Neutral Citation No. - 2023:AHC-LKO:44463-DB

A.F.R.

RESERVED JUDGMENT

Reserved on: 07.07.2023

Delivered on: 10.07.2023

Court No. - 1

Case :- CIVIL MISC REVIEW APPLICATION No. - 24 of 2023

Applicant :- Mata Prasad Tiwari

Opposite Party :- State Of U.P. Thru. Its Secy. Deptt. Of Revenue Civil Sectt. Lko. And Others

Counsel for Applicant :- Rama Kant Dixit,Asok Pande

Hon'ble Devendra Kumar Upadhyaya J.

Hon'ble Subhash Vidyarthi J.

(Delivered by Hon'ble Subhash Vidyarthi J)

1. This is an application seeking review of the judgment and order passed by a co-ordinate Bench of this court dismissing Special Appeal No. 349 of 2022.

2. The first ground pressed by the learned counsel for the review-applicant is that the judgment was not pronounced as per the procedure prescribed by Chapter VII, Rule 1 of the Allahabad High Court Rules, 1952. The aforesaid Rule provides as follows: -

> *"1. Pronouncing of judgment:-*
>
> *(1) After a case has been heard judgment may be pronounced either at once or on some future date 60 of which notice shall be given to the Advocates of the parties : Provided that notification in the Cause List shall be deemed to be sufficient notice.*
>
> *(2) Where a case is heard by two or more Judges and judgments is reserved, their judgment or judgments, may be pronounced by any one of them. If no such Judge be present such judgment or judgments may be pronounced by any other Judge. 61*
>
> *(3) Where a case is heard by a Judge sitting alone and judgment is reserved, his judgment may, in his absence, be pronounced by any other Judge."*

The purpose of the aforesaid Rule is that the judgment delivered by the Court should be known to the parties.

3. The aforesaid Rule provides that after a case has been heard, the judgment ***may*** be pronounced either at once, or on some future date, of which notice shall be given to the Advocates of the parties. It further provides that notification in the cause-list shall be deemed to be 'sufficient notice'. After a case has been heard, the judgment ***may*** be pronounced either at once, or on some future date. This Rule is a Rule of Procedure and it does not confer any substantive right on any party. The Rule does not provide any adverse consequence of the entire judgment not being pronounced in open Court immediately. In our considered view, the aforesaid Procedural Rule is merely directory in nature.

4. The judgments are normally pronounced in open court. In some cases, where the dictation of judgment is expected to consume a very long time, the judgments are reserved. It is also a common practice that at times the Courts pronounce the jist of the judgment and the outcome of the case in the open Court, and the detailed judgments are dictated in the Chamber so as to utilise the time of working on the dias, which would have been consumed in dictation of the complete judgment, in the interest of judicial work by hearing and deciding some other cases. In the present case also, jist of the judgment and the outcome of the Appeal was pronounced in open court and the detailed judgment was dictated subsequently in the Chamber.

5. Therefore, we do not find force in the submission of the learned Counsel for the Review-Applicant that as the complete judgment was not pronounced in open Court, it becomes unsustainable in law. Thus, we reject the first submission of the learned Counsel for the Review-Applicant.

6. The next ground taken by the learned Counsel for the Review-Applicant is that the Special Appeal was heard by a Division Bench, consisting of two Judges, one of whom was appointed under Article 217 of the Constitution of India, whereas the other Judge was appointed under Article 224 of the Constitution of India and the formation of the Bench was against the spirit of the Constitution of India.

7. The Constitution of the Bench was known to the learned Counsel for the review-applicant at the time of making his submissions in support of the Special Appeal and still he preferred to advance his submissions in support of the Special Appeal and he took a chance of getting a judgment which would be favourable to the Appellant. This ground has been taken by him for the first time in review application, after the Special Appeal was dismissed. It is settled law that a new ground cannot be raised for the first time in review application.

8. However, the learned Counsel for the Review-Applicant has submitted that he has taken this Ground in several other cases and in none of the cases it has been decided, so we proceed to consider the merits of this submission.

