

Form No.J(2)

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

Present:

The Hon'ble Justice Harish Tandon

And

The Hon'ble Justice Prasenjit Biswas

MAT 441 of 2024

With
CAN 2 of 2024

Sk. Majibar Rahaman

-Versus

The State of West Bengal & ors.

For the appellant : *Mr. Biswarup Biswas*
Mr. Md. Mojnu Sk.
Ms. Nupur Chowdhury
For the State : *Mr. Swapan Kr. Dutta*
Mr. Rajat Dutta
For the C.U. : *Mr. Nilotpall Chatterjee*
Mr. Sourabh Sengupta
,

Heard on : *20.09.2024, 30.09.2024, 08.10.2024 &*
19.11.2024.

Judgment on : *19th November, 2024.*

Harish Tandon , J:

1. The short point involved in the instant appeal is whether the party can achieve the object of reviewing its order in the guise of a modification and/or clarification of an interim order passed earlier. Ancillary point emanates from the pivotal

issue is whether the Court while considering an application for modification shall proceed to dismiss/dispose of the main proceedings without affording an opportunity of hearing to the parties to canvas the issues involved in the main proceedings. A prelude to the litigation is required to be recapitulated before we proceed to address the issue as indicated hereinbefore. The appellant was admittedly appointed as a Laboratory Assistant at the Institute of Jute Technology, Kolkata and the said institute was subsequently infused in the technology department of the University of Calcutta by virtue of a memorandum dated May 25, 2011 and emerged in a new getup as department of Jute Fiber Technology.

2. After re-naming of the said institute, the employees were permitted to continue as an employee of the University of Calcutta as a Junior Technical Assistant. The dispute arose when the designation and/or nomenclature of the post as Technical Assistant Grade-II with the consequential effect on the promotion was not addressed properly which constrained the appellant to move this Court under Article 226 of the Constitution of India.
3. At the time of entertaining the writ petition, an interim order was passed to the effect that the University shall take steps officially to incorporate such re-designation in its record. The foundation leading to such interim order was also succinctly recorded by the Single Bench to the effect that paragraph 42 of the writ petition contains particulars of two resolutions taken by the syndicate of the University dated 29th December, 2015 and 15th January, 2016 respectively by which the designation/nomenclature of the post was changed to the Technical Assistant Grade-II. The Single Bench was also apprised of the fact that in terms of the said resolutions,

the official records of the University qua the appellant could not be corrected and/or rectified. Precisely for such reason the interim order was passed directing the University to take steps to incorporate such re-designation in its record.

4. An application for modification was taken out by the University on the premise that though the post has been re-designated as Technical Assistant Grade-II but the requisite educational qualification required for such post is lacking in the appellant and, therefore, the claim as projected before the Court is untenable and unacceptable. It was further indicated in the said application that by virtue of a subsequent resolution dated August 9, 2016, the conferment of such status/designation can only be effected after a requisite qualification for such post is attained by the appellant. The single Bench proceeded to hold that the appellant does not possess the requisite educational qualification to be conferred as status of a Technical Assistant Grade-II and re-called the said order but further proceeded to dismiss the said writ petition.
5. The pivotal issue as indicated in the first paragraph of the Judgment hereinbefore was considered to be a seminal point as the counsel for the appellant submits that the Court cannot achieve the purpose of review in the guise of an application for modification taken out by the University. It is no longer *res integra* that the review lies not only against a Judgment but also against an order be it interim or otherwise provided the conditions enshrined for exercise of review jurisdiction is eminently and evidently satisfied by the party applying therefor.
6. It is also trite law that a party cannot invite the Court to rehear and/or re-visit its order in the guise of a review nor it is expected that the Court would exercise such power for re-

writing the Judgment afresh. The scope for considering an application for modification is different than the scope under the review jurisdiction; the later part to be exercised within the contour of the limitation put forth in this regard.

7. The Apex Court in **Ram Chandra Singh vs. Savitri Devi & ors.** reported in **(2004)12 SCC 713** in unequivocal term laid down the law in this regard to the effect that the application for clarification or modification should not achieve the purpose of review and should not be decided on the merit of the matter, more particularly, at the interlocutory stage in the following:

“13. It is now well settled that an application for clarification or modification touching the merit of the matter would not be maintainable. A court can rehear the matter upon review of its judgment but, therefor, the procedure laid down in Order 40 Rules 3 and 5 of the Supreme Court Rules, 1966 as also Article 137 of the Constitution are required to be complied with as review of a judgment is governed by the constitutional as well as statutory provisions.

