

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P(C) No.3275/2001**

% **Date of decision: 19.03.2008**

Krishna Bus Service (P) Ltd. Petitioner
Through: Mr.Sanjeet Kumar, Advocate.

Versus

Satvir Singh & Others Respondents
Through: Mr.Sanjeev Kumar, 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.

1. The petitioner has challenged the order dated 3rd March, 2001 of the Labour Court III dismissing the application of the petitioner management under Order XLVII Rule 1 of the CPC, 1908 seeking review of order dated 16th October, 2000 whereby the application of the respondent/workman under Section 33C(2) was allowed holding that the respondent No.1 is entitled for an amount of Rs.40,240/- from the petitioner on account of wages from December 1999, bonus for four

years, overtime wages for three years from 1st January, 1988 to 31st December, 1990 and overtime wages for working on national/festival holidays for three years.

2. The respondent had filed an application under Section 33-C(2) claiming an amount of Rs.55,580/- on account of earned wages for the month of December 1990 @ 1040/-; leave wages for four years four months @ Rs.1,040/- per month amounting to Rs.4,160/-; bonus for four years, four months @ one month's salary for each year amounting to Rs.4,160/-; overtime wages at the double rate for last three years from 1st January, 1988 to 31st December, 1990 @ Rs.800/- per month amounting to Rs.28,800/-; wages for national & festival holidays, 60 days salary amounting to Rs.6,240/-; expenses for contesting case of accident while on duty with Bus No.DEP 3196 @ Rs.7,000/- and legal expenses amounting to Rs.2,100/-. After considering the pleas and contentions and the evidence produced by the parties, the Labour Court, however, allowed only an amount of Rs.40,240/- to the workman for one month earned wages for December 1990 amounting to Rs.1040/-; bonus for four years at 8.33% amounting to Rs.4160/-; overtime wages at double rate for three years from 1st January, 1988 to 31st December, 1999 at Rs.800/- per month amounting to Rs.28,800/- and overtime wages for working on national/festal holidays for three years amounting to Rs.6,240/-. The Labour Court also held by order

dated 16th October, 2000 that if the amount of Rs.40,240/- is not paid to the respondent workman within a period of three months from the date of order, the petitioner shall also be liable to pay interest @ 12% per annum from the date of the passing of the order.

3. The petitioner sought the review of the order dated 16th October, 2000 by filing an application under Order XLVII Rule 1 read with Section 151 of the Code of Civil Procedure on the ground that on 9th December, 2000, the petitioner was trying to search out some papers regarding his business and he was surprised to see that some vouchers were found regarding the bonus amount which the workman had already received from the applicant/management. The petitioner contended that the vouchers found by the petitioners are for a sum of Rs.1206/- for the year 1988 and another sum of Rs.924/- for the year 1989 and third voucher for Rs.1672/- for the 1990 respectively. Consequently, the petitioner contended that out of the claim of Rs.4,060/-, respondent workman has already received a sum of Rs.3,802/-. The petitioner also sought review of order dated 16th October, 2000 on the ground that he worked with the management in the year 1988 to December 1990 for 740 days, then he cannot claim overtime @ Rs.800/- per month for the respective period and relied on The Punjab University v. Manmohan & Ors, AIR 1973 Punjab & Haryana 236 to contend that the power of the Court to review is not

limited to discovery of new documents after the judgment but the Court has wide discretion to do justice by granting review for any sufficient reason.

4. The application of the petitioner was contested by the respondent/workman and after hearing the parties, the Labour court dismissed the application of the review on the ground that the petitioner has not pleaded the essential circumstances which are necessary for considering the case of the management for review. The Labour Court held that the review can be sought only on three grounds, namely, (i) discovery of new and important matter of evidence which after exercise of due diligence was not within the knowledge of the applicant or could not be produced by him at the time when the decree was passed or order was made, or (ii) some mistake or error apparent on the face of the record, or (iii) for any other sufficient reason.

5. The Labour Court noticed that in the application, the petitioner did not plead as to how the petitioner/management could not produce those documents despite due diligence on their part. The Labour Court considered that the evidence of the petitioner was recorded for more than one year from 8th January, 1999 till 26th May, 2000 and no facts have been pleaded regarding due diligence on the part of the petitioner. The Labour Court also considered the plea of the respondent that

though the signatures were obtained from the respondent/workman on some vouchers and register, however, the bonus was not paid to him. These allegations of the workman that signatures of the respondent workman were obtained on some vouchers and register were not specifically denied by the petitioner. The due diligence on the part of the petitioner was also disbelieved on account of the fact that the management was maintaining its office and it has a Cashier as well as Accountant and in the cross examination of petitioners' witness, Shri Manjit Singh, it was admitted that the petitioner was maintaining records of its employees in respect of leave, bonus paid, etc.

6. The case of the petitioner was not that the documents sought to be produced later on, three vouchers, on the basis of which review of the order dated 16th October, 2000 was sought, were misplaced. In the circumstances, it was held that the management has failed to make out a case for review of order dated 16th October, 2000 on the ground of discovery of new documents which could not be produced despite due diligence.

7. Discovery of new evidence or material by itself is not sufficient to entitle a party for review of a judgment. A review is permissible on the ground of discovery of new evidence only when such an evidence is

relevant and of such a character that if it had been produced earlier it might possibly have altered the judgment, further, it must be established that the applicant had acted with due diligence and that the existence of the evidence, which he has now discovered, was not within his knowledge when the order was passed. If it is found that the petitioner has not acted with due diligence then it is not open to the Court to admit evidence on the ground of sufficient cause. The party seeking a review should prove strictly the diligence he claims to have exercised. In a review application a party cannot be allowed to introduce fresh documents merely to supplement evidence which might possibly have had some effect on the result. 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 stares in the face, without any elaborate argument being needed for establishing it. In Aribam Tuleshwar Sharma v. Aribam Pishak Sharma (AIR 1979 SC 1047) the Supreme Court held that :-

“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 be exercise of the power of review. **The power of review may be exercised on the discovery of new and important matter of 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 merit.”

8. The limitation on the powers of the Court under Order 47 Rule 1 CPC are similar and applicable to the jurisdiction available to the High Court under Article 226 of the Constitution of India. With caution the Court has to ensure that such power is not exercised like entertaining an 'Appeal in disguise'. Where conceivably there may be two opinions and an error has to be established by a long drawn process it is not an error apparent on the face of the record. The power of review can be exercised only for correction of a patent error of law which is traced in the face without any elaborate argument being noted for establishing it. 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 on the face of the record justifying the court to exercise its power of review. In the case of Parsion Devi and Ors. v. Sumitri Devi and Ors. (1997) 8 SCC 715, the Supreme Court has held as under:

" It is well settled that review proceedings have to be strictly confined to the ambit and scope of Order 47 Rule 1 CPC. Under Order 47 Rule 1 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. An error which is not self evident and has to be dictated by a process of reasoning can hardly be said to be an error apparent on the face of the record.

9. A review is permissible on the ground of discovery of new evidence only on the applicant establishing the he had acted with due diligence and that the existence of the evidence, which he has now discovered, was not within his knowledge when the order was passed. If it is found that the petitioner has not acted with due diligence then it is not open to the Court to admit evidence on the ground of sufficient cause. The party seeking a review should prove strictly the diligence he claims to have exercised. In a review application a party cannot be allowed to introduce fresh documents merely to supplement evidence which might possibly have had some effect on the result.

10. Petitioner had not pleaded that he had acted with due diligence in tracing the papers, three vouchers, showing payment of a part of the amount to the respondent on account of bonus. What has been pleaded is that the petitioner could not bring on the record the said 'vouchers due to some unavoidable circumstances', in paragraph 4 of the

