

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL REVIEW No.69 of 2019

In
Civil Writ Jurisdiction Case No.5334 of 2001

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1. The Managing Director, Hindustan Antibiotic Limited Pimpri, Pune, Government of India undertaking
 2. The General Manager (Marketing) Hindustan Antibiotic Limited, Pimpri, Pune
 3. The Divisional Manager Hindustan Antibiotics Limited, Road No. 5, Rajendra Nagar, Patna-16
 4. The Divisional Manager having his office in Hindustan Antibiotics Limited, Calcutta
 5. Hindustan Antibiotics Limited through Company Secretary, Pimpri, Pune, A Government of India Undertaking

... .. Petitioner/s

Versus

1. The Union of India through the Secretary, Ministry of Chemical and Fertilizer, Government of India, New Delhi, having his office in Shastri Nagar, Dr. Rajendra Prasad Road, New Delhi
2. Abinash Kumar Sinha Son of Sri Baijnath Sahay R/o D Block, Kadamkuan, P.S. Kadamkuan, District-Patna

... .. Opposite Party/s

with
Miscellaneous Jurisdiction Case No. 4366 of 2018
In
Civil Writ Jurisdiction Case No.5334 of 2001

Abinash Kumar Sinha, Son of Late Baijnath Sahay, resident of D Block, Kadamkuan, Police Station Kadamkuan, District Patna at present residing at E- 179, Surya Apartment, Flat No. F-4, Samaspur Road, Pandav Nagar, Delhi-110091.

... .. Petitioner/s

Versus

1. The Union of India through the Secretary, Sri Jai Priye Prakash, Ministry Of Chemical and Fertilizer, Department of Pharmaceutical, Government of India, New Delhi, having his office in Shastri Bhawan, Dr. Rajendra Prasad Road, New Delhi.
2. Ms. Nirja Saraf, the Managing Director, Hindustran Antibiotics Limited (A Government of India Enterprise), Pimpri, Pune- 411018.
3. Sri J.B. Patnaik, National Sales Manager (Pharma), Hindustan Antibiotics Limited, (A Government of India Enterprise), Pimpri, Pune- 411018.



4. Mrs. Sunita N. Shivatara, Senior Personnel Officer (Corporate Personnel), Hindustan Antibiotics Limited, (A Government of India Enterprise), Pimpri, Pune- 411018.

... .. Opposite Party/s

Appearance :

(In CIVIL REVIEW No. 69 of 2019)

For the Petitioner/s : Mr.Amitabh Sohan

For the Opposite Party/s : Mr.S.D. Sanjay (ADSG)

(In Miscellaneous Jurisdiction Case No. 4366 of 2018)

For the Petitioner/s : Mr.Rupak Kumar

For the Opposite Party/s : Mr.S.D Sanjay Addl. Soc. Gen.

CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH

ORAL JUDGMENT

Date: 22-10-2019

The present review petition has been filed for review of the judgment and order dated 25.08.2018 passed by this Court in CWJC No. 5334 of 2011, whereby and whereunder the writ petition filed by the opposite party no. 2 has been allowed.

The review petitioners have stated in the review petition that on account of lack of assistance on part of the learned counsel for the review petitioners in the connected writ proceedings, appropriate materials could not be brought on record leading to passing of the judgment and order dated 25.08.2018.

The learned counsel appearing for the review petitioners has submitted that a memo of charge containing specific imputations against the writ petitioner was served upon the writ petitioner on 19.11.1999 whereafter Enquiry Officer was appointed and a domestic enquiry was conducted strictly in



accordance with the rules. However, the writ petitioner did not appear before the Enquiry Officer and instead chose to indulge in correspondences whereafter the Enquiry was proceeded *ex parte* and the Enquiry Officer had submitted his enquiry report, which along with the findings was sent to the writ petitioner along with a second show cause notice dated 09.10.2000 whereafter the writ petitioner is stated to have submitted his explanation on 25.10.2000, which was considered by the disciplinary authority and finding the same to be unsatisfactory, the same was rejected and the writ petitioner was dismissed from services vide order dated 05.12.2000. The writ petitioner is stated to have preferred an appeal on 07.01.2001 before the Managing Director, Hindustan Antibiotics Limited, against the order of dismissal dated 05.12.2000, however, the same was also dismissed.

