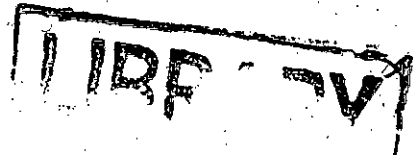




**CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH, KOLKATA**



**No. R.A. 350/00004/2020
(O.A. 350/01618/2018)**

Date of order: 16.03.2020

**Present: Hon'ble Ms. Bidisha Banerjee, Judicial Member
Hon'ble Dr. Nandita Chatterjee, Administrative Member**

SWAPAN SANTRA

Vs.

UNION OF INDIA & ORS. (FINANCE)

**For the Applicant : Mr. A. Chakraborty, Counsel
For the Respondents : None**

O R D E R O N R E V I E W A P P L I C A T I O N (D i s p o s e d o f b y C i r c u l a t i o n)



Per Dr. Nandita Chatterjee, Administrative Member:

The applicant in the Review Application has approached this Tribunal for review of its orders dated 14.1.2020 in O.A. No. 1618 of 2018.

2. In O.A. No. 1618 of 2018, this Tribunal had issued the following orders:-

“ Hence, as long as the applicant would continue to perform his duties on as and when required” basis, there is no option for him but to register with the service provider and the respondents may direct such service provider to provide the services of the applicant concerned whenever required in the interest of official work of the respondent authorities.

We, therefore, do not find any infirmity in the notice dated 27.8.2018 of the respondent authorities and refrain from interfering therein.

6. During hearing, the applicant would admit that after March, 2019 his services had no longer been utilized by the respondent authorities, who, on the other hand, would argue that he was not asked to perform any duties from August, 2018.

Be that as it may, the applicant should be paid for the period during which he has performed his duties, and, thereafter, in case, respondents wishes to reengage him, it should be through a service provider as required.”

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3. The applicant has advanced the following grounds to seek such review:-

- (i) That the Tribunal failed to consider the fact that the applicant was working as a Casual Labour from 1.10.1998 as per Annexure A-1 to the O.A..
- (ii) That, this Tribunal did not consider para 3 to Office Memorandum dated 4.12.2008 (Annexure A-3 to the O.A.).
- (iii) That, the Tribunal failed to consider that the observations of PAO, CGST, Kolkata - I dated 21.6.2018 was only a reference to the provisions of GFR and that the respondents had misinterpreted such observations in compelling the applicant to be engaged through an outsourced agency.
- (iv) That, the Tribunal failed to consider the judgment of the Hon'ble High Court of Rajasthan at Jodhpur (**UOI & ors. v. Jeevan Singh Gehlot & ors.**) in compliance to which casual workers working through service providers since 2010 were allowed to continue as casual labour directly by the respondents.

4. We examine each of the abovenoted grounds, ad seriatim, as follows:-

- (i) This Tribunal had noted that the applicant's averment that he was working as Casual labour from 1.10.1998 (and certified accordingly at Annexure I to the O.A.), had been denied and disputed by the respondents who have categorically stated in their reply that the certificate at Annexure A-1 was not issued by an authorised official. In the absence of the applicