

and

**DIRECTOR SECONDARY EDUCATION HARYANA
AND OTHERS
V/S
KRISHNA DEVI AND OTHERS**

As prayed for, the applications are allowed.

Present applications have been filed for condonation of delay of 775 days in filing the review application as well as for reviewing the order dated 14.03.2019.

It may be noticed that the appeal preferred by the State of Haryana came up for consideration before the Coordinate Bench of this Court on 14.03.2019 on which date, the following order was passed:-

“I have considered the submissions made by learned counsel for the appellants and with his assistance, have gone through the records of the case but do not find any fault as far as the claim of the respondents for the grant of pensionary benefits is concerned. The judgments which have been passed by the Courts below being based upon proper appreciation of the pleadings and the evidence as also the settled proposition of law, do not call for any interference.

At this stage, learned counsel for the appellants has submitted that in the light of the Full Bench judgment of this Court in Saroj Kumari Versus State of Punjab and others 1998 (3) SCT 664, respondents would be entitled to the grant of arrears limited to the extent of three years and two months prior to the date of filing of the civil suit.

Notice of motion to this limited extent for 05.09.2019.

Direction is issued to the appellants to release the retiral benefits as per the judgments and decree passed by the Courts below within a period of two months from today to the respondents except for the period which is beyond three years, two months prior to the date of filing of the civil suit. To be shown in the urgent list.”

The review of said order is being sought in the present case after a delay of more than four years.

It may be noticed that in the order dated 14.03.2019, after hearing the submission made by the learned counsel for the State and after going through the record, a finding was recorded by the Coordinate Bench of this Court that the judgments of the Courts below are based upon proper appreciation of pleadings and evidence as well as the settled principle of law and do not call for any interference.

Further, the notice of motion was issued only qua the modification of the grant of arrears to the respondents-plaintiffs. The respondents did not challenge the said order and accepted the same and ultimately, on the basis of the said order, the main RSA was decided on 12.01.2023.

Now, by the present application, the applicants/appellants-State are challenging the order passed by the Coordinate Bench of this Court dated 14.03.2019 by which, the appeal preferred by the State was dismissed on merits.

Learned counsel for the applicants/appellants-State submits that there is no factual error in the order passed by the Coordinate Bench while upholding the judgment of the Courts below wherein, finding has been recorded that judgments of the Courts below are perfectly valid and legal, but upholding of the order passed by the trial Court is on wrong premises that the plaintiffs were entitled for the relief as being claimed therein.

From the said argument, it is clear that under the garb of the review, the order passed by the Coordinate Bench is being challenged on the ground that the same is incorrect. The correctness of an order passed by the Coordinate Bench cannot be tested in review as the same can only be tested in appeal.

Keeping in view the settled principle of law settled by the Hon'ble Supreme Court of India in ***Civil Appeal No.5503-04 of 2022 titled as S. Madhusudhan Reddy vs. V. Narayana Reddy and others, decided on 18.08.2022*** that review cannot be preferred so as to argue the appeal once again, hence, no ground is made out for the review of the order dated 14.03.2019 even on merits. Relevant paragraph of the said judgment is as under:-

26. As can be seen from the above exposition of law, it has been consistently held by this Court in several judicial pronouncements that the Court's jurisdiction of review, is not the same as that of an appeal. A judgment can be open to review if there is a mistake or an error apparent on the face of the record, but an error that has to be detected by a process of reasoning, cannot be described as an error apparent on the face of the record for the Court to exercise its powers of review under Order XLVII Rule 1 CPC. In the guise of exercising powers of review, the Court can correct a mistake but not substitute the view taken earlier merely because there is a possibility of taking two views in a matter. A judgment may also

be open to review when any new or important matter of evidence has emerged after passing of the judgment, subject to the condition that such evidence was not within the knowledge of the party seeking review or could not be produced by it when the order was made despite undertaking an exercise of due diligence. There is a clear distinction between an erroneous decision as against an error apparent on the face of the record. An erroneous decision can be corrected by the Superior Court, however an error apparent on the face of the record can only be corrected by exercising review jurisdiction. Yet another circumstance referred to in Order XLVII Rule 1 for reviewing a judgment has been described as “for any other sufficient reason”. The said phrase has been explained to mean “a reason sufficient on grounds, at least analogous to those specified in the rule.”

Even otherwise, it may be noticed that the said order was within the knowledge of the applicants/appellants-State when the notice of motion was issued on 19.03.2019. The plain reading of the said order clearly shows that the appeal was dismissed on merits by the Coordinate Bench. That being so, in case the applicants/appellants-State were aggrieved against the said order, they should have move appropriate application within the time frame.

In the present case, the review application has been moved after the disposal of the main appeal and that too after a period of four years of the passing of the order, the review of which is being sought.

The justification given by the applicants/appellants-State in the application does not give any cogent reason for condoning the delay keeping in view the settled principle of law. Hence, even the application seeking the condonation of delay is not maintainable in the facts and circumstances of the present case.

Hence, both the applications seeking condonation of delay as well as the application seeking review are accordingly dismissed.

CM-7421-C-2023 in/and RA-RS-51-2023

Present applications have been filed for condonation of delay of 90 days in filing the review application as well as for review of the order dated 12.01.2023 by which the main RSA was disposed of.

Argument being raised is that the order passed by the Coordinate Bench of this Court dated 14.03.2019 is bad, hence order dated 12.01.2023, which is based upon the order dated 14.03.2019, is liable to reviewed. Once the review petition in respect of the order dated 14.03.2019 has been dismissed, no ground is made out for the review of the order 12.01.2023 as well.

The applications seeking condonation of delay as well as for review of the order dated 12.01.2023 are also accordingly dismissed.

CM-7418-C-2023 & CM-7422-C-2023

As the review applications are dismissed, present applications also stands dismissed.

August 18, 2023
harsha

(HARSIMRAN SINGH SETHI)
JUDGE