2023 STPL(Web) 28 HP
HIGH COURT OF HIMACHAL PRADESH

(HON'BLE MR. JUSTICE SATYEN VAIDYA, J.)

CHAMPAVATI

Petitioner

VERSUS

STATE OF H.P. & ORS.

Respondents

SAFRA RAM KAPOOR

Petitioner

VERSUS

STATE OF H.P. & ORS.

Respondents

RPT No. 13 of 2020 a/w RPT No.14 of 2020-Decided on 14-7-2023.

Service Law, Practice and Procedure
Service Law - Modification of order not allowed in review –Modification in relief – Held: A review petition, it must be remembered has a limited purpose and cannot be allowed to be "an appeal in disguise". Petition dismissed.

(Para 4, 10, 11)

Advocate(s): For the Petitioners: Mr. Y. P. Sood, Advocate.
For the Respondents: Ms. Sharmila Patial, Addl. A.G.

JUDGMENT

Satyen Vaidya, Judge. Both the aforesaid petitions are being decided by a common order as identical questions of facts and law are involved.

2. Petitioner in RPT No. 13 of 2020 had approached the H.P. State Administrative Tribunal (for short "the Tribunal") by way of O.A. No. 67 of 2017 and petitioner in RPT No.14 of 2020 had approached the learned Tribunal by way of O.A. No. 72 of 2017. In both the petitions, the reliefs were identically prayed as under:

> "(a) That the rejection of the claim of the applicant by the respondent No.3 Additional Director, Treasuries, Accounts & Lotteries HP vide letter No. Fin(TR)b(15)18/ 75VIIILoose/ 4030 dated 7.11.16 as well as of respondent No.2 vide reply to notice No. Fin (TR) (5)1/2008Loose/ 371/1322017 dated 13th February, 2017 kindly be ordered to be quashed.
>
> (b) That the respondents be directed to pay ACPS arrear bill to the applicant from 02.08.2008 to 31.07.2016 submitted to the District Treasury Officer, Chamba District Chamba HP and returned

vide letter Endst. No.5133 Fin (TR) CBA.Try. Bill2015/ 5133 dated 8.11.2016 with penal interest @12% per annum."

3. Both the petitions were decided by the learned Tribunal on 26th March, 2018, exactly in the same terms, though by separate orders. The petitions were allowed in following terms:

> "3. Consequently, the original application is allowed and the respondents are directed to release the financial benefit under ACPS to the applicant with effect from 27.08.2009 to 09.08.2012 on actual basis within two months from the date of production of certified copy of this order."

4. By way of instant petitions, the orders dated 26.03.2018 passed in O.A. Nos. 67 of 2017 and 72 of 2017 are sought to be reviewed on the ground that an error has occurred therein. As per petitioners, learned Tribunal instead of granting the relief of financial benefits for the period 01.11.2004 to 04.06.2012 in O.A. No. 67 of 2017 granted the relief for the period 27.08.2009 to 09.08.2012 and similarly in O.A. No. 72 of 2017 the relief was granted for the same period i.e. 27.08.2009 to 09.08.2012 instead of 02.08.2008 to 31.07.2016. Thus, the petitioners have prayed for modification of aforesaid orders to the above extent.

5. The prayer of the petitioners is opposed by the respondents on the ground that as per the defence raised by the respondents in O.A. Nos. 67 of 2017 and 72 of 2017, the entitlement of the petitioners was admitted for financial benefits under ACPS scheme w.e.f. 27.08.2009 on notional basis and from 09.08.2012 on actual basis. The respondents have further submitted that the learned Tribunal while passing orders dated 26.03.2018 in O.A. Nos. 67 of 2017 and 72 of 2017 had taken into account 27.08.2009 as the date from which the petitioners were entitled to the benefit under the ACPS scheme and it was thereafter that the learned Tribunal had proceeded to adjudicate the matter in issue.

6. I have heard the learned counsel for the parties and have also carefully gone through the records. 7. Delay, if any, in filing the review petitions is condoned.

8. Orders dated 26.03.2018 passed in O.A. Nos. 67 of 2017 and 72 of 2017, reveal that the learned Tribunal had proceeded to pass the orders by taking into consideration the following facts vide para2 of the orders as under:

> "2. It is not in dispute that the applicant was held entitled to ACPS benefit with effect from 27.08.2009. The benefit was ordered to be granted notionally with effect from 27.08.2009 and on actual basis from the date of issuance of the order. The stand of the respondents that the benefit under the ACPS is payable from the date of issuance of the order is not tenable."

9. Thus, Original Applications filed by the petitioners were decided on merits by taking into consideration defence raised by the respondents. By way of instant petitions, petitioners are seeking relief which definitely requires a process of rethinking on the merits of the case of the rival parties. It was not a case where the respondents had admitted the claim of the petitioner as it is.

