

Ct. 09.11
No 2022
4 Item No.9

**RVW 96 of 2022
With
CAN 1 OF 2022
In
WPCT 85 of 2021
Union of India & Ors.
-Versus-
Arabinda Pathak & Ors.**

Mr. Tapan Bhanja, Advocate

... for the Petitioners

Ms. Soma Kar Ghosh, Advocate

...for the Respondents

This review application has been preferred by the Union of India & Ors seeking review and setting aside of the Order dated 22.02.2022 passed by this Bench in writ petition being WPCT 85 of 2021. By the Order dated 22.02.2022 the writ petition preferred by the petitioners was dismissed. It is pertinent to mention that the petitioners filed the writ petition assailing the Order dated 14.07.2021 passed by Central Administrative Tribunal, Calcutta Bench (hereinafter be referred to as the Tribunal) in O.A No. 350/01595/2019 by which the Tribunal application filed by the respondents was allowed.

The respondents filed the Tribunal application on the facts which may precisely be stated as under:

The respondents belong to Group-B Officers (Stenographers) in the Office of the Chief Post Master General, West Bengal Circle, Department of Posts. Claiming that they were entitled to get Grade Pay of Rs. 5,400 in Pay Band-2

(Pre-revised) on completion of four years of regular service in Grade Pay of Rs.4,800 on non-functional basis in terms of Gazette notification dated 29.08.2008 of Ministry of Finance, Department of Expenditure they made representations to the concerned authority. Ultimately, the representations made by them was rejected by the Assistant Director of Postal Services (Staff, Establishment and Postal Network) on 21.10.2019. Aggrieved by the Order of rejection of the representation the respondents filed the aforesaid Tribunal application.

Having heard learned counsels at length and on consideration of the materials on record this Bench disposed of the writ petition with the following observation and direction:

“We do not find any justification in the stand of the Union of India that the benefit of successfully rendering service for 4 years was done away with upon introduction of the MACP in the year 2009. The moment the respondents have fulfilled the criterion enshrined in paragraph (x)(e) of the resolution dated 29.08.2008, we do not find any justification in the stand of the Union of India in denying the benefit thereunder. The said scheme was extended to the Department of Posts and admittedly the respondents are the Group-B officers in the said Department. The authorities, therefore, acted contrary to the law laid down by the Madras High Court in M. Subramaniam (Supra) in rejecting the representation. We, thus do not find any infirmity or illegality in the order of the Tribunal in allowing the application filed by

the respondents. The present writ petition being W.P.C.T. 85 of 2021 fails and is accordingly dismissed without any order as to costs.”

Learned Counsel appearing for the petitioners submits that the benefit of Grade Pay of Rs.5,400 is extended only to Superintendent of Posts and Senior Private Secretary of the Department of Posts who rendered four years of regular service in Grade Pay of Rs.4,800 in terms of the relevant schedule of CCS (Revised Pay) Rules, 2008. Since the respondents who were enjoying Grade Pay of Rs.4,800 as Group-B Stenographers by way of MACP are not entitled to get the benefit of Grade Pay of Rs.5,400 as their position was not at par either with the Superintendent of Posts or with Senior Private Secretary in the Department of Posts. By pointing out this learned Counsel submits that there is error on the face of the Order in question since this Bench did not consider this aspect. On such score, learned counsel argues that the Order passed by this Bench requires review.

Learned Counsel appearing for the respondents submits that the point urged by the learned Counsel appearing for the petitioners was already taken at the time of hearing of the writ petition and this Bench dealt with the point elaborately considering all the relevant legal provisions. In such context, learned Counsel emphasizes that the review application is liable to be dismissed.

Before we proceed to consider the submissions advanced at the bar we think that it will be apposite to refer Order 47 Rule 1 of the Code of Civil Procedure which governs a review application. Order 47 Rule 1 of the Code reads as under:

1. Any person considering himself aggrieved,---

(a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred,

(b) by a decree or order from which no appeal is allowed, or

(c) by a decision on a reference from a Court of Small Causes, and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgment to the Court which passed the decree or made the order.”

In the decision in the case of *M/s. Thungabhadra Industries Ltd.-Vs- The Government of Andhra Pradesh* reported in *AIR 1964 SC 1372* the Hon’ble Apex Court

at paragraph 11 has held that there is a distinction which is real, though it might not always be capable of exposition, between a mere erroneous decision and a decision which could be characterised as vitiated by “error apparent”. A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected but lies only for patent error. Where without any elaborate argument one could point to the error and say here is a substantial point of law which stares one in the face and there could reasonably be no two opinions entertained about it, a clear case of error apparent on the face of the record would be made out.

