

IN THE HIGH COURT OF BOMBAY AT GOA**CIVIL APPLICATION (REVIEW) NO.33 OF 2017**
IN
WRIT PETITION NO.63 OF 2016

The Goa Postal Employees Co-op.
Society Limited, represented by its
Secretary, Ramnath G. Naik. ... Applicant.

V e r s u s

Nirupa C. Udaikar & Ors. ... Respondents

Shri Shivraj Gaonkar, Advocate for the applicant.

Shri J. J. Mulgaonkar, Advocate for the respondent no.1.

Ms. P. Kamat, Additional Government Advocate for
respondent no.3.

Coram:- NUTAN D. SARDESSAI, J.

Order reserved on :- 1st February, 2018

Order pronounced on:- 9th February, 2018

ORDER

The original petitioner seeks review of the judgment dated 13.10.2017 passed by this Court on the premise that it was never their case that the respondent no.1 had abandoned her services as erroneously assumed

by this Court and secondly on the premise that the ground taken to challenge the impugned judgment of the Tribunal was never considered by this Court.

2. Heard Shri S. Gaonkar, learned Advocate for the applicant who adverted to the judgment under review and the written statement filed by the applicant/petitioner in the petition to buttress his plea that the abandonment of service by the respondent no.1 was never their case and quite on the contrary it was their case that she had voluntarily abandoned herself from work. He placed reliance in **State of Haryana vs Omprakash and another** [(1998) 8 SCC 733]. His next basis for the review was that the ground no.2 taken in the writ petition to challenge the award of the Industrial Tribunal was not considered by this Court which itself provided the ground of review and in that context placed reliance in **Rasiklal Manikchand Dhariwal and another vs M.S.S. Food Products** [(2012)2 SCC 196].

3. Shri J. J. Mulgaonkar, learned Advocate for the

respondent no.1 submitted that new contentions were raised in the present application for review of the judgment and on his part adverted to paragraph 21 of the judgment under review, the award passed by the learned Tribunal and submitted that the respondent no.1 being a regular employee and not a daily wage employee was entitled to a notice which had not been issued to her in the present case. The case of the applicant that a notice was issued to her and despatched personally was also not borne out from the records. The plea of abandonment of service was argued by the learned Advocate appearing for the applicant both before the learned Tribunal and this Court which was sought to be disputed by the learned Advocate now appearing on their behalf. No ground whatsoever was made out for a review of the judgment and this application was motivated only to delay the payment ordered in favour of the respondent no.1.

4. Ms. P. Kamat, learned Addl. Government Advocate on behalf of the respondent no.3 submitted at the outset that she adopted the arguments of

Shri Mulgaonkar, learned Advocate for the respondent no.1 that a new case was set up by seeking a review of the judgment. There was no scope for review and hence the application ought to be dismissed. Shri Gaonkar in reply admitted that no notice was issued to the respondent no.1 to join the service. In any event, it was his contention that the judgment in **Sonal Garments** (supra) though binding was not considered by this Court.

5. i have examined the judgment under review and the relevant paragraphs to which attention was invited to by Shri S. Gaonkar, learned Advocate for the applicant, Shri J. Mulgaonkar, learned Advocate for the respondent no.1 and Ms. P. Kamat, learned Additional Government Advocate for the respondent no.3 apart from the plea taken in defence on behalf of the applicant in the proceedings before the learned Tribunal. Although an issue is raised that it was never their case that the respondent no.1 had abandoned the service, the applicant had virtually put the same wording differently that she had voluntarily abandoned herself from service. Therefore, merely

replacing one word would not substantiate the case of the applicant that there was mis-appreciation of the case carved out by the applicant as to justify a case of review of the judgment under consideration.

6. In **Omprakash** (supra), a daily-rated workman had stopped attending the work with effect from 30.06.1986 upon his appointment on 10.08.1985 and three years later he had served a demand notice claiming reinstatement with attendant benefits under the Industrial Disputes Act, 1947. The Tribunal concluded that the employer had terminated his services which amounted to retrenchment and, therefore, he was entitled to the protection of Sections 25-F and 25-G of the Act. The termination was invalid and, therefore, the Tribunal directed the reinstatement with full back wages and benefit of continuity in service etc., giving rise to an appeal. The High Court however summarily rejected the petition filed under Article 226/227 of the Constitution giving rise to the appeal before the Apex Court which found that though he had worked upto 30.06.1986 and thereafter ceased to

report for work the employer had not taken any steps to terminate his services. Moreover, being a daily wage worker, there was no material before the authority that he had worked for 240 days to satisfy Section 25-B of the Act and in that view of the matter, the authority was wrong to conclude that there was a violation of Section 25-F of the Act. This case is clearly distinguishable from that of the respondent no.1 who was a regular employee and not daily- rated employee as in **Omprakash** (supra).

7. The next ground of review that this Court had not considered the ground no.2 raised in the petition is rather misplaced on a bare reading of the judgment under review. There can be no dispute with the proposition culled out by the Apex Court in **Rasiklal Dhariwal** (supra), that when the contentions raised by the parties were not considered by the High Court, the proper course available to the party was to bring to the notice of the High Court this aspect by filing a review application. However, this proposition is not available to the applicant on a reading of the judgment passed by the Tribunal as well as by this

Court when the aspect of termination of service of the respondent no.1 was duly considered while dealing with the judgment of the learned Tribunal under challenge. Last but not the least, the contention of Shri Gaonkar that the judgment in **Sonal Garments** (supra), was not considered also cannot stand test of scrutiny when the same was held to be clearly distinguishable being that of a learned Single Judge and when the judgment of the Division Bench and of the Apex Court were considered while dealing with the impugned judgment in the writ petition. In any view of the matter, there is no error apparent on the face of record as to justify a review of the judgment under challenge. The predicates of Order XLVII Rule 1 of the Civil Procedure Code are not at all attracted to the facts of the present case and in view thereof, the application is found lacking in merits and is hereby dismissed.

NUTAN D. SARDESSAI, J.

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