

Court No. - 8

Case :- CIVIL MISC REVIEW APPLICATION DEFECTIVE
No. - 239 of 2023

Applicant :- U.P. Rajya Nirman Sahkari Sangh Ltd. Thru. Its
Managing Director And Another

Opposite Party :- Purushottam Verma And 2 Others

Counsel for Applicant :- Rakesh Kumar Chaudhary

Counsel for Opposite Party :- Alok Mishra

Hon'ble Pankaj Bhatia,J.

Order on IA No.01 of 2023

1. The abovesaid application has been filed seeking condonation of delay in filing the review application.
2. Sri Alok Mishra, learned Counsel for the opposite party (petitioner of the writ petition) has no objection.
3. The application is allowed.
4. The delay in filing the review application is condoned.

Order on Review Application

5. The present application has been filed seeking review of the judgment and order dated 22.09.2023, whereby this Court had passed an order quashing the order dated 10.05.2023 by which, an order was passed for withholding the gratuity on the basis of audit objection found against the petitioner. This Court after considering the mandatory provisions and the earlier judgments of this Court held that the proceedings as contemplated under Section 4(6) of the Payment of Gratuity Act were not existed against the petitioner, thus, the withholding of gratuity was not justified.

6. It is argued by the Counsel for the applicants (respondents in the writ petition) that apart from the order dated 10.05.2023, an order, which was similar in nature to the said order, was also passed on 21.09.2023, whereby directions for withholding the gratuity in terms of the audit objection were issued against him. He argues that the order dated 21.09.2023 continues against the petitioner and certain problems have arisen in respect of the compliance of the judgment dated 22.09.2023.

7. It is also on record that against the said judgment sought to be reviewed, a Special Appeal No.502 of 2023 was preferred, however, the same was disposed off permitting the appellant therein to file an appropriate application vide order dated 28.10.2023. In terms of the said liberty, the present review application has been filed.

8. Sri Alok Mishra, learned Counsel appearing on behalf of the respondent opposes the review application by arguing that the issue decided by this Court vide its judgment dated 22.09.2023 was in respect of the power to stop the gratuity in the absence of proceedings referable to Section 4(6) of the Payment of Gratuity Act.

9. The Counsel for the applicant at this stage argues that apart from the gratuity, the leave encashment and the other retiral dues of the petitioner are also restrained.

10. Considering the submissions made at the bar, in the judgement dated 22.09.2023, this Court was of the view that unless the proceedings as contemplated under Section 4(6) of the Act are initiated merely on the basis of audit objection, the retiral dues including the gratuity cannot be withhold and the same is in violation of the provisions of Article 300-A of the Constitution of India. Even the subsequent order dated 21.09.2023 is based upon the audit objection. As no proceedings have been initiated, which can be deciphered in the order dated 21.09.2023, the analogy on which the judgment and order dated 22.09.2023 passed, cannot be faulted.

11. To further clarify, the order dated 21.09.2023 also suffers from the same vice, based upon which, the order dated 10.05.2023 was quashed, as such, it is directed that the petitioner shall be paid the entire dues. Even otherwise, no disciplinary proceedings have also been initiated, which can be termed as the proceedings referable to Section 4(6) of the Act. The order dated 21.09.2023 is also quashed on the same reasoning.

11. The review application is ***allowed***.

Order Date :- 28.11.2023

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