was dismissed by order dated 3rd August, 2004. The criminal case is still pending against the petitioner and there are no such subsequent circumstances which will entail modification/review of that order dismissing his application for release of his gratuity.

12. If the order dated 3rd August, 2004 could not be passed as alleged by the petitioner now, the petitioner ought to have challenged the same either by filing an appeal against the said order or by seeking the review of the order in case there was any error apparent. The allegations made by the petitioner in the application for modification do not infuse an error apparent on the record in the order dated 3rd August, 2004.

13. A review cannot be sought merely for fresh hearing or arguments or correction of an erroneous view taken earlier. The power of review can be exercised only for correction of a patent error of law or fact which stays in the face without any elaborate

argument being needed for establishing it. It is well settled that review proceedings have to be strictly confined to the ambit and scope of Order 47 Rule 1 of the Code of Civil Procedure. Under Order 47 Rule 1 of CPC, a judgment may be open to review inter alia if there is a mistake or an error 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 CPC. In exercise of the jurisdiction under Order 47 Rule 1 CPC it is not permissible for an erroneous decision to be reheard and corrected. A review petition, it must be remembered, has a limited purpose and cannot be allowed to be an appeal in disguise.

14. There are no ground for review or modification of the said order dated 3rd August, 2004 dismissing the prayer of the petitioner for release of gratuity amount in the facts and circumstances and the application is, therefore, dismissed.

January 22, 2008
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ANIL KUMAR, J.