

T. K. David Vs. Kuruppampady Service Co-Operative Bank Ltd. & Ors.

Special Leave Petition (C) No. 10482 of 2020

2020-01-01 | Ashok Bhushan, J.

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Full judgment text

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[Special Leave Petition (C) No. 10482 of 2020]

Ashok Bhushan, J.

1. This special leave to appeal has been filed against the Division Bench judgment of the Kerala High Court dated 06.02.2020 rejecting the Review Petition No. 805 of 2018 filed by the petitioner in Writ Appeal No. 399 of 2014.

2. Brief facts necessary to consider this special leave petition need to be noted.

3. The petitioner was an employee of Kuruppampady Service Co-operative Bank. Petitioner was suspended and disciplinary inquiry was conducted by the Bank. The Bank vide order dated 20.03.2003 dismissed the petitioner consequent to domestic enquiry.

There has been series of litigation between the petitioner and the Bank and thereafter Cooperative Arbitration Court by order dated 18.08.2010 gave award by which punishment of dismissal was modified as reduction to a lower rank. Against the order dated 18.08.2010 both the petitioner as well as the Bank filed Appeal No. 78 of 2010 and No. 81 of 2010 respectively.

The Cooperative Tribunal vide its judgment dated 16.08.2011 disposed of both the appeals by which the punishment of compulsory retirement on 20.03.2003 was imposed with terminal benefits subject to liability, if any, duly assessed. Against the order of the Cooperative Tribunal a writ petition was filed by the petitioner before the learned Single Judge of the Kerala High Court, which writ petition was dismissed by judgment dated 31.07.2013 against which judgment Writ Appeal No. 1313 of 2013 was filed by petitioner before the Division Bench.

The Division Bench of the High Court vide its judgment dated 11.03.2015 dismissed the writ appeal filed by the petitioner. Aggrieved by the Division Bench judgment dated 11.03.2015, the petitioner filed a Special Leave Petition No. 24231 of 2015 before this Court, which was dismissed by order dated 21.08.2015, which is as follows:- "Heard. Delay condoned. We do not see any merit in this special leave petition which is hereby dismissed."

4. After dismissal of special leave petition, a Review Petition No. 1521 of 2016 was filed in this Court, which too was dismissed on 02.03.2016. The petitioner also filed a Curative Petition No. 245 of 2016, which also was dismissed on 12.05.2016. After the aforesaid proceedings in this Court, the petitioner filed a Review Petition, R.P. No. 805 of 2018 in Writ Appeal No.399 of 2014, which review petition has been dismissed by the High Court vide its judgment dated 06.02.2020. Aggrieved with the judgment dated 06.02.2020, this special leave petition has been filed.

5. Learned counsel for the petitioner challenging the order on the review submits that earlier dismissal of the special leave petition on 21.08.2015 shall not operate as res judicata. He further submits that the petitioner was dismissed on petty charges due to political vendetta. He further contends that Cooperative Arbitration Court, which has imposed punishment of reduction in rank was wrongly substituted by compulsory retirement by the Cooperative Tribunal. Learned counsel for the petitioner has also referred to judgment of this Court in Kunhayammed and Ors. Vs. State of Kerala and Anr., (2000) 6 SCC 359.

6. We have heard learned counsel for the petitioner and have perused the records.

7. The earlier Special Leave Petition (C) No. 24231 of 2015 was filed by the petitioner challenging the Division Bench judgment dated 11.03.2015 by which his Writ Appeal was dismissed. The Review Petition No. 805 of 2018 giving rise to this special leave petition has been filed to review the judgment dated

11.03.2015 of the Division Bench.

A review petition as well as curative petition was filed by the petitioner after dismissal of his earlier special leave petition. The judgment of this Court in Kunhayammed and Ors. Vs. State of Kerala and Anr. (supra) laid down that where the special leave petition is dismissed there being no merger, the aggrieved party is not deprived of any statutory right of review, if it was available and he can pursue it. In paragraph 34, this Court made following observations:-

"34.But where the special leave petition is dismissed - there being no merger, the aggrieved party is not deprived of any statutory right of review, if it was available and he can pursue it. It may be that the review court may interfere, or it may not interfere depending upon the law and principles applicable to interference in the review....."

8. The Division Bench of the High Court by the impugned judgment dated 06.02.2020 has not dismissed the review petition as not maintainable. The High Court proceeded to meticulously examine the question and after consideration came to the conclusion that there is no mistake or omission amounting to error apparent on the face of the record. In paragraphs 8 and 9 of the judgment, High Court held:-

"8. This Court in paragraph Nos.11 and 12 of the judgment passed in writ appeal, elaborately considered the conversion of punishment to compulsory retirement with sufficient reasonings and justified the Co-operative Tribunal for setting aside the punishment of reduction to lower rank and imposing compulsory retirement. The aforesaid findings are made consciously after making due deliberations on the materials on record and the findings of the single Bench of this Court.

The findings of this Court are supported by the decisions of the Apex Court in Hussain Sasansaheb Kaladgi v. State of Maharashtra [AIR 1987 SC 1627] and J.K.Synthetic Ltd. v. K.P.Agarwal and Another [(2007) (2) SCC 433]. 9. So there is no omission to consider the legality or correctness of the punishment or power of the Co-operative Tribunal to impose such a punishment of compulsory retirement.

There is no mistake or omission amounting to error apparent on the face of the record, as contended by the revision petitioner. In view of the legal proposition laid down by the Supreme Court in the decisions referred above, this Court is not inclined to rehear or reconsider the above findings, as the review is not an appeal in disguise. Hence, the review petition fails and is dismissed accordingly."

9. The review petition filed by the petitioner, thus, was rejected on merits.

10. The first question, which need to be considered is as to whether the present special leave petition challenging the above review order dated 06.02.2020 is maintainable when the Division Bench judgment dated 11.03.2015 has neither been challenged nor can be challenged in this special leave petition. The consequence of the rejection of the review petition is that the High Court has refused to review the judgment of the Division Bench dated 11.03.2015 passed in Writ Appeal No. 399 of 2014.

As noted above, the Division Bench judgement dated 11.03.2015 was questioned by petitioner by special leave petition in this Court, which was dismissed on 21.08.2015. When the Special Leave Petition No. 24231 of 2015 challenging the earlier judgment has already been dismissed, such dismissal has become final between the parties.

In this special leave petition, the petitioner cannot challenge the earlier order dated 11.03.2015 against which he unsuccessfully has earlier filed the special leave petition. When the order dated 11.03.2015 is unassailable by the petitioner in this special leave petition, no relief can be granted to petitioner, which may have effect in any manner diluting, modifying or reversing the earlier judgment dated 11.03.2015.

11. This Court had earlier considered the question as to whether the special leave petition challenging the order rejecting review petition is maintainable when the main judgment of the High Court is not under challenge. We may refer to judgment of this Court in Municipal Corporation of Delhi Vs. Yashwant Singh Negi, (2013) 2 SCR 550. In the above case, a special leave petition was preferred against an order rejecting the review petition.

A preliminary objection was raised that special leave petition is not maintainable since the main judgment is not challenged. In paragraph 1 of the judgment, facts have been noticed, which are to the following effect:-
"1. This special leave petition has been preferred against the order dated 11.09.2009 passed by the High Court of Delhi in Review Petition No. 79 of 2009 in LPA No. 1233 of 2006. Mr. Nidhesh Gupta, learned senior counsel appearing for the Respondent raised a preliminary objection that the special leave petition is not

maintainable since the main judgment rendered by the High Court on 5.11.2008 in LPA No. 1233 of 2006 was not challenged."

12. This Court after considering the earlier judgment of this Court held that special leave petition is not maintainable. In paragraphs 3 and 4 following was laid down:- "3. We find ourselves unable to agree with the views expressed by this Court in Eastern Coalfields Limited (supra).

In our view, once the High Court has refused to entertain the review petition and the same was dismissed confirming the main order, there is no question of any merger and the aggrieved person has to challenge the main order and not the order dismissing the review petition because on the dismissal of the review petition the principle of merger does not apply.

In this connection reference may be made to the Judgment of this Court in Manohar S/o Shankar Nale v. Jaipalsing S/o Shivalising Rajput (2008) 1 SCC 520 wherein this Court has taken the view that once the review petition is dismissed the doctrine of merger will have no application whatsoever. This Court in DSR Steel (Private) Limited v. State of Rajasthan (2012) 6 SCC 782 also examined the various situations which might arise in relation to the orders passed in review petitions. Reference to paragraphs 25, 25.1, 25.2 and 25.3 is made, which are extracted below for ready reference:

"25. Different situations may arise in relation to review petitions filed before a court or tribunal.

25.1. One of the situations could be where the review application is allowed, the decree or order passed by the court or tribunal is vacated and the [pic]appeal/proceedings in which the same is made are reheard and a fresh decree or order passed in the same. It is manifest that in such a situation the subsequent decree alone is appealable not because it is an order in review but because it is a decree that is passed in a proceeding after the earlier decree passed in the very same proceedings has been vacated by the court hearing the review petition.

25.2. The second situation that one can conceive of is where a court or tribunal makes an order in a review petition by which the review petition is allowed and the decree/order under review is reversed or modified. Such an order shall then be a composite order whereby the court not only vacates the earlier decree or order but simultaneous with such vacation of the earlier decree or order, passes another decree or order or modifies the one made earlier. The decree so vacated reversed or modified is then the decree that is effective for the purposes of a further appeal, if any, maintainable under law.

25.3. The third situation with which we are concerned in the instant case is where the revision petition is filed before the Tribunal but the Tribunal refuses to interfere with the decree or order earlier made. It simply dismisses the review petition. The decree in such a case suffers neither any reversal nor an alteration or modification. It is an order by which the review petition is dismissed thereby affirming the decree or order.

In such a contingency there is no question of any merger and anyone aggrieved by the decree or order of the Tribunal or court shall have to challenge within the time stipulated by law, the original decree and not the order dismissing the review petition. Time taken by a party in diligently pursuing the remedy by way of review may in appropriate cases be excluded from consideration while condoning the delay in the filing of the appeal, but such exclusion or condonation would not imply that there is a merger of the original decree and the order dismissing the review petition."

4. We are in complete agreement with the principle laid down by this Court in DSR Steel (Private) Limited (supra) and applying the 3rd situation referred to therein in paragraph 25.3, we are inclined to dismiss this special leave petition. We find force in the contention made by the learned senior counsel appearing for the respondent that this SLP is not maintainable, since the main order was not challenged but only the order passed in the review petition alone was challenged in this SLP. Hence, the SLP is, therefore, not maintainable and the same is dismissed.

13. We may also notice another elaborate judgment of this Court in Bussa Overseas and Properties Private Limited and Anr. Vs. Union of India and Anr., (2016) 4 SCC 696. In the above case also special leave petition was filed against the Division Bench judgment of the High Court rejecting the review petition. Facts have been noticed in paragraph 1, which is to the following effect:-

".....The present appeal is directed against the judgment and order dated 14-9-2004 passed by the Division Bench of the High Court of Judicature at Bombay in Bussa Overseas & Properties (P) Ltd. v. Union of India [Notice of Motion No. 62 of 2004, decided on 14-9-2004 (Bom)] whereby the High Court while dealing

with an application of review has declined to condone the delay of 129 days in preferring the application for review and also opined that the application for review was totally devoid of merit. The expression of the said view led to dismissal of the application for review."

14. In the above case, this Court noticed several earlier judgments and accepting the preliminary objection held that the special leave petition is not maintainable. Following was held in paragraphs 29 to 32:-

"29. Needless to state that when the prayer for review is dismissed, there can be no merger. If the order passed in review recalls the main order and a different order is passed, definitely the main order does not exist. In that event, there is no need to challenge the main order, for it is the order in review that affects the aggrieved party.

30. The decisions pertaining to maintainability of special leave petition or for that matter appeal have to be seemly understood. Though in the decision in *Shanker Motiram Nale* [*Shanker Motiram Nale v. Shiolalsing Gannusing Rajput*, (1994) 2 SCC 753] the two-Judge Bench referred to Order 47 Rule 7 of the Code of Civil Procedure that bars an appeal against the order of the court rejecting the review, it is not to be understood that the Court has curtailed the plenary jurisdiction under Article 136 of the Constitution by taking recourse to the provisions in the Code of Civil Procedure.

It has to be understood that the Court has evolved and formulated a principle that if the basic judgment is not assailed and the challenge is only to the order passed in review, this Court is obliged not to entertain such special leave petition. The said principle has gained the authoritative status and has been treated as a precedential principle for more than two decades and we are disposed to think that there is hardly any necessity not to be guided by the said precedent.

31. In this context, we may profitably reproduce a passage from *State of A.P. v. A.P. Jaiswal* [(2001) 1 SCC 748] wherein a three-Judge Bench has observed thus: (SCC p. 761, para 24) "24. Consistency is the cornerstone of the administration of justice. It is consistency which creates confidence in the system and this consistency can never be achieved without respect to the rule of finality. It is with a view to achieve consistency in judicial pronouncements, the courts have evolved the rule of precedents, principle of stare decisis, etc. These rules and principle are based on public policy...."

32. In view of the aforesaid analysis, the submission of Mr. Gulati that all the subsequent judgments are per incuriam as they have not taken into consideration the decision rendered in *Thungabhadra Industries Ltd.* [*Thungabhadra Industries Ltd. v. State of A.P.*, AIR 1964 SC 1372 : (1964) 5 SCR 174] is not correct. Consequently, the appeal, being not maintainable, stands dismissed. There shall be no order as to costs."

15. The rationale for not entertaining a special leave petition challenging the order of High Court rejecting the review petition when main order in the writ petition is not challenged can be easily comprehended. Against the main judgment the SLP having been dismissed earlier the same having become final between the parties cannot be allowed to be affected at the instance of petitioner.

When the main judgment of the High Court cannot be effected in any manner, no relief can be granted by this Court in the special leave petition filed against order rejecting review application to review the main judgment of the High Court. This Court does not entertain a special leave petition in which no relief can be granted.

It is due to this reason that this Court in *Bussa Overseas and Properties Private Limited and Anr.* (supra) has held that principle of not entertaining special leave petition against an order rejecting the review petition when main judgment is not under challenge has become a precedential principle. We reiterate the above precedential principle in this case again.

16. The special leave petition against the Division Bench judgment dated 11.03.2015 having been dismissed by this Court earlier on 21.08.2015 and the review petition filed by the petitioner to review the judgment having been dismissed by the impugned judgment, we see no reason to entertain this special leave petition. The special leave petition is accordingly dismissed.

Source disclosure: Complete sanitized public judgment text retained for research. Official-primary replacement and later-history closure remain pending.

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