

CASE NO.:
Appeal (civil) 6101-6102 of 2005

PETITIONER:
Rajender Singh

RESPONDENT:
Lt. Governor, Andaman & Nicobar Islands & Ors.

DATE OF JUDGMENT: 04/10/2005

BENCH:
Ruma Pal & Dr. AR. Lakshmanan

JUDGMENT:
J U D G M E N T
(Arising out of S.L.P. (Civil) Nos. 11817-11818 OF 2004)
Dr. AR. Lakshmanan, J.

Leave granted.

These two appeals are directed against the final judgment and order dated 22.12.2003 passed in W.P.C.T. No. 214 of 2003 by the High Court of Calcutta, Circuit Bench at Port Blair by which the High Court allowed the writ petition by dismissing the petition of the appellant herein before the Central Administrative Tribunal in which the appellant herein succeeded and judgment and order dated 20.2.2004 passed by the High Court of Calcutta, Circuit Bench at Port Blair in Review Petition bearing RVW No. 003 of 2004 by which the High Court dismissed the review petition filed by the appellant.

The short facts, which are relevant for the disposal of these two appeals, are as follows:

The appellant has been working continuously since 23.09.1976 as a Lecturer. He filed an application for regularisation of his service. The Tribunal disposed of the application with a direction to grant study leave within a period of three years vide order dated 17.6.1987. The operative part of the order reads as follows:

"Hence, it is ordered that the applicant be given an opportunity to acquire M.Phil degree from a recognised university within a period of three years and for that purpose study leave of sufficient length should be given to the applicant. If the applicant fails to acquire the M.Phil degree even after being given this opportunity, the Government will be at liberty to terminate his services. If the applicant is able to acquire the M.Phil degree he should be regularised immediately after he gets the M.Phil degree."

The appellant being aggrieved due to the inaction of the respondents, filed O.A. No.79 and 80/A&N/1998 for regularisation of his service and award of Senior Scale and selection grades on 24.11.1998. O.A.No. 80/A&N/1998 was disposed of at the admission stage with a direction upon the respondents to pass reasoned and speaking order for award of selection grade. Pursuant to the said judgment, the respondents passed Order No. 582 dated 19.2.1999.

The appellant filed O.A.No. 17/A&N/1999 challenging order No. 582 dated 19.2.1999 for award of senior scales and selection grades which was disposed of on 14.2.2001 with a direction upon the Union Public Service Commission to decide the matter of regularisation latest by 31.3.2001. The order reads as follows:

"Accordingly, we dispose of the OA with a direction that UPSC should decide the matter and communicate the decision to the applicant latest by 31.3.2001 and while doing so the observation made in para 13,14,15 of the earlier decision in O.A 107/A&N/99 in which UPSC was also a party should be kept in view. If the applicant is aggrieved by the decision of the authorities he will be at liberty to approach this Tribunal again. There will be no order as to costs."

The respondents regularised the service vide order dated 26.8.1999 regularizing the services w.e.f. 12.3.1993 i.e. from the date of issue of mark sheet of M.Phil. Being

aggrieved with the respondents for not upholding their own order, the appellant withdrew O.A.No. 79/A&N/1998 and filed fresh O.A.No.107/A&N/1999 dated 6.10.1999 for regularisation of his service w.e.f. 23.9.1976 and the said application was disposed of by the Tribunal by order dated 7.7.2000 with the direction to the respondents to regularize service of the appellant w.e.f. 23.9.1976 awarding cost of Rs.25,000/-. The order reads thus:

"We also take note of the fact that this petitioner has been unnecessarily harassed by the respondent authorities compelling him to approach this Tribunal once again in the matter of regularisation of his service without any lawful reason on the part of the respondent authorities for which the petitioner deserves exemplary cost.

The OA is allowed. The impugned order dated 26th August,1999 is hereby set aside. The respondent authorities are directed to regularise the service of the petitioner with effect from the date of his initial appointment as lecturer i.e. 23.9.1976 by issuing appropriate order and grant him all consequential service benefits within a period of six weeks from the date of communication of this order. We also direct the respondents to pay cost of Rs.25,000/- to the petitioner within the aforesaid period."

The respondents preferred an appeal against the order in O.A.No. 107/A&N/1999 and the appeal was disposed of by the High Court vide order dated 21.8.2000 directing the respondents to reconsider the case of the appellant afresh and to grant benefits to the appellant to which the appellant is entitled to in view of peculiar

facts and circumstances of the case. The High Court also upheld the cost and in view of the conduct of the respondents gave liberty to the appellant to file suit for damages. The appellant being aggrieved due to the denial of the award of senior scale and selection grades filed fresh O.A. No. 90 of 2002 which the Tribunal disposed of by its order dated 3.9.2003 which reads as follows:

"In view of the above, we allow this application with following directions to the respondent authorities:-

(i) To consider and issue necessary order giving seniority to the applicant w.e.f. 23-9-1976 and granting senior scale to the applicant, w.e.f. 1-1-1986 within a period of two months from the date of communication of this order and communicate the same to the applicant within a period of two weeks thereafter.

