

Neutral Citation No. - 2023:AHC-LKO:76617-DB

Court No. - 1

Case :- CIVIL MISC REVIEW APPLICATION No. - 134 of 2023

Applicant :- Gauri Shankar Goswami

Opposite Party :- Pradeshik Cooperative Dairy Federation Ltd. Lko.
Thru. Chairman And Another

Counsel for Applicant :- Nirbhay Kumar Singh

Hon'ble Attau Rahman Masoodi, J.

Hon'ble Om Prakash Shukla, J.

- (1) The review applicant has filed the instant review application under Chapter V Rule 12 of the Allahabad High Court Rules, 1952, seeking review of the judgment and order dated 10.10.2023 passed in Special Appeal Defective No.778 of 2023 and has also prayed for allowing the interest awarded to him vide judgment and order dated 24.05.2023 passed in Writ-A No. 2516 of 2023 by the learned Single Judge.
- (2) The brief facts of the case are that the respondent-Pradeshik Co-operative Dairy Federation Ltd. Lucknow had preferred Special Appeal Defective No. 778 of 2023 before this Court impugning the judgment/order dated 10.10.2023 passed by the learned Single Judge, by which Writ-A No. 2516 of 2023 filed by the review applicant/ petitioner was disposed of with an observation that the review applicant was entitled to benefit of promotional pay-scale after completion of the requisite service period along with interest at the rate of 6% *per annum*.

- (3) While hearing the aforesaid appeal and noting the facts that the benefit of promotional pay-scale has already been granted and the Pradeshik Co-operative Dairy Federation Ltd. Lucknow undertook to make the payment without any delay coupled with the fact that a Co-ordinate Bench of this Court had set-aside the grant of any interest to the employee, having regard to the financial crunch being faced by the Pradeshik Co-operative Dairy Federation Ltd. Lucknow, this Court, vide judgment/order dated 10.10.2023, disposed of the special appeal by partially setting aside the impugned order relating to payment of interest by Pradeshik Co-operative Dairy Federation Ltd. Lucknow to the review applicant. It was also provided that the payment made shall be subject to the outcome of the pending proceedings under Sections 65/68 of the U.P. Co-operative Societies Act.
- (4) Apparently, the review applicant has sought to challenge the aforesaid order dated 10.10.2023 passed in Special Appeal Defective No.778 of 2023 and has prayed for allowing the interest.
- (5) Heard Shri Nirbhay Kumar Singh, learned Counsel representing the review applicant and Shri Lalit Shukla, learned Counsel representing the respondent.

- (6) Learned Counsel representing the review applicant submits that the review applicant has sought review of the judgment/order dated 10.10.2023 passed in Special Appeal Defective No.778 of 2023 only on the ground that in almost identical issue i.e. to pay the interest on the amount due which was computed as a consequence of grant of promotional pay-scale on completion of 19 and 24 years of satisfactory service, this Court has passed the judgment/order dated 13.10.2023 in Special Appeal Defective No. 786 of 2023, whereby direction given by the learned Single Judge vide judgment/order dated 22.08.2023 to the effect to pay interest at the rate of 7% per annum from the date of voluntary retirement till actual payment/realization in accordance with law, has been upheld. Thus, it is the case of the review petitioner that, although this court has upheld identical order passed by the learned Single Judge, however, in the instant case, when the Pradeshik Cooperative Dairy Federation Ltd. had challenged the judgment/order dated 24.05.2023 passed in Writ-A No. 3516 of 2023 against the direction of the learned Single Judge to pay interest at the rate of 6% per annum to the writ petitioner, this Court had modified the judgment/order dated 24.05.2023 passed by the learned Single Judge by partially setting aside the said judgment/order to the extent of payment of interest on the amount due. In this backdrop, he prays that the judgment and order dated 10.10.2023 may be reviewed to the extent that the respondents

be directed to pay interest on the amount due in terms of the judgment/order dated 24.05.2023 (supra) passed by the learned Single Judge.

- (7) Shri Lalit Shukla, learned Counsel representing the respondents has raised a serious objection with regard to the maintainability of the instant review application and has argued that even if the matter akin to the one has subsequently been decided in favour of the similarly situated person, yet it will not amount to an error apparent on the face of record or it does not amount to discovery of any new material or for that matter it does not amount to any of the permissible ground for review as has been carved out by various Judicial precedent by the Apex Court. To strengthen this submission, learned Counsel has placed reliance upon a judgment of the Apex Court rendered in the case of **Ratan Lal Patel vs Dr. Hari Singh Gour Vishwavidyalaya** : (2022) 6 SCC 540 and while drawing attention to paras-4 and 5 of Ratan Lal Patel (supra), he has submitted that unless the error on the face of record is made out, a review would not lie. Learned Counsel, thus, has submitted that since the review applicant has failed to show any error in the judgment/order under review on the face of record and the review applicant has only sought review of the judgment under review on the basis of subsequently decided matter in favour of the review applicant, hence the instant review application is not maintainable.

