

Jammu & Kashmir High Court

Naveen Kumar Katoch & Ors vs Ut Of J&K & Ors on 9 December, 2022

IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU

Reserved on: 25.11.2021

Pronounced on: 09.12.2022

RP No.39/2022

C/W

RP No.51/2022

RP No.53/2022

RP No.55/2022

RP No.56/2022

RP No.57/2022

RP No.58/2022

RP No.59/2022

NAVEEN KUMAR KATOCH & ORS.

...PETITIONER(S)

Through:- Mr. A. M. Dar, Sr. Advocate, with
Mr. Danish Majid Dar & Mr. Bhat Shafi, Advocate.

Vs.

UT OF J&K & ORS.

...RESPONDENT(S)

Through:- None.

CORAM:-

HON'BLE MRS. SINDHU SHARMA, JUDGE

HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE.

JUDGMENT

Per Sanjay Dhar 'J'

1) By this common order, the afore titled review petitions filed under Section 114 read with Order 47 of the Code of Civil Procedure are proposed to be disposed of.

2) The petitioners have filed the instant review petitions against the judgment and order dated 28.01.2022 passed by this Court in a bunch of Letters Patent Appeals and writ petitions challenging the selection of Page |2 Naib Tehsildars held pursuant to three separate advertisement notices issued on 16.04.2002, 04.05.2005 and 26.05.2008. Although a number of grounds have been projected in the review petitions but during the course of arguments, the petitioners laid stress on the following grounds:

(I) That in para 17 of the judgment under review, it has been observed by this Court that the review petitioners are seeking benefits emanating from judgment dated 31.12.2014 passed in passed in SWP No.487/2009 (Hamidullah Dar's case) whereas the fact of the matter is that they are seeking benefits emanating from the judgment

dated 19.08.2015 (Inamul Haq's case) and, as such, the impugned judgment deserves to be reviewed;

(II) That the observation of this Court in the judgment under review that the judgment dated 31.12.2014 passed in SWP No.487/2009 (Hamidullah Dar's case) and the judgment dated 19.08.2015 (Inamul Haq's case) are judgments in personam and not judgments in rem, is not in accordance with law and, as such, the impugned judgment deserves to be reviewed;

(III) That some of the review petitioners like Naveen Kumar Katoch, were figuring in the wait list of the Naib Tehsildar issued by the Selection Board and, as such, they had no cause to approach the Court immediately after the selection process was over, therefore, dismissal of their writ Page |3 petition on the grounds of delay and laches is not in accordance with law;

(IV) That the review petitioners are seeking enforcement of their fundamental rights and, thus, principle of delay and laches cannot be applied to their cases in view of the law laid down by the Supreme Court;

3) While supporting the aforesaid grounds, learned senior counsel appearing for the review petitioners has referred to and relied upon a number of judgments of the Supreme Court and of this Court and, in particular, he has, while explaining the scope of review, laid much emphasis on the judgments rendered by the Supreme Court in the cases of O. N. Mahindroo vs. District Judge, Delhi and Ors. AIR 1971 SC 107, and Jaswinder Singh (Dead) through legal representatives vs. Navjot Singh Sidhu and Ors, AIR 2022 SC 2441.

4) We have heard learned counsel for the review petitioners and perused the record.

5) Before dealing with the contentions raised by the petitioners, it would be apt to notice the law relating to scope of review.

6) Rule 65 of the Jammu & Kashmir and Ladakh High Court Rules, 1999 deals with power of the High Court to review its judgments. It reads as under:

"65. Application for review of judgment- The Court may review its judgment or order but no application for review shall be entertained except on the ground mentioned in order XLVII Rule 1 of the Code."

Page |4

7) From a perusal of the aforesaid provision, it is clear that a plea for review of a judgment can be entertained only on the grounds mentioned in Order XLVII Rule 1 of the Code of Civil Procedure. Here it would be apt to quote the provisions contained in Order XLVII Rule 1 of the CPC, which reads as under:

"1. Application for review of judgment-"(1) Any person considering himself aggrieved-

(a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred,

(b) by a decree or order from which no appeal is allowed, or

(c) by a decision on a reference from a court of small causes, and who, from the discovery of new an important matter 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 was 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, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgment to the court which passed the decree or made the order.

(2) A party who is not appealing from a decree or order may apply for a review of judgment notwithstanding the pendency of an appeal by some other party except where the ground of such appeal is common to the applicant and the appellant, or when, being respondent, he can present to the appellate court the case on which he applies for the review.

[Explanation:- The fact that the decision on a question of law on which the judgment of the court is based has been reversed or modified by the subsequent decision of a superior court in any other case, shall not be a ground for review of such judgment.] "

Page |5

12) From a perusal of the aforesaid provision, it is clear that the review of a judgment can be made on the following grounds:

(i) if it is shown by the aggrieved person that a new and important matter and evidence which, after exercise of due diligence, was not within his knowledge or could not be produced by him, has been discovered;

(ii) if there is some mistake or error apparent on the face of record; and

(iii) for any other sufficient reason.

The expression "for any sufficient reason" has been interpreted by the Courts to mean a reason analogous to the first two reasons.

