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27.02.2025
Ct. No. 11
rrc

CPAN 220 of 2024
(Uday Singh & Ors. Vs. Shri S. Suresh Kumar & Ors.)

in
WPA 7333 of 2022
with
RVW 65 of 2024
(CAN 1 of 2024)

Mr. Durga Prasad Dutta
Mr. Souvik Sen

.... For the Petitioners in
CPAN 220 of 2024 &
Respondents in RVW 65 of
2024.

Mr. Achintya Kumar Banerjee
Mr. Dipankar Ghosh

.... For the Applicants in RVW
65 of 2024 and alleged
contemnors in CPAN 220 of
2024.

In Re: CAN 1 of 2024.

Record reveals that by an order dated 10.04.2024, the application being CAN 1 of 2024 has effectively been disposed of. The Registry is directed to record disposal of the application.

In Re : RVW 65 of 2024.

1. The present application has been filed seeking a review of the judgment dated January 8, 2024, in WPA 7333 of 2022. In this judgment, the respondents were directed to reckon half of the service rendered by the writ petitioners as casual employees before their appointment when calculating the qualifying service for pension. Additionally, the respondents were directed to disburse the pension and other retirement

benefits to the writ petitioners in accordance with the Central Civil Services (Pension) Rules, 1972. Furthermore, the respondents were directed to allow the writ petitioners to exercise the option to avail themselves of the benefits under the Old Pension Scheme, i.e., the Central Civil Services (Pension) Rules, 1972.

2. Mr. Banerjee, the learned advocate representing the respondents/applicants, argues that there is an error apparent on the face of the record. In passing the judgment, he contends, this Court overlooked the fact that the writ petitioners were appointed on probation, which cannot be considered a substantive appointment since their appointments were subject to confirmation upon successful completion of the probationary period. Therefore, he contends that the petitioners' service should only be considered from 16.03.2020, the date of their probationary appointment. He further explains that a probationer is only formally recognized in the cadre after successfully completing the probation period, and, as such, these appointees cannot claim any benefits for their prior service. He argues that this court erred in stating that 'the petitioners were accepted as regular employees of DVC by issuing letters of appointment in their favor on 16.03.2020,' even though they were appointed on probation.

3. He further argues that the writ petitioners accepted their appointments without objection, thereby acquiescing to their right to regularization from any earlier date, including their entitlement to pension. It is contended that this Court

overlooked the fact that, due to their appointment on probation, the petitioners' previous engagement as casual employees became void, and they are now estopped from claiming any benefits from their past service. He points out that, despite taking note of such appointments, the Hon'ble Supreme Court disposed of the contempt petition after being satisfied that the order, the violation of which was the subject of the petition, had been duly complied with. In his view, this reinforces the position that the writ petitioners are not entitled to claim any benefits for their past service. He contends that, in passing the judgment, this Court overlooked these issues, which warrants a review of the judgment. In support of his contention, he cites the decisions, reported at AIR (37) 1950 FC 131 (Mt. Jamna Kuer vs. Lal Bahadur & Ors.), 1999 SCC (L & S) 622 (State of Tripura & Ors. vs. Jhuma Gupta (Smt.) & Ors.), (2020) 7 SCC 509 (Warad Murti Mishra vs. State of M.P. & Ors.).

4. *Per Contra*, Mr. Dutta, learned advocate for the writ petitioners/respondents, vehemently argues that the respondents/applicants have failed to make out any case for obtaining a review of the judgment. According to him, no error is apparent on the face of the record. Mr. Dutta claims that by filing this application, the respondents/applicants are attempting to reopen the matter and re-agitate their contentions. He contends that a Court cannot be invited to rehear the matter under the guise of a review petition. He strongly relies on the decision reported at 2022 SCC OnLine

SC 1034 (S. Madhusudhan Reddy vs. V. Narayan Reddy & Ors.) to support this contention.

5. Referring to paragraph 9 of the judgment, Mr. Dutta points out that this Court had considered the fact that the petitioners were appointed on probation. Drawing attention to paragraph 19, he argues that, in light of the nature of their appointment, this Court held that giving such appointments to the petitioners instead of absorbing them into the posts was a deliberate attempt to prevent the petitioners from claiming any benefit from their past service.

6. Section 114 and Order 47, Rule 1 of the Code of Civil Procedure, 1908, deal with the right of an aggrieved party to obtain a review of a decree, order, or judgment, and prescribe the procedure for such a remedy, respectively. Thoguh, due to the explanation under Section 141 of the Code, Order 47, Rule 1 is not directly applicable to a proceeding under Article 226 of the Constitution of India. It is, however, axiomatic that this explanation does not affect the inherent power of the Court to review its own orders passed under Article 226, as the plenary jurisdiction to prevent miscarriage of justice or correct gross and palpable errors inheres in every Court.

7. Generally, once a judgment or order is delivered, it cannot be altered thereafter. However, a court can be invited to review its judgment only on three grounds: (i) the discovery of new and important matter or evidence, which, after exercising due diligence, was not within the applicant's knowledge or could not have been produced at the time the decree was passed or

the order made; (ii) a mistake or error apparent on the face of the record; or (iii) any other sufficient reason.

8. It is a settled proposition of law that contentions raised and decided in the main proceedings cannot be reopened or re-agitated under the guise of a review petition. The power of review should not be confused with the appellate power, which allows an appellate court to correct all errors made by a subordinate court.

9. In the present case, the respondents/applicants seek a review of the judgment on the ground that there is an error apparent on the face of the record. However, there is a distinct difference between a mere erroneous decision and an error apparent on the face of the record. An error can be considered apparent on the face of the record only when it is patent, easily identifiable without the need for elaborate argument, and leaves no room for controversy. Such an error is immediately obvious, as if it stares at one upon a simple glance. The term 'error apparent on the face of the record' refers to an error that can be discerned by a mere perusal of the record, without reference to any external matter, and one that strikes the observer immediately, without requiring a lengthy process of reasoning to pinpoint the error.

