Court No. - 17

Case :- CIVIL MISC REVIEW APPLICATION DEFECTIVE No. - 243 of 2023

Applicant :- State Of U.P. Thru. Prin. Secy. Public Works Deptt. U.P. Lko. And 2 Others
Opposite Party :- Manoj Kumar Singh
Counsel for Applicant :- C.S.C.

Hon'ble Alok Mathur,J.

1. Heard Shri Prafull Kumar Yadav, learned counsel for the review applicant.

2. Against the judgment of this Court dated 19.7.2022 passed in bunch of writ petitions the leading being Writ A No.2000222 of 2015, the review application has been reported to be filed with a delay of 394 days..

3. The application for condonation of delay is supported with an affidavit.

4. It has been stated that against the judgment of this court a special appeal was preferred being special appeal (Defective) No.71 of 2023 which was decided on 13.3.2023 where the applicants were advised to seek review of the judgment and order of the single judge.

5. It is stated that the order of the Division Bench was duly communicated to the State Government and the Law Department has issued a contest permission on 11.4.2023.

6. Though the delay has not been satisfactorily explained but considering the fact that liberty has been given by the Division Bench to raise the issue before the single judge.

7. In the interest of justice the delay in filing the review application is condoned.

8. The present review application arises from the direction issued by the Division Bench of this Court while deciding the special appeal (defective) no.71/2023 vide order dated 13.3.2023 where it seems that the State counsel had informed the Division Bench that it was never stated before the single judge that the case of the petitioner is covered by the judgment of the Division Bench of this Court in the case of Ashok

Kanojia vs. State of U.P. and Others.

9. It is only when the contest to the said facts was made before the Division Bench, the Division Bench thought it appropriate to permit the state counsel to raise the said plea before the single judge and consequently the present review application has been filed for the limited purpose as stated above which is contained in the order dated 13.3.2023.

10. The controversy which has been engaged before this Court in the shape of this writ petition the leading being Writ A No.2000222 of 2015 and other connected matters was with regard to grant of the pay scale of 37400-67000/- with grade pay of 8700/- in pay band of IV with effect from 05.7.2011.

11. A perusal of the order of the writ Court indicates that vide Government Order dated 18.3.2011 State Government took a decision for revision of pay scale of 15600-39100/- with grade pay of 7600/- to pay scale of 37400-76000 with pay grade of 8700/-.

12. This Court had relied upon the judgment in the case of **Ashok Kumar Kanojia Vs. State of U.P. and others**, decided on 28.01.2014 as corrected on 06.02.2014. Relevant portion of the judgment is quoted hereinbelow :-

"In view of what has been discussed above, we are of the view that the opposite parties have wrongly denied the benefit of revised pay scale of Rs.17400 to 67000 with Grade Pay of Rs.8700/- which is the only pay scale of the post of Superintending Engineer. After the upgradation of pay scale there is only one pay scale of the post of Superintending Engineer which is 37400 to 67000 with grade pay of Rs.8700 which is the only pay scale of the post of Superintending Engineer. After the upgradation of pay scale there is only one pay scale of the post of Superintending Engineer which is 37400 to 67000 with grade pay of Rs.8700 and the petitioners being the Superintending Engineers are entitled to get this pay scale.

In view of the Government Order dated 04.5.2010 both the writ petitions succeed."

13. The State had preferred an SLP before the Hon?ble Supreme Court which was dismissed on 14.7.2014. Apart from the judgment rendered by the Division Bench of this Court in the case of **Ashok Kumar Kanojia (Supra)** the similar view was taken in the case of **Birendra Kumar Maurya Vs. State of U.P. and others**, passed in Writ Petition No.1440 (S/B) of

2013 and in the said case also judgment was assailed before the Hon'ble Supreme Court in SLP No. 17297 of 2014.

14. Order of the Supreme Court is quoted hereinbelow :-

"We are not inclined to entertain this special leave petition inasmuch as against the very same judgment at the instance of the petitioner against another person we declined to entertain the special eave petition in SLP (C) No.15453/2014. The instant special leave petition is dismissed.

