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SooperKanoon Citation : sooperkanoon.com/537023

Court : Orissa

Decided On : Aug-22-2008

Reported in : 2009(I)OLR259

Judge : L. Mohapatra and; M.M. Das, JJ.

Appellant : Amulya Kumar Jena

Respondent : Chief General Manager, State Bank of India and ors.

Disposition : Appeal dismissed

Judgement :

L. Mohapatra, J.

1. This review is directed against the judgment dated 25.3.2003 passed by this Court in 2003 (Supp.) OLR 359 I O.J.C 13052 of 1997 dismissing the writ application filed by the review-petitioner.

2. The petitioner in the writ application had challenged the order passed by the disciplinary authority pursuant to a departmental proceeding initiated against him imposing penalty of reduction of basic pay by three stages and treating the period of suspension as such. It was contended in the writ application that out of twenty charges framed against the petitioner, only six were found to have been partially proved by the Enquiry Officer and three more charges were found to be partially

approved by the disciplinary authority. On the above basis, it was further contended that charges cannot be divided into separate parts and the question of partial proof of any charge does not arise. It was also the case of the petitioner that he was kept in dark about the portion of the charges said to have been proved and, therefore, appropriate explanation could not be submitted challenging the said findings of the enquiry officer as well as disciplinary authority. It was also the case of the petitioner that it is a case of no evidence and findings of the enquiry officer having been based on no evidence, all other orders passed on such report cannot be sustained. This Court in the impugned judgment not only took into consideration the evidence adduced by the department and the charges that were proved in course inquiry but also the law laid down in that regard and dismissed the writ application.

3. Dr. M. R. Panda, the learned Counsel appearing for the review petitioner submitted that the State Bank of India Officers Service Rules" had been framed in fact in exercise of the power vested Section 67 of State Bank of India Act, 1955. Rule 5 thereof provides for increment and Rule-21 provides for dearness allowance. According to the learned Counsel for the review petitioner, the dearness allowance and the increments are the statutory pecuniary benefits and the same cannot be withheld or curtailed without following the due procedure of law. It was further contended that even if the punishment is accepted, the petitioner shall be entitled to dearness allowance and increment and, therefore, the judgment, of this Court is required to be modified/reviewed to the above extent.

Learned Counsel for the State Bank of India submitted that the claim made by the petitioner cannot be subject matter of review as it has got nothing to do with the prayer made in the writ application out of which the review arises. It was also contended that the power of review has its own limitation and unless the Court arrives at a finding, that there is error apparent on the face of the record the power of review should not be exercised. Reliance is placed by the learned Counsel for the opposite parties on a decision of the Apex Court in the case of Union of India and Ors. v. B. Valluvan and Ors. reported in (2007) 1 Scc (L & S) 28.

4. We now proceed to examine as to whether the grounds taken in review application are available to be taken by the petitioner. In the aforesaid decision, the Apex Court has laid down the limitation of the Court in entertaining a review petition and has specifically held in the said decision that review power must be exercised within the limitations as provided under Section 114 read with Order 47 of the Code of Civil Procedure. The High Court without arriving at a finding as to how error apparent on the face of the record is committed, cannot go into the merits of the case while exercising its review jurisdiction. In the present case as stated earlier, the writ application was filed by the petitioner challenging the punishment inflicted on him by the disciplinary authority in pursuance of a departmental proceeding. Punishment was reduction of basic pay by three stages and treating the period of suspension as such. The sole ground taken before this Court in the review petition is that even accepting such punishment, the petitioner is entitled to dearness allowance and annual increments, which have been denied to him. Since payment of dearness allowance and grant of annual increments are admittedly not the subject matter of the writ application, non-payment of the same can only give rise to a fresh cause of action for which the petitioner may have to file another writ application, but the same being not the subject matter of dispute before this Court in the writ application cannot be taken as ground for review. Dr. Panda learned Counsel appearing for the review-petitioner has not been able to show anything from the judgment as to how it comes within the purview either Section 114 or Order 47 of the Code of Civil Procedure.

5. We, therefore, hold that no ground having been made by the review-petitioner for reviewing the impugned judgment, we have no other option except dismissing the same.

The review petition is accordingly dismissed.

M.M. Das, J.

6. I agree.