10. The scope of review of judgment is quite restrictive. It definitely cannot extend to grounds on which an appeal can be preferred. The scope of interference is only if any error on the face of record is found to exist or some new and important material becomes available which despite due diligence could not be produced. This Court in exercise of jurisdiction under Article 226 of the Constitution, can also review its decisions on any other sufficient grounds. The scope of interference by way of review of judgment has been explained as under: In State of Rajasthan v. Surendra Mohnot, (2014)14 SCC 77, it was held as under:

22. In Aribam Tuleshwar Sharma v. Aribam Pishak Sharma (1979) 4 SCC 389, the twoJudge Bench speaking through Chinnappa Reddy, J. observed thus: (SCC p. 390, para 3)

> "3. … It is true as observed by this Court in Shivdeo Singh v. State of Punjab AIR 1963 SC 1909, there is nothing in Article 226 of the Constitution to preclude a High Court from exercising the power of review which inheres in every court of plenary jurisdiction to prevent miscarriage of justice or to correct grave and palpable errors committed by it. But, there are definitive limits to the exercise of the power of review. The power of review may be exercised on the discovery of new and important matter or evidence which, after the exercise of due diligence was not within the knowledge of the person seeking the review or could not be produced by him at the time when the order was made; it may be exercised where some mistake or error apparent on the face of the record is found; it may also be exercised on any analogous ground. But, it may not be exercised on the ground that the decision was erroneous on merits. That would be the province of a court of appeal. A power of review is not to be confused with appellate powers which may enable an appellate court to correct all manner of errors committed by the subordinate court."

23. In Thungabhadra Industries Ltd. vs. State of A.P. AIR 1964 SC 1372, while dealing with the concept of review, the Court opined thus:

> "11. … A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected, but lies only for patent error. We do not consider that this furnishes a suitable occasion for dealing with this difference exhaustively or in any great detail, but it would suffice for us to say that where without any elaborate argument one could point to the error and say here is a substantial point of law which stares one in the face, and there could reasonably be no two opinions entertained about it, a clear case of error apparent on the face of the record would be made out."

24. In Northern India Caterers (India) Ltd. v. Lt. Governor of Delhi (1980) 2 SCC 167, R.S. Pathak, J. (as His Lordship then was) while speaking about jurisdiction of review observed that:

> "8. … it is beyond dispute that a review proceeding cannot be equated with the original hearing of the case, and the finality of the judgment delivered by the Court will not be reconsidered except 'where a glaring omission or patent mistake or like grave error has crept in earlier by judicial fallibility'."

25. To appreciate what constitutes an error apparent on the face of the record, the observations of the Court in Satyanarayan Laxminarayan Hegde v. Mallikarjun Bhavanappa Tirumale AIR 1960 SC 137 are useful:

> "An error which has to be established by a longdrawn process of reasoning on points where there may conceivably be two opinions can hardly be said to be an error apparent on the face of the record. Where an alleged error is far from selfevident and if it can be established, it has to be established, by lengthy and complicated arguments, such an error cannot be cured by a writ of certiorari according to the rule governing the powers of the superior court to issue such a writ."

In Inderchand Jain v. Motilal, (2009) 14 SCC 663, the Hon'ble Supreme Court held as under:

10. It is beyond any doubt or dispute that the review court does not sit in appeal over its own order. A rehearing of the matter is impermissible in law. It constitutes an exception to the general rule that once a judgment is signed or pronounced, it should not be altered. It is also trite that exercise of inherent jurisdiction is not invoked for reviewing any order.

11. Review is not appeal in disguise. In Lily Thomas v. Union of India (2000) 6 SCC 224 this Court held:

> "56. It follows, therefore, that the power of review can be exercised for correction of a mistake but not to substitute a view. Such powers can be exercised within the limits of the statute dealing with the exercise of power. The review cannot be treated like an appeal in disguise."

10. Thus, this Court while considering the review petition will neither sit as a Court of appeal nor enter into an arena where the process of rethinking is involved. In Parsion Devi v. Sumitri Devi, (1997) 8 SCC 715 Hon'ble Supreme has explained the term "error apparent on the face of record" as under "Under Order 47 Rule 1 CPC a judgment may be open to review inter alia if there is a mistake or an error apparent on the face of the record. An error which is not selfevident and has to be detected by a process of reasoning, can hardly be said to be an error apparent on the face of the record justifying the court to exercise its power of review under Order 47 Rule 1 CPC. In exercise of the jurisdiction under Order 47 Rule 1 CPC it is not permissible for an erroneous decision to be "reheard and corrected".

A review petition, it must be remembered has a limited purpose and cannot be allowed to be "an appeal in disguise".

11. In the given facts of instant petitions, petitioners have failed to make out a case for review. There is no error apparent on the face of record. The contention raised on behalf of petitioners, if acceded to, will amount to reconsideration of the case on merits, which is outside the purview of review jurisdiction.

12. In result, there is no merit in the petitions and the same are dismissed. Pending applications, if any, also stand dismissed.