In *Parsion Devi & Ors. vs. Sumitri Devi & Ors.* reported in (1997) 8 SCC 715, the Hon’ble Apex Court in fact, propelled the exposition of law laid down in the case of *Thungabhadra* (supra) and held that the error apparent on the face of the record must be self-evident and does not require to be ascertained by a process of reasoning. It is further held that the said jurisdiction can never be invoked for the purpose of mere correction of the order and upon hearing of the entire matter, in the following:

“9. Under Order 47 Rule 1 CPC a judgment may be open to review inter alia if there is a mistake or an error apparent on the face of the record. An error which is not self-evident and has to be detected by a

process of reasoning, can hardly be said to be an error apparent on the face of the record justifying the court to exercise its power of review under Order 47 Rule 1 CPC. In exercise of the jurisdiction under Order 47 Rule 1 CPC it is not permissible for an erroneous decision to be “reheard and corrected”. A review petition, it must be remembered has a RVW 159 OF 2022 PAGE-14 limited purpose and cannot be allowed to be “an appeal in disguise”.

In *Haridas Das vs. Usha Rani Banik & Ors.* reported in (2006) 4 SCC 78, the Hon’ble Apex Court held that the error or mistake appearing in Order 47 Rule 1 of the Code must not be such which is to be established by a long drawn process of reasoning upon lengthy arguments but should be self-evident in the following:

“A Constitution Bench of this Court in the case of Pandurang Dhondi Chougule v. Maruti Hari Jadhav MANU/SC/0033/1965: [1966]ISCR102 has held that the issue concerning res judicata is an issue of law and, therefore, there is no impediment in treating and deciding such an issue as a preliminary issue. Relying on the aforementioned judgment of the Constitution Bench, this Court has taken the view in the case of Meharban v. Punjab Wakf Board (supra) and Harinder Kumar (supra) that such like issues can be treated

and decided as issues of law under Order XIV, Rule 2(2) of the Code. Similarly, the other issues concerning limitation, maintainability and Court fee could always be treated as preliminary issues as no detail evidence is required to be led. Evidence of a formal nature even with regard to preliminary issue has to be led because these issues would either create a bar in accordance with law in force or they are jurisdictional issues.”

In a recent decision in the case of ***S. Madhusudhan Reddy vs. V. Narayana Reddy*** reported in ***AIR Online 2022 SC 1304***, it has been reiterated by the Hon’ble Apex Court that the power of review should not be equated with the power of an appeal. It has been further held that the Court can exercise such powers for correction of a mistake but not to substitute its view taken earlier solely on the ground that there is a possibility of two views.

Perusal of the Order dated 22.02.2022 under review shows that the point taken by learned Counsel for the petitioners was taken similarly while the writ petition was heard. To speak it specifically, a plea was taken by the petitioners that since the MACP was introduced in the meantime and there was no decision of granting benefit of the resolution dated 29.08.2008, the respondents were not entitled to any benefit. This Bench

on consideration of the Order dated 06.09.2010 passed by Madras High Court in ***M. Subramaniam-Vs-Union of India*** & Ors in WP No. 13225 of 2010 which was confirmed by the Hon'ble Apex Court has come to this inference that the respondents who were enjoying Grade Pay of Rs.4,800 and rendered four years of service were entitled to get the Grade Pay of Rs.5,400. This Bench also observed that the moment the right of the respondents fructified and accrued on the date of the decision of the Government extending benefit vide the aforesaid resolution dated 29.08.2008, such right cannot be destroyed but must be extended to the concerned employees strictly in terms thereof.

What we find from the Order passed by us, the learned counsel canvassed all the points which have been taken in the review application.

We are of the view that the petitioners have failed to produce any new matter or evidence as required under Order 47 Rule 1 on the strength of which we may consider to review the Order passed by us.

The grounds as set out in the review application appear to us to be the grounds of appeal challenging the Order in disguise.

In view of the above and in the light of the legal proposition enunciated by the Hon'ble Apex Court in the decisions supra, we do not find any error apparent on the Order dated 22.02.2022 passed by us.

Accordingly, the review application is dismissed.

The application of stay being CAN 1 of 2022 also stands dismissed.

No order as to costs.

Certified copy of the Order, if applied for, be given to parties upon compliance with all requisite formalities.

(Harish Tandon,J.)

(Rabindranath Samanta,J.)