

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
Appellate Side

Present:

The Hon'ble Justice Debangsu Basak

And

The Hon'ble Justice Md. Shabbar Rashidi

MAT 694 of 2024

With

IA NO. CAN 1 of 2024

Sarvesh Kumar & Ors.

Vs.

Union of India & Ors.

For the Appellants : Mr. Avratosh Majumder, Sr. Adv.
Mr. Samim Ahammed, Adv.
Mr. Arka Maiti, Adv.
Ms. Ambiya Khatoon, Adv.
Mr. Danish Abbasi, Adv.

For the Respondents : Mr. Soumendranath Mookherjee, Sr. Adv.
IOCL Mr. Soumya Majumder, Adv.
Mrs. Sharmistha Ghosh, Adv.
Mr. Victor Chatterjee, Adv.
Mr. R. Ray, Adv.

Hearing Concluded on : July 15, 2024

Judgement on : July 22, 2024

DEBANGSU BASAK, J.:-

1. Appellants have assailed the judgement and order dated March 27, 2024 passed by the learned Single Judge in RVW 84 of 2024 filed in WPA 9428 of 2021.

2. By the impugned judgement and order the learned Single Judge has allowed the review petition and reversed its original decision dated February 12, 2024 passed in WPA 9428 of 2021. Initially, learned Single Judge had allowed the writ petition by its judgement and order dated February 12, 2024. On review, learned Single Judge has reversed its decision dated February 12, 2024 and dismissed the writ petition.

3. Learned senior advocate appearing for the appellants has submitted that, the appellants as writ petitioners prayed for fixation of their basic pay at par with other Junior Engineering Assistants-IV with effect from the respective dates of joining and consequential benefits, in the writ petition. He has referred to the prayers made in the writ petition. He has submitted that, such writ petition had been allowed by the judgement and order dated February 12, 2024. No new material or fact had been brought on record for a review to be sustained. He has referred to the review petition and contended that, only three documents were sought to be brought on record in the review petition. The affidavit in opposition filed in the main writ petition had alluded to such documents. Such documents had been in the control and

custody of the review applicants. Review applicants did not produce those documents before the writ court at the hearing of the writ petition.

4. Learned senior advocate appearing for the appellants has submitted that, powers of review are circumscribed by the provisions of Order 47 Rule 1 and Section 114 of the Code of Civil Procedure, 1908. Principles enunciated under such provisions of the Code of Civil Procedure, 1908 should be applied by a writ court while deciding a review petition. According to him, the review applicants had failed to establish any ground analogous to those specified in Order 47 Rule 1 of the Code of Civil Procedure, 1908 before the learned Single Judge. Therefore, according to him, the review petition was not maintainable and that the learned Single Judge erred in allowing the review petition. In support of his contention, he has relied upon ***AIR 2020 SC (Supp) 1017 (Ram Sahu vs. Vinod Kumar Rawat and Others)***.

5. Learned senior advocate appearing for the appellants has submitted that, all the appellants had been appointed pursuant to a selection process undertaken by the advertisement bearing Advt. No. PH/R/01/2019. The oil company has appointed a number of persons pursuant to

such advertisement from time to time. The oil company has granted one financial package for persons appointed pursuant to such advertisement up to October 3, 2019. Persons appointed pursuant to the same advertisement subsequent to October 3, 2019 have been granted a lesser pay. He has contended that, the grant of a higher pay to persons appointed for the period from January 1, 2017 till October 3, 2019 pursuant to the same advertisement was de hors the Memorandum of Settlement dated October 3, 2019. In any event, such treatment of employees of the same cadre differently with regard to pay and emoluments was discriminatory and violative of Articles 14 and 16 of the Constitution of India.

6. Learned Senior advocate appearing for the appellants has drawn the attention of the Court to the impugned judgement and order. He has contended that, the learned Single Judge had taken into consideration three documents which were not submitted along with the affidavit in opposition in the main writ petition. He has drawn the attention of the Court to the three documents which were sought to be produced by the review applicants in the review petition. He has contended that, none of those documents can

be construed to be a valid settlement of industrial disputes between the workers and management of the oil company concerned. Consequently, the contents of such three documents do not bind the appellants or the oil company so as to allow the oil company to deny the benefits of the same pay package as that of employees appointed between the period January 1, 2017 till October 3, 2019.

7. Learned Senior advocate appearing for the appellants has contended that, there being no reasonable basis for discriminating the employees who were appointed by the same selection process, same financial benefits should be afforded to the appellants. In support of such contention, he has relied upon ***1990 (Supp) Supreme Court Cases 778 (State of Rajasthan versus Gurcharan Singh Grewal and others)***.

8. Learned senior advocate appearing for the appellants has contended that, in the facts and circumstances of the present case, the impugned judgement and order allowing the review petition should be set aside and the judgement and order dated February 12, 2024 allowing the writ petition should be restored.

