

2016 SCC OnLine All 2613

In the High Court of Allahabad[†]
(BEFORE NARAYAN SHUKLA AND ANANT KUMAR, JJ.)

Dr. Gurmeet Singh Petitioner;

v.

State of U.P. and Others Respondents.

Review Petition/Application No. 60287 of 2016 and Service Bench
No. - 113 of 2007

Decided on September 22, 2016

Advocates who appeared in this case :

Counsel for Petitioner:- Upendra Nath Mishra, Harjot Singh, Vivek
Kumar Rai

Counsel for Respondent:- C.S.C., Saurav Lavania, Sri Krishna
Chandra

The Order of the Court was delivered by

NARAYAN SHUKLA, J.:— Heard Mr. Prashant Chandra, learned Senior Advocate assisted by Mr. Vivek Kumar Rai, learned counsel for the review applicant as well as Mr. Saurav Lavania, learned counsel for the respondents.

2. This is an application for review of order dated 18 May 2016, passed in writ petition No. 113 (SB) of 2007.

3. The review applicant has submitted that this Court in deciding the writ petition has failed to take note of the case of *Dr. B.K. Khanna v. State of U.P.*, 1994 Supp (1) SCC 571, in which the Hon'ble Supreme Court had dealt with the similar facts. Secondly, this Court in making decision has taken into consideration Rule 12(a) of Fundamental Rules, whereas the Fundamental Rules are inapplicable in the petitioner's case. The petitioner's services were governed strictly by the first statute of the Lucknow University. It has further been submitted that this Court has failed to appreciate Annexure No. CA-7 of the counter affidavit filed on behalf of the respondents 2 and 3, which is a letter dated 2.8.1994 written by the petitioner to the Vice Chancellor, in which it had been categorically mentioned that the petitioner should be deemed to have been relieved from the duties as Assistant Professor in the Department of Anesthesiology and not from the post. Further this Court has failed to appreciate that the respondents in rejecting the representation had ignored that in past there had been examples of number of persons who had been holding charge on different posts at one point of time.

4. In support of his submission he cited a decision of the Hon'ble

Supreme Court i.e. *State of Rajasthan v. Surendra Mohnot* (2014) 14 SCC 77:—

“26. In the case at hand, as the factual score has uncurtained, the application for review did not require a long-drawn process of reasoning. It did not require any advertence on merits which is in the province of the appellate court. Frankly speaking, it was a manifest and palpable error. A wrong authority which had nothing to do with the lis was cited and that was conceded to. An already existing binding precedent was ignored. At a mere glance it would have been clear to the Writ Court that the decision was rendered on the basis of a wrong authority. The error was self-evident. When such self-evident errors come to the notice of the Court and they are not rectified in exercise of review jurisdiction or jurisdiction of recall which is a facet of plenary jurisdiction under Article 226 of the Constitution, a grave miscarriage of justice occurs.

In appeal the Division Bench, we assume, did not even think it necessary to look at the judgments and did not apprise itself of the fact that an application for review had already been preferred before the learned Single Judge and faced rejection. As it seems, it has transiently and laconically addressed itself to the principle enshrined in Section 96(3) of the Code of Civil Procedure, as a consequence of which the decision rendered by it has carried the weight of legal vulnerability.” In view of the aforesaid submissions, we would like to discuss firstly *Dr. B.K. Khanna's case* (Supra). The facts of this case are that the appellant was appointed as Professor in the Department of Tuberculosis of the King George's Medical College, Lucknow on May 1, 1967. At that time the said College was being run by the Lucknow University. However, its control and management was taken over by the State Government by U.P. Ordinance No. 10 of 1981. Thereafter the appellant was appointed as acting Principal of the College by the State Government and then as Principal of the College on regular basis. While he was working as Principal of the College he was compulsorily retired by a Government Order dated March 6, 1991. Aggrieved appellant filed a writ petition before this Court challenging the order of compulsory retirement. The writ petition was dismissed by this Court. Aggrieved appellant had filed an appeal before the Hon'ble Supreme Court.

Before this Court the appellant had challenged the constitutional validity of the U.P. Act No. 10 of 1983. This Court vide judgment and order dated 29 March 1991 and April 8, 1991 had declared the said Act as unconstitutional and had struck down the same. The Civil Appeal filed by the State of U.P. before the Supreme Court against the decision of the High Court was withdrawn. Thus the judgment of the High Court had become final.