Court No. - 4

Case :- WRIT - A No. - 7991 of 2022

Petitioner :- Mukesh Sharma And 5 Others
Respondent :- State Of U.P. Thru. Prin. Secy. Medical Health And Family Welfare Civil Sectt U.P. Lko And 7 Others
Counsel for Petitioner :- Anurag Srivastava,Manoj Kumar Rai
Counsel for Respondent :- C.S.C.

Hon'ble Rajesh Singh Chauhan,J.

1. In the issue in question, one review application bearing Civil Misc. Review Application (Defective) No.283 of 2023; State of U.P. & 4 others vs. Kamal Deep Nirala and 9 others was filed in Writ-A No.20255 of 2021; Kamal Deep Nirala & others vs. State of U.P. & another, which has been dismissed vide order dated 01.08.2024. The order dated 01.08.2024 reads as under:-

*"**1.** Heard Sri Vivek Shukla, learned Additional Chief Standing Counsel on behalf of the review petitioners/ State and Sri Sanjay Bhasin, learned Senior Advocate assisted by Sri Sanjay Mishra, learned counsel for the writ petitioners.*

***2.** By means of this review application, the review petitioners i.e. the State of U.P. has sought review of the judgment and order dated 04.07.2023 passed in Writ-A No.20255 of 2021 (Kamal Deep Nirala and others vs. State of U.P. & others), which reads as under:-*

"1.Heard Shri Sanjay Misra, learned counsel for the petitioners and Shri Ashwani Kumar Singh Rathore, learned Standing Counsel appearing for the State-respondents.

2.The present petition under Article 226 of the Constitution of India has been filed seeking grade pay of Rs.2800/- as is being paid to other similarly placed Health Workers, who were appointed on or before 01.12.2011.

3.The petitioners have been appointed after due selection on the post of Health Worker (Male and Female) in the Health Department, Government of Uttar Pradesh. Admittedly, they have been appointed after 01.12.2011. The petitioners are given same pay scale of Rs.5200-20200/- as is being given to the Health Workers who were appointed before 01.12.2011. The only difference is fixation of grade pay inasmuch as the petitioners are being paid grade pay of Rs.2000/- whereas the similarly placed Health Workers appointed on or before 01.12.2011 are being paid grade pay of Rs.2800/-.

4.Shri Sanjay Misra, learned Counsel for the petitioners submits that paying different grade pay to similarly appointed Health Workers on the ground of difference in their dates of appointment is wholly discriminatory

and is in violation of Articles 14 and 16 of the Constitution of India. He further submits that the petitioners are also entitled to be given the grade pay of Rs.2800/- as is being given to the similarly placed Health Workers who were appointed on or before 01.12.2011.

5.Shri Ashwani Kumar Singh Rathore, learned Standing Counsel for the State-respondents submits that the difference in grade pay is being given in pursuance of the government order dated 19.12.2011 which provides that the Health Workers appointed after 01.12.2011 would be given grade pay of Rs.2000/-. This Court asked a specific question to learned Standing Counsel that what was the basis for paying different grade pay to the Health Workers appointed on or before 01.12.2011 and the Health Workers appointed after 01.12.2011? to which he fairly submits that no reasoning is discernible in the government order except for cut of date for fixing the grade pay of Rs.2000/- instead of Rs.2800/-.

6.This Court finds that the executive instructions of the government order is in violation of Article 14 of the Constitution of India. The Government cannot discriminate in the matter of payment of salary in respect of similarly appointed Health Workers only on the basis of their dates of appointment.

7.In view thereof, the present petition is allowed. The respondents are directed to pay grade pay of Rs.2800/- to the petitioners as is being paid to other similarly placed Health Workers from the date of their appointment. The arrears should be paid to the petitioners within a period of four months from today."

