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Court : Rajasthan

Decided On : Jan-17-1996

Reported in : 1996(2)WLC140; 1996(1)WLN52

Judge : N.K. Jain, J.

Appeal No. : D.B.S. Misc. Review Petition No. 31 of 1994

Appellant : Ashok Kumar Joshi and ors.

Respondent : State of Rajasthan and anr.

Advocate for Def. : Mr. Singhvi

Disposition : Petition dismissed

Judgement :

N.K. Jain, J.

1. This review petition is filed in view of the order of the Supreme Court dt. 7.4.1994 against the judgment of this Court dt. 28.9.1993 whereby the order of the learned Single Judge was upheld.

2. In pursuance of the show cause notice issued by this Court, Mr. M.R. Singhvi filed reply on behalf of Respondents Nos. 1,2, & 4 and Mr. Jangir has filed reply on behalf of the Respondent No. 3.

3. The non-petitioners raised preliminary objections regarding the maintainability of the review petition. It has been stated that in the grab of this review petition, the Advocate on record has made some new persons Nos. 14, 15, 16, 17, 18, 19, 20, 21 and 22 as party who were not party in the original writ petition and by this attempt the petitioners practised fraud upon the Court as they were never party in the original writ petition Nos. 4426/93, DBC Special Appeal Nos. 600/93 and not before Hon'ble the Supreme Court of India. It has also been stated that the petitioners have tried to enlarge the scope of the review petition by placing new material on record of the persons who were not even party. The petitioners have made reference of the facts of writ petition Nos. 6178/92 Prem Prakash v. State to misled the Court. On merits also the respondents filed reply submitting that there was no occasion to file reply as the writ petition was dismissed in limine. In the reply the respondents have stated that the present petitioners never persuaded their regular course of study nor their names were entered in the regular scroll register of the school. It has also been stated that the writ petition and the special appeal are rightly rejected and there is no error apparent on the face of record.

4. Respondent No. 3 in its reply has raised preliminary objections stating that it is a review petition and the petitioner is not permitted to place new material which was not placed in the earlier proceedings. It has been stated that the petitioners have misstated the facts. It has also been stated that the petitioners were never admitted as regular students except three candidates who deposited Rs. 1/- only. It has been further stated that the petitioners never appeared in the written test and the alleged receipt Nos. 33/72 (Anx. 9) is false where no such receipt was issued on 22.10.1989 in favour of Narayan Prasad similarly the affidavit of Vishnu Dutt is also incorrect as also that of Nand Kishore is false since no receipt was issued in favour of these persons. The respondent No. 3 has stated that Anx. 22 is also false and therefore, this Court should take necessary & appropriate legal action. The review petition may be dismissed with exemplary costs.

5. The petitioners filed rejoinder on 11.1.1996 in the Court along with Anx. 4 typed copies of receipt issued in favour of Ram Kumar Acharya for a sum of Rs. 80.50 bearing receipt No. 73 of Receipt Book No. 30 dt. 2.7.1991 and Anx. 5 receipt issued in favour of Pradeep Sharma for a sum of Rs. 1/- dt. 21.10.1989 bearing

No. 10 of Book No. 30 as also of Rs. 56/- bearing No. 33 of Book No. 29 issued on 21.10.1989 with the allegation that this is true with regard to other persons as well.

6. Mr. Mridul, Sr. Advocate appearing on behalf of the petitioners has referred to Anx. R/1 dt. 6.8.1992 whereby the Government has given relaxation to 65 candidates as their practicals could not be completed. Learned Counsel for the petitioners also referred to the reply filed by the State in writ petition Nos. 6178/92 and submitted that out of 16 persons except petitioners Nos. 13 & 14, none other has opted for MLT course and petitioners Nos. 13 & 14 though they opted the course but they did not choose to appear in the theory papers even when they were given admission, therefore, the petitioners are also entitled for admission and by not considering the petitioners' case for admission in the light of the above, there is an error apparent on the face of record.

7. Mr. Singhvi, learned counsel for the respondents has contended that there is no reference of 16 candidates in the order of the Supreme Court and this material cannot be taken into account. He has submitted that the 65 candidates were admitted but their practical could not be completed, therefore, the Government gave one time relaxation which is within the competence of the State Government whereas the petitioners were not admitted in the training and on the contrary they did not deposit fees. Therefore, there is no error apparent on the face of record, so as to call for any review.

8. Mr. Jangir has adopted the arguments of Mr. Singhvi and has also urged that no error apparent can be shown on the basis of new facts. He has urged that the petitioners never appeared in the written test nor took the studies as done by 65 candidates. He has also urged that the petitioners cannot take advantage of 16 candidates as this was not agitated earlier and further they did not appeal in the written test. He has further urged that the receipts filed by the petitioners are false and the petitioners should be prosecuted for filing forged documents.

9. In rejoinder Mr. Mridul has not said anything regarding adding of new persons & regarding applications moved for taking documents Anx. 7 to 23 on record. However, he has submitted that he can argue the new points in the absence of any specific restriction.

