IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI

REVIEW APPLICATION NO.12 OF 2019
IN
ORIGINAL APPLICATION NO.825 OF 2017

Smt. Suchitra Suryaji Sawant.)
Age : 59 Yrs., Occu. : Nil,)
R/at 1, Shivkrupa Chawl, Bhawani Chowk,)
Suryanagar, Vitava, Thane – 400 601.)**...Applicant**

Versus

1. The State of Maharashtra.)
Through the Addl. Chief Secretary,)
Home Department, Mantralaya,)
Mumbai - 400 032.)

2. The Director General of Police (M.S),)
Shahid Bhagatsingh Marg, Fort,)
Mumbai.)

3. The Commissioner of Police.)
Thane City, Thane.)**...Respondents**

Mr. R.M. Kolge, Advocate for Applicant.

Mr. A.J. Chougule, Presenting Officer for Respondents.

CORAM : A.P. KURHEKAR, MEMBER-J

DATE : 28.11.2019

JUDGMENT

1. The present Review Application is filed under Section 22(3)(f) of the Administrative Tribunals Act, 1985 under Section 47 of Civil Procedure Code seeking review of the Judgment dated 18.07.2019 delivered in O.A.825/2017 rejecting the claim of the Applicant for grant of family pension.

2. The factual matrix is as follows :-

The Applicant is widow of deceased Government employee Suryaji Sawant, who was appointed as Police Constable in 1977. The FIR No.78/1998 was registered against Applicant's husband and others under Sections 302, 225(A), 224, 221, 120(B) read with 34 of Indian Penal Code and under Sections 324 and 327 of Arm Act. On 07.08.1998, the Commissioner of Police, Thane dismissed the Applicant's husband invoking Article 311(2)(b) of Constitution of India. The Applicant challenged summary dismissal by filing appeal which was dismissed by the Government. The Applicant again unsuccessfully challenged the dismissal by filing O.A.No.242/1999 which was also dismissed. In the meantime, the Applicant's husband along with co-accused were convicted by Sessions Court and sentenced to suffer life imprisonment by order dated 28th August, 1999. It was challenged by filing Criminal Appeal No.495/1999 and 570/1999. The Applicant's husband passed away on 14.01.2002. The Hon'ble High Court allowed appeal on 27th October, 2004 and acquitted all accused.

3. After acquittal in Criminal Case, the Applicant had filed representation before Commissioner of Police for grant of family pension in view of acquittal in Criminal Case. Her representation was rejected on the ground of forfeiture of past service consequent to summary dismissal under Article 311(2)(b) of Constitution of India.

Against this order, the Applicant had filed O.A.No.825/2017 which was decided by this Tribunal on merit and dismissed on 18.07.2019.

4. This Review Application is filed seeking review of Judgment passed in O.A.825/2017 on the ground that the Tribunal has erred in his finding that summary dismissal under Article 311(2)(b) of Constitution of India have nothing to do with the acquittal in Criminal Case and acquittal in Criminal Case itself will not give right to claim family pension.

5. Shri R.M. Kolge, learned Advocate sought to contend that view taken by the Tribunal that acquittal of the husband of the Applicant cannot revive the claim of family pension is erroneous. According to him, in view of acquittal of the Applicant's husband in Criminal Case, the order of summary dismissal under Section 311(2)(b) of Constitution of India loses its efficacy or relevance, and therefore, Applicant's claim for family pension deserves acceptance.

6. Per contra, Shri A.J. Chougule, learned P.O. submits that review itself is not maintainable, as it does not fall within the parameters of review and under the garb of review, the Applicant is seeking re-assessment of the Judgment as an Appellate Authority, which is impermissible in law. I find merit in his submission.

7. At this juncture, it would be apposite to reproduce Order 47 of CPC, which is as follows :-

> "**1. Application for review of judgment**.- (1) Any person considering himself aggrieved.-
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> (a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred,
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> (b) by a decree or order from which no appeal is allowed, or
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> (c) by a decision on a reference from a Court of Small Causes,

> and who, from the discovery of new and 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.
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> (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 applied for the review."