It has been submitted by the review petitioners that the order of punishment has been passed by an officer junior to the appointing authority inasmuch as the General Manager (Marketing), was duly authorized and delegated with the powers of the disciplinary authority, much prior to the initiation of the disciplinary proceedings. It is further submitted that reasonable opportunity was granted to the writ petitioner and notices were



issued to him, however, he chose not to appear before the Enquiry Officer, hence the enquiry proceedings were held ex parte. It is further submitted that the appellate order is detailed and exhaustive, hence the same is not required to be interfered with.

Per contra, the learned counsel appearing for the writ petitioner has submitted that first of all the review petitioners had issued Vakalatnama in favour of their counsel, who had represented the review petitioners all along. The learned counsel for the petitioner has further submitted that the writ petition was finally decided in the year 2018, though it had lingered for a period of 17 years, inasmuch as the same had been filed in the year 2001. On merits, it is stated that the review petitioners have failed to bring on record any resolution of the Company i.e. Hindustan Antibiotic Limited, delegating the powers of the disciplinary authority to the General Manager (Marketing), hence it is apparent that the General Manager (Marketing) cannot be said to have been delegated with the power of the disciplinary authority, vested with the Chief General Manager (Marketing) who is the disciplinary authority of the writ petitioner as far as the present case is concerned, hence frivolous pleas are being taken in order to save the skin



of the officials of the company in question from the on going contempt proceedings. It is further submitted that the order of punishment dated 05.12.2000 (Annexure-3 to the writ petition), is a cryptic order as well as an unjust, perverse and a non-speaking order and the same merely states as follows:-

“Dismissed from the services of the company without notice with effect from 05.12.2000, in terms of Conduct, Discipline & Appeal (Amended) Rules of the Company issued under Part-I Order No.11 dated 22.05.1985.”

It is further submitted that the appellate order dated 24.01.2001, which is at Annexure-1 to the writ petition is also a mere narration of the facts and nothing more and the same neither shows application of mind by the appellate authority nor deals with the issues raised by the writ petitioner, hence the same is not sustainable in the eyes of law.

I have heard the leaned counsel for the parties and perused the materials on record and I find that the principles of Order 47 Rule 1 of the Code of Civil Procedure, 1908 clearly postulates that a judgment may be open to review inter alia if there is a mistake or error apparent on the face of the record, however, in the present case the review petitioners have miserably failed to show any mistake or error apparent on the face of the record, hence on this ground alone the present review



petition is fit to be dismissed. Moreover, the principle underlying Order 47 Rule 1 of the C.P.C. further postulates that in case such relevant documents/materials which could not have been produced at the time when the order/decreed was passed, an application for review of the order can be made, however, in the present case, it is apparent from the review petition that no relevant facts or any documents have been brought on record so as to invoke the principle mentioned under Order 47 Rule 1 of the C.P.C.

Thus, this Court is of the opinion that the present review petition does not stand the scrutiny of the principle underlying the provision contained in Order 47 Rule 1 of the Code of Civil Procedure, 1908, hence the same is dismissed. Even on merits, the review petitioners have miserably failed inasmuch as no resolution of the company has been brought on record to show that the powers of the disciplinary authority vested in the Chief Manager (Marketing) was delegated upon the General Manager (Marketing) of the Company, hence on this aspect as well, the judgment under review dated 25.08.2018 cannot be faulted with. Lastly, this Court is of the view that by no stretch of imagination the order of punishment dated 05.12.2000 can be said to be a self speaking, just and a



legal order, hence the same is required to be set aside specially in view of the well settled law to the effect that a cryptic and an unreasoned/perverse order of punishment of dismissal from service cannot be passed casually and contrary to the settled law since the same takes away the livelihood of a person illegally which also amounts to infringement of the fundamental rights of a citizen guaranteed by Part III of the Constitution of India. Reference in this connection be had to a judgment rendered by a Constitution Bench of the Hon'ble Apex Court, reported in ***1991 Suppl. (1) SCC 600 (Delhi Transport Corporation vs. D.T.C. Mazdoor Congress & Ors.)***.

Having regard to the facts and circumstances of the case and for the reasons mentioned herein above, I do not find any merit in the present review petition, accordingly, the same stands dismissed, however with a direction to the review petitioners to comply with the judgment dated 25.08.018 passed in CWJC No. 5334 of 2001 within a period of two weeks from today, failing which the Managing Director, Hindustan Antibiotics Limited, Pimpri, Pune, shall be present in the Court in the connected contempt proceedings, which is directed to be listed on 13th November, 2019. The records of M.J.C. No. 4366 of 2018 are directed to be de-tagged from the review petition



bearing Civil Review No. 69 of 2019.

(Mohit Kumar Shah, J)

S.Sb/-

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Transmission Date	