application for review. What are those unavoidable circumstances have neither been explained nor are the facts disclosed by the petitioner such that 'due diligence on the part of the petitioner' can be inferred from them. The petitioner has not explained as to why the vouchers of payment of some amount of bonus could not be brought on record despite the fact that the evidence was recorded for more than one year from 8th January, 1999 till 26th May, 2000. Lack of due diligence has also been inferred from the fact that the management was maintaining its office and it has a Cashier as well as an Accountant and in the cross examination of petitioner's witness, Shri Manjit Singh, it was admitted that the petitioner was maintaining records of its employees in respect of leave, bonus paid, etc. This has not been explained as to how these three vouchers came to the knowledge of the petitioner after the decision and where these vouchers were kept. In disallowing the plea of the review of the petitioner, the allegation of the respondent that his signatures were obtained on some vouchers and register, however, the bonus was not paid to him has also been considered. These allegations of the workman that signatures of the respondent workman were obtained on some vouchers and register were not specifically denied by the petitioner. There is complete lack of diligence on the part of the petitioner in producing the alleged vouchers in support of the contention that out of an amount of Rs.4160/- a sum of Rs.3801/- was already paid. Diligence which will be a *sine qua non* for review of the

order in these facts and circumstances has neither been pleaded nor established.

11. In Shanmugam Servai v. P. Periyakaruppan Servai, AIR 1996 Madras 411, the Madras High Court laid down the legal requirements of review under CPC which are as under:-

“.....I am firm in saying that such discovery of new evidence must contain (i) the relevancy of the same and (ii) be such of a character that, if it had been given in a suit it would have altered the judgment. It must at least be such as presumably to be believed and if so, it would be conclusive. The discovery afore stated is not only a discovery of new and important materials or evidence, that would entitle a party to apply for review, but the discovery of any new materials or evidence; **and important matter must be one which was not within the knowledge of the party when the decree was made. The person seeking the review should prove strictly the diligence as clearly spelt out in the above rule which he claims to have exercised and also that the matter or evidence to which he wishes to have access to is, if not absolutely conclusive, at any rate, nearly conclusive. What has become more imperative is that a mere and bare assertion in the affidavit that the party could not trace the documents earlier or he was not in possession nor in custody of said documents is not a ground at all to seek legal aid provided under the above rule. It is not the proper function of a review application to supplement the evidence or to make it serve the purpose of merely introducing evidence which might possibly have had same effect upon the result.**

12. The concept of finality of judgment has to be enforced with its normal rigor. If the practice adopted by the petitioner in the present case is permitted, it will amount to undermining the concept of finality and in every case, the party who is not satisfied with the judgment, would seek a rehearing of the matter in the guise of review. . It is a settled canon of law that merely because a party is not satisfied with the judgment of the court or it was possible to take another view on reasonable interpretation on law and facts, would by itself be no ground for review of a judgment. In the circumstances the petition under Article 226 of the Constitution of India against the dismissal of the application for review is an attempt on the part of the petitioner to have the rehearing and delay the payment of the amounts which are due to the respondent.

13. It is also a settled position of law that in exercise of jurisdiction under Article 226 of the Constitution of India, the Court is not to interfere with factual findings of the lower courts and should restrain itself from re-appreciating evidence while exercising powers of judicial review. Reliance for this proposition can be placed on the judgment of the Supreme Court, *Government of A.P. and Ors. v. Mohd. Nasrullah*

Khan reported as (2006) 2 SCC 373. It was held that a writ court should refrain from interfering with the orders of an inferior tribunal or subordinate court unless it suffers from an error of jurisdiction or from a breach of the principles of natural justice or is vitiated by a manifest or apparent error of law. The objective of judicial review is that a person receives a fair treatment and objective is not to re-appreciate the entire pleas and evidence and draw inferences again. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the court.

14. The Labor Court while dismissing the application for review of the petitioner has considered all the facts and circumstances and the Learned Counsel for the petitioner in the facts and circumstances is unable to show any manifest error or perversity in the order of the Labor Court dismissing the application of the petitioner for review of order dated. 16th October, 2000 allowing the application of the respondent/workman under Section 33 C (2) of the Industrial Disputes Act, 1947. The writ petition is without any merit and for the foregoing reasons, I do not find any perversity in the order of the Labour Court dated 3rd March, 2001 nor there is any manifest error nor there is denial of principle of natural justice so as to invoke the jurisdiction of

this Court under Article 226 of the Constitution of India. The writ petition is, therefore, without any merit and is dismissed. The interim order dated 16th October, 2000 is vacated and pending applications, if any, are disposed of. Parties are, however, left to bear their own costs.

March 19th , 2008.
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ANIL KUMAR, J.