(ii) To consider and issue necessary order granting all other consequential service benefits as a result of above seniority position and grant of senior scale to the applicant within a period of three months after order has been passed and communicated in respect of para (i) above and communicate this order to the applicant within a period of two weeks thereafter, and,

(iii) To work out and pay/grant all the dues including arrears of pay and allowances etc. to the applicant within a period of six weeks after taking action as per para (ii) above.

No order is passed as to costs."

The respondents preferred appeal against the order in O.A.No.90 /A&N/2002 which was disposed of by the High Court by its order dated 22.12.2002 setting aside the order of the Tribunal.

The appellant filed review application against the order in WPCT No. 214 of 2003 and the said review petition was rejected by another Division Bench vide order dated 20.2.2004 in RVW No. 003 of 2004 in WPCT No. 214 of 2003.

We heard Mr. Yashank Adhyaru, learned senior counsel, appearing for the appellant and Mr. B. Datta, learned Additional Solicitor General, appearing for the respondents.

This Court issued notice on 20.07.2004 limited to the challenge to the order passed on the review application by the High Court. Since the copy of the review petition has not been filed along with the special leave petition, the appellant was directed by an order of this Court dated 31.08.2005 to file the review application and to produce a copy of the review application. Accordingly, counsel for the appellant has on 21.09.2005 filed certified copies of the records of the review petition and the same was placed before us for our perusal. We have perused the certified copy of the review petition along with all annexures. Learned counsel for the appellant reiterated the grounds raised in the review petition and submitted that the impugned judgment does not deal with and decide the important issue in the case that whether the qualification laid down under para 13 and 14 of UGC Career Advancement Scheme is mandatory or not for placing the appellant in senior scale and selection grade and if there is no finding about the qualification, the appellant did not qualify for the said scheme. It was further submitted that the judgment based on misrepresentation of a party on the main issue is open for review in the light of the law laid down by this Court in a number of decisions. Learned counsel further submitted that in view of relaxation incorporated in the scheme with regard to the provision 11 (b) and (d) and subsequent relaxation to the aforesaid provisions by UGC up to 31.12.2004, the appellant is eligible for selection grade. In addition, the mala fides coupled with obvious factor of bias was also raised before the High Court. It was clearly overlooked by the High Court and, therefore, learned counsel submitted that it is a good ground for review particularly when the appellant was precluded from producing the documents due to bona fide reasons and non-possession. The High Court held that though the documents were very much available to the appellant, the appellant has not been able to satisfy the Court and failed to establish the situation which prevented him from not producing those documents before the Division Bench when the matter was taken up for consideration and in such view of the fact it cannot be said that there has been discovery of new and important matter which despite exercise of due diligence on the part of the appellant was not within the knowledge and possession of the appellant and as such could not be produced by him at the time when the impugned order was made. It has been clearly stated in the special leave petition as to how these documents were not in possession of the appellant at the time of hearing of the case. It was stated by the appellant that despite due diligence, the appellant could not place before the Division Bench, the Minutes of the Screening Committee held on 23.06.1987 and 04.03.1992 wherefrom it is crystal clear that senior scale and selection grade have been awarded to many lecturers by relaxing the conditions and only on the basis of length of regular service in the College, on the basis of their teaching experience. It was further pointed out that the Division Bench has not considered the issue that conditions 13(b) and 14(b) are no longer a pre-condition for placement in senior scale and for selection grade as the conditions of participation in the refresher course were incorporated in relaxation of rules following the guidelines dated 18.12.1989. This apart, the condition of refresher courses/summer institute had been relaxed up to 31.12.2004 by the UGC vide its letter No. F2-16/2002 (PS) dated 17.10.2002. It was also contended that the UGC's letter No. F1-6/90 (PS) Cell dated 27.11.1990 wherein the Commission in consultation with the Ministry of Human Resources Development (Department of Education), issued revised guidelines for counting of previous ad hoc service for the purpose of senior scale/selection grade under Career Advancement Scheme for lecturer. According to learned counsel for the appellant, the Division Bench of the High Court has overlooked the fact that after regularisation from the initial date of appointment, the appellant fulfilled the condition (a) and (c) under para 13 for senior scale and the condition (b). I t was further submitted that the Division Bench has not taken into consideration the fact that the appellant has a good teaching record and also fulfils other conditions (a), (c) and (e) as he possesses M.Phil degree which is a research degree, and he presented research papers in National Seminar sponsored by UGC and engaged in teaching at Post-Graduate level (M.Sc.) and that the condition (d) relaxation is incorporated in the scheme and that the respondents themselves never allowed the appellant to participate in such courses. It was submitted that the High Court has not noticed the important fact that the Screening Committee having interviewed the appellant on 28.01.2002 for award of senior scale again called him for personal interview after two months for grant of selection grade in its meeting held on 05.03.2002. It was well-established fact that unless a lecturer is granted senior scale in the first instance, he cannot be considered at all for the grant of selection grade. Our attention was also drawn to the fact that the Division Bench has not considered the Administration's letter dated 10.01.1995 wherein