13) Now coming to the first ground that has been urged by the review petitioners, it has been observed by this Court in para 17 of the impugned judgment that there is a common thread running

through all the cases, inasmuch as all the writ petitioners have woken up from the deep slumber only after the Writ Court delivered its judgment in SWP No.487/2009 (Hamidullah Dar's case) on 31.12.2014. On this basis it has been observed that the writ petitioners had acquiesced in rejection of their candidature and reconciled to their fate until one fine morning they came to know about the judgment in Hamidullah Dar's case. In para 21 of the impugned judgment, it has been noted that the writ petitioners including the review petitioners filed their writ petitions after the judgments were passed in both the cases i.e., SWP No.487/2009 (Hamidullah Dar's case) and SWP No.1941/2009 (Inamu-ul-Haq's case). Again, in para 24 of the impugned judgment, it has been noted that mere fact that the writ petitioners including the review petitioners had filed writ petitions on an Page |6 earlier occasion also wherein the respondent-State was directed to consider their claim by treating their writ petitions as representations, does not entitle them to grant of any relief because all the earlier writ petitions were filed by them after the judgments were passed in Hamidullah Dar's case and Inamu-ul-Haq's case (supra).

14) It is true that the review petitioners were not seeking benefit on the basis of the judgment in Hamidullah Dar's case but they were seeking benefit of the judgment in Inamu-ul-Haq's case but it is an admitted fact that none of the review petitioners had approached the Court before the judgment in Inamu-ul-Haq's case was delivered. It is only on the basis of these facts that this Court vide the impugned judgment came to the conclusion that the writ petitioners have acquiesced in rejection of their selection and, as such, they are not entitled to any relief. Both the sets of writ petitioners who had claimed the benefit either on the basis of the judgment in Hamidullah Dar's case or on the basis of the judgment in Inamu-ul-Haq's case, have been treated equally as all the writ petitioners, admittedly, approached the Court only after the judgment in the aforementioned two cases had been pronounced. Thus, there is no error apparent on the face of the record that would justify review of the impugned judgment on this ground .

15) So far as the second ground urged by the review petitioners is concerned, the same has been dealt in detail by this Court in para 20 of the impugned judgment. Whether the reasoning given by this Court in arriving at a conclusion that the judgments in Hamidullah Dar's case Page |7 and in Inamu-ul-Haq's case, are judgements in personam is in accordance with law, cannot be a subject matter of discussion for this Court while exercising jurisdiction of review. In any case, the Supreme Court has, while dismissing a petition for Special Leave to Appeal against the judgment under review, in its order dated 14.11.2022 made observations that the judgments in question cannot be said to be judgment in rem as was sought to be contended by the petitioners before the Supreme Court. In view of these observations of the Supreme Court, it will not be open for this Court to go into this issue in these proceedings.

16) It has been contended by learned senior counsel appearing for the review petitioners that one of the review petitioners, namely, Naveen Kumar, figured at serial No.5 of the wait listed candidates and, as such, he had no occasion to call into question his rejection. In this regard, it has to be noted that the selections which were subject matter of the judgment under review were made in the year 2009-10. Pursuant to the selections, the appointments of the candidates were also made during the same period. There was no question of waiting list remaining alive even after the lapse of five years when the review petitioner Naveen Kumar approached the Court after the judgment in

Inamu-ul-Haq's case was delivered. It was not expected of the said review petitioner to go into deep slumber for about five years, particularly when life of a waiting list, in terms of Rule 14(7) of the J&K Civil Services Decentralization and Recruitment Rules, 2010, is only on year. The review petitioners by waiting for four more years after the expiry of life of waiting list invoked Page |8 the writ jurisdiction of the Court only when he came to know about the result of Inamu-ul-Haq's case. The conduct of the aforesaid review petitioner clearly is a classic case of acquiescence in his rejection. Therefore, he cannot claim that just because his name figured in the waiting list, his case is on different footing. This is so, for the simple reason that the waiting list had outlived its life long back. The ground urged by learned counsel for the review petitioners in this regard is without any merit.

17) It has been contended by learned counsel for the review petitioners that the review petitioners are seeking enforcement of their fundamental rights and, thus, the principle of delay and laches cannot be applied to their cases in view of the law laid down by the Supreme Court in C. Channabasavaiah vs. State of Mysore & others, AIR 1965 SC 1293, and Ramchandra Shankar Deodhar & others vs. State of Maharashtra, (1974) 1 SCC 317. On this ground, it has been urged that the impugned judgment deserves to be reviewed.

18) In the above context, it has to be noted that the aforesaid judgments relied upon by the review petitioners have been taken note of in paras 31 to 33 of the impugned judgment and this Court has compared the facts which are peculiar to this case with the facts and circumstances in which the aforesaid judgments were delivered. In case the reasoning adopted by this Court in distinguishing the cases relied upon by the review petitioners is not in accordance with law, the same can be a Page |9 subject of discussion in a higher forum and not a subject matter of discussion in review proceedings.

19) It appears that the learned senior counsel appearing for the review petitioners by urging the grounds which he has projected during the course of arguments wants this Court to re-hear the case and review the judgment. A mere repetition of old and overruled arguments is not sufficient for exercising review jurisdiction.

20) Thus, we are of the opinion that all the contentions raised by the petitioners before the Division Bench have been appropriately dealt with in the judgment and order under review and we do not find any error apparent on the face of record that would warrant interference by this Court in exercise of its review jurisdiction. We do not find any merit in these review petitions. The same are, accordingly, dismissed. A copy of this judgment be placed on each file.

(SANJAY DHAR)
JUDGE

(SINDHU SHARMA)
JUDGE

SRINAGAR
09.12.2022
"Bhat Altaf, PS"

Whether the order is speaking: Yes/No
Whether the order is reportable: Yes/No