

Item-12
& 13

04-02-2022

RVW 93 of 2021
CAN 1 of 2021

Union of India & Ors.
Versus
Manish Kumar & Ors.

sg

Ct. 8

And

RVW 110 of 2021
CAN 1 of 2021
CAN 2 of 2022

Manish Kumar & Ors.
Versus
Union of India & Ors.

(Through Video Conference)

Mr. Manish Kumar, Adv.
...appellant in person

Mr. Sandip Kumar Bhattacharyya, Adv.
...for the petitioners

Both the review applications are heard together and disposed of by this common order.

The appellants/writ petitioners filed this application for review containing as many as eleven grounds.

We distinctly remember that a similar matter was heard when Mr. Sandip Kumar Bhattacharyya, learned Counsel representing the applicants has pointed out that the order passed by us in this matter is required to be reviewed on the ground that the reconsideration for quantum of punishment should be decided by the disciplinary authority and not by the appellate authority in view of the relevant Rules. On that basis, we observed that a review application may be filed.

However, it appears in the present review application

besides that many other grounds have been taken. Some of which may not have been raised at all or argued and many of them have been considered by us in our judgment.

The power to review of an Order passed under Article 226 of the Constitution is not curtailed and/or limited by any provision of the Code of Civil Procedure or other statute but, at the same time, we have to remind ourselves that under the garb of review we should not permit rehearing of the entire appeal. The review proceedings are not meant for rehearing of appeal. The scope and ambit of Order 47 Rule 1, vis-à-vis, the jurisdiction available to High Court, while seeking to review the orders under Article 226 of the Constitution of India, came up for consideration in the case of ***Aribam Tuleshwar Sharma v. Aribam Pishak Sharmal*** in a decision reported in **1979(4) SCC 389; AIR 1979 SC 1047** in which the Hon'ble Supreme Court in Paragraph 3 held as follows:

*“It is true as observed by this Court in ***Shivdeo Singh v. State of Punjab*** reported in **AIR 1963 SC 1909**, there is nothing in Article 226 of the Constitution to preclude the High Court from exercising the power of *II* review which inheres in every Court of plenary jurisdiction to prevent miscarriage of justice or to correct grave and palpable errors committed by it. But, there are definitive limits to the exercise of the power of review. The power of review may be exercised on the discovery of new and important matter or evidence which, after the exercise of due diligence was not within the knowledge of the power seeking the review or could not be produced by him at the time when the order was made; it may be exercised where some mistake or error apparent on the face of the record is found; it may also be exercised on any analogous ground. But, it may not be exercised on the ground that the decision was erroneous*

on merits. That would be the province of a court of appeal. A power of review is not to be confused with appellate power which may enable an appellate Court to correct all manner of errors committed by the subordinate court.”

The said decision was subsequently considered in ***Meera Bhanja Vs. Nirmala Kumari Choudhury*** case reported in **1995 (1) SCC 170** in which Their Lordships held, while entertaining a review only on the ground of error apparent on the face of the record, it has to be kept in mind that an error apparent on the face of record must be such an error which must strike one on mere looking at the record and would not require any long-drawn process of reasoning on points where there may conceivably be of two opinions. We may also usefully refer to the observations of the Hon’ble Supreme Court in the case of ***Satyanarayan Laxminarayan Hegde v. Mallikarjun Bhavanappa 12 Tirumale*** reported in **AIR 1960 SC 137** wherein, K.C. Das Gupta, J., speaking for the Court has made the following observations in connection with an error apparent on the face of the record:

“An error which has to be established by a long-drawn process of reasoning on points where there may conceivably be two opinions can hardly be said to be an error apparent on the face of the record. Where an alleged error is far from self-evident and if it can be established, it has to be established, by lengthy and complicated arguments, such an error cannot be cured by a writ of certiorari according to the rule governing the powers of the superior court to issue such a writ.”

It is also well-settled that mistake or error apparent on the face of the record has to be self-evident and does not require a process of reasoning and the same is clearly distinct from erroneous decision as has been held in ***Parsion Devi & Ors. v. Sumitri Devi & Ors.*** reported in **1997(8) SCC 715**. In the said

decision, the Hon'ble Supreme Court was considering the phrase "mistake or error apparent on the face of record". It was held, 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". There is a clear distinction between an erroneous decision and an error apparent on the face of the record. While the first can be 13 corrected by the higher forum, the latter can only be corrected by exercise of the review jurisdiction. A review petition has a limited purpose and cannot be allowed to be "an appeal in disguise".