Mr. P.P. Rao, learned senior counsel appearing for the petitioner contended that there are about 500 others who also state their claims based on the above judgment of the High Court. It is also the submission of the learned Senior counsel that the stand of the petitioner is not being considered by the High Court in other leading matters.

We only make it clear that the dismissal of this special leave petition shall not stand in the way of the petitioner raising all or any other contentions available to it in the law in the pending proceedings."

15. From the perusal of the aforesaid facts it is clear that the issue pertaining to the grant of pay scale of 37400-67000 with grade pay of Rs.8700/- to the Superintendent Engineers became final as the challenge to the judgments of the Division Bench before the Supreme Court was also unsuccessful at the behest of the State Government. It is only in the case of Birendra Kumar Maurya that a liberty was given to the State to raise all or any other contentions available to it in law in the pending proceedings.

16. This Court is of the considered view that reconsideration of the facts in issue relating to the grant of the pay scale as raised before this Court in the case of Ashok Kumar Kanojia and Birendra Kumar Maurya could not have been raised as the judicial determination in the said matter stood concluded by this Court and the said special leave petition was dismissed by the Hon?ble Supreme Court.

17. Once the said issue became final the same was not liable to be raised by the petitioner and the said judgments were binding upon the State Government and should have duly complied with. The State Government has taken liberty to raise the contention stating that they have been permitted to do the same as per the observations made by the Hon'ble Supreme Court in the case of Birendra Kumar Maurya.

18. It is further noticed that only those contentions which were available to it under law could have been raised and an issue which has attained finality upon determination by this court affirmed by the Hon'ble Supreme Court, such an issue became final and could not have been raised under law by the State.

19. Before the Division Bench while assailing the judgment of this Court decided by this Court in Writ Petition No.2000222/2015, surprisingly, the State counsel had argued that no such case was ever set up by the State before the learned single judge and it appears that the said observation have crept in on account of some misconception.

20. It seems that it was urged before the Division Bench that the judgment in the case of Ashok Kumar Kanojia would not govern the case at hand and the learned single judge has incorrectly relied upon the judgment in the case of Ashok Kanojia.

21. It is further noticed that in the counter affidavit filed by the State in Writ Petition No.23634 (SB) of 2017 [Satya Prakash Gupta vs. State of U.P.] in para 20 the State had itself indicated that this Court has already decided the said issue in the case of Ashok Kanojia and reference was also made to the case of Birendra Kumar Maurya. It seems that facts were not fairly disclosed before the Division Bench and they now seek to contest the statement made before this Court.

22. This Court has gone through the judgment of the Division Bench dated 13.3.2023 and reaffirms the statements made before this Court as discussed and recorded in the judgment dated 19.7.2022.

23. Even for a moment it is assumed that the matter can be re-agitated before this Court after determination up to the level of the Supreme Court this Court finds itself bound by the judgment of the Division Bench which admittedly has not been set aside by any higher Court or by any larger Bench.

24. This view as taken by the Division Bench in the case of Kanojia has also been rendered in number of other cases as stated in the case of **State vs. Birendra Kumar Maurya** and also in Narottam Kumar Agarwal vs. State of U.P. in Writ Petition No.1063 (SB) of 2014 decided on 23.9.2014. It has been informed that even in the case of **Narottam Kumar Agarwal** the SLP No.4776 of 2015 has been dismissed on 23.3.2015.

25. In light of the above there is no ground for review.

26. It is unfortunate that the Standing Counsel has not disclosed the correct and full facts before the Division bench which has unnecessarily necessitated filing of the present review petition.

27. In light of the above, review petition is **dismissed** with a cost of Rs.10,000/-.

(Alok Mathur, J.)

Order Date :- 8.11.2023

Ravi/

Digitally signed by :-
RAVI SHANKAR SRIVASTAV
High Court of Judicature at Allahabad,
Lucknow Bench