- (8) Having regard to the submissions raised by the learned Counsel for the parties and going through the record available before this Court, it is required to be noted that the basic principles in which review application can be entertained or it cannot be entertained have been eloquently laid down by the Apex Court in the case of **Kamlesh Verma vs. Mayawati** : (2013) 8 SCC 320. Paragraph 20 under the heading "summary of principles" is reproduced as under :-

"20. Thus, in view of the above, the following grounds of review are maintainable as stipulated by the statute:

20.1. When the review will be maintainable:

(i) Discovery of new and important matter or evidence which, after the exercise of due diligence, was not within knowledge of the petitioner or could not be produced by him;

(ii) Mistake or error apparent on the face of the record;

(iii) Any other sufficient reason.

The words "any other sufficient reason" have been interpreted in Chhajju Ram v. Neki [(1921-22) 49 IA 144 : (1922) 16 LW 37 : AIR 1922 PC 112] and approved by this Court in Moran Mar Basselios Catholicos v. Most Rev. Mar Poullose Athanasius [AIR 1954 SC 526 : (1955) 1 SCR 520] to mean "a reason sufficient on grounds at least analogous to those specified in the rule". The same principles have been reiterated in Union of India v. Sandur Manganese & Iron Ores Ltd. [(2013) 8 SCC 337 : JT (2013) 8 SC 275]

20.2. When the review will not be maintainable:

(i) A repetition of old and overruled argument is not enough to reopen concluded adjudications.

(ii) Minor mistakes of inconsequential import.

(iii) Review proceedings cannot be equated with the original hearing of the case.

(iv) Review is not maintainable unless the material error, manifest on the face of the order, undermines its soundness or results in miscarriage of justice.

(v) A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected but lies only for patent error.

(vi) The mere possibility of two views on the subject cannot be a ground for review.

(vii) The error apparent on the face of the record should not be an error which has to be fished out and searched.

(viii) The appreciation of evidence on record is fully within the domain of the appellate court, it cannot be permitted to be advanced in the review petition.

(ix) Review is not maintainable when the same relief sought at the time of arguing the main matter had been negated.”

(9) In Kansagra v. Smriti Madan Kansagra : (2019) 20 SCC

753, the Apex Court on the scope and power of review has reiterated the same principles. It is apt to reproduce paragraph nos. 14 to 16, which are as under :-

“14. The issues that arise for our consideration can broadly be put under two heads:

14.1. (a) Whether the High Court was justified in exercising review jurisdiction and setting aside the earlier judgment?

14.2. (b) Whether the High Court was correct in holding that the reports of the Mediator and the Counsellor in this case were part of confidential proceedings and no party could be permitted to use the same in any court proceedings or could place any reliance on such reports?

15. As regards the first issue, relying on the decisions of this Court in Inderchand Jain v. Motilal [Inderchand Jain v. Motilal, (2009) 14 SCC 663 : (2009) 5 SCC (Civ) 461] , Ajit

Kumar Rath v. State of Orissa [Ajit Kumar Rath v. State of Orissa, (1999) 9 SCC 596 : 2000 SCC (L&S) 192] and Parsion Devi v. Sumitri Devi [Parsion Devi v. Sumitri Devi, (1997) 8 SCC 715], it was submitted by the appellant that the exercise of review jurisdiction was not warranted at all.

15.1. In Inderchand Jain [Inderchand Jain v. Motilal, (2009) 14 SCC 663 : (2009) 5 SCC (Civ) 461] it was observed in paras 10, 11 and 33 as under: (SCC pp. 669 & 675) "10. It is beyond any doubt or dispute that the review court does not sit in appeal over its own order. A rehearing of the matter is impermissible in law. It constitutes an exception to the general rule that once a judgment is signed or pronounced, it should not be altered. It is also trite that exercise of inherent jurisdiction is not invoked for reviewing any order.

11. Review is not appeal in disguise. In Lily Thomas v. Union of India [Lily Thomas v. Union of India, (2000) 6 SCC 224 : 2000 SCC (Cri) 1056] this Court held: (SCC p. 251, para 56) "56. It follows, therefore, that the power of review can be exercised for correction of a mistake but not to substitute a view. Such powers can be exercised within the limits of the statute dealing with the exercise of power. The review cannot be treated like an appeal in disguise.'

33. The High Court had rightly noticed the review jurisdiction of the court, which is as under:

"The law on the subject--exercise of power of review, as propounded by the Apex Court and various other High Courts may be summarised as hereunder:

(i) Review proceedings are not by way of appeal and have to be strictly confined to the scope and ambit of Order 47 Rule 1 CPC.

(ii) Power of review may be exercised when some mistake or error apparent on the fact of record is found. But error on the face of record must be such an error which must strike one on mere looking at the record and would not require any long-drawn process of reasoning on the points where there may conceivably be two opinions.

(iii) Power of review may not be exercised on the ground that the decision was erroneous on merits.

(iv) Power of review can also be exercised for any sufficient reason which is wide enough to include a misconception of fact or law by a court or even an advocate.

(v) An application for review may be necessitated by way of invoking the doctrine *actus curiae neminem gravabit*.' In our opinion, the principles of law enumerated by it, in the facts of this case, have wrongly been applied."