Although the said decision was rendered under Order 47 Rule 1 of the Code of Civil Procedure, it is certainly a guiding principle even for considering an application under Article 226 of the Constitution of India.

In our judgment dated 24th June, 2021, we were considering the propriety and legality of the order of punishment initially passed by the disciplinary authority and enhanced by the appellate authority. On consideration of the materials on record, we were of the view that the learned Tribunal made out a third case while granting liberty to the parties to consider whether Manish Kumar had violated the terms and conditions while he was still on probation when it was not in dispute that he was on probation at the relevant point of time. We also expressed our view that on the basis of the materials available to the

disciplinary authority and the appellate authority, it cannot be said that the decision of dismissal was proper or that an appropriate authority on the basis of the materials could have arrived at the said conclusion.

In fact, the disciplinary authority did not impose the punishment by way of dismissal.

In the memorandum of review, issues are sought to be raised concerning the application of the writ petitioner under the physically handicapped (other backward class) category medical certificate.

We have taken a view on the said aspect of the matter which the applicant may not accept but there was no error apparent on the face of the record for which a review would be maintainable. It is well-settled that the review is not an appeal in disguise. The applicant do not contend that any new material had been discovered, which in spite of due diligence, could not be produced at the time of hearing and accordingly, the review is required to be made on the discovery of such new materials.

All the points raised in the review petition were taken into consideration while disposing of the writ petition arising out of an order of the learned Administrative Tribunal. In fact, both the parties were aggrieved by the said order for different reasons.

All these points which are now sought to be raised in the review were argued before the Division Bench and considered.

In the instant review application, the petitioner/applicant, in fact, seeks rehearing of the appeal, which is, is not permissible.

The issues sought to be raised in the review application, in our considered opinion, do not come within the purview of Order 47 Rule 1 of the Code of Civil Procedure. Even it is assumed that Order 47 Rule 1 would not strictly apply to an application of review arising out of a writ proceeding we do not find any 'sufficient reason' either to review the said order.

However, we have committed a mistake insofar as directing the appellate authority to reconsider the quantum of punishment after setting aside the order of both the authorities.

We agree with Mr. Bhattacharyya that there was an oversight on our part and this direction needs to be reviewed and/or modified. Accordingly, we modify the impugned order by setting aside the order of the appellate authority.

Mr. Manish Kumar shall be entitled to file a further representation against the order of the disciplinary authority in addition to its earlier representation within three weeks from date.

The appellate authority shall consider the matter afresh without being influenced by its earlier order in the light of the observation made by us in the order dated 24th June, 2021 within a period of eight weeks from the date of communication of this order by either of the party after giving a reasonable opportunity of hearing to the petitioner only on the point of quantum of punishment. The relevant observations are:

The Appellate Authority is directed to reconsider the quantum of punishment upon revisiting the order of punishment passed by the Disciplinary Authority and to pass any appropriate order in the light of our observations short of dismissal within a period of eight weeks from the date of

communication of this order by either parties after giving a reasonable opportunity of hearing to the petitioner only on the quantum of punishment.” (Emphasis supplied)

Mr. Manish Kumar appears in person and submits that he should have been reinstated in view of our order setting aside the order of the appellate authority and the disciplinary authority in view of the order passed by us today as modifying our dated 24th June, 2021. The question of reinstatement, at this stage, does not arise. The Appellate authority while reconsidering the quantum of punishment as proposed by the disciplinary authority shall pass suitable order with regard to the reinstatement and payment of arrear dues in accordance with law.

Both the review applications being RVW 93 of 2021 and RVW 110 of 2021 and the connected applications being, CAN 1 of 2021 (in RVW 93 of 2021) and the CAN 1 of 2021 along with CAN 2 of 2021 (in RVW 110 of 2021) are, accordingly, disposed of.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties upon compliance of all requisite formalities.

(Hiranmay Bhattacharyya, J.)

(Soumen Sen, J.)