other lecturers' services were regularised from the initial date on their ad hoc appointment after clearance from the UPSC on the directions of the Tribunal and awarded them seniority and all consequential benefits. It was argued that the High Court has committed an error of fact by overlooking the documents relied on by the appellant particularly the documents showing bias on the part of the respondents/members of the Screening Committee and the discrimination and harassment to which the appellant has been subjected since 27.03.2000 and the incorrect submission made by their respondents in their affidavits which bear direct relation to the case of the appellant and as such non-adjudication on the grounds of mala fide/fraud falls within the scope of Order 47 CPC.

It was also pointed out that some of the documents were overlooked by the Court. They are:

- i. D.O.Letter No.F.2-16/2002(PS) dated 17-10-2002 and D.O. Letter No.F1-6/90 (ASC/ER) dated 24-10-1994 of UGC regarding the relaxation of refresher courses. Both these letters are annexed to the Review Petition.
- ii. Relaxation incorporated in the Scheme dated 18-12-1989 of UGC and the same is annexed to the Review Petition.
- iii. Letter dated 19th January, 1995 wherein the Assistant Secretary (Edn.) being directed to inform to the Principal, JNRM regarding the service benefits including the seniority to which the lecturers are entitled to after the regularization of their services from the initial date of their ad hoc appointment.
- iv. Documents reflecting bias and malafide intentions of the respondent authorities to victimize and harass the Petitioner.

The appellant has also filed a rejoinder affidavit with annexures R1-R5.

Per contra, Mr. B. Dutta, learned Additional Solicitor General submitted that the placement in senior scale/selection grade/reader is not by virtue of length of service alone but certain mandatory conditions under the Career Advancement Scheme and that the case of the appellant for placement in senior scale/selection grade/reader was examined by the Screening Committee and since he could not satisfy the mandatory requirement, his name was not considered. Our attention was also drawn to certain averments made in the counter affidavit filed in this Court on merits of the claim made by the appellant for reviewing the order of the Division Bench. He denied that the Screening Committee was neither mala fide nor biased and it adhered to Career Advancement Scheme as laid down by UGC and the Ministry of Human Resources Development and that the appellant did not fulfil the mandatory and statutory conditions for the award of senior scale. It was submitted that the scope of application for review is more restricted than that of an appeal and, therefore, the review application has no merits.

We are unable to countenance the argument advanced by learned Additional Solicitor General appearing for the respondents. A careful perusal of the impugned judgment does not deal with and decide many important issues as could be seen from the grounds of review and as raised in the grounds of special leave petition/appeal. The High Court, in our opinion, is not justified in ignoring the materials on record which on proper consideration may justify the claim of the appellant. Learned counsel for the appellant has also explained to this Court as to why the appellant could not place before the Division Bench some of these documents which were not in possession of the appellant at the time of hearing of the case. The High Court, in our opinion, is not correct in overlooking the documents relied on by the appellant and the respondents. In our opinion, review jurisdiction is available in the present case since the impugned judgment is a clear case of an error apparent on the face of the record and non-consideration of relevant documents. The appellant, in our opinion, has got a strong case in their favour and if the claim of the appellant in this appeal is not countenanced, the appellant will suffer immeasurable loss and injury. Law is well-settled that the power of judicial review of its own order by the High Court inheres in every Court of plenary jurisdiction to prevent mis-carriage of justice.

The power, in our opinion, extends to correct all errors to prevent miscarriage of justice. The courts should not hesitate to review its own earlier order when there exists an error on the face of the record and the interest of the justice so demands in appropriate cases. The grievance of the appellant is that though several vital issues

were raised and documents placed, the High Court has not considered the same in its review jurisdiction. In our opinion, the High Court's order in the revision petition is not correct which really necessitates our interference.

We, therefore, set aside the order passed by the High Court in RVW No. 003 of 2004 in WPCT No. 214 of 2003 dated 20.02.2004 and allow the appeal from the order refusing review. In view of our allowing the appeal filed against the order in RVW No. 003 of 2004 dated 20.02.2004, we set aside the original order dated 22.12.2003 in WPCT No. 214 of 2003. The WPCT is restored to file. We dispose of these two appeals with a request to the High Court for fresh consideration of the WPCT No. 214 of 2003 on merits as expeditiously as possible. Both parties are at liberty to place before the High Court the special leave petition grounds with annexures, the counter filed by the respondent herein with annexures and the rejoinder filed by the appellant with annexures as additional documents in WPCT NO. 214 of 2003.

We make it clear that we are not expressing any opinion on the merits of the rival claim. The appeals shall stand allowed. No costs.