

141 18-07-2025
AKG
Ct. 15

RVW 133 of 2015
+
CAN 2 of 2022
CAN 3 of 2022
in
WPA 18505 of 2004

Achintya Kumar Sarkar
Vs.
The State of West Bengal & Ors.

Mr. Chitta Ranjan Panda,
Mr. N. C. Bhandary
...for the Petitioner

Mr. Arindam Chattopadhyay,
Ms. Lipika Chatterjee
...for the State

In Re: CAN 2 of 2022

This is an application for substitution. The applicant is the daughter of the original writ petitioner. The applicant is a major and has a right to sue that survives on her.

Accordingly, **CAN 2 of 2022** stands allowed.

In Re: CAN 3 of 2022

This is an application for condonation of delay in preferring the review application. There appears to be a delay of 1010 days in filing the review.

However, having regard to the averments made in paragraph nos. 7 to 12 of the application, I am satisfied that the petitioner was prevented by sufficient cause particularly, due to the Covid-19 pandemic, from filing the review application within the prescribed period.

Accordingly, **CAN 3 of 2022** stands allowed.

In Re: RVW 133 of 2015

By filing this review application, the applicant seeks to review the order dated March 31, 2015, passed in WPCRC 24024 (W) of 2006 (Achintya Kumar Sarkar vs. Mr. Suvendu Ghosh & Anr.), whereby the learned Judge was pleased to discharge the contempt rule issued against the alleged contemnor.

The contempt proceeding arose out of the order dated September 7, 2005, passed in W.P. No. 18505 (W) of 2004. By the said order, a co-ordinate Bench of this Court directed as follows:

“In this writ petition, the petitioner has retired from his service long back but he has not got any pensionary benefits as yet.

In this case, the school authority will send all the papers before the D.I. of Schools (SE), relating to the pensionary benefits of the petitioner within four weeks from the date of communication of this order, if not already completed. After getting the papers from the school authority, the D.I. of Schools will process the papers within a period of two weeks and send it to the Director of Pension, Provident & Group Insurance, Purta Bhavan, Salt Lake City, Calcutta – 91. After getting the papers the director will release the pension payment order within four weeks from the date of receipt of the papers from the D.I. of Schools. The Treasury Officer will release the amount within a week from the date of receipt of the P.P.O. While calculating the amount the authority will also calculate the interest @ 10% per annum on the gratuity amount from the date of retirement till the date of actual disbursement, if he is otherwise entitled in law.

The dates mentioned above are peremptory in nature.

The writ petition is disposed of without any order as to costs.

Urgent Xerox certified copy of this order be supplied to the parties, if applied for.”

Pursuant to the said order, the original writ petitioner initiated a contempt proceeding for its alleged violation. However, as mentioned above, the learned Judge discharged the rule on March 31, 2025, with the following order:

“Mr. Ganguly, learned Counsel appearing for the alleged contemnors, submits that the money, which was paid second time to the writ petitioner/applicant, was refunded by the writ petitioner. Communication dated 19th March, 2015, by the Additional Treasury Officer, Treasury-1, Krishnagar, Nadia, to this effect filed in Court today be kept in records.

Accordingly, the Rule issued earlier stands discharged and the contempt application is disposed of.

Personal appearance of the alleged contemnors are dispensed with.”

When the matter was taken up for hearing, this Court raised the issue of maintainability of the present review application, as the Contempt of Courts Act, 1971 does not provide for a remedy of review against an order discharging a contempt rule.

Learned counsel appearing for the review applicant submits that the present review application should be treated as an application for recall or modification of the order dated March 31, 2015. It is argued that merely citing the wrong provision would not be fatal if the Court has the

jurisdiction to pass appropriate orders under another provision of law. It is further submitted that the writ Court possesses inherent jurisdiction to make necessary orders in the interest of justice, and that such power should be exercised in the present case.

I am unable to accept the argument advanced on behalf of the petitioner. While it is true that an incorrect reference to a statutory provision does not necessarily bar the Court from granting relief, this case presents a jurisdictional issue, not a mere incorrect mention of a legal provision. The grounds for review and recalling of an order are different. Therefore, a review application cannot be considered to be a recalling application.

The Contempt of Courts Act, 1971 provides only a remedy of appeal under Section 19 when a Court punishes a person for contempt. The statute does not contemplate any remedy of review where the Court has discharged a contempt rule.

In that view of the matter, I am of the opinion that this review application is not maintainable.

Accordingly, there is no ground to entertain the review application, nor can it be treated as one for recall or modification.

RVW 133 of 2015 is, therefore, dismissed.

Urgent certified *website* copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Kausik Chanda, J.)