

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

**LPA No.1109 of 2021 (O&M)
Date of Decision :22.11.2021**

Reena Rani

.....Appellant

Versus

Union of India and others

..... Respondents

**CORAM: HON'BLE MR.JUSTICE RAVI SHANKER JHA, CHIEF JUSTICE
HON'BLE MR.JUSTICE ARUN PALLI, JUDGE**

Present : Mr. Vikram Singh Punia, Advocate for the appellant.

Arun Palli, J.:

This is an *intra Court* appeal, under Clause X of the Letters Patent, against an order dated 16.11.2021, vide which the application moved by the appellant for review of the order dated 02.11.2021, dismissing the writ petition preferred by her, has since been rejected/declined by the learned Single Judge.

The facts that are required to be noticed are limited.

The appellant is posted as a Constable (appointed on compassionate ground in 2016) in Indo Tibetan Border Police Force (ITBPF) under the command of I.G. North-western frontier in the 'C' Company of 47th Battalion (Jammu & Kashmir). Vide report dated 07.12.2020 (Annexure P-6), she was declared unfit for basic training in ITBPF by the Special Medical Board (SMB), since she was diagnosed with SLE with LUPUS NEPHRITIS with CNS involvement. In the opinion of the Medical Board she was not fit either for adverse environmental condition and exertional duties. Accordingly, before terminating her services under

Rule 17 (v) (physical unfitness) of Indo-Tibetan Border Police Force Rules 1994 (for short '1994 Rules'), she was served with a show cause notice dated 08.10.2021 (Annexure P-7) by the Office of the Commandant 47th Battalion Indo-Tibetan Border Police Force (Jammu & Kashmir), appended therewith the report dated 07.12.2020. She was granted liberty to file an appeal under Rule 26(3) of 1994 Rules, against the decision of the Board to the competent Officer with *prima facie* evidence of error of judgment in the opinion expressed by the medical Board. Aggrieved with this, she assailed the opinion of the Medical Board as also the show cause notice (ibid), vide a civil writ petition (CWP No.22227 of 2021), which was dismissed as withdrawn by the learned Single Judge on 02.11.2021:-

“Learned counsel for the petitioner seeks permission to withdraw the present writ petition with liberty to avail remedy before the competent Court; in the territorial jurisdiction of whom the office of the authority, which has passed the impugned order, is situated

Dismissed as withdrawn with liberty aforesaid.”

Whereafter an application was filed by the appellant for review of the order dated 02.11.2021, which too was dismissed on 16.11.2021:

“RA-CW-292 of 2021 and

CM-17077-CWP-2021 in CWP No.22227 of 2021:

These are the applications filed under Order 47 Rule 1 read with Section 151 CPC to review the order dated 02.11.2021 passed in CWP No.22227 of 2021, by this Court; and for stay of operation of impugned notice dated 8.10.2021 (Annexure P-7).

No ground to review the order and for stay of the operation of impugned notice is made out.

Dismissed.”

The only argument advanced by the learned counsel for the appellant is: that the counsel who represented/appeared for the appellant before the learned Single Judge in a writ petition was not authorized or instructed to withdraw the petition. And as the same was withdrawn without consent of the appellant, she was not bound by the order dated 02.11.2021. He submits, for the learned Single Judge over looked this aspect and dismissed the review application, vide order dated 16.11.2021, the order being assailed, is erroneous and unsustainable. In support of his submission, learned counsel for the appellant has placed reliance upon the decisions rendered by Hon’ble the Supreme Court in **Director of Elementary Education, Odisha and Ors. v. Pramod Kumar Sahoo 2019 (10) SCC 674; Himalayan Cooperative Group Housing Society v. Balwan Singh 2015 (7) SCC 373; Kirti and Anr. Etc. v. Oriental Insurance Company 2021 (2) SCC 166.**

We have heard learned counsel for the appellant and perused the records.

In context of the limited issue that arises for consideration it would be apposite to refer to Article 226(2) of the Constitution, which postulates that power to issue directions, orders or writs is exercised by the High Court in relation to the territories within which the cause of action arises wholly or in part: **the power conferred by clause (1) to issue directions, orders or writs to any Government, authority or person may also be exercised by any High Court exercising jurisdiction in relation to the territories within which the cause of action, wholly or in part, arises for the exercise of such power, notwithstanding that the seat of such**

Government or authority or the residence of such person is not within those territories.

Ex facie, the appellant was posted at 47th Battalion (Jammu & Kashmir) when she was served with the opinion of the Medical Board as also the show cause notice dated 8.10.2021 (Annexure P-7), by the Commandant 47th Battalion (Jammu & Kashmir). Thus, cause of action, if any, had arisen in Jammu & Kashmir and therefore, this Court lacked jurisdiction to examine or adjudicate the dispute between the parties. The mere fact that the appellant happens to be the resident of Sonapat (Haryana) would not confer jurisdiction upon this Court. Possibly, as it appears, being confronted with this position, counsel for the appellant chose to withdraw the writ petition and approach the competent Court in whose territorial jurisdiction the cause of action had actually arisen.

