

**IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH**

RA-CW-415 of 2017 in
CWP No. 13516 of 2013
Date of decision: November 22, 2019

Dr. Bhupinder Singh and another

...Petitioners

Versus

Punjabi University, Patiala and others

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. Kanwaljit Singh, Senior Advocate with
Mr. Abhishek Bajaj, Advocate,
for the applicant—University.

Mr. Gagnehwar Walia, Advocate,
for the non-applicants/petitioners.

Mr. Salil Sabhlok, Advocate,
for UGC.

Mr. Charanjiv Singh—respondent No.4 in person.

JAISHREE THAKUR, J.

1. This application has been filed under Order 47 Rule 1 and read with Section 151 of the Code of Civil Procedure for reviewing the order dated 5.4.2017 passed in CWP No. 13516 of 2013.

2. In brief, the facts are that the aforesaid writ petition was filed by the petitioners seeking to challenge the decision of the Syndicate and the decision to extend the cutoff date from 31.12.2008 to 23.3.2011 for applicability of the Carrier Advancement Scheme (CAS). The writ petition was dismissed holding that the decision did not smack of any arbitrariness.

Consequent to the disposal of the writ petition, a review application has

been filed by the respondent—University seeking recall of the order on the ground that during the pendency of the writ petition and after filing of the written statement, the UGC had issued instructions dated 26.2.2014 (Annexure A/1), which clearly states that any candidate who had become eligible for promotion under Career Advancement Scheme on or after 31st December, 2008, the promotion of such a candidate shall be governed by the provisions of these Regulations, namely, ‘UGC Regulations, 2010’ as amended from time to time and if any candidate become eligible for promotion under Career Advancement Scheme prior to 31.12.2008, the promotion of such a candidates shall be governed by the provisions of ‘UGC Regulations 2000’. It is contended that the Syndicate in its meeting held on 30.12.2014 (Annexure A/2) had already adopted the UGC Guidelines and in case the judgment sought to be reviewed is not amended or modified, a huge anomaly would arise in the pay of the candidates. It is also argued that it is only on reading of the judgment that the applicant/University became aware that the relevant instructions dated 26.2.2014 (Annexure A/1) had not been brought to the notice of the Court and also that the same has been adopted by the Syndicate in its meeting held on 30.12.2014 (Annexure A/2).

3. Learned counsel for the applicant/University argues that Order 47 Rule 1 of the Code of Civil Procedure permits a judgment to be reviewed if a person aggrieved of the order or decree can satisfy the Court that the information sought to be placed on the record could not have been done so despite due diligence.

4. Learned counsel appearing for respondent No.5/UGC has filed

its reply and supports the arguments as raised by the learned counsel for the applicant/University stating that the University could not have been allowed extension of the cutoff date, while arguing that Annexure A/1 on the record had come into existence which clearly specifies that a candidate would be governed in terms of the UGC Regulations mentioned therein.

5. Per contra, Mr. Charajiv Singh—respondent No. 4, who appears in person, submits that the review application is not maintainable in view of the fact that the applicant/University has not been able to show due diligence as to why Annexures A/1 and A/2 were not placed before the writ Court, while arguing that there is clear attempt to seek de-novo hearing of the writ petition. In support of his contentions, he relies on the judgments rendered in **State of West Bengal V. Kamal Sengupta (2008) 8 SCC 612** and **Kiran Rosy V. State of Punjab and others RA-CW-187 of 2014 in CWP No. 15480 of 2013 decided on 8.4.2015** to argue that a review would not be maintainable until and unless there is an error apparent on the face of the record, which is not so in the present case.

6. I have heard learned counsel for the parties and with their assistance gone through the documents.

7. There is no doubt that the scope of interference in a review petition is limited. The error should be something more than a mere error and it must be one which is manifest on the face of the record. A review cannot be a ruse to set aside the judgment and decree and become a means for reopening the case. A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected, but a review lies only for patent error. Order 41 Rule 27 Code of Civil Procedure reads as

under:

“1. Application for review of judgment.-

(1) Any person considering himself aggrieved - (a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred. (b) by a decree or order from which no appeal is allowed, or (c) by a decision on a reference from a Court of Small Causes, and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgment to the Court which passed the decree or made the order.

(2) A party who is not appealing from a decree or order may apply for a review of judgment notwithstanding the pendency of an appeal by some other party except where the ground of such appeal is common to the applicant and the appellant, or when, being respondent, he can present to the Appellate Court the case on which he applies for the review. Explanation.- The fact that the decision on a question of law on which the judgment of the Court is based has been reversed or modified by 4 the subsequent decision of a superior Court in any other case, shall not be a ground for the review of such judgment.”

9. However, in the present case, admittedly, the two documents, Annexures A/1 and A/2, which would have great ramifications on the merit of the case, if the same had been produced before the court at the time the matter was being argued. Normally, whenever a case is decided in favour of a particular party, he/she would not file an application for review of the same. But in the present case, admittedly, the case was decided in favour of

the applicant/University. However, the applicant/University would submit that since the UGC instructions (Annexure A/1) were not on the record, therefore, it led the Court to conclude otherwise, which order if allowed to stand would be detrimental to others since the UGC Regulations as adopted by the University are to be followed. Admittedly, there is no error on the face of the record, but the applicant/University has been able to show sufficient cause for recalling the said order. The power of review may be exercised on the discovery of new and important matter or 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 is stated in the application that the UGC instructions were received after the filing of the written statement and they were not able to inform their counsel to that effect. The application for recalling also stands supported by the counsel for UGC who has argued that it is for the University to follow all regulations as amended by the UGC from time to time and therefore the judgment needs to be recalled. Therefore, in view of the above, the application is allowed, the dated 5.4.2017 is recalled.

10. List as per roster.

November 22, 2019
prem

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No