- 14. The applicants herein did not appear at the time of hearing. They, as noticed hereinbefore, have not to contend that there exist errors in the judgment which are apparent on the face of the records except the typographical. The prayer of the applicant is that apart from the corrections which are required to be made in the judgment, as noticed hereinbefore, the merit of the matter may also be considered, inter alia, with reference to the pleadings of the parties. Such a course of action, in our opinion, is not contemplated in law. If there exist errors apparent on the face of the record, an application for review would be maintainable but an application for clarification and/or modification cannot be entertained unless it is shown that the same is necessary in the interest of justice. An application which is in effect and substance an application for review cannot be entertained dehors the statutory embargo contained in Order 40 Rules 3 and 5 of the Supreme Court Rules, 1966.”**

8. We are not unmindful of the proposition that the nomenclature of an application cannot be a determinant factor as the Court is required to look into the subsistence thereof and apply the correct proposition of law. Yet the Court cannot overlook that if in the real sense, the applicant intended to achieve the purpose of review, the procedural law applicable in this regard cannot be ignored and/or obliterated taking the clue of the above notion that the nomenclature is not the determinant factor. The law laid down in Ram Chandra Singh's case is re-stated and reiterated in a subsequent decision of the Supreme Court rendered in case of **State of Haryana & ors. vs. M.P. Mohla** reported in (2007)1 SCC 457 in the following:

"28. Mr Srivastava submitted that an application for review in effect and substance was an application for clarification of the judgment of the High Court. We do not think so. An application for clarification cannot be taken recourse to achieve the result of a review application. What cannot be done directly, cannot be done indirectly."

9. Apart from the same, the moment the Court venture to decide an application for modification or a review of an interim order, such jurisdiction becomes limited and should be restricted to as to whether the interim order passed earlier needs to be vacated or to be varied in exercise of powers so conferred upon the Court. The findings made by the Court at an interlocutory stage is always regarded as *prima facie* finding having no impact or persuasive effect at the time of final adjudication of the dispute.
10. Furthermore, the Court should avoid in making any findings or observations at the interlocutory stage which would negate the claim or would render the proceeding liable to be dismissed. We do not find any fetter on the part of the Court to re-call the interim order or vacate the same but while

exercising such power, the Court must record the reasons within the four corners of the law applicable in this regard and should not have proceeded to dismiss the main proceedings without affording an opportunity of the parties to complete the pleadings and argue on merit thereof.

11. As indicated above, what was sought to be achieved in the garb of an application for modification is the review of an order passed at the time of an admission of an appeal and we further find that there is no observations and/or findings made by the Court which are supposed to be recorded while exercising the review jurisdiction. The power of review is within the limited compass and to be exercised with great caution and care as observed hereinbefore. There is no second view that the Court also possess the power of review in the event any mistake or the error is committed which are apparent on the face of the record for the simple reason that the act of the Court should not prejudice any of the parties. The aforesaid notion is founded upon in the legal maxim "*actus curiae neminem gravabit*" meaning that the act or mistake committed by the Court should not prejudice or make any party to suffer. In fact, the aforesaid concept gets fructified from the Judgment of the Apex Court rendered in case of **Board of Control For Cricket in India & anr. Vs. Netaji Cricket Club and Ors.** reported in **(2005)4 SCC 741** in the following:

“88. We are, furthermore, of the opinion that the jurisdiction of the High Court in entertaining a review application cannot be said to be *ex facie* bad in law. Section 114 of the Code empowers a court to review its order if the conditions precedent laid down therein are satisfied. The substantive provision of law does not prescribe any limitation on the power of the court except those which are expressly provided in Section 114 of the Code in terms whereof it is empowered to make such order as it thinks fit.

89. Order 47 Rule 1 of the Code provides for filing an application for review. Such an application for review would be maintainable not only upon discovery of a new and important piece of evidence or when there exists an error apparent on the face of the record but also if the same is necessitated on account of some mistake or for any other sufficient reason.

90. Thus, a mistake on the part of the court which would include a mistake in the nature of the undertaking may also call for a review of the order. An application for review would also be maintainable if there exists sufficient reason therefor. What would constitute sufficient reason would depend on the facts and circumstances of the case. The words “sufficient reason” in Order 47 Rule 1 of the Code are wide enough to include a misconception of fact or law by a court or even an advocate. An application for review may be necessitated by way of invoking the doctrine “actus curiae neminem gravabit”.

93. It is also not correct to contend that the Court while exercising its review jurisdiction in any situation whatsoever cannot take into consideration a subsequent event. In a case of this nature when the Court accepts its own mistake in understanding the nature and purport of the undertaking given by the learned Senior Counsel appearing on behalf of the Board and its correlation with as to what transpired in the AGM of the Board held on 29-9-2004, the subsequent event may be taken into consideration by the Court for the purpose of rectifying its own mistake.”

12. In view of the exposition of law as annunciated in the above noted reports, the appellate Court finds that the manner in which the Single Bench proceeded to vacate the interim order and/or dismiss the writ petition is contrary to the ratio laid down in the above noted report.
13. The order impugned is set aside. The moment, the order is set aside, the interim order revives.
14. Considering the gamut of facts and the stand taken by the University and the proposition of law that in the garb of the modification, the purpose of review should not be allowed to be achieved, it is open to the University to take an appropriate step as permissible in law. In the event, such steps are taken,

the observations made hereinabove would not stand as a deterrent in deciding the same on merit and in accordance with law.

15. The appeal and application are disposed of.

(Harish Tandon, J.)

(Prasenjit Biswas, J.)