9. Learned senior advocate appearing for the respondent oil company has contended that, there was a bona fide

mistake committed, by the learned advocate appearing for the oil company before the learned Single Judge, in not bringing on record the three documents which were otherwise pleaded in the affidavit in opposition. It is due to such mistake that, the judgement and order dated February 12, 2024 in the writ petition had been passed. Subsequent to the oil company discovering such mistake, it had applied for review which was allowed.

10. Learned senior advocate appearing for the oil company has contended that, a mistake which results in miscarriage of justice can be corrected on review. In support of such contention, he has relied upon **2005 Volume 4 Supreme Court Cases 741 (Board of Control for Cricket in India and another versus Netaji Cricket Club and others)** and **2020 Volume 2 Supreme Court Cases 338 (Yashwant Sinha and others versus Central Bureau of Investigation).**

11. Learned senior advocate appearing for the oil company has referred to the three documents which were considered by the learned Single Judge on review. He has contended that, those documents were referred to in the affidavit in opposition and inadvertently not produced therewith. Subsequently, such documents had been produced before the learned Single

Judge. Learned Single Judge has rightly observed that, there was a mistake on the part of the learned advocate appearing for the oil company before it and that, those documents were required to be considered to adjudicate upon the reliefs that the parties were entitled to in the writ petition.

12. Referring to the three documents, learned senior advocate appearing for the oil company has contended that, such documents establishes that, after a series of negotiations, it was agreed by and between the workers and the management of the oil company that, persons who were given appointment for the period from January 1 2017 till October 3, 2019 would be granted the Fitment benefits. He has referred to the various provisions of the Industrial Disputes Act, 1947 and contended that, the documents constitute valid agreement between the workers and management of the oil company and were enforceable in law. According to him, the appellants are bound by such agreement. In support of such contentions, he has relied upon ***2000 Volume 1 Supreme Court Cases 371 (National Engineering Industries Ltd versus State of Rajasthan and others).***

13. Learned senior advocate appearing for the oil company has contended that, amongst the same cadre different pay packages can be granted. In support of such contention, he has relied upon **1989 Volume 1 Supreme Court Cases 121 (State of U.P. and Others vs. J. P. Chaurasia and Others)**. Consequently, he has submitted that, there being no merit in the present appeal, the same should be dismissed.

14. Oil company had issued an advertisement being number PH/R/01/2019 for recruitment to the post of Junior Engineering Assistant-IV in various departments. Appellants had participated in such selection process. Appellants had been appointed to such post from time to time subsequent to October 3, 2019. Appellants had been and still are paid a basic pay of Rs. 25,000 in the unrevised pay scale of Rs. 11,900-Rs. 32,000 (revised Rs. 25,000-1,05,000).

15. Appellants had complained to the authorities that, persons who participated in the same selection process were getting a basic pay of Rs. 29,000 in the same pay scale. Oil company by a letter dated February 14, 2020 had stated that, pay fixation of any employee joining subsequent to October 3, 2019 was based on the scale applicable on his date of joining

and in line with the Long Term Settlement dated October 3, 2019.

16. Appellants had approached the writ Court by way of a writ petition being WPA 9428 of 2021 praying for fixation of their basic pay at par with other Junior Engineering Assistants-IV being Rs. 29,000 with effect from their respective dates of joining. Such writ petition had been allowed by a judgement and order dated February 12, 2024.

17. While allowing the writ petition of the appellants, learned Single Judge had held the view that, the “Guidelines for Implementation” was a unilateral document brought about by the management of the oil company and therefore did not apply so far as pay and entitlements of the appellants were concerned. The learned Single Judge had therefore proceeded to direct the oil company to grant pay parity to the appellants in line with other Junior Engineering Assistant-IV appointed through the same selection process.

18. Oil company had applied for review of the judgement and order dated February 12, 2024 passed by the learned Single Judge. Oil company had contended in the review petition that, three vital documents, although alluded to in the affidavit in opposition, were not brought on record by the oil

company due to bona fide mistake of the learned advocate appearing for the oil company, before the learned Single Judge. Oil company had also contended that, such documents would establish that, the “Guidelines for Implementation” was neither a standalone document and nor brought about by the management of the oil company arbitrarily in derogation of any settlement but reflected the Long Term Settlement arrived at between the management and workers of the oil company.

19. Three authorities have been cited at the bar on the aspect of the power of review. ***Netaji Cricket Club (supra)*** and ***Ram Sahu (supra)*** had been rendered in the context of a civil suit. ***Yashwant Sinha (supra)*** had been rendered in the context of a writ petition under Article 226 of the Constitution of India and power of review of the Supreme Court under Article 137 thereof. Order 47 Rule 1 and Section 114 of the Code of Civil Procedure, 1908 had been considered. Such authorities have observed that, power of review can be exercised for correction of a mistake but not to substitute a view. Such powers have to be exercised within the limits of the statute dealing with the exercise of power. Any other sufficient reason appearing in Order 47 Rule 1 of the Code of Civil Procedure, 1908 has been construed to mean a reason

sufficient on grounds at least analogous to those specified in Rule 1 of Order 47. Such authorities have also recognised that, mistake of an advocate is sufficient ground for review.