9. The relevant provisions of Article 217 and 224 of the Constitution of India provide as follows: -

> *"**217. Appointment and conditions of the office of a Judge of a High Court**.—(1) Every Judge of a High Court shall be appointed by the President by warrant under his hand and seal and shall hold office, in the case of an additional or acting Judge, as provided in Article 224, and in any other case, until he attains the age of sixty-two years:*
>
> *Provided that—*
>
> * * *
>
> ***224. Appointment of additional and acting Judges**.—(1) If by reason of any temporary increase in the business of a High Court or by reason of arrears of work therein, it appears to the President that the number of the Judges of that Court should be for the time being increased, the President may appoint duly qualified persons to be additional Judges of the Court for such period not exceeding two years as he may specify.*
>
> *(2) When any Judge of a High Court other than the Chief Justice is by reason of absence or for any other reason unable to perform the duties of his office or is appointed to act temporarily as*

Chief Justice, the President may appoint a duly qualified person to act as a Judge of that Court until the permanent Judge has resumed his duties.

(3) No person appointed as an additional or acting Judge of a High Court shall hold office after attaining the age of sixty-two years."

10. A bare perusal of the aforesaid Articles makes it manifest that Article 217 makes a mention of the Judges appointed under Article 224 of the Constitution of India and it differentiates them only in the matter of their tenure of working by providing that an additional or acting Judge shall hold office as per the provision contained in Article 224 and the other Judges shall hold office until they attain the age of 62 years.

11. Article 219 of the Constitution of India contains the following provision for Oath or affirmation by the Judges of High Courts: -

*"**219. Oath or affirmation by Judges of High Courts**.—Every person appointed to be a Judge of a High Court shall, before he enters upon his office, make and subscribe before the Governor of the State, or some person appointed in that behalf by him, an oath or affirmation according to the form set out for the purpose in the Third Schedule."*

12. The form of oath to be made and subscribed by all the Judges of the High Courts, including the Chief Justices, is as follows: -

"I, A.B., having been appointed Chief Justice (or a Ju dge) of the High Court at (or of) _ _ _ do swear in the name of God / solemnly affirm that I will bear true faith and allegiance to the Constitution of India as by law established, that I will uphold the sovereignty and integrity of India, that I will duly and faithfully and to the best of my ability, knowledge and judgment perform the duties of my office without fear or favour, affection or ill-will and that I will uphold the Constitution and the laws."

13. There is no separate provision for making and subscribing oath by the Judges appointed under Article 224 of the Constitution of India and no separate Form of Oath is prescribed for them. The Judges appointed under Article 224 of the Constitution of India are also under oath to duly and faithfully and to the best of their ability, knowledge and judgment, perform the duties of their office without fear of favour, affection or ill-will like a Judge appointed under Article 217.

The primary duty of the office of a Judge is to render justice to the litigants by deciding the cases that are assigned to him and a Judge appointed under Article 224 of the Constitution of India is as much under Oath to perform this duty, as a Judge appointed under Article 217.

14. Rule 1 of Chapter V of the Allahabad High Court Rules, 1952 provides that "*Judges shall sit alone or in such Division Courts as may be constituted from time to time and do such work as may be allotted to them by order of the Chief Justice or in accordance with his directions*."

15. In **State of Rajasthan v. Prakash Chand**, (1998) 1 SCC 1, the Hon'ble Supreme Court emphasized that: -

> *"the administrative control of the High Court vests in the Chief Justice of the High Court alone and that it is his prerogative to distribute business of the High Court both judicial and administrative. He alone, has the right and power to decide how the Benches of the High Court are to be constituted: which Judge is to sit alone and which cases he can and is required to hear as also as to which Judges shall constitute a Division Bench and what work those Benches shall do."*

16. The Hon'ble Chief Justice is the master of the roster and he alone has the authority to assign different cases or category of cases to different Judges. All the Judges are duty bound to perform the judicial work allotted to them and to exercise their jurisdiction accordingly, irrespective of the Constitutional provision under which they have been appointed.

17. So far as the judicial powers and duties of the judges are concerned, there is no difference between the Judges appointed under Article 217 of the Constitution of India and the Judges appointed under Article 224. In case a Judge appointed under Article 224 of the Constitution of India does not decide any case for the reason that he has been appointed under that Article, he would be failing in the performance of his Constitutional duties and he will be dis-respecting his oath.

18. Therefore, we find no substance in the second submission of the learned Counsel for the Review-Applicant and we reject the same.

19. Now we proceed to consider the merits of the case in order to

ascertain whether the judgment under challenge suffers from any error apparent on the face of the record, which is the basic requirement for reviewing a judgment. The Review-Applicant was appointed as a Collection Amin in the year 1986. Although all persons appointed with him were appointed on regular posts, they were treated as Seasonal Collection Amins. One of the selected candidates filed Writ Petition No. 4031 (S/S) of 2001, which was allowed by means of an order dated 19.08.2006 and a Writ of Mandamus was issued for allowing the petitioner of that Writ Petition to work as a Regular Collection Amin.

