Uday S. Jagtap

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND REVIEW PETITION NO. 3 OF 2022
IN
SECOND APPEAL NO. 181 OF 2018

Anand Prabhakar Joshi]
]
]
]
].. Petitioner

Vs.

Bank of Maharashtra]
1501, Lokmangal, Central Office,]
Shivajinagar, Pune 411 005]
Through its General Manager HRD].. Respondent

.....

Mr. Anand Prabhakar Joshi, party in person
Mr. Dhananjay Bhanage for the Respondent – Bank

.....

CORAM : PRITHVIRAJ K. CHAVAN, J.

Reserved on : 5th July, 2022.

Pronounced on : 15th July, 2022

JUDGMENT :-

1. This Second Review Petition has been preferred by the petitioner, who appeared in person after dismissal of his first review petition by this Court bearing No. 3119 of 2020 on 5th October, 2020.

2. Before adverting to the legal aspect as to whether second review is tenable in the given facts and circumstances, it would be expedient to briefly consider the background history of the case.

3. The petitioner was an employee of the respondent-bank. A disciplinary proceeding initiated against him on the ground of unauthorized absence from the service between 21st August, 1994 to 14th September, 1995, came to be unsuccessfully challenged by him before the Trial and the First Appellate Court. However, it was proved before the Courts below that the petitioner's absence till 30th September, 1994 was authorized. There was nothing to show that the petitioner's admitted absence from service after 1st October, 1994 and until 14th September 1995, when the charge-sheet was issued against him on the ground of unauthorized absenteeism, was authorized.

4. The petitioner's case before the Enquiry Officer as well as the Courts below was that he was entitled to voluntary retirement from the service w.e.f. 1st October, 1994 and that his application seeking voluntary retirement was not accepted by the respondent-employer on the ground that the voluntary retirement was not in force. The petitioner had placed reliance on a circular of Indian Banks Association, dated 4th January, 1996 by contending that the voluntary retirement scheme in terms of the settlement with the unions under the Industrial Dispute Act, was a binding settlement and the employees of the

banks were entitled to the benefit of the settlement from the date mentioned therein, i.e. 1st November, 1993. While dismissing Second Appeal of the petitioner, this Court in its order dated 4th November, 2019 has categorically observed in paragraph nos.3 and 4, which is extracted below :-

> *"3. The controversy in the present case is not whether or not the Respondent-bank rightly refused to accept the Appellant's application for voluntary retirement, though it was bound to accept such application. The fact of the matter is that it did not do so at the relevant time. If the Appellant was aggrieved by the bank's refusal to accept his voluntary application, his remedy was to get the bank accept it by invoking the appropriate provisions of law. He did not do so. He simply cannot chose to remain absent on the ground that he was deemed to have voluntarily retired on the basis of the applicable scheme and his application made in response thereof. The Enquiry Officer as well as the Disciplinary Authority and the two courts cannot accordingly be said to have erred in passing the impugned orders. The charge against the Appellant was that he was absent without a proper authorization. Though the charge that he was absent with effect from 21 August 1994 was not proved, what was proved was that he was absent unauthorizedly with effect from 1 October 1994 and till 15 September 1995, when a show-cause notice was issued to him. It is no answer to this charge of unauthorized absence that the bank was legally bound to consider the application for voluntary retirement preferred by the employee.*
>
> *4. On these facts and in the light of the impugned decisions of the two courts below, no substantial question of law arises in the matter for consideration of this court. The Second Appeal, thus, has no merit and is dismissed accordingly."*

5. Dissatisfied with the dismissal of the Second Appeal, the petitioner preferred First Review Petition (St.) No.3119 of 2020, which also came to be dismissed by the same Hon'ble Judge on 5th October, 2020. Paragraph nos. 4 to 6 of the oral judgment are extracted below for advantage, which read thus :-

