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Court : Karnataka Dharwad

Decided On : Jan-20-2011

Judge : The Honourable Mr Justice N.K. Patil &Amp; the Honourable Mr Justice a.N. Venugopalagowda

Appeal No. : Review Petition No.193 of 2010

Appellant : Andanagoudar

Respondent : The Management of N.W.K.R.T.C, Divisional Office by Its Dvn. Contl

Advocate for Pet/Ap. : For the Petitioner: Ravi Hegde, V.S. Naik, Advocates. For the Respondent: ------.

Judgement :

Venugopala Gowda, J

The matter is on Board, to hear regarding non compliance of office objection. The office raised objection with regard to the maintainability of this review petition. Learned Counsel for the petitioner having endorsed on the Form of Examination Report (Form No.14) to the effect that “Under Order 47 Rule 1, there is no prohibition for second review and may be posted before the Court.”, the matter has been placed before us.

2. It is necessary to notice in brief, the facts of the case, which have led to the filing of this review petition:

The petitioner/workman remained absent from duty while working on the post of Junior Assistant with the respondent/management from 18.7.86 to 30.10.86 i.e., for about 102 days. Management issued 'Articles of Charges' on 21.8.87 alleging that, the absence was unauthorised and amounted to misconduct, to which, the workman submitted his reply. The explanation offered by the workman having been found to be not satisfactory, domestic enquiry was ordered. The workman did not participate in the enquiry despite issue of notices by the enquiry Officer. The enquiry Officer submitted his report holding the charge levelled against the workman as proved. The disciplinary authority having taken further action, passed an order of dismissal against the workman on 10.1.2000. While imposing the punishment, it was noted by the disciplinary authority that the workman had remained unauthorisedly absent even on earlier occasions and there were previous misconducts.

3. The order of dismissal was questioned by the workman by filing an application Under Section 10(4-A) of the Industrial Disputes (Karnataka Amendment) Act, 1947 (for short, 'the Act') before the Labour Court at Gulbarga. The management contested the said application. The Labour Court found that, the enquiry held against the workman was neither fair nor proper and held that, the Corporation was not justified in dismissing the workman. Ultimately, the Labour Court directed the reinstatement of the workman with continuity of service but without payment of backwages. Aggrieved, both the parties filed writ petitions. Learned Single Judge, upon consideration, found both the writ petitions to be devoid of merit and dismissed the same. Aggrieved, the workman filed writ appeal which was found to be devoid of merit. It was held that, the workman is not entitled to any relief. The workman filed review petition with an application seeking condonation of delay in the matter of filing the review petition. The review petition having been found to be untenable, was rejected by making it clear that, it is unnecessary to issue notice on the delay condonation application. This review petition has been filed, to review the order dated 23.10.09 passed in R.P.No.199/09 and to restore W.A.1095/07 by setting aside the judgment dated 11.6.2008 and to hear the writ appeal.

4. Sri Ravi S. Hegde, Learned Counsel appearing for the petitioner contended that, there is no prohibition under Rule 1 of Order 47 CPC to file a second review petition since there are errors apparent on the face of the record in the judgment dated 11.6.08 passed in W.A.1095/07 and that the order dated 23.10.09 rejecting R.P.199/09 is not a considered order. Learned Counsel submits that, the office objection regarding maintainability being untenable, may be over-ruled and the review petition may be entertained.

5. Keeping in view the record and the contention of the Learned Counsel, the point for consideration is:

“Whether a second review petition is maintainable?”

6. Indisputably, the petitioner sought review of the judgment dated 11.6.08 passed in W.A.1095/07 by filing review petition 199/09. Taking into consideration the facts and circumstances of the case, the relief granted and the review being only with regard to the denial of backwages, it was held that the prayer sought in the review petition cannot be granted. The review petition was held to be devoid of merit and was rejected on 23.10.09.

7. Rule 1 of Order 47 CPC can be invoked by a party to seek review of judgment or order, if there is error apparent on the face of the record and the conditions stipulated therein are found to exist. R.P.199/09 was filed by the petitioner to review the judgment passed in the writ appeal. In the instant review petition, the petitioner, in the first instance, is seeking review of the order passed on the review petition and in the second instance, to setaside the judgment passed in the writ appeal and to re-hear the writ appeal. As already noticed, the review petition was rejected as devoid of merit. In our considered opinion, there is no provision under the Code of Civil Procedure to review an order passed on a review petition. This second review petition has been filed in spite of rejection of the first review petition as devoid of merit and this petition is nothing but an abuse of process, in as much as, recourse to successive review petitions against the same order is not permissible.

Office is right in raising the objection regarding the maintainability of the second review petition. The submission of the learned counsel to overrule the office objection has no merit. The office objection stands upheld and the petition stands rejected.

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