8. Needless to mention that the review proceedings have to be strictly confined to the ambit and scope of Order 47, Rule 1 of CPC. The review is by no means an appeal in disguise whereby the matter is re-heard. True, under Order 47, Rule 1 of CPC, the Judgment may be opened to review, if there is mistake or error apparent on the face of record. An error which is not self-evident and has to be detected by the process of reasoning can hardly be said to be an error apparent on the face of record justifying the Court to exercise its powers of review. In exercise of jurisdiction under Order 47 of CPC, it is not permissible that the matter to be re-heard and erroneous view to be corrected. Suffice to say, it must be remembered that the Review Petition cannot be allowed as an appeal in disguise. There is clear distinction between an erroneous decision and error apparent on the face of record. Erroneous decision can be corrected by the higher forum in appeal in Writ Jurisdiction, whereas error apparent on the face of record can be corrected by exercise or review jurisdiction. This is fairly settled legal position.

9. Now, turning to the present case, the submission advanced by the learned Advocate for the Applicant that there is apparent error on the fact of record is misconceived and fallacious. In O.A.825/2017, the Tribunal has considered all submissions advanced by the learned

Advocate for the Applicant as well as Judgment relied by him and recorded finding against the Applicant. It is finding of fact, which is outcome of assessment of the material on record. As such, it cannot be termed as error apparent on the face of record. As such, even assuming for a moment that the view taken by the Tribunal in O.A.825/2017 was incorrect, in that event also, the remedy was to file appeal/Writ Petition challenging the same and it can never be challenged by filing Review Application. The Applicant in the present Review is in fact seeking re-hearing of the entire matter which requires long debate and process of reasoning, which is not permissible in revisional jurisdiction. This Court could not sit in appeal. The order 47 of CPC by its very connotation signifies an error, which is evident *per se* from the record of the case and does not require any detailed examination, scrutiny and elucidation either of fact or legal position.

10. At this juncture, it would be apposite to refer the decision of Hon'ble Supreme Court ***Parsion Devi & Ors. Vs. Sumitri Devi & Ors. (1997) 8 SCC 715***, wherein it has been held that if an error is not self-evident and detection thereof requires longer debate and process of reasoning, it cannot be treated as error apparent on the face of record for the purpose of Order 47 under Rule 1 of CPC. In other words, the order or decision or Judgment cannot be corrected merely because its erroneous view in law or on the ground that the different view could have been taken on account of fact or law, as the Court could not sit in appeal over its own Judgment. Similar view was again reiterated by Hon'ble Supreme Court in ***AIR 2000 SC 1650 (Lily Thomas Vs. Union of India)*** where it has been held that the power of review can be exercised for correction of mistake only and not to substitute a view. Such powers can be exercised within limits of statute dealing with the exercise of power and review cannot be treated an appeal in disguise. The mere possibility of two views on the subject is not ground for review.

11. As such, the grounds now raised in Review are already considered by the Tribunal while deciding O.A.825/2017. In O.A.825/2017, the Applicant's Advocate had placed reliance on ***(1998) 3 Mh.L.J. 435 (Anna D. Londhe Vs. State of Maharashtra)*** which has been also discussed and distinguished. In ***Anna Londhe's*** case, it was a case of removal from service and not dismissal from service. Therefore, liberty was granted to make representation for grant of compassionate pension as per proviso to Rule 101(1) of Maharashtra Civil Services (Pension) Rules, 1982. This Tribunal has also concluded that in case of dismissal from service, it entails in forfeiture of past service. In view of Rule 101(3) of 'Pension Rules 1982', the dismissed Government servant is not eligible for compassionate pension.

12. As such, the present case does not fall within the parameters of review as this Court cannot sit in appeal over its own Judgment. The Review Application thus devoid of merit and deserves to be dismissed. Hence, the following order.

O R D E R

The Review Application is dismissed with no order as to costs.

Sd/-
(A.P. KURHEKAR)
Member-J

Mumbai
Date : 28.11.2019
Dictation taken by :
S.K. Wamanse.
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