15.2. In *Ajit Kumar Rath* [*Ajit Kumar Rath v. State of Orissa*, (1999) 9 SCC 596 : 2000 SCC (L&S) 192], it was observed: (SCC p. 608, para 29) "29. In review proceedings, the Tribunal deviated from the principles laid down above which, we must say, is wholly unjustified and exhibits a tendency to rewrite a judgment by which the controversy had been finally decided. This, we are constrained to say, is not the scope of review under Section 22(3)(f) of the Administrative Tribunals Act, 1985..."

15.3. Similarly, in *Parsion Devi* [*Parsion Devi v. Sumitri Devi*, (1997) 8 SCC 715] the principles were summarised as under: (SCC p. 719, para 9) "9. 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 C.P.C. 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".

16. On the other hand, reliance was placed by the respondent on the decision in *BCCI v. Netaji Cricket Club* [*BCCI v. Netaji Cricket Club*, (2005) 4 SCC 741] to submit that exercise in review would be justified if there be misconception of fact or law. Para 90 of the said decision was to the following

effect: (SCC p. 765) "90. Thus, a mistake on the part of the court which would include a mistake in the nature of the undertaking may also call for a review of the order. An application for review would also be maintainable if there exists sufficient reason therefor. What would constitute sufficient reason would depend on the facts and circumstances of the case. The words "sufficient reason" in Order 47 Rule 1 of the Code are wide enough to include a misconception of fact or law by a court or even an advocate. An application for review may be necessitated by way of invoking the doctrine *actus curiae neminem gravabit*."

(17) It has thus been settled in law that;

(i) the power of review may be necessitated by way of invoking the doctrine "*actus curiae neminem gravabit*" which means that no act of the court in the course of whole of the proceedings does an injury to the suitors in the court. It has been held in *Food Corporation of India and Another vs. M/s Seil Ltd. & Ors.* [(2008) 3 SCC 440] that a writ court exercises its power of review under Article 226 of the Constitution of India itself and while exercising the jurisdiction it not only acts as a court of law but also as a court of equity. A clear error or omission on the part of the court to consider a justifiable claim would be subject to review, amongst others, on the "*actus curiae neminem gravabit*".

(ii) The mistake or error must be apparent on the face of record i.e. that it must strike one on mere looking at the record and would not require any long drawn process of reasoning. It should not be an error which has to be fished out and searched. Such an error must also be material which undermines the soundness of the judgment or results in miscarriage of justice. An error which may be apparent but is of inconsequential import, that would not furnish a ground for review.

(iii) An application for review would also be maintainable for "any other sufficient reason", which expression has been interpreted to mean a reason sufficient on grounds at least analogous to those specified in Order 47 Rule 1 C.P.C., which

are wide enough to include a misconception of fact or law by a court or even an Advocate and what other grounds would constitute sufficient reason depends on the facts and circumstances of each case.

(iv) There are limitations on the exercise of review jurisdiction. Review proceedings are not by way of appeal. It cannot be treated like an appeal in disguise. A rehearing of the matter is not permissible in law. If there are two views possible, the power of review cannot be exercised to substitute the view already taken in the judgment under review. It is not for an erroneous decision to be "reheard and corrected" in review jurisdiction."

(10) In **Ratan Lal Patel (supra)**, which has been relied by the learned Counsel representing the respondent, the Apex Court has observed as under :-

"4. Having considered the impugned order, it can be seen that the impugned order allowing the review application is a cryptic, non- reasoned and non-speaking order. Nothing has been mentioned and/or observed as to what was that error apparent on the face of the record which called for interference. It cannot be disputed that the review jurisdiction can be exercised only in a case where it is found that there is an error apparent on the face of the record and not otherwise. Therefore, while exercising the review jurisdiction, the Court has to first satisfy itself on any error apparent on the face of the record which calls for exercise of the review jurisdiction.

5. Merely stating that there is an error apparent on the face of the record is not sufficient. It must be demonstrated that in fact there was an error apparent on the face of the record. There must be a speaking and reasoned order as to what was that error apparent on the face of the record, which called for interference and therefore a reasoned order is required to be passed. Unless such reasons are given and unless what was that error apparent on

the face of the record is stated and mentioned in the order, the higher forum would not be in a position to know what has weighed with the Court while exercising the review jurisdiction and what was that error apparent on the face of the record.”

(11) Keeping in mind the above principles, we now proceed to consider as to whether the grounds on which review has been filed exist, and if yes, whether on such grounds review would be permissible.

(12) A perusal of the judgment under review, what we find is that there is no apparent error on the face of record. Moreso, learned Counsel for the review applicant has failed to show any error in the judgment under review on the face of record and more so when proceedings under Section 65/68 of the U.P. Co-operative Societies Act, 1965 were pending and his sole plea that the matter akin to the present case, has subsequently been decided in a manner which favours the cause of the review applicant, could not be a ground for seeking review of the judgment in view of the aforesaid legal proposition.

(13) In view of the aforesaid, the instant review application is **dismissed.**

(Om Prakash Shukla, J.) (Attau Rahman Masoodi, J.)

Order Date :- 22.11.2023

Anand Sri/Ajit/-