

CASE NO.:
Appeal (civil) 5023 of 2006

PETITIONER:
Shiv Charan Singh

RESPONDENT:
The State of Punjab & Ors.

DATE OF JUDGMENT: 17/11/2006

BENCH:
ARIJIT PASAYAT & LOKESHWAR SINGH PANTA

JUDGMENT:
J U D G M E N T
(Arising out of SLP (C) No. 26765 of 2005)

ARIJIT PASAYAT, J.

Leave granted.

Challenge in this appeal is to the order passed by a Division Bench of the Punjab and Haryana High Court dismissing the application for review filed in respect of the order in CWP No.17615 of 2001 which was dismissed on 12.8.2005. The said writ petition was dismissed on the ground that the writ petitioner was absent for about three years. The High Court found the writ petitioner to be a habitual absentee and, therefore, felt that he did not deserve any relief in the quantum of punishment. It is to be noted that while issuing notice on 6.11.2001 the following order had been passed by the High Court:

"Learned counsel for the petitioner at the time of arguments stated that the petitioner has put in ten years of service and he has been deprived of the retiral benefits in view of the impugned order. He confines the prayer in the writ petition only to the quantum of punishment."

Learned counsel for the appellant submitted that the High Court is not right in holding that the review petition was not entertainable in view of the materials which were placed for consideration. Those materials clearly show that the High Court did not take note of the correct factual position while dismissing the writ petition.

Learned counsel for the respondents submitted that the High Court has rightly held that the review petition was not maintainable.

Challenge in this appeal is only to the order passed in the review application. Such an appeal is not maintainable.

In Shanker Motiram Nale v. Shirolalsing Gannusing Rajput [(1994) 2 SCC 753] it was observed as follows:

"The appeal is obviously incompetent. It is against an order of a Division Bench of the

High Court rejecting the application for review of a judgment and decree passed by a learned Single Judge, who seems to have retired in the meantime. It is not against the basic judgment. Order 47 Rule 7 of CPC bars an appeal against the order of the court rejecting the review. On this basis, we reject the appeal. No cost.

I.A. No.1/93 (Application for substitution).

No orders are necessary in view of the rejection of the appeal."

The position has been re-iterated in *Suseel Finance & Leasing Co. v. M. Lata and Ors.* [(2004) 13 SCC 675] and *M.N. Haider and Ors. v. Kendriya Vidyalaya Sangathan and Ors.* [(2004) 13 SCC 677].

It is stated by learned counsel for the appellant that the basic order dated 20.8.2004 passed by the High Court has been challenged by filing a special leave petition on 9.10.2006. However, dismissal of this present appeal shall not stand on the way of consideration of the Special Leave Petition stated to have been filed on 9.10.2006. The same shall be dealt with in accordance with law.

The appeal is dismissed. No costs.