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RA-CW-349-2018 *IN CWP-5565-2018 (O&M)*

DAYA NAND AND OTHERS V/S STATE OF HARYANA AND ORS

Present: Mr. Sharad Aggarwal, AAG, Haryana
for the applicant/respondents in RA-CW-349-2018 (O&M).

Ms. Bhavna Grewal, Advocate for
Mr.S.K.Yadav, Advocate
for the applicant/petitioners in CM-10899-CWP-2018.

This is an application, under Order XLVII Rule 1 of the Code of Civil Procedure, seeking review of the order dated 08.03.2018, vide which the writ petition filed by the non-applicant/petitioners was finally disposed of.

Notice of this application was issued to the non-applicant/petitioners, but despite repeated opportunities no reply has been filed thereto.

Facts that are required to be noticed are limited.

The writ petition preferred by the non-applicant/petitioners was disposed of by this Court vide order under review, for learned counsel for the respective parties were *ad idem* that the matter in issue was squarely covered by an order and judgment dated 15.05.2013, rendered by this Court in **CWP No.11254 of 2010 (Neelam Rani Vs. The State of Haryana and others)** and therefore be disposed of as such. Subsequently, an application (CM-10899-CWP-2018) was moved by the non-applicant/petitioners seeking modification of the order dated 8.3.2018, for, in the absence of any specified time within which the respondents were required to release the arrears of pay, the said order was not being complied with. And albeit even

a contempt petition was filed, but the same was not proceeded with in the absence of any stipulated time within which the applicant/respondents were required to comply with the order dated 8.3.2018. Notice of the said application was issued to the State and the records show that on number of occasions time was sought by the learned State counsel to comply with the order dated 8.3.2018. However, subsequently on 5.10.2018, it was submitted that the matter was considered at length by the respondent authorities, and since the decision in **Neelam Rani (supra)** had no bearing on the matter at hands, the State was in fact moving an application for review of the order. Thus, this application.

Before I proceed further, it would be apposite to refer to the order dated 8.3.2018, which reads thus:-

“Contends, that the matter in issue is squarely covered by an order and judgment dated 15.05.2013, rendered by this Court in CWP No.11254 of 2010 (Neelam Rani Vs. The State of Haryana and others), and therefore, the petitioners too are entitled to the same relief, and let the petition be disposed of in the same terms.

Notice of motion, confined to respondents No.1 and 2 only at this stage.

Mr. Hitesh Pandit, Addl. A.G. Haryana, present in Court, accepts notice on behalf of the respondents. Copy furnished.

The factual position, as set out above, is not disputed by learned State counsel, who rather fairly submits that the matter is required to be disposed of, in terms of the decision of this Court, referred to above. However, he submits that the petitioners shall only be entitled to the arrears for a period of 38 months, as ordered

by this Court in the subsequent orders/judgment, post **Neelam Rani's** case.

To this, learned counsel for the petitioners submits that the petitioners give up their claims as regards arrears beyond a period of 38 months, preceding the filing of this petition.

Accordingly, the petition is disposed of, in terms of the decision in **Neelam Rani (supra)**. And, they shall be entitled to arrears of pay only for a period of 38 months, preceding the date of filing of this petition.”

Ex facie, the matter was disposed of on the statement of the learned counsel for the parties: for it was squarely covered by the decision in **Neelam Rani (supra)** and thus be disposed of as such. And, now the applicant/respondents seek review of the said order, for, on a deeper analysis and consideration of the matter it was found that the statement made by learned State counsel it was erroneous, as for multiple reasons/grounds, set out in the review application, the decision in **Neelam Rani (supra)** was/is distinguishable from the case of the non-applicant/petitioners. Meaning thereby, the matter is required to be heard and adjudicated on merits.

Whereas, learned counsel for the non-applicant/petitioners vehemently refutes this position and maintain that the ratio of the decision in **Neelam Rani (supra)** covered the issue arising herein.

In the wake of the above and for there was no occasion or this Court never examined the question if the decision in **Neelam Rani (supra)** indeed had any bearing on the matter at hands or the ratio thereof covered the issue arising in the writ petition, I do not find it expedient to determine

the said question in review proceedings. However, for the order under review is being recalled and the writ petition shall be heard on merits, needless to assert that the non-applicant/petitioners shall be free to substantiate the plea that decision in **Neelam Rani (supra)** applies to their case.

Accordingly, the review application is allowed. The order dated 8.3.2018 is recalled, and the writ petition is restored to its original number.

CWP-5565-2018

Be placed as per roster.

01.03.2019

Manoj Bhutani

(**ARUN PALLI**)
JUDGE