10. It is well settled that review does not mean to rehear the entire matter, to allow to raise new points which were not raised earlier and even erroneous order cannot be corrected in the review petition as also filing of review petition is not permissible by a third party who was not a party to the initial proceedings. Of course, review petition can be allowed when there is an error apparent on the face of record, in view of the observations made by the Hon'ble the Supreme Court and considering the arguments in the light of above legal position, after giving my thoughtful and earnest consideration, I am of the view that there is no error apparent on the fact of record.

11. In the case in hand the petitioners have placed on record scroll register showing their attendance which has been disputed by the respondents stating that the photo copy produced by the petitioners is not a copy of the original scroll register and the same is not genuine one. Some of the typed copies of the receipts produced by the petitioners along with the rejoinder have also been denied by the respondents and it has been categorically stated that no such receipt has been issued by the respondent No. 3. The alleged typed copies of the receipts issued in favour of Ram Kumar Acharya and Pradeep Kumar Sharma are false and that too of some other persons who were not party to the writ petition. Therefore, in such a situation when there is a serious dispute between the parties regarding the controversy cannot be said to be an error apparent on the face of record arising out of the order of this Court. Moreso, nothing has been pointed out that on that basis of existing material there is any factual mistake which amounts to error apparent on the face of record. The facts as alleged by the petitioners are seriously disputed and cannot be considered in review petition as its scope is very limited. Apart from that the learned counsel for the petitioners has not been able to furnish any explanation as to how the persons who were not party throughout were made party in the review petition and application have been moved to impleaded them and further how he has placed new material on record. The contention of Mr. Mridul that he can agitate new points on the basis of new material does not impress me for the reasons as is clear from the order of the Hon'ble Supreme Court, which reads as under -

It is urged that the High Court was in error in recording the finding in relation to the petitioners, to the effect that on 'on cancellation of Nursing Course they left the school in the year 1990 and neither they joined the course again nor they were allowed to take training in the Medical College as was done in the case of 65 students. 'Sri Lahoty says that the petitioners had in fact joined the 'Medical Laboratory Technician's Course' and were therefore in the same position as the other 65 students.

There is a factual finding recorded by the High Court to the contrary. We do not propose to go into that aspect here. If there is any such factual error, it is open to the petitioners to move the High Court for correction. If a Review Petition is moved within three weeks from today, the same shall not be dismissed on the ground of limitation alone. With this liberty, the special leave petition is dismissed.

12. Since admittedly the points were not raised earlier and material was not placed in the earlier proceedings. Now, the petitioners can't agitate these points at this belated stage that too in review petition. So far as the alleged factual error that the petitioners had joined the 'Medical Laboratory Technician's Course' and were in the same position as that of other 65 students, has not been proved as discussed above and as such no relief can be granted in the review petition.

13. Mr. Singhvi, learned counsel for the respondents has questioned the conduct of the Advocate on record and the Advocate who has settled the review petition stating that knowing well the actual writ petitioners, they have added some more persons in this review petition as party and also moved applications for impleading other persons as party whereas no third party can file review. He has also contended that the learned counsel for the petitioners agitated new points on the basis of the material which is false & is not correct and that too was not earlier before this Court and this conduct of the learned counsel for the petitioner itself amounts to misconduct. He has further contended that nothing has been said before the learned Single Judge or before the Division Bench or before their lordships of the Supremed Court regarding the reply given in S.B.C.W. Petition Nos. 6178/93 and the petitioners cannot take any advantage put of the same stating that there is a factual error. Learned counsel for the respondents have

vehemently & strongly contended that the conduct of the Advocates appearing on behalf of the petitioners is not befitting rather they tried to misled the Court with a view to get their case considered and to give them advantage in the garb of this review petition which was filed by 13 persons rightly as S.L.P. was preferred by 13 persons only. Writ Petition was filed by 31 persons and out of these 31 persons only 13 filed S.L.P. Later on application dt. 18.4.1994 for impleading Sandeep Modi as party, application dt. 10.5.1994 for impleading six persons, application dt. 18.8.1994 for impleading Rajesh Vyas, application dt. 19.10.1994 for impleading Pradeep Kumar and application dt. 10.4.95 for impleading three persons as party were moved and further application dt. 6.5.1995 for taking documents Anx. 7 to 23 on record was moved on the ground that their case is identical without disclosing that they were party earlier and amended cause titles were respectively filed without there being any order of this Court. In this way deliberately added 12 new persons against remaining 18 original persons in the garb of 31 persons. This conduct to mislead the Court is serious one on the face of it which tantamounts to misconduct and appropriate action must be taken against the Advocate on record so also against the Senior Advocate who is not merely a arguing counsel but he has settled the petition and thereby they are liable to be held guilty for contempt of this Hon'ble Court. Be that as it may be since there is a separate remedy I need not to go into such question and the advocates are also always expected to place the true and correct material before the Court, so as to assist in dispensation of justice.

14. In the result, the review petition is dismissed.

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