> *"4. The ground urged by the Petitioner is no ground for seeking review of the order passed by this Court on 4 November 2019. The order itself, as noted above, made it clear that the question before the Court was not whether or not the Respondent-bank rightly refused to accept the Petitioner's application for voluntary retirement with effect from 1 October 2014. The fact of the matter is that it did not accept the application, and if that was so, the Petitioner could not have simply chosen to remain absent on the ground that he was deemed to have voluntarily retired on the basis of a scheme and his application made in response thereof. This court found nothing wrong with the conclusion of the courts below that the Petitioner could not have done so and, therefore, the unauthorized character of his absence from service between 1 October 1994 and 14 September 1995 (i.e. the date of his charge-sheet) was clearly proved. No substantial question of law accordingly arose for consideration of this court.*
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> *5. There is no new or important matter or evidence, which, despite exercise of due diligence, was not within the knowledge of the Review-Petitioner, or which could not be produced by him, at the time when the order was made, which is brought to the notice of this court. Likewise, there is neither an error apparent on the face of the order nor sufficient reason to obtain a review of the order.*
>
> *6. There is, accordingly, no merit in the review petition. The petition is dismissed."*

6. As a matter of fact, Order 47, Rule 9 of the Code of Civil Procedure specifically bars second review. Order 47 Rule 9 reads thus :-

> *"**R.9. Bar of certain applications.** – No application to review an order made on an application for a review or a decree or order passed or made on a review shall be entertained."*

7. The Second Review, therefore, cannot be entertained, but for following few reasons, I am constrained to make a few important observations against the petitioner in light of a chequered history.

8. Since the petitioner was unable to put-forth his case properly before this Court, it was suggested to engage a Counsel of his choice. However, the petitioner submitted that "he can argue better than any advocate". In the second review petition, the petitioner has literally reproduced and reiterated almost everything what has been stated by him in the Second Appeal as well as in his first review petition save and except anything to show as to how second review is tenable. The grounds raised by him cannot be said to be the grounds for seeking second review of the order passed by this Court on 4th November, 2019. It is not the contention of the petitioner that there was discovery of new and important matters or evidence which, after the exercise of due diligence was not within his knowledge or could not be produced by him at the time when the decree passed or order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason. This has been clearly observed by this

Court while dismissing the first review petition. The power of review can be exercised for correction of a mistake and not to substitute a view. The error contemplated under Order 47 Rule 1, must be such which is apparent on the face of the record and not an error which has to be searched. It must be an error of inadvertence which does not require any long drawn process of hearing.

9. Indubitably, the petitioner had preferred a Writ Petition No.2553 of 2019 before a Division Bench of this Court, which came to be dismissed on 25th January, 2022 (Coram : Dipankar Datta, CJ & M.S. Karnik, J). This is a classic example of abuse of process of Court as well as law, wherein, the petitioner has left no stone unturned to abuse the process not only by preferring second review which is not tenable in law, but also by filing multiple proceedings before different Courts. Even before institution of Special Civil Suit No.40 of 2000, petitioner had filed a Writ Petition No.1228 of 1997 wherein a challenge was laid to the departmental inquiry. The said petition was disposed of on 6th September, 2001 by a co-ordinate bench of this Court with the following order:-

> *"Civil Application as well as Writ Petition allowed to be withdrawn.*
>
> *Authenticated copy be made available to the petitioner's Counsel".*

10. The petitioner, thereafter, had instituted 10 Criminal Writ Petitions and several Civil Writ Petitions from the year 2004 to 2014, together with miscellaneous applications therein. In none of those petitions, petitioner appear to have gained any

concrete relief qua the proceedings initiated by his employer – Bank leading to termination of his services. He had even approached the Supreme Court under Article 136 of the Constitution of India against the order dated 14th October, 2016 passed by the co-ordinate bench of this Court. However, his Special Leave Petition came to be dismissed with a direction to the Civil Court to expedite its decision in Special Civil Suit No.40 of 2000.

11. During the pendency of Writ Petition No. 2553 of 2019, an attempt was made by the petitioner to seek relief before the Supreme Court by instituting the proceedings under Article 32 of the Constitution of India on 10th May, 2019 giving rise to Writ Petition (C) No. 787 of 2019. The Supreme Court by an order dated 25th October, 2019 dismissed the writ petition by passing the following order :-

> *"Upon perusing papers the Court made the following*
>
> *O R D E R*
>
> *Permission to appear and argue in person is allowed.*
>
> *We are not inclined to entertain this petition under Article 32 of the Constitution of India.*
>
> *The writ petition is, accordingly, dismissed. Pending applications stand disposed of."*

12. The prayers made by the petitioner before the Supreme Court were as follows :-

> *"a) this Hon'ble Court may set aside the order dated 01.10.1996 issued by the respondent-Bank by which the petitioner is removed from service;*
>
> *b) this Hon'ble Court may declare that the charge-sheet issued by the respondent-Bank dated 14.09.1995*

against the petitioner may be quashed;

c) this Hon'ble Court may declare that the order dated 18.07.2017 passed by the Hon'ble District Court, Pune in Civil Appeal No.503 of 2016 as null and void;

d) this Hon'ble Court may consider the period from 01.10.1994 to 01.10.1996 as "DIES-NON".

e) this Hon'ble Court may pass an order to the respondent-Bank to declare the petitioner as deemed to be in service from 01.10.1994 till the retirement on superannuation i.e. 31.10.2012, with entitlement for deemed promotion upto officer grade VII of the Bank;

f) the respondent-Bank be ordered to pay the eligible pension to the petitioner from 01.11.2012;

g) the respondent-Bank be ordered to pay damages of Rs.23,75,000/- to petitioner for malfeasance acts. The interest @ 18% p.a. may be ordered from 01.10.1996 to realization of amount.

h) the respondent-Bank be ordered to pay interest @ 18% p.a. at bank lending rate of interest on salary and pension till realization of amount;

i) the respondent-Bank be ordered to pay unliquidated damages amounting to Indian Rupees 25/- Crores (Rupees twenty-five crores) in addition to pay damages of Rs.23,75 lacs to petitioner on which Court fee is paid;

j) the respondent-Bank be ordered to pay the cost of the litigation;

k) such any other or further order/orders may be passed as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case."

13. The petitioner had suppressed pendency of Writ Petition in the Supreme Court before this Court and, therefore, he can be said to be guilty of suppressing of material facts, which also amounts to abuse of process of Court as well as of law.

14. It would be apposite to extract paragraph nos.17 to 22 of the order dated 25th January, 2022 passed by the Division Bench of

this Court in Writ Petition No. 2553 of 2019, which read thus:-

> *"17. Prayers (a) to (d) quoted above, simply cannot be entertained. The second appeal of the petitioner having been dismissed, the petitioner's attempt to have the order reviewed has also not met with success. The lis in such second appeal does not survive. No order in terms of prayer (a) can thus be granted. In so far as prayers (b) and (c) are concerned, the same were the subject matter of challenge in Special Civil Suit No.40 of 2000 and the issue has attained finality with dismissal of the petition filed by the petitioner seeking review of the second appellate order under section 100 of the CPC read with Order XLI Rule 11 thereof. Prayer (d) of the writ petition is also thoroughly misconceived. The judgment and decree of the first appellate court dated 18th July, 2017 having been challenged in a second appeal under section 100 of the CPC, we wonder how the same order could be a subject matter of challenge in a different proceeding, and that too, in a writ petition. The other prayers vide prayer clauses (e) to (k) relate to the subject matter of Special Civil Suit No.40 of 2000. This Court, albeit in a different jurisdiction, having dealt with the disciplinary proceedings including the charge-sheet, the inquiry and the order of removal, the present writ petition is plainly not maintainable being barred by res judicata and analogous principles.*
>
> *18. In our view, the petitioner not having pursued this writ petition and having approached the Supreme Court for substantially the same relief as claimed herein, the conclusion is inescapable that there had been a temporary abandonment of this writ petition and only after being unsuccessful before the Supreme Court that the petitioner is seeking to take a chance before us once again.*
>
> *19. Since the petitioner had appealed to us that we ought to look into his written notes of argument and decide his claims, we have looked into the same. Such notes are replete with contentions as to how the disciplinary proceedings initiated against the petitioner*

together with the order of removal are bad in law and ought to be invalidated as such. We are afraid, the issue having attained finality cannot be reopened by this proceeding.

20. We would have been justified in imposing exemplary costs on the petitioner for having abused the process of Court as well as law; however, bearing in mind that the petitioner is in the winter years of his life, and may not have received proper legal advice or may have even faltered by reason of his lack of legal knowledge, we refrain from imposing such costs.

21. The writ petition, accordingly, stands dismissed.

22. We make it clear that if the petitioner seeks to approach this Court in future raising any grievance with regard to the subject matter of Special Civil Suit No.40 of 2000 by instituting any proceeding, he would be adequately dealt with."

15. Despite clearly indicating to the petitioner as regards the observation made by the Division Bench of this Court in Writ Petition No. 2553 of 2019, especially, by inviting his attention to the observations made in paragraph 20, 21 and 22 of which, the petitioner is already aware, he insisted for deciding this second review. The petitioner herein had sought second review on the premise that this Court is sitting in an appeal over its first review. A rehearing of the matter is impermissible in law. Review is not an appeal in disguise.

16. The petitioner has also placed reliance on a judgment of the Supreme Court in case of ***Jaya Chandra Mohapatra Vs. Land Acquisition Officer, Rayagada***[1] I am afraid, the ratio laid down therein would not be of any help to the petitioner for the

1 (2005) 9 SCC 123

simple reason that it has been held and I quote paragraph 8, which reads thus :-

> *"8. In law, there is no bar in filing applications for review successively if the same are otherwise maintainable in law. The civil court herein admittedly had not granted to the appellant the benefit of solatium at the rate of 30% of the amount of enhanced compensation as also the additional amount and interest as contemplated under the amending Act of 1984. To the said benefits, the appellant was entitled to in terms of Section 23 (1-A), Section 23 (2) as also Section 28 of the Act. It is one thing to say that the omission to award additional amount under Section 23 (1-A), enhanced interest under Section 28 and solatium under Section 23 (2) may not amount to clerical or arithmetical mistake in relation whereto an executing court will not be entitled to grant relief but it is another thing to say that the grant thereof would be impressible in law even if the Reference Court on an appropriate application made in this behalf and upon application of its mind holds that the statutory benefits available to the claimant had not been granted to him and pass an order in that behalf by directing amendment of decree. In a case of former nature, an executing court may not have any jurisdiction to pass such an order on the ground that it cannot go behind the decree, but in law there does not exist any bar on a Reference Court to review its earlier order if there exists an error apparent on the face of the record in terms of Order-47 Rule 1 of the Code of Civil Procedure. Such a jurisdiction cannot be denied to the Reference Court. Act 68 of 1984 is a beneficial statute and thus, the benefits arising thereunder cannot ordinarily be denied to a claimant except on strong and cogent reasons".*

17. For the reasons already stated hereinabove, there is neither any clerical or arithmetical mistake nor any discovery of new or important matter or evidence, which the petitioner could not notice despite due diligence.

18. Since 2009, till date valuable time of this Court had been consumed by the petitioner by filing frivolous litigation. Despite a clear warning of this Court in Writ Petition No.2553 of 2019, the petitioner was hell-bent in prosecuting second review petition. Such conduct is highly deprecated as the petitioner appears to be incorrigible.

19. The petitioner cannot be said to be unmindful of his several unsuccessful attempts and its ultimate fate. He is not a naive person. He is, indeed, fully aware that he has been fighting a lost legal battle which has no merit at all. Looking to the overall conduct of the petitioner, there can hardly be any reason to take a sympathetic view due to his advanced age. Such tendencies need to be nipped in the bud by imposing exemplary costs. Such elements cannot be permitted to take the system for a ride by filing unmerited multiple proceedings and to drag the proceedings unendlessly.

20. I, therefore, reject the review petition by imposing exemplary costs on the petitioner in the sum of Rs.1,00,000/- (Rupees One Lakh only). The petitioner shall deposit the costs with the Registry of this Court within three weeks from today.

21. After depositing the amount, Registry shall transmit the said

amount to "The Bombay Mothers and Children Welfare Society" having its address at 10, B.D.D. Chawls, N.M. Joshi Marg, Lower Parel, Mumbai – 400 013. The Bank details of said Society are as under :-

Account Name	: The Bombay Mothers & Children Welfare Society
Bank	: State Bank of India
Branch	: Lower Parel Branch
Account No.	: 34227701406
IFSC Code No.	: SBIN0003428

22. If the petitioner fails to deposit the amount of costs as stated in paragraph 20, it be recovered by the Collector, Pune from petitioner's arrears of land revenue. The Collector, thereafter, shall submit a report of compliance to this Court on or before 5th September, 2022. Hard as well as soft copy of this judgment be sent to Collector, Pune, in case, the petitioner fails to deposit amount of costs as directed hereinabove within three weeks from today.

23. The Review Petition is dismissed in the aforesaid terms.

(PRITHVIRAJ K. CHAVAN, J.)