

IN THE HIGH COURT OF PUNJAB & HARYANA  
AT CHANDIGARH

\*\*\*\*

RA-CW-322-2019 in  
CWP-6992-1994  
Reserved on : August 21, 2024  
Pronounced on : September 03, 2024

J. C. Chawla

..... Petitioner

Versus

State of Punjab and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE NAMIT KUMAR

Present: Mr. Satya Pal Jain, Senior Advocate with  
Mr. Sahil Garg, Advocate  
for the applicant/petitioner.

Mr. Rajesh Sehgal, Addl. A.G., Punjab  
for Respondent Nos.1 and 2.

Mr. Sangram Singh Saron, Advocate  
for Respondent Nos.3 and 4.

None for Respondent No.5.  
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NAMIT KUMAR, J. (Oral)

1. The instant review application has been filed by the review-applicant/  
petitioner under Order 47 Rule 1 read with Section 151 CPC seeking review of  
the order dated 15.05.2019 (Annexure A-1) passed in CWP No.6992 of 1994,  
whereby the writ petition filed by the petitioner has been dismissed by recording  
the following findings:-

xxx xxx xxx xxx

“ 6. Vide order dated 05.12.2013, the petitioner was directed to  
file an affidavit disclosing the source of his livelihood during  
pendency of the writ petition and further to inform whether he was  
employed during all this period so that equities can be balanced by  
this Court, while deciding the issue raised in the petition. Pursuant

*thereto, the petitioner filed an affidavit dated 15.07.2014, stating that in October, 1976 he had accepted an assignment as an Expert in Indian Technical & Economic Cooperation Program (ITECP) and subsequent thereto he was granted extensions from time to time, except in the year 1984 when his services were abruptly terminated. The petitioner has further deposed that on his return from Yemen, he has been working from 1985 till 2006 with Apeejay School, Faridabad and other institutions and lastly worked at Dayawati Modi Public School, Modinagar and has given the details of salary drawn from time to time and the total thereof comes to Rs.30,02,600/-.*

7. *Learned counsel appearing for respondent College submitted that in view of the conceded position deposed in the affidavit, the present writ petition is liable to be dismissed on the short ground that the petitioner himself abandoned his service and, therefore, cannot take advantage of his own wrong to claim arrears of wages without performing any work. Learned counsel specifically relies on letter dated 19.04.1994 (Annexure P-19) issued by the College to the petitioner, wherein it has been stated that owing to his having abandoned the job, the College was compelled to confirm Sh. Satish Gupta as Lecturer in Chemistry w.e.f. 11.08.1979, duly approved by DPI vide letter dated 31.01.1983.*

8. *Learned counsel for the respondent further submitted that said Sh. Satish Gupta has successfully completed his tenure and has superannuated. He was appointed on the same post, which the petitioner himself abandoned for his own reasons, which are not attributable to the respondent-College.*

9. *He further contended that even otherwise, qua the claim of the petitioner towards arrears of salary, the writ petition has also been rendered infructuous as the affidavit discloses that he was gainfully employed throughout and is not entitled to any salary. They further rely on principle of 'no pay no work' and submit that the petitioner cannot take advantage of order dated 14.12.1989 (Annexure P-1) passed by the DPI(Colleges), which was passed on the premise that*

*the services of the petitioner were dispensed with without holding any proper enquiry.*

10. *Learned counsel for respondents submit that the petitioner had abandoned the job by his own conduct and self volition, therefore, order dated 14.12.1989 passed by DPI(C) could not be implemented as the petitioner did not join duties despite affording of ample opportunities. According to them, the other prayers made in the writ petition have been rendered infructuous.*

11. *Learned counsel for the respondents placed reliance on a judgment rendered by Hon'ble the Apex Court in **Aligarh Muslim University & Ors. Vs. Mansoor Ali Khan, 2000(7) SCC 529**, the relevant extract whereof reads as under:-*

*“19. Coming back to the first case of Mr. Mansoor Ali Khan, admittedly, no notice under Rule 5(8)(i) of the 1969 Rules has been given. There is, therefore, violation of principles of natural justice as notice contemplated in Rule 5(8)(i) has not been given. Question as to whether the order deeming that he vacated office is correct or not, will have to be then decided. We shall decide that point under point 5. We decide accordingly against Mr. Murshad Hussain Khan and partly in favour of Mr. Mansoor Ali Khan under point 4.*

