
Before S.S Nijjar, A.C.J. & S.S. Saron, J.

HARJIT PAL KAUR,—*Petitioner*

versus

STATE OF PUNJAB AND OTHERS,—*Respondents*

Review Application No. 320 of 2006 in

C.W.P. NO. 3011 OF 2005

27th October, 2006

Code of Civil Procedure, 1908—O.47 Rl.1 & S.151—Constitution of India, 1950—Art.226—An employee on contract seeking regularisation of services—High Court directing PSEB to permit petitioner to continue on the post till the same was filled on regular basis—Subsequently Supreme Court taking a contrary view with regard to determination of rights of an employee working on ad hoc/daily wages/temporary basis—Board seeking review of order of High Court on account of decision rendered by Supreme Court—Scope of review—Only in respect of some mistake or error apparent on the face of record or for any other sufficient reason—A subsequent decision of a superior Court in any other case is no ground for review of a decision on a question of law—Board also cannot claim rehearing of matter on account of subsequent decision—Review application dismissed.

Held, that the applicant cannot seek a review of an order on the basis of a judgment which has been passed by the Supreme Court subsequent to the passing of the order by this Court. The scope of review which provides for re-hearing of the matter is permissible in terms of Order 47 of the Code of Civil Procedure in respect of some mistake or error apparent on the face of the record or for any other sufficient reason. Even if it is to be taken that the provisions of Order 47 Rule 1 CPC are not to apply to review of judgments and orders passed in writ petitions under Article 226 of the Constitution still the principle underlying the same would apply. The Explanation to Order 47 Rule 1 CPC envisages that the fact that a decision on a question of law on which the judgment of the Court is based has been reversed or modified by a subsequent decision of a superior Court in any other case shall not be a ground for review of such judgment. Therefore, a subsequent decision of the Supreme Court taking a contrary view conveyed by the judgment passed by this Court does not amount to a mistake or an error apparent on the face of the record.

Besides, the applicant cannot claim re-hearing of the matter on account of the subsequent decision rendered by the Supreme Court.

(Para 4)

V.K. Shukla, Advocate for the applicant—respondent No. 2.

JUDGEMENT

S.S. NIJJAR, A.C.J.

(1) The applicant (respondent No. 2) seeks review of the order dated 21st March, 2006 passed by this Court. Along with the application seeking review, the applicant has filed civil miscellaneous application for condoning 182 days in filing the review petition.

(2) The petitioner Harjit Pal Kaur filed the writ petition for regularizing her service on the post she was working and to grant her all consequential benefits of running pay scale, annual increments and all other monetary benefits as were being paid to her counter-parts working in the schools run by the Punjab Government. The writ petition was disposed of as the matter stood covered by a Division Bench judgment of this Court in the case of **Polu Ram versus State of Haryana, (1)**. It was directed that the petitioner shall be permitted to continue on the post of Science Mistress till the said post was filled on regular basis by direct recruitment. It was, however, made clear that the petitioner would be entitled to the salary as mentioned in her appointment order (Annexure-P.4). Besides, she would also be paid the difference between the salary actually received by her and the salary mentioned in her appointment order (Annexure-P.4) during the period when she was paid out of the parent teachers' association fund.

(3) Learned counsel for the applicant (respondent No. 2) has submitted that subsequent to the passing of the order by this Court on 21st March, 2006 the matter with regard to the determination of rights of an employee working on *ad hoc*/daily wages/temporary basis for seeking regularization of his/her service has been decided by the Supreme Court in **Secretary, State of Karnataka and others versus Umadevi and others (2)**. It is, therefore, contended that in view of the said judgment the petitioner has no case for seeking regularization of her service. Besides, she has no legally enforceable right for absorption in the service. The service of the petitioner being

(1) 1991 (4) R.S.J. 152

(2) J.T. 2006 (4) S.C. 420

purely on contract basis, it is contended, cannot be regularized. Accordingly, the order passed by this Court is liable to be reviewed.

(4) After giving our thoughtful consideration to the matter we find no merit in the same. The decision of the Supreme Court in the case of **Secretary, State of Karnataka versus Umadevi** (supra) was rendered on 10th April, 2006 i.e. after the passing of the order by this Court on 21st March, 2006. Therefore, the applicant cannot seek a review of an order on the basis of a judgment which has been passed by the Supreme Court subsequent to the passing of the order by this Court. The scope of review which provides for re-hearing of the matter is permissible in terms of Order 47 of the Code of Civil Procedure ('C.P.C.'-for short) in respect of some mistake or error apparent on the face of the record or for any other sufficient reason. Even if it is to be taken that the provisions of Order 47 Rule 1 C.P.C. are not to apply to review of judgments and orders passed in writ petitions under Article 226 of the Constitution, still the principle underlying the same would apply. The 'Explanation' to Order 47 Rule 1 CPC envisages that the fact that a decision on a question of law on which the judgment of the Court is based has been reversed or modified by a subsequent decision of a superior Court in any other case shall not be a ground for review of such judgment. Therefore, a subsequent decision of the Supreme Court taking a contrary view covered by the judgment passed by this Court does not amount to a mistake or an error apparent on the face of the record. Besides, the applicant cannot claim rehearing of the matter on account of the subsequent decision rendered by the Supreme Court.

(5) In view of the aforesaid position the review of the judgment which is sought on account of a later decision rendered by the Supreme Court is inappropriate. Even otherwise there is a delay of 182 days in filing the review petition. It appears that the review applicant was perfectly satisfied with the order dated 21st March, 2006 and it has now decided to seek review of the same due to the passing of the judgment of the Supreme Court in **Secretary, State of Karnataka versus Umadevi** (supra).

(6) For the foregoing reasons, we see no reason either to condone the delay or to review the order dated 21st March, 2006. Dismissed.

R.N.R.