

25.07.2022

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RVW 60 of 2022
With
IA No. CAN/1/2022
In
WPA 13266 of 2021

Dr. Kaushik Paul
-Vs-
Seacom Skills University & Ors.

Mr. Meghnad Dutta,
Mr. Avishek Shaw.

... for the petitioner.

Mr. Partha Sarathi Bhattacharya,
Mr. Mani Shankar Chattopadhyay,
Mr. Raju Bhattacharyya.

... for the respondent

University.

Mr. Anil Kr. Gupta

... for the UGC.

Mr. Raja Saha,
Mr. Biswabrata Basu Mallick.

... for the State.

The petitioner in WPA No. 13266 of 2021 has filed the present application for review of a Judgment delivered by this Court on 23.3.2022. The petitioner Dr. Kausik Paul had filed the writ petition seeking order of cancellation of a letter dated 19.7.2021 from the respondent University by which the writ petitioner was asked to discontinue his service as Assistant Professor in Bio-Sciences effective from 19.8.2021. The petitioner also sought for a declaration that Clause 6 of the letter of appointment dated 27.2.2021 was illegal, null and void. Clause 6 reserved the right of the management to

terminate services of the petitioner without any notice in case of misconduct or violation of rules of the University. By the impugned judgment, this Court refused the prayer for declaration and the relief of cancellation of the letter providing for discontinuation of the petitioner's service.

The petitioner seeks review of the impugned judgment on the ground that the judgment contains an error apparent on the face of the judgment and that the Court committed a manifest error by failing to appreciate that the letter dated 11.6.2021 was never served by the respondent University on the petitioner. The petitioner has challenged the findings of the judgment based on the fact of service of the letter of 11.6.2021 on the petitioner. The said letter was issued by the Vice-Chancellor of the University evaluating the performance of the petitioner. The letter alleged that the petitioner had failed to fulfill certain responsibilities assigned to the petitioner. The petitioner was given 7 days to reply to the letter and the University reserved its right to decide whether the petitioner's services were thereafter required. The letter of 11.6.2021 preceded the letter of discontinuation which was dated 19.7.2021. The petitioner disputes that the letter of 11.6.2021 was served on the petitioner and hence seeks review of the judgment. The petitioner also disputes that the

petitioner was put on notice before the letter of discontinuation was issued by the University.

Learned counsel appearing for the review applicant places the Report filed by the University which contains the statement that the University issued the letter of 11.6.2021 to the writ petitioner requesting the petitioner to provide certain information on the progress of a project. The letter of 11.6.2021 formed a part of the Report. Counsel places the Reply of the petitioner to the Report disputing that the letter of 11.6.2021 was served on the petitioner as well as the statement that the letter was brought into existence by the University. Counsel submits that there is no evidence on record to show that the letter was indeed served on the petitioner. The ground of error apparent on the face of the judgment is based on the finding of the Court that the petitioner was served with the letter of 11.6.2021 which effectively diluted allegation that the petitioner is a victim of a 'hire and fire policy' of the University or that the University acted in breach of principles of natural justice.

The scope of any application for review is circumscribed by the three conditions under Order XLVII Rule 1 of The Code of Civil Procedure, 1908. Under the said provision, an aggrieved person coming under (a), (b) or (c) of sub-rule(1) of Rule 1 of Order XLVII may apply for review of a judgment of the Court which passed the decree or order (i) on discovery of new

and important matter of evidence which was not within the knowledge or could not be produced by him despite due diligence at the time of the decree/order; or (ii) on ground of some mistake or error apparent on the face of the record; or (iii) for any other sufficient reason. The petitioner is concerned with (ii) i.e., a mistake or error apparent on the face of the record. The mistake or error apparent is the finding of the Court of the petitioner being served with the letter of 11.6.2021. The expression “error apparent on the face of the record” signifies a mistake which is easily found and recognised at first glance. A mistake on the face of the record, by logical definition, is not a mistake which has to be unearthed after protracted arguments or after unravelling the layers of the judgment passed by the Court. It cannot also be an error which is a contentious issue and one which the parties are not *ad idem*. A mistake may be one of a fact or a recording of a fact and is generally an undisputed fact which is at once recognizable.

In paragraphs 7, 8, 9 and 10 of the impugned judgment, this Court relied on the letter which was produced by the University in its Report. The letter is from the office of the Vice-Chancellor of the University and the Court referred to the contents of the said letter with regard to the inadequacy of the petitioner’s performance. The fact that the petitioner did not

respond to this letter forms a part of this judgment together with the recording in paragraph 10 that the petitioner did not dispute and object to the contents of this letter. The same paragraph also records that the fact of the letter of 11.6.2021 being served on the petitioner would be evident from a copy of the relevant mail which was produced by the University during the course of hearing. The entire set of findings in relation to the letter of 11.6.2021 stems from the Report of the University, the letter enclosed with the Report and the proof of service by way of mail which was also produced before the Court.

The impugned judgment would also show that the petitioner being served with the letter of 11.6.2021 was not the only ground for which the writ petition was dismissed. This would be evident from paragraph 14 of the judgment where the Court also found that the petitioner had just completed four months in service when the letter of discontinuation was served on the petitioner. The Court also found that there is no evidence of the petitioner being at a particular disadvantage with reference to the allegedly unreasonable term in the contract and further that the letter of appointment is in the nature of a contract of a personal service between the petitioner and the University. It is consequential that the only ground taken by the applicant in the Memorandum of Review is

in relation to the error on the face of the judgment in finding that the petitioner was served with the letter of 11.6.2021.

Ground V of the Memorandum of Rule also takes the plea that the apology sent by the petitioner to the University by mail dated 23.7.2021 was given under procedure by the petitioner to save his job. This is entirely a new ground. It would also be evident from the statement made by counsel on behalf of the parties that the issue whether the letter of 11.6.2021 was received by the petitioner has transformed into a new dispute in the stage of review. The parties have taken diagonally opposite positions in respect of the service and receipt of the said letter. This hence becomes a matter of evidence and cannot be seen as an error which is apparent from a reconsideration of the impugned judgment. If the contention of the petitioner is at all to be accepted, this Court would have to delve into the evidence of the matter which is not the scope of an application for review under Order XLVII Rule 1 of The Code of Civil Procedure. The scope of Order XLVII is considerably different from that of an appeal and the arena of reconsideration is limited by the Code itself.

As the entire case for review centers around the letter of 11.6.2021 being a manufactured document, besides the new point of the apology letter, this Court finds no merit in the present application under the

grounds available to the petitioner under Order XLVII of The Code of Civil Procedure.

RVW 60 of 2022 and CAN 1 of 2022 are accordingly dismissed without any order as to costs.

It should be clarified that this matter was initially directed to appear under the heading For Orders on 29.7.2022. However, since this Court finished dictating the order in the meantime, counsel were informed that the matter would be listed today. The matter was in any event directed to appear in the list from 22.07.2022. The matter appeared in the list on that day indicating that it would appear under the heading For Orders today.

Urgent Photostat certified copy of this order, if applied for, be supplied to the parties after fulfillment of the requisite formalities.

(Moushumi Bhattacharya, J.)