10. The preceding paragraphs indicate that to bring the error to the notice of the Court and to identify the error, a lengthy argument was advanced on behalf of the applicant that led to controversy also. Therefore, before delving into the contentious issue, it would be appropriate to outline key facts that led to filing of the present application.

11. The writ petitioners who initially engaged in various department of Damodar Valley Corporation (in short, DVC) between 1985 to 1986 as casual workers (highly skilled group) and a panel of such workers was prepared and published. The petitioners invoked extraordinary jurisdiction of this Court by preferring a writ petition seeking their regularisation in Group-D or other equivalent posts citing that they were engaged against sanctioned posts of the DVC and some workers were appointed from that panel.

12. The issue ultimately reached the Hon'ble Supreme Court in S.L.P. (C) Nos. 26224-26225 of 2019 and 26226-27277 of 2029, which was disposed of by an order dated 4.11.2019. The order directed the respondents/applicants that if permanent vacancies have already arisen and the petitioners are still employed as casual workers, the Corporation is obligated to absorb the eligible candidates in the order of their seniority from the relevant list (the panel referred to in the foregoing paragraph).

13. By filing two applications, the respondents/applicants sought modification of the order dated 4.11.2019. In an order passed on 5.2.2020, the Hon'ble Court observed that 38 vacancies were available as of 31.03.2010. On 2.3.2020, taking note of the fact that the order dated 4.11.2019, clarified on 5.2.2020, had not been complied with, the Hon'ble Court, while disposing of both applications, observed that the stand taken by DVC was, to say the least, preposterous and an attempt to circumvent the directions issued on 4.11.2019. The Court, however, directed the respondents/applicants to

comply with the order dated 4.11.2019, inserting a default clause to the effect that failure to comply would constitute aggravated contempt of Court and would be viewed sternly.

14. However, the order had not been complied with. The petitioners filed Contempt Petition (C) Nos. 220-221 of 2021. During pendency of the Contempt Petition, the petitioners were appointed on probation. However, since the appointments had been made, the Hon'ble Court disposed of the Contempt Petitions holding that it was not a case for precipitating contempt action.

15. Therefore, it is evident that after a series of litigations and following an order passed by the Hon'ble Supreme Court in Contempt Petition (C) Nos. 220-221 of 2021, the petitioners were appointed on probation. During the hearing, the respondents argued that since the petitioners were appointed on probation and subsequently confirmed in service upon successful completion, they are not entitled to claim any benefits from their past service, particularly as they accepted their appointment without protest and taking note of the nature of the appointments, the Hon'ble Supreme Court disposed of the Contempt Petitions without further action.

16. Admittedly, this issue was raised before this Court during the hearing of the writ petition, WPA 7333 of 2022. In paragraph 9 of the judgment, it was noted that the petitioners were appointed on probation for a period of one year. The Court observed that the Hon'ble Supreme Court had noted that there were 38 vacancies available as of 31.03.2010 to accommodate the petitioners. In paragraph 15 of the

judgment, it was recorded that Mr. Banerjee argued that the petitioners cannot claim regularization, and in paragraph 16, it was noted that Mr. Banerjee had argued that the petitioners had accepted their appointments and, therefore, cannot now turn around and claim benefits from their past service.

17. In paragraph 17 of the judgment, it was observed that, although the Hon'ble Supreme Court directed the respondents/applicants to comply with the direction given by this Court on 28.08.2014 in W.P. No. 22988(W) of 2010, instead of taking steps to absorb the petitioners, they were given appointments and forced to remain on probation for one year. In paragraph 19, it was observed that giving appointments to the petitioners instead of absorbing them into the posts was nothing but a desperate attempt to prevent the petitioners from claiming any benefit from their past service.

18. Therefore, it is clear and evident that these issues were raised by Mr. Banerjee and, rightly or wrongly, were decided by this Court in that judgment. As observed earlier, issues raised and decided in the main proceedings cannot be reopened or re-agitated under the guise of a review petition, and the power of review should not be confused with the appellate power, which allows an appellate court to correct all errors made by a subordinate court. I have carefully gone through the decisions relied upon by the applicants, but the reliance is misplaced, as they are distinguishable on the facts.

19. Thus, it is quite vivid and luminescent that the respondents/applicants have miserably failed to pinpoint any

error apparent on the face of the record which is staring at face of the observer of the judgment. It is well settled principle that if there is no error apparent on the face of the record, no review petition can be entertained. In view thereof, the review petition is dismissed.

In Re : CPAN 220 of 2024.

1. This present contempt petition has been preferred alleging willful violation of the judgment and/or order dated 8.1.2024 passed in WPA 7333 of 2022.
2. Mr. Dutta contends that despite the order dated 8.1.2024 having been brought to the notice of the alleged contemnors, the same has not been complied with.
3. Mr. Dutta further submits that a new incumbent has taken over the post which the alleged contemnor no. 2 was holding.
4. In view of the above, liberty is granted to the learned advocate-on-record for this petition to include the present incumbent in the contempt petition by amending the cause title in Court today.
5. During the hearing, Mr. Banerjee, the learned advocate representing the other alleged contemnors, has agreed to accept service of a copy of this contempt application on behalf of the new incumbent. In light of this submission, the acceptance of the copy of the contempt petition shall be considered as an acceptance on behalf of the new incumbent.

6. List the matter for further consideration on 5th March, 2025 at 1.05 p.m.

(Partha Sarathi Chatterjee, J.)