*Point 5:*

*20. This is the crucial point in this case. As already stated under point 4, in the case of Mr. Mansoor Ali Khan, notice calling for an explanation had not been issued under Rule 5(8)(i) of the 1969 Rules. Question is whether interference is not called for in the special circumstances of the case?*

*21. As pointed recently in M.C. Mehta Vs. Union of India (1999 (6) SCC 237), there can be certain situations in which an order passed in violation of natural justice need not be set aside under Article 226 of the Constitution of India. For example where no*

*prejudice is caused to the person concerned, interference under Article 226 is not necessary. Similarly, if the quashing of the order which is in breach of natural justice is likely to result in revival of another order which is in itself illegal as in Gadde Venkateswara Rao vs. Government of Andhra Pradesh [1966 (2) SCR 172 = AIR 1966 SC 828], it is not necessary to quash the order merely because of violation of principles of natural justice.”*

*12. Learned counsel for the respondent submit that above judgment is squarely applicable to the present case as in the judgment relied upon by them the delinquent had abandoned his job since he had gone to work in Libia, likewise in the present case, the petitioner had abandoned the job to work in Yemen and on return had started working with other institutions.*

*13. I am in agreement with the submissions of learned counsel for respondent, as noted above and also the judgment relied on by him. I do not find any ground to interfere in the matter. The writ petition is accordingly dismissed.*

*No order as to costs. ”*

**xxx                      xxx                      xxx                      xxx**

2.                      In the instant review application, the following averments have been made:-

**xxx                      xxx                      xxx                      xxx**

*“ 3. That in the order dated 15.05.2019 (Annexure A-1), an apparent error has occurred. In para no.5 of the order it is recorded that after passing the order dated 14-12-1987 (Annexure P-1), passed by DPI (C), the applicant/petitioner never came personally to join his duties despite being asked and since the applicant/petitioner did not resume the duties, Sh. Satish Kumar Gupta (respondent no.5) was appointed in his place.*

4. *That the contentions of the respondents, as recorded in Para No.5, is not in conformity with the stand actually taken by the respondents in their written statement and is also contrary to the various documents already on record. The petitioner specifically averred in the petition that he personally appeared in the college to join his duties. In this regard, it is further submitted that after passing the order dated 14-12-1989 (Annexure P-1), the applicant/petitioner submitted joining report dated 2-1-1990 (Annexure P-2) and also sent reminder dated 23-5-1990 (Annexure P-3) for re-joining.*

5. *That as the applicant/petitioner was not allowed to join the duties, he filed a petition dated 8-3-1991 under Section 9 of the Punjab Affiliated Colleges (Security of Service) Act, 1974 for issuance of direction to release the amount of arrears before the Secretary to Government of Punjab, Department of Education, Chandigarh. Thereafter, the applicant/petitioner filed a CWP No. 10743 of 1993, which was disposed off by the Hon'ble Court vide order dated 6-9-1993 (annexure P-9) with a direction to decide the petition dated 8-3-1991 (Annexure P-5) within 3 months.*

6. *That after passing of the order dated 6-9-1993, the Government of Punjab, Education Department wrote a letter dated 6-1-1994 (Annexure P-12) to the Chairman, Managing Committee, Guru Nanak College, Ferozepur Cantonment to permit the applicant/petitioner to report for duty as lecturer in Chemistry and also pay him all the arrears of salary with all consequential benefits. The applicant/petitioner also submitted applications dated 13-1-1994 (Annexure P-3) and 14-2-1994 (Annexure P-14) with a request to allow him to join his duties.*

7. *That as the applicant/petitioner was not allowed to join his duties, he also appeared in person before the Principle Guru Nanak College and submitted letter dated 11-4-2019 (Annexure P- 17) to allow him to join his duties and pay*

*arrears.*

8. *That keeping in view the above facts, on 5-12-2013, this Hon'ble Court directed the applicant/petitioner to file an affidavit as to what was the source of his livelihood and whether he was employed during all this period so that the equities can be balanced by the Hon'ble Court while deciding the issue. Apart from above, in the order dated 5-12-2013, this Hon'ble Court also observed that it is not disputed that the termination order dated 13- 3-1984 was set aside in appeal on 14-12-1989 (Annexure P-1) and the period from 3-8-1983 to 14-1-1983 was treated as leave of kind due. The management did not permit applicant/petitioner to join, even a direction was issued by the State Government directing the Managing Committee to permit him to join duty and pay him arrears of salary.*

9. *That, in fact, the respondents themselves claimed in their reply that negotiations were allegedly going on with the petitioner. The petitioner had personally come present in the college number of times but the Principal of the College was pressuring the petitioner to go and meet the President of the Managing Committee at his residence, which is also admitted by them in the written statement. Therefore, the contentions of the respondents recorded in the order that the petitioner never personally came to join service and had allegedly abandoned his job, is contrary to the stand taken by them in the written statement.*

10. *That, from the above, it is evident that the contentions recorded in the order dated 15-5-2019 (Annexure A-1) that the applicant/petitioner never came personally to join his duties despite being asked or that he abandoned his job, is contrary to the record. As such, the order dated 15-5-2019 (Annexure A-1) deserves to be reviewed/re-called, in the interest of justice.*

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**xxx**

**xxx**

**xxx**

3. Notice of the review application was issued on 10.01.2023 and pursuant thereto, reply on behalf of Respondent Nos.3 and 4 has been filed.

4. During the course of arguments, learned Senior counsel for the petitioner intended to re-argue the main case, which is not the scope of review application, since it is a settled proposition of law that an application for review is entertained only on the grounds mentioned in Order 47 Rule 1 of the Code of Civil Procedure, if there is an error apparent on the face of record.

5. The Hon'ble Supreme Court in a recent Judgement in the case titled as ***“Sanjay Kumar Aggarwal versus State Tax Officer & another and connected matters” (2024) 2 SCC 362***, while examining the scope of review, has held as under:-

xxx                      xxx                      xxx                      xxx

“ 16. The gist of the afore-stated decisions is that: -

- (i) A judgment is open to review inter alia if there is a mistake or an error apparent on the face of the record.
- (ii) A judgment pronounced by the Court is final, and departure from that principle is justified only when circumstances of a substantial and compelling character make it necessary to do so.
- (iii) An error which is not self-evident and has to be detected by a process of reasoning, can hardly be said to be an error apparent on the face of record justifying the court to exercise its power of review.
- (iv) In exercise of the jurisdiction under Order 47 Rule 1 CPC, it is not permissible for an erroneous decision to be “reheard and corrected.”
- (v) A Review Petition has a limited purpose and cannot be allowed to be “an appeal in disguise.”
- (vi) Under the guise of review, the petitioner cannot be permitted to reagitate and reargue the questions which

*have already been addressed and decided.*

*(vii)An error on the face of record must be such an error which, mere looking at the record should strike and it should not require any long-drawn process of reasoning on the points where there may conceivably be two opinions.*

*(viii)Even the change in law or subsequent decision/ judgment of a co-ordinate or larger Bench by itself cannot be regarded as a ground for review. ”*

**xxx                      xxx                      xxx                      xxx**

6.                      To the same effect are the Judgements passed by the Hon'ble Supreme Court in '*Tamilnadu Terminated Full Time Temporary LIC Employees Association versus S.K. Roy, the Chairman, Life Insurance Corporation of India and another*' 2016 (4) SCT 288, and in '*State of West Bengal and others versus Kamal Sengupta and another*' 2008 (8) SCC 612.

7.                      Since, learned Senior counsel for the review-applicant / petitioner has not been able to make out a case of any mistake or error apparent on the face of record in the impugned judgment and to bring the case within the parameters laid down by Hon'ble Apex Court in “*Sanjay Kumar Aggarwal* ” case (*Supra*) and findings recorded in '*Kamal Sen Gupta*' and '*S.K. Roy, the Chairman LIC*' cases (*Supra*), therefore, this Court is of the opinion that the well-considered judgment sought to be reviewed does not fall within the scope and ambit of review and consequently the present review application is hereby dismissed.

**September 03, 2024**  
*mkkoundal*

**(NAMIT KUMAR)**  
**JUDGE**

***Whether speaking/reasoned :                      Yes/No***  
***Whether reportable :                      Yes/No***