

26.04.2022
Item No.03
Court No.32
Avijit Mitra

RVW 67 of 2019
with
IA No. CAN 1 of 2019 (Old No.CAN 5398 of 2019)
with
IA No. CAN 2 of 2022
in
WPST No. 68 of 2015

State of West Bengal & ors.
- Versus -
Noreen Barlow & ors.

Mr. Sirsanyo Bandyopadhyay,
Mr. Arka K. Nag
....for the appellant
Mr. Subhendu Banerjee
...for the Respondent nos.1 to 3

Aggrieved by the judgment dated 30th August, 2017 passed in WPST 68 of 2015, the State of West Bengal and its functionaries have preferred the present review application, being RVW 67 of 2019 along with an application for condonation of delay, being IA No. CAN 2 of 2022 and an application for stay, being IA No. CAN 1 of 2019 [Old No.CAN 5398 of 2019].

As we have invited Mr. Bandyopadhyay, learned advocate appearing for the applicants to advance his arguments on merits of the review application, we condone the delay in preferring the review application and allow the application for condonation of delay, being IA No. CAN 2 of 2022.

Mr. Bandyopadhyay primarily argues that the judgment under review suffers from error apparent on the face of the record, specifically at paragraph 18 thereof wherein Hon'ble Court has been pleased to record that '*a perusal of the notification dated 1st March, 2011 clearly reveals that the decision to fill up 100 vacant posts of Group-D including Night Guards from the merit list of the empanelled candidates had the approval of the Appointment Committee of the Cabinet*'. The Hon'ble Court failed to appreciate the actual texture and legal implication of the office order dated 1st March, 2011.

He submits that the contents of the notification dated 28th October, 2013 clearly states that no proposal was initiated and sent to the Appointment Committee of the Cabinet for approval. The impugned judgment was delivered being oblivious of the reasons contained in the notification dated 28th October, 2013 superseding the earlier office order no. 1301/FS dated 1st March, 2011 issued by the Assistant Secretary to the Government of West Bengal, Food & Supplies Department.

Per contra, Mr. Banerjee, learned advocate appearing for the writ petitioners/respondents submits that from the contents of the notification

dated 1st March, 2011 it would be explicit that the order was issued with the approval of the Appointment Committee of the Cabinet and also with the concurrence of the Finance Department. On the basis of the said notification, allotment orders were issued to the empanelled candidates.

According to Mr. Banerjee, it is not a case that any fact was suppressed and it cannot be argued by the applicants that even after exercise of due diligence certain facts could not be brought to the notice of the Court. There is no patent error on the face of the record and the parameters prescribed for review do not postulate rehearing of the dispute.

Records reveal that the writ petition, being WPST 68 of 2015 along with five other writ petitions were dismissed by the common judgment dated 30th August, 2017. After disposal of the writ petition being WPST 68 of 2015, the West Bengal Administrative Tribunal (in short, the said Tribunal) was disabled to finally decide the contempt application on the ground that the present review application is pending. Aggrieved thereby, Noreen Barlow preferred a writ petition being WPST 130 of 2019 in which a final order was passed on 3rd March, 2020. By the said order, the writ petition was disposed of with a direction upon the learned Tribunal to consider and dispose of the contempt

application being CCP 72 of 2014 as early as possible, subject to its convenience, but preferably within 3 (three) months from the date of receipt of a copy of the order. It was also observed that the compliance of the order of the learned Tribunal shall abide by and be subject to the result of the present review application. The Special Leave Petition preferred thereafter was disposed of by an order dated 24th January, 2022 requesting this Court to dispose of the review application preferably within a period of six months. The order dated 11th February, 2020, 3rd March, 2020 and 24th January, 2022, as filed, be kept on record.

The issue as urged by Mr. Bandyopadhyay that there was no approval of the Appointment Committee of the Cabinet was argued at length on behalf of the State at the time of hearing of the writ petition. The said issue was considered in details as would be explicit from the contents of the judgment impugned. The sustainability of the subsequent notification dated 28th October, 2013 was also considered in details.

It is not a case that the writ petitioners had suppressed any fact. All the records were placed before this Court and upon due consideration of the same, the impugned judgment was delivered. The issues which were urged in course of hearing of the

writ petitions have been sought to be agitated afresh. The argument of Mr. Bandyopadhyay that the matter needs to be reheard upon review is not acceptable to this Court.

The law on the subject- the exercise of power of review as propounded by the Hon'ble Apex Court and various other High Courts may be summarized as follows :

- i) review proceedings are not by way of appeal;
- ii) power of review may be exercised when some mistake or error apparent on the face of the record is found. But, error on the face of record must be such an error which must strike on mere looking at the record and would not require any long drawn process of reasoning on the point where there may be conceivable two opinions;
- iii) power of review may not be exercised on the ground that the decision was erroneous on merits;
- iv) power of review can also be exercised for any sufficient reason which is wide enough to include any misconception of fact or law by the Court or even the advocate.

The arguments as advanced by Mr. Bandyopadhyay and the grounds taken in the review application do not in any manner establish any error whatsoever on the face of the record nor the application for review had been preferred upon discovery of any new and important piece of evidence.

For the reasons discussed above, no interference is called for and the review application being RVW 67 of 2019 and the application for stay being IA No. CAN 2 of 2022 are, accordingly, dismissed.

There shall however be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be given to the learned advocates for the parties.

(Sugato Majumdar, J.) (Tapabrata Chakraborty, J.)