

19.12.2024

Jayanta

57 & 58

CPAN 537 of 2024

Tuhin Chakraborty & Another

– *Versus* –

Rajib Bhattacharya

in

WPCT 84 of 2023

With

RVW 284 of 2024

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IA No.: CAN 1 of 2024

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IA No.: CAN 2 of 2024

**Regional Provident Fund Commissioner,
Employees' Provident Fund Organization & Another**

– *Versus* –

Tuhin Chakraborty & Another

in

WPCT 84 of 2023

Mr. Ujjal Ray,

Mr. Arpa Chakraborty,

Mr. D. Bandhu

Mr. Nirupam Dutta

... for the Petitioners/Opposite
Parties in RVW 284 of 2024.

Mr. Anil Kumar Gupta,

Mr. Jayanata Narayan Chatterjee,

Mr. Rajib Roy

... for the alleged Contemnor/
Review Applicants.

RVW 284 of 2024

Aggrieved by the order dated 12.12.2023 passed in the writ petition being WP.CT 84 of 2023, the present review application, being RVW 284 of 2024 along with applications being CAN 1 of 2024 and CAN 2 of 2024 has been filed.

Since we have invited Mr. Gupta, learned advocate appearing for the review applicants/respondents in the writ petition to advance his arguments on merits of the matter, the delay in preferring the review application is condoned. The application, being IA No.: CAN 1 of 2024 is, accordingly, disposed of.

Mr. Gupta submits that after the disposal of the writ petition on 20th December, 2023, the applicants acquired knowledge that the writ petitioners have suppressed material fact by not disclosing the value of the family's immovable assets worth Rs. 40,00,000/- and the writ petitioner no. 1, namely, Tuhin Chakraborty (hereinafter referred to as Tuhin) mentioned 'NO' in column (g) of the said proforma where the information relating to immovable properties was sought for. In support of such contention, he has drawn our attention to the documents annexed at pages 25 and 26 of the application being CAN 2 of 2024. Accepting such declaration to be true, Tuhin was recommended by the authorities for grant of compassionate appointment.

Drawing our attention to an *e-mail* annexed at page 33 of the application being CAN 2 of 2024, Mr. Gupta argues that in his application dated 5th March, 2014 Tuhin had suppressed the information about the value of the family's immovable assets and the approximate value of the immovable property was reported as Rs. 40,00,000/- *vide* report dated 29th September, 2016. Such information was not within the knowledge of the

Regional Level Committee which conducted the preliminary screening on 30th June, 2014. Such declaration given by Tuhin also does not tally with his declaration annexed at page 61 of the writ petition wherein the column seeking information of properties, was answered by Tuhin stating '*Ancestral Joint Property*'.

According to Mr. Gupta, the dismissal of the Special Leave Petition preferred by the review applicants does not debar them from filing the present review application.

Drawing our attention to the averments and annexures to the supplementary affidavit to the application being CAN 2 of 2024, Mr. Gupta argues that after filing of the review application, the review applicants collected two relevant documents being a deed of sale along with a deed of boundary declaration duly registered before the learned District Registrar, in respect of the ancestral property of the writ petitioners. The said documents were also not disclosed at the time of hearing of the writ petition though the execution of the said documents was within the knowledge of the writ petitioners. If such facts had been disclosed, the result of the writ petition would have been different.

Mr. Ray, learned advocate appearing for the writ petitioners denies and disputes the contention of the review applicants and submits that all the proforma declarations as submitted on behalf of the writ petitioners were annexed to the main writ petition and

that as such the allegation of suppression of material facts is absolutely unfounded. Neither at the time of hearing nor in the pleadings it was ever disclosed by the review applicants that they were having a report dated 29th September, 2016.

Drawing our attention to the document annexed at page 111 of the writ petition, Mr. Ray, submits that a perusal of the said document would itself reveal that to ascertain the financial status of the writ petitioners and on the direction of the competent authority, the Enforcement Officer (Area) VIII, Regional Office, Kolkata visited the writ petitioners' residence and in column 1(d) it was stated that *'Yes but holding joint property consisting of two room, tin shaded, house, with the brother of the deceased employee'*. Considering the said report, the screening committee recommended Tuhin's claim stating that *'The screening committee, after considering information available on record and discussion held with the candidate during interview unanimously recommended the candidature of Tuhin Chakraborty to the post of Social Security Assistant on compassionate ground'*. From the said documents it is thus explicit that on the date Tuhin's claim was recommended for compassionate appointment it was within the knowledge of the authorities that the writ petitioners were holding ancestral joint property consisting of two rooms.

He further argues that the ancestral joint property was handed over to a developer for promoting the same

and as possession was taken over, the writ petitioners were staying upon paying rent, as would be explicit from Tuhin's representation dated 23rd August, 2017 annexed at page 68 of the writ petition.

We have heard the learned advocates appearing for the respective parties and we have considered the materials on record.

Records would reveal that the writ petition was disposed on 20th December, 2023. As the said order was not been complied with, the writ petitioners preferred a contempt application which came up for hearing on 31st July, 2024, when this Court directed the petitioners to serve the contempt application upon the alleged contemnor. Thereafter when the matter appeared on 22nd August, 2024, the learned advocate appearing for the alleged contemnor submitted that a Special Leave Petition was preferred challenging the order dated 20th December, 2023 but the Hon'ble Supreme Court did not interfere with the order. He further submitted that steps have already been initiated to comply with the order passed and accordingly he prayed for a short adjournment. In view of such submission, the contempt application was adjourned and directed to appear on 10th September, 2024. Subsequent thereto, instead of complying with the order, the alleged contemnor filed the review application. The said application as well as the contempt application was thereafter taken up for hearing on 7th November, 2024 when this Court directed the

review applicants to produce the originals of the documents annexed to the review application and the writ petition. Pursuant to such direction, the original documents have been placed before this Court today.

Considering the proforma application submitted by Tuhin, the competent authority directed the concerned officer to conduct an inspection. Pursuant thereto, the concerned officer went to the writ petitioners' premises situated at C/13, Ramgarh, Post Office- Naktala and P.S. Netaji Nagar, Kolkata 700047 and issued a memo dated 21.05.2014 clearly stating that the writ petitioners were holding a joint property consisting of two rooms with the brother of the deceased employee. The said report was placed before the screening committee. In the order dated 30th June, 2014, the said report regarding financial and social status and other facts were perused and Tuhin's claim for compassionate appointment was recommended. The writ petitioners were all along residing at their joint property C/13, Ramgarh, Post Office- Naktala and P.S. Netaji Nagar, Kolkata 700047 and such fact was disclosed at the time of inspection. Subsequent development of the ancestral property cannot be termed as suppression.

The order dated 12th December, 2023 passed in the writ petition being WP.CT 84 of 2023 was challenged before the Hon'ble Supreme Court and the SLP was dismissed on 11th July, 2014. The said order runs as follows:

'Delay condoned.

In view of the fact that decision is with respect to an individual, we are not inclined to interfere with the judgment and order passed by the High Court. However, the submission made by Ms. Asha Gopalan Nair, learned counsel appearing for the petitioner(s) with respect to the applicability of the relevant policy is kept open for being considered in an appropriate case.

Hence, the Special Leave Petition is dismissed.

Pending application(s), if any, shall stand dispose of'.

It is only thereafter the review application was affirmed before this Court in the month of September, 2024 after submitting before this Court on 22.08.2024 that the respondents are taking steps to comply with the Court's order. The review application was filed substantially placing reliance upon a report dated 29th September, 2016. The said document was issued much prior to the disposal of the writ petition. In the said conspectus, it cannot be urged by the review applicants that in spite of exercise of due diligence, the said document could not be brought to the notice of this Court. All the documents, upon which relevance has been placed in the review application were lying with the respondents when the writ petition was finally heard. It is not a case that there was discovery of new documents after disposal of the writ petition. The review applicants have miserably failed to establish that any additional

matter came to their knowledge only after the writ petition was disposed of.

It is also not a case that the order suffers from any patent error apparent on the face of the records. Upon considering all the documents as placed and upon hearing the learned advocates appearing for the respective parties the writ petition was disposed of with a categorical direction upon the respondents to grant compassionate appointment to Tuhin within a period of four weeks from the date of communication of this order.

It is well settled that review is for a limited purpose. Review proceedings are not by way of appeal. Such review does not postulate a rehearing of the entire dispute because a party has not highlighted all the aspects of the case. Matters which ought to have been urged in course of hearing of the writ petition have been sought to be agitated afresh and that too after the self-same respondents expressed that they would be complying with the order since the SLP has been dismissed. Such conduct on the part of the review applicants is most unbecoming of an instrumentality of State.

In view thereof, we find no merit in the review application. RVW 284 of 2024 and the connected application being CAN 2 of 2024 are dismissed.

The original documents, as produced, have been handed over to Mr. Gupta.

CPAN 537 of 2024

The present application has been preferred alleging violation of the order dated 20th December, 2023 passed in the writ petition being WPCT 84 of 2023.

We have heard the learned advocates appearing for the respective parties and considered the materials on record.

Records reveal that the said order was duly communicated to the alleged contemnor.

Prima facie, it appears that the alleged contemnor is very reluctant to comply with the order of this Court dated 20th December, 2023.

In view thereof, let Rule be issued upon the alleged Contemnor, returnable on **15th January, 2024 at 3.00 p.m.**

Pendency of the Rule shall not preclude the aforesaid alleged contemnor from complying with the Court's order dated 20th December, 2023 in WPCT 84 of 2023.

Rule drawn up on
separate sheets

(Partha Sarathi Chatterjee, J.) (Tapabrata Chakraborty, J.)