We have also examined the decisions rendered by Hon'ble the Supreme Court, that are being relied upon by learned counsel for the appellant. However, none of those applies to the facts of the present case. In **Director of Elementary Education, Odisha (supra)**, the Supreme Court in paragraph 11 of its judgment held that the concession in law which is contrary to statute is not binding. However, as demonstrated above, statement made by counsel for the appellant in the present case was in sync with the factual position obtaining in the matter at hands and the provision of Article 226(2).

In **Himalayan Cooperative Group Housing Society (supra)**, the Supreme Court while discussing the duties of counsels towards their clients and the effect of admissions/statements made by counsels on behalf of their clients concluded in paragraph 33 of judgment that generally the

counsel has no implied authority to surrender or conclude substantial legal rights of the clients unless such statement is clearly a proper step in accomplishing the purpose for which the lawyer/counsel was employed. As indicated earlier, for, in the present case, this Court lacked jurisdiction to examine the dispute sought to be raked by the appellant the statement of her counsel to withdraw the petition with liberty to approach the competent court of jurisdiction was/is binding on the appellant.

Likewise, the decision in **Kirti and Anr. (supra)** is clearly distinguishable on facts. For, in the said case the concession was made with respect to computation of compensation and the counsel has conceded to a lower computation which was held to be against the settled legal principles.

Not just that: the matter has yet another dimension. Concededly, the appellant has not chosen to assail the order dated 02.11.2021, vide which her writ petition was dismissed as withdrawn but only the order dated 16.11.2021, whereby her review application to review the order dated 02.11.2021, was dismissed. It would be apposite, at this stage, to refer to the decision of the Supreme Court in **Municipal Corporation of India Vs. Yashwant Singh Negi 2013(3) RCR (Civil) 94 (para 3)**, wherein it was concluded that an order dismissing the review petition cannot be challenged without assailing the main order/judgment since dismissal of review has the effect of confirming the main order and therefore, it cannot be said that the main order has merged with the order dismissing the review:

“we find ourselves unable to agree with the views expressed by this Court in Eastern Coalfields Limited (supra). In our view, once the High Court has refused to entertain the review petition and the same was dismissed confirming the main order, there is no question of any

merger and the aggrieved person has to challenge the main order and not the order dismissing the review petition because on the dismissal of the review petition the principle of merger does not apply. In this connection reference may be made to the judgment of this Court in Manohar S/o Shankar Nale and others v. Jaipalsing S/o Shivralsing Rajput and others, (2008)1 SCC 520 wherein this Court has taken the view that once the review petition is dismissed the doctrine of merger will have no application whatsoever. This Court in DSR Steel (Private) Limited v. State of Rajasthan and others, 2012(2) RCR (Civil) 947 : 2012(2) Recent Apex Judgments (R.A.J.) 615 : (2012)6 SCC 782 also examined the various situations which might arise in relation to the orders passed in review petitions. Reference to paragraphs 25, 25.1, 25.2 and 25.3 is made, which are extracted below for ready reference:

XXXXX

XXXXX

XXXXX

25.3 The third situation with which we are concerned in the instant case is where the revision petition is filed before the Tribunal but the Tribunal refuses to interfere with the decree or order earlier made. It simply dismisses the review petition. The decree in such a case suffers neither any reversal nor an alteration or modification. It is an order by which the review petition is dismissed thereby affirming the decree or order. In such a contingency there is no question of any merger and anyone aggrieved by the decree or order of the Tribunal or Court shall have to challenge within the time stipulated by law, the original decree and not the order dismissing the review petition. Time taken by a party in diligently pursuing the remedy by way of review may in appropriate cases be excluded from consideration while condoning the delay in the filing of the appeal, but such exclusion or condonation would not imply that there is a merger of the original decree and the order dismissing the review petition."

4. We are in complete agreement with the principle laid down by this Court in DSR Steel (Private) Limited (supra) and applying the 3rd situation referred to therein in paragraph 25.3, we are inclined to dismiss this special leave petition. We find force in the contention made by the learned Senior counsel appearing for the respondent that this SLP is not maintainable, since the main order was not challenged but only the order passed in the review petition

alone was challenged in this SLP. Hence, the SLP is, therefore, not maintainable and the same is dismissed.”

In the wake of the position, as sketched out above, we are dissuaded to interfere with the impugned order passed by the learned Single Judge. The appeal being bereft of merit is accordingly dismissed.

(RAVI SHANKER JHA)
CHIEF JUSTICE

(ARUN PALLI)
JUDGE

22.11.2021
Manoj Bhutani

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No