20. Learned Single Judge has noted the authorities on the issue of power of review as cited before such Court. Learned Single Judge has arrived at a finding that, the three documents which the review applicants sought to rely upon in the review petition were not made available on record due to the mistake committed on part of the advocate of the review applicants. Learned Single Judge after having arrived at a finding that, the documents were material and were inadvertently not placed on behalf of the oil company due to the mistake committed by the advocate of the oil company, proceeded to review the judgement and order dated February 12, 2024 on the basis of the entirety of the materials placed before Court. Such a course of action as undertaken by the learned Single Judge has not been established to be indicted by any law in the factual matrix of the present case.

21. Workers and management of the oil company had been discussing pay revision over a period of time. During such pay revision negotiations, unions of the oil company had repeatedly requested the Negotiating Committee to offer

Fitment benefit to workmen who joined services of the oil company in Grade I and Grade IV on and after January 1, 2017 till the date of signing of the settlement. The unions had signed a letter dated October 2, 2019 to such effect. On October 3, 2019 a Record Note of Discussion had been executed between the representative of the management and representative of the unions granting basic pay fixation for workmen who joined services of the oil company in regular scale on or after January 1, 2017 till October 3, 2019. A Long-Term Settlement had been entered into between the workmen and management of the oil company on October 3, 2019.

22. Clause 2.3 of the Long-Term Settlement dated October 3, 2019 has provided that workmen who joined the service of the oil company in regular scale of pay on or after January 1, 2017 shall be covered by the provisions of the Long-Term Settlement. However, the Fitment benefits shall not be admissible to them.

23. Although clause 2.3 of the Long-Term Settlement dated October 3, 2019 takes away the Fitment benefits to employees joining the services on or after January 1, 2017, the Record Note of Discussion dated October 3, 2019 allows Fitment benefits to be extended to the specified category of employees

who had joined the services on and from January 1, 2017 till October 3, 2019. In order to effectuate the Record Note of Discussion dated October 3, 2019 the oil company had issued the “Guidelines for Implementation”. Such “Guidelines for Implementation” if considered without the letter dated October 2, 2019 issued by the unions of the workmen of the oil company and the Record Note of Discussion dated October 3, 2019 would allow an inference that the same was arbitrarily issued by the management of the oil company. However such “Guidelines for Implementation” had been issued pursuant to the letter dated October 2, 2019 and the Record Note of Discussion dated October 3, 2019 and therefore, read in the correct factual matrix, the same cannot be termed as arbitrary.

24. Learned Single Judge has noted such aspects and proceeded to review the earlier judgement and order dated February 12, 2024.

25. In ***National Engineering Industries Ltd (supra)*** Supreme Court has noted that, a settlement of dispute between the parties themselves is to be preferred, where it could be arrived at, to industrial adjudication, as the settlement is likely to lead to more lasting peace than an

award. It has considered section 18 of the Industrial Disputes Act, 1947 and observed that there are 2 categories of settlements namely one that has been arrived at outside the conciliation proceedings and the other that has been arrived at in the course of the conciliation proceedings. It has also observed that a settlement which belongs to the first category has limited application compared to the second category. It has also observed that, the validity of a settlement can be questioned by raising an industrial dispute.

26. Appellants as writ petitioners have not invoked the provisions of the Industrial Disputes Act, 1947 to raise an industrial dispute within the meaning of such Act in respect of their claim for pay parity. Learned Single Judge has taken the view that, the Fitment benefits granted in terms of the agreement between the workers and the management of the oil company for employees appointed till October 3, 2019 was valid. Such view is plausible in the facts and circumstances of the present case. Therefore, we are not minded to upset the same.

27. ***Gurcharan Singh Grewal (supra)*** has been rendered in the context of an order issued by the State of Rajasthan directing payment of Beas Project Compensatory Allowance. In

the facts and circumstances of such case, it has been held that, the writ petitioners were denied the benefit of compensatory allowance arbitrarily and that they had been discriminated against persons who had been similarly placed.

28. *J P Chaurasia (supra)* has noted that, two scales of pay in the same cadre based on merit and experience is permissible. It has noted that the principle “equal pay for equal work” cannot be applied mechanically. It has to be read into Article 14 which allows reasonable classification. It has noted that, in service matters, merit or experience can be proper basis for classification. In the facts and circumstances of the present case, the appellants had joined the services beyond the cut off date of October 3, 2019. Cut off date of October 3, 2019 has been uniformly applied by the oil company. It has not been established that, persons granted appointment subsequent to October 3, 2019 have been afforded the Fitment benefit. Persons appointed on or prior to October 3, 2019 had been granted the Fitment benefits. Such persons are obviously senior to the appellants on the basis of date of appointment. Therefore, none of the appellants have been discriminated against.

29. In view of the discussions above, we have found no merit in the present appeal.

30. MAT 694 of 2024 along with CAN 1 of 2024 are dismissed without any orders to cost.

[DEBANGSU BASAK, J.]

31. I agree.

[MD. SHABBAR RASHIDI, J.]