***3.** Sri Vivek Shukla, learned counsel for the review petitioner has mainly taken a ground that in the aforesaid case the counter affidavit was not properly filed in terms of the Government Order dated 19.12.2011 inasmuch as in the aforesaid Government Order there is a clear cut bifurcation for providing the grade pay to the post of 'Health Worker' and Health Supervisor inasmuch as the post of Health Supervisor is a promotional post from Health Workers. In terms of the aforesaid Government Order dated 19.12.2011 the Health Workers would be paid the grade pay of Rs.2000/- whereas the Health Supervisor would be getting the grade pay of Rs.2800/-. However, the employees who have been appointed on or before 01.12.2011 may be given personal grade pay Rs.2800/-. He has further submitted that the writ petitioners are Health Workers (Male & Female), therefore, they are only entitled for the grade pay of Rs.2000/- and they cannot be paid the grade pay of Rs.2800/- which is a promotional grade pay.*

***4.** In para-10 of the counter affidavit of the State this fact has not been clarified, rather, the bare perusal of the aforesaid para creates some confusion. Therefore, the learned Standing Counsel who appeared before the Writ Court has submitted that no reasoning is discernible in the aforesaid Government Order except for cut of date for fixing the grade pay of Rs.2000/- instead of Rs.2800/-.*

***5.** Sri Shukla has fairly submitted that it has not been clarified in the aforesaid counter affidavit as to how the Health Workers (Male & Female) could get the grade pay of Rs.2800/- as personal grade pay.*

***6.** Sri Shukla has not disputed the fact that the order dated 04.07.2023 was*

passed after affording proper opportunity of hearing to the parties including the State.

7. *Sri Sanjay Bhasin, learned Senior Advocate assisted by Sri Sanjay Mishra, learned counsel for the writ petitioners has opposed the aforesaid review application by submitting that if an order dated 04.07.2023 (supra) has been passed after considering the stand of the State Government, so indicated in the counter affidavit, then by means of review application the fresh arguments may not be advanced by filing a review application. Even if the aforesaid order dated 04.07.2023 (supra) is erroneous order, however, the same is not erroneous order but learned counsel for the review petitioner is saying so that error, if any, may not be rectified or corrected by the review court but he could have filed the appeal challenging the aforesaid order dated 04.07.2023 (supra).*

8. *Sri Bhasin, learned Senior Advocate has further submitted that no error apparent in the order dated 04.07.2023 (supra) has been pointed out by the learned counsel for the review petitioners.*

9. *Having heard learned counsel for the parties and having perused the material available on record, I am of the considered opinion that a review cannot be an appeal in disguise to rehear the matter.*

10. *Recently, the Hon'ble Apex Court in the case in re:* ***Arun Dev Upadhyaya vs. Integrated Sales Service Limited and another*** *reported in* ***(2023) 8 SCC 11,*** *following its own judgments rendered in the case in re:* ***Meera Bhanja (Smt) vs. Nirmala Kumari Choudhury (Smt.)*** *reported in* ***(1995) 1 SCC 170*** *and in the case in re****: Sasi (Dead) through legal representatives vs. Aravindakshan Nair and others reported in (2017) 4 SCC 692*** *has held that a power to review cannot be exercised as an appellate power and has to be strictly confined to the scope and ambit of Order 47 Rule 1 CPC. The Hon'ble Apex Court further held that an error on the face of record must be such an error which, mere looking at the record should strike and it should not required any long-drawn process of reasoning on the points where there may conceivably be two opinions. In para-32 the Hon'ble Apex Court has referred some more judgments besides* ***Meera Bhanja (Smt.)*** *(supra) holding that a power of review should not be confused with the appellate powers. Para-32 reads as under:-*

"32. A series of decisions may also be referred to wherein, it has been held that power to review may not be exercised on the ground that decision was erroneous on merits as the same would be the domain of the court of appeal. Power of review should not be confused with appellate powers as the appellate powers can correct all manners of errors committed by the subordinate courts."

11. *In the present case, the writ petitioners convinced the court that they are entitled for the grade pay of Rs.2800/- in terms of the Government Order dated 19.12.2011 and learned counsel for the review petitioners could not dispute the aforesaid submission before the Writ Court, therefore, the petition of the writ petitioners was allowed. If the review petitioners are able to convince that in terms of the aforesaid Government Order the another view might have been possible then instead of filing the review petition, he should have filed an appeal before the Appellate Court.*

12. *Accordingly, the instant review application is* ***rejected.***

13. *No order as to cost."*

2. Since the present issue is identical with the issue involved in the writ petition bearing Writ-A No.20255 of 2021; Kamal Deep Nirala (supra) which has been allowed by this Court vide order dated 04.07.2023, therefore, this writ petition is also allowed in terms of the judgment and order dated 04.07.2023.

[Rajesh Singh Chauhan,J.]

Order Date :- 1.8.2024
Suresh/

Digitally signed by :-
SURESH CHANDRA
High Court of Judicature at Allahabad,
Lucknow Bench