20. The Review-Applicant filed Writ Petition No. 738 (S/S) of 2012, which was disposed-off by means of an order dated 07.02,2012, directing the respondents to give him benefit of the order dated 19.08.2006 passed in Writ Petition No. 4031 (S/S) of 2001, to pay him salary for the period 07.02.2002 to 13.11.2012 and to pay him pension.

21. In furtherance of the aforesaid order dated 07.02.2012, the Sub-Divisional Magistrate, Gauriganj passed an order dated 18.08.2012 permitting the Review-Applicant to join his service as a Regular Collection Amin. The Review-Applicant has retired on 30.11.2012.

22. The Review Applicant filed a Contempt Petition alleging non-compliance of the order dated 07.02.2012 and the Contempt Petition was dismissed after recording that the order of the Writ Court has been complied with. It appears that the review Applicant did not challenge the order dismissing the Contempt Petition filed by him.

23. The Review Applicant thereafter filed Writ Petition No. 6155 (S/S) of 2015 for issuance of a Writ of Mandamus for fixation of his salary as directed in the order dated 07.02.2012 passed in Writ Petition No. 738 (S/S) of 2012. The Hon'ble Single Judge dismissed the Writ Petition holding that the petitioner's claim had been rejected on the ground that he had not worked as a Regular Collection Amin from 27.08.2012 to 30.11.2012 and from 07.02.2012 to 26.08.2012 and, therefore, he was not entitled for payment of salary for the aforesaid period on the principle of "No Work No Pay". The petitioner's services were

regularized vide order dated 27.08.2012 and he had worked on a regular basis for a period of merely 3 months and 5 days and he did not complete the qualifying service of 10 years necessary for making him entitled to receive pension.

24. The Special Appeal challenging the aforesaid order had been dismissed as the Division Bench was also of the view that the petitioner was not entitled to receive salary for the period he had not worked, applying the principle of "No Work No Pay" and he had not completed the qualifying service as a Regular Collection Amin.

25. The learned counsel for the Review-Applicant has submitted that in the judgment and order dated 03.08.2017 passed in Writ Petition No. 4963 (S/S) of 2015, Rajendra Prasad Tiwari v. State of U.P. and in the judgment and order dated 27.11.2018 passed in Writ Petition No. 619 (S/S) of 2014, Md. Usman Ansari v. State of U.P., the persons who had not worked for a single day, were extended benefit of judgment and order dated 19.08.2006 passed in Writ Petition No. 4031 (S/S) of 2001, whereby the petitioner's services were treated as regular since 05.06.1986 and they were paid post-retiral dues and pension, and this was not considered by the Division Bench while deciding the Special Appeal.

26. Although it is mentioned in Ground-D taken in the memo of review-application that the aforesaid judgments were already on record, it has rightly not been stated that the learned counsel for the appellant had referred to those judgments during his submissions.

27. Copies of Case-laws are not required to be annexed with the Writ Petition or the Memo of Appeal. In any case, while deciding a case, the Court is required to consider the submission made by the learned Counsel for the parties and the case-laws placed by them before the Court in support of their submissions. The Court is not expected to go through the entire record to find out whether the petitioner or the appellant has brought on record a copy of any case-law, although the same has not been relied upon by the learned counsel during his submissions.

28. Even if Rajendra Prasad Tiwari and Md. Usman Ansari had been

granted the benefit of the judgment and order dated 19.08.2006 passed in Writ Petition No. 4031 (S/S) of 2001 although they had not worked for a single day, the judgments passed in their cases will not be binding precedents unless the question of eligibility of the persons for being paid the salary for the period they had not worked was decided in those judgments, because it is well settled law of precedents that only the ratio of a judgment is binding as a precedent, not the order which is passed in a case.

29. For the aforesaid reasons, we are of the considered view that the judgment and order dated 17.01.2023 dismissing the Special Appeal does not suffer from any error, much less an error which is apparent on the face of the record.

30. The review application lacks merits and the same is accordingly **dismissed**. However, there will be no order as to costs.

(**Subhash Vidyarthi, J.**) (**Devendra Kumar Upadhyaya, J.**)

Order Date :- 7.7.2023
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