



127 **IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

RA-LP-11-2019 (O&M)
Date of Decision: 22.08.2024

ANURAG VASHISHTHA (DECEASED) THROUGH LRS

.....Appellant

Versus

THE HARYANA FINANCIAL CORPORATION AND OTHERS

.....Respondents

CORAM : HON'BLE MR. JUSTICE DEEPAK SIBAL
HON'BLE MR. JUSTICE DEEPAK MANCHANDA

Present: Mr. Amar Vivek Aggarwal, Advocate,
 for the applicant/respondent No.1.

 Mr. P.K. Mutneja, Senior Advocate with
 Mr. Akshay Goel, Advocate, for the non-applicant/appellant.

* * * * *

DEEPAK MANCHANDA, J.

The applicant/respondent No.1 has filed the present review application under Section 114 read with Order 47 Rule 1 and 2 CPC for reviewing and recalling of judgment dated 23.10.2018 passed by this Court in LPA No.907 of 2017 arising out of CWP No.5314 of 2007.

2. The brief facts emanating from the pleadings of the case are that the appellant was working as an Additional General Manager with the applicant/respondent No.1 when allegations were made against him, being incharge of the leasing section, as well as against Sh. Ajit M.Sharan, IAS,



Managing Director and one Manisha Gupta, Leasing Manager of the applicant-respondent No.1 regarding irregularities and illegalities pertaining to the advancements of finances to various firms and companies. The appellant was placed under suspension vide order dated 11.08.1996, after which he was served with 17 charge-sheets. The other two officers mentioned above were also charge sheeted. Subsequently, the appellant was dismissed from service, which was challenged by him through a petition bearing CWP No.5314 of 2007 and the same was dismissed vide judgment dated 26.04.2017 passed by the learned Single Judge. Thereafter, the appellant preferred a Letters Patent Appeal being LPA No.907 of 2017 against the judgment dated 26.04.2017, which was allowed by this Court, vide order dated 23.10.2018 resulting in the setting aside of the judgment dated 26.04.2017 passed by the learned Single Judge. The applicant-respondent No.1 has filed the present application seeking review of judgment dated 23.10.2018 passed by this Court in LPA No.907 of 2017.

3. Learned counsel for applicant-respondent No.1 while referring to ground No.5 of the present application contends that no prejudice was caused to the appellant due to appointment of the Inquiry Officer where the principles of natural justice were duly followed and the appellant was given a fair opportunity of being heard and to lead evidence. He further contends that the appellant always had an option of engaging a legal practitioner to present his case during the departmental enquiry but he chose not to do so. The applicant/respondent No.1 was under no obligation to provide him a counsel to present his case and it is he who neither exercised his legal rights



nor made any such prayer before the appropriate authority at any moment. He further contends that the appellant cannot take a plea of unfairness at a later stage. Learned counsel submits that this submission was duly advanced before this Court during arguments but was not considered which clearly constitutes an error apparent on the face of the record. Hence, the judgment dated 23.10.2018 passed by this Court deserves to be reviewed and recalled in the interest of justice.

4. On the other hand, learned senior counsel for the non-applicant-appellant submits that learned counsel for applicant/respondent No.1 has failed to point out any error apparent on the face of the record and that the judgment passed by this Court needs no interference as the same has been passed on the settled principles of law.

5. Heard.

6. The present application has been filed seeking review of the judgment dated 23.10.2018 passed by this Court in LPA No.907 of 2017 on the sole ground that during the course of the departmental proceedings against the appellant the principles of natural justice were duly followed by the respondent department and this aspect was not considered by this Court while passing the judgment dated 23.10.2018.

7. A perusal of the judgment dated 23.10.2018 would show that arguments raised by the learned counsel for the applicant/respondent No.1 are misconceived and are in contrast, whereas it had been specifically observed by this Court while passing the judgment under review that the appellant had raised an objection against the appointment of the inquiry



officer and it was incumbent upon the applicant-corporation to take notice of this direct conflict of interest in the appointment and continuation of the inquiry officer but the same was not done. It was further observed in the judgment under review that the learned Single Judge did not advert to this aspect which amounts to a gross violation of the principles of natural justice, as the inquiry by a person, who himself stood to gain in seeking justification of the appellant's conduct, would naturally find a scapegoat to escape the consequences. In this regard, the relevant paras of judgment dated 23.10.2018 passed by this Court in LPA No.907 of 2017 are reproduced herein below:

“xxx xxx

It is not the case where the appellant did not raise any objection to the appointment of Sh. Sudhir Verma as an Inquiry Officer and once it has been raised, it was incumbent upon the Corporation to take notice of this direct conflict of interest offered in the appointment and continuation of Sh. Sudhir Verma as an Inquiry Officer.

Learned Single Judge has not even adverted to this aspect. This to our minds is a gross violation of principles of natural justice as the Inquiry by a person, who himself stood to gain in seeking a justification of his conduct, would naturally find a scapegoat to escape the consequences.

xxx xxx

In Ramesh Chandra's case (supra), a retired Judge, who was appointed as an Inquiry Officer, had represented the University as a counsel. While deprecating the appointment of Hon'ble retired Judge, the proceedings against the delinquent were set aside.

In the case in hand, the situation is on a far surer footing than the one offered in Ramesh Chandra's case (supra). Here,



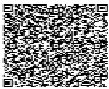
there was a case where the Inquiry Officer had himself misconducted by clearing the collateral securities, that were eventually found to be fake. Therefore, his appointment as an Inquiry Officer has clearly resulted in gross prejudice to the appellant. That apart we also notice an eternal bias in this process where the superior officer has been exonerated altogether and the other delinquent, Manisha Gupta, let off lightly, with the entire blame foisted on the appellant in a manner, which speaks of extreme arbitrariness and partiality. We are, thus, of the opinion that learned Single Judge has failed to take into account these crucial issues that have a far-reaching effect on the controversy. As observed earlier the appointment of a biased Inquiry Officer and the resultant process leading to the subsequent orders on the basis of such findings are not sustainable, we, therefore, accept the appeal and set aside the impugned judgment as also orders the orders dated 17.02.2000 and 17.07.2006.

Consequently, the appellant is held entitled to all service benefits that he would have gained, otherwise had the impugned orders of dismissal not intervened.

All the benefits be released to the appellant within a period of four months from today.”

8. Apart from the above, the jurisdiction in review is limited. 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 reviewed only 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.

9. Keeping in view the fact that learned counsel for the applicant-respondent No.1 has failed to point out in the instant case if there is any



error apparent on the face of the record, no ground is made out to review the judgment in question and the review application is accordingly dismissed.

10. All pending miscellaneous application(s) also stand disposed of.

(DEEPAK MANCHANDA)
JUDGE

(DEEPAK SIBAL)
JUDGE

22.08.2024
vanita

Whether Speaking/Reasoned : Yes/No

Whether Reportable : Yes/No