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RVW 141 of 2023
CAN 1 of 2023
CAN 2 of 2023
(Union of India & Ors. Vs. Buddhadeb Senapati & Ors.)
in
WPCT 88 of 2023

Mr. Sauvik Nandy, Advocate
Mr. Subrata Santra, Advocate

.....for the Applicant

Mr. Surajit Samanta, Advocate
Mr. Bharat Bhusan, Advocate

.....for the Writ Petitioners/Respondents

CAN 2 of 2023

1. This is an application for condonation of delay of 10 days in filing an application for review.
2. It is averred in the instant application that after the order dated 11.05.2023 passed by this Court and uploaded on the official website, the file was sent to the Legal Department of the South Eastern Railway and on 05.06.2023, the Law Officer has given his opinion to file the review against the said order. Thereafter, the file was sent to the Ministry of Law and Justice for taking necessary action. Subsequently, the lawyer was engaged on 07.06.2023. Thereafter, the entire documents were handed over to the learned Advocate to prepare a Memorandum of Review and the application which, in fact, was done and sent for settling to the senior Counsel on 10.06.2023. After the Memorandum of Review is settled by the senior Counsel, immediately steps were taken to file the same and by this time, there is a delay of 10 days.
3. Considering the explanation to be sufficient, we **allow** the application being **CAN 2 of 2023**, the delay in filing the review application is hereby condoned.
4. Office is directed to formally register the review application.

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5. We are amazed and surprised when an application for review is taken out assailing an order passed on 11.05.2023 on the basis of a subsequent order passed by the Bench of co-equal strength. Even if the ratio laid down in a judgment has not been accepted or overruled subsequently, it does not efface the ultimate decision taken in the said judgment nor would invite a review to be undertaken.
6. Every litigation must reach finality. If this course is accepted and adopted, it will never bring any litigation to an end. In order to achieve finality any ratio laid down in the judgment may not be accepted or may be overruled after a gap of 10 or 15 years and the person would still come and file an application for review that the ratio laid down in the said judgment has now been overruled in a subsequent decision of the Court. The review can only be entertained on the grounds or the parameters provided under Order 47 Rule 11 of the Code of Civil Procedure.
7. In the event, the Court find that there is an error apparent on the face of the record, there is no difficulty in understanding that the Court would review its own judgment/order. Even a review can be allowed on discovery of a new and important document which despite due diligence was not within the knowledge of the applicant on the date of passing the order. The second criteria can only be applied, in the event, the document, though in existence at the time of passing the order but could not be discovered despite due diligence.
8. We have recorded in the order dated 11.05.2023 that several judgments delivered by the High Court as well as Tribunal were placed before us which appears to

be inconsistent in nature and, therefore, it cannot be said that those judgments were not taken in account at the time of passing the said order. However, it is sought to be contended before us that another order passed by the Division Bench in which one of us was a Member of the Bench in ***Kazi Ebadul Karim & Ors. Vs. S. Bhattacharya & Anr. (CPAN 1235 of 2019)*** decided on 29.01.2021, could not be placed due to inadvertence and the order dated 11.05.2023 runs counter to the said order.

9. We invited the attention of the learned Counsel appearing for the review application, the reason for citing the said judgment and it is submitted that in the said judgment the earlier Division Bench in WPCT 74 of 2016 directed the following procedures to be adopted and/or adhered to which have been noticed in the said judgment and a direction was passed upon the Railway Authorities to constitute a Screening Committee which leads to an inescapable inference that the scheme was accepted by the Court to have its operation and, therefore, such scheme cannot be whittled-down in a subsequent judgment rendered on 11.05.2023.
10. We noticed the judgment rendered in Kazi Ebadul Karim (supra) wherefrom it appears that the prayer of some land-loosers were turned down on the ground of over-age and non-submission of the documents. The Division Bench who rendered the judgment in WPCT 74 of 2016 disposed of the said writ-petition with a direction that within a period of 7 days from date of receipt of a copy of the judgment and order, the Chief Personnel Officer shall intimate the respondent no. 1, which of the documents are required for ensuring placement of his claim before

the Screening Committee. There was a further direction that within a month of receipt of such intimation, the respondent no. 1 will produce the necessary documents/papers before the Chief Personnel Officer and upon receipt of such documents /papers, the claim of the respondent no. 1 shall be placed before the Screening Committee for an appropriate decision. The third direction appears to have clinched the issue in the said writ-petition where the Court directed that while considering the case of the land-loosers for appointment who have crossed 47 years of age, the authority shall not cite age bar as a ground for not considering the claim and if the power of relaxation is indeed available, to consider the invocation thereof. The fourth direction in the said writ-petition is inconsequential as it contains a time limit within which the entire exercise should be completed.

11. The Court noticed the aforesaid decision and disposed of the writ-petition filed by Kazi Ebadul Karim and Ors., upon noticing that the authorities have unnecessarily created an impasse in contending that the documents submitted is not in order and, there are discrepancies therein. A supplementary affidavit was filed in the said writ-petition to cure such discrepancies as highlighted and on the basis thereof, the Court directed that the moment the discrepancies have been removed, the matter may be placed before the Chief Commercial Officer in terms of the order/ directions passed in WPCT 74 of 2016 and, thereafter, the Screening Committee shall consider the respective claims.
12. We do not find any ratio which can be laid down impinging upon the scheme or contrary to the order

passed in the writ-petition on 11.05.2023. The issue involved therein relates to a discrepancy in submitting the documents and the Court did not have any occasion to go into other nuances of the law or anything impinging upon the benevolent/welfare scheme framed by the Railway Board relating to appointment of the land-loosers.

13. We do not find that simply because the judgment is passed, would invite a review provided the issue is identical and common and having decided earlier and the latter Bench did not notice the same and passed an order contrary thereto, there may be a possibility of exploring the provision of review. The aforesaid observations may not be treated as sacrosanct as it depends upon the facts of the each case and cannot be treated as rule of universal application. However, a judgment which has no relevance to the core issue, even if not placed before a subsequent Bench, does not invite the review to be made nor we find any inconsistency in the directions passed therein.
14. So far as the scheme is concerned, the Court noticed the existence of a benevolent/welfare scheme framed by the Railway Board and the tenet of the order does not give any impression that there has been any encroachment upon the said scheme or the said scheme has been whittled-down. Even if we consider that the challenge to the said scheme rendered futile upto the Supreme Court and the judgment of the Supreme Court could not be placed on the said date, it does not invite the review of the order/judgment as the judgment dated 11.05.2023 does not render the said scheme redundant or unworkable. Rather the spirit of the said judgment would lead to an unequivocal conclusion that the scheme was accepted

and held to the applied to the land-loosers.

15. Interestingly, an argument is advanced that the word 'debar' used in the judgment dated 11.05.2023 have clinched the issue and in effect, overrides the scheme.
16. We are unable to accept the stand of the applicant of the review application. The said judgment was passed when the Railway Authority disclosed its stand that even if the land-loosers could not qualify for the physical efficiency test, they cannot be thrown-away from the zone of consideration for medical test. The words or the expressions used in a judicial order, should not be interpreted in an abstract manner but has to be read in the context in which it is used. Every word has multiple meaning and, therefore, it is a misconception in the minds of the Railway Authority to segregate the word and interpreted in its own way without venturing to go into the context in which it is used.
17. It is a sheer wastage of time for such reason to make a clarification of the words used in the judgment when there is no ambiguity in ascertaining its meaning, if read conjointly with context in which it is used. The word 'debar' cannot be construed to have an absolute immunity over the scheme but what is intended that the land-loosers cannot be kept outside the purview of the zone of consideration for the medical test, in the event, he could not qualify in the medical test.
18. In view of the observations made here-in-above, the review application being RVW 141 of 2023 is dismissed with costs assessed at Rs.10,000/- to be deposited with the State Legal Services Authority within two weeks from date. The connected application being CAN 1 of 2023 also stands disposed of.

19. After the judgment is passed in open Court, the learned Counsel for the applicant submits, on instruction, received from the competent authority, that the time to comply the direction passed in the order dated 11.05.2023 be extended for a period of two months.
20. We find that the period provided in the order dated 11.05.2023 has not expired, as it is due to expire on 10/11.08.2023 and, therefore, further two months time is granted to comply the said order to be reckoned from the said date i.e. 10/11.08.2023.

(Harish Tandon, J.)

(Prasenjit Biswas, J.)