

13.06.2023
Item Nos. 8 & 9.
Crt.No.11
b.r.

RVW 5 of 2018
in
FMA 991 of 2018
With
CAN 1 of 2023

Sri Samarendra Datta
-vs-
Bank of India & Ors.

Mr. Ranjit Kumar Ray
Mr. Arun Naskar
Mr. Krishna Deo Das
Ms. Sandhya Das Adhikari
.... For the applicant
in RVW 5 of 2018.

Mr. R.N. Majumder
Mr. S.M. Obaidullah
.. for the Bank of India.

In Re: **CAN 1 of 2023.**

Party/parties is/are represented in the order of their name/names as printed above in the cause title.

This is an application for review of the Judgement and Order of the Hon'ble Division Bench dated 5th of September, 2017 passed in the appeal, being MAT 703 of 2015, of which one of us (Subrata Talukdar,J.) was a part.

The instant review application, being RVW 5 of 2018, is barred by delay and hence supported by an application for condonation of delay, being CAN 1 of 2023.

The review applicant is represented by Mr. Ray, Learned Senior Counsel, appearing with Mr. Naskar, Learned Advocate.

The Respondent/ Bank of India (*the Bank*) is represented by Mr. Obaidullah, learned Counsel led by Mr. Majumder, Learned Senior Counsel.

Heard.

Perused the contents of CAN 1 of 2023.

Cause shown is found to be sufficient.

Accordingly, the delay stands condoned.

Review application be now treated to be on board to be considered on merits.

Registry to take steps.

CAN 1 of 2023 stands accordingly **disposed of**.

RVW 5 of 2018

Next, the review application is taken up for consideration on merits.

Mr. Ray submits that the primary ground for filing the review application against the Judgement and Order dated 5th September, 2017 (*supra*) is the incomplete payment of the compulsory retirement to the writ petitioner/the appellant/the present review applicant.

Mr. Ray submits that this aspect of the matter has not been considered by the co-ordinate Hon'ble

Division Bench *vide* its Judgement dated 5th of September, 2017(*supra*).

Appearing on behalf of the Respondents/ the Bank, Mr. Majumder points out that the issue of the non-disbursement of the complete compulsory retirement dues of the review applicant was placed before the co-ordinate Hon'ble Division Bench which also recorded the stand of the Bank that the appellant/the writ petitioner had received all his dues in the year 2000.

The co-ordinate Hon'ble Division Bench was further pleased to take notice of a similar recording by the Hon'ble Single Bench *vide* its Order dated 12th March, 2015 passed in WP No. 716(W) of 2008 which was under challenge in MAT 703 of 2015(*supra*). The Co-ordinate Hon'ble Division Bench was pleased to record *vide* the Order dated 12th of March, 2015 to the following effect.

“The petitioner expressly abandoned the challenge to the order of punishment as recorded in the order of February 12, 2015.

The only issue thereafter was as to the amount due from the bank to the petitioner. When the petition was next taken up on March 9, 2015, the bank indicated that following the Petitioner's punishment of compulsory retirement, all his dues were paid off in the year 2007. The petition was again adjourned

till today for Advocate for the petitioner to ascertain whether the dues had been paid.

It is now sought to be urged that the petitioner would challenge the order of punishment. Such unfounded submission could not have been accepted even if the petitioner appeared in person. Advocate who appeared for the petitioner on February 12, 2015 unequivocally abandoned the challenge to the order of punishment. By virtue of his position, Advocate had due authority to do. Such position cannot be revisited at this stage.

It is of some significance that Advocate who had appeared for the petitioner on February 12, 2015 is not in attendance today. It was only upon the matter being found to be unmeritorious that the challenge was abandoned.

W.P. 716(W) of 2008 is dismissed.

There will be no order as to costs.”

Thereafter, the co-ordinate Hon’ble Division Bench further took notice of the fact that by an earlier Order dated 12th February, 2015 in the same writ petition, i.e. WP No. 716(W) of 2008, the Hon’ble Single Bench had recorded as follows:-

“ Since it is submitted on behalf of the petitioner that the only grievance of the petitioner at the moment is that the money due to the petitioner upon the petitioner’s compulsory retirement in terms of the order of punishment has not been paid, the

respondents should be directed to ensure the immediate payment thereof.

Since the petitioner has given up the challenge to the order of punishment in view of the petitioner having reached the normal age of superannuation during the pendency of the present proceedings, the respondent bank is directed to furnish a statement as to the amount that the petitioner was entitled to upon his compulsory retirement in terms of the order of punishment. The statement should also indicate how the entire dues of the petitioner have been discharged and the dates of the payment.

Let the matter appear three weeks hence for such statement to be received.”

Having recorded as above, the Hon’ble Division Bench found the prayer of the review applicant to be unmeritorious in view of the fact that such prayer required to be placed before the Hon’ble Single Bench for recalling and/or modification and/or variation of its order dated 12th February, 2015(*supra*), which has not been shown to be done by the review applicant before the co-ordinate Hon’ble Division Bench.

Accordingly, relying on the judicial authority reported in (2003) 9 SCC 519 at *Paragraphs 10,11 and 12*, the Co-ordinate Hon’ble Division Bench found that the stand of the Review Applicant as recorded by Hon’ble Single Bench *vide* its Orders dated 12th February, 2015 and 12th March, 2015 (*supra*), ought to

be presumed to be correct in the absence of the Review Applicant having taken any step to approach the Hon'ble Single Bench with the prayer for recalling and/or modification and/or variation of the said Orders.

In the light of the above discussion, this Court finds the present review application to be misconceived.

No grounds for review of the Judgement and Order dated 5th September, 2017 are accordingly made out.

Accordingly, **RVW 5 of 2018** stands **dismissed**.

Parties to act in terms of the copy of the order downloaded from the official website of this Court.

Urgent photostat certified copy of this if applied for be given to the parties upon compliance with all necessary formalities.

(Supratim Bhattacharya,J.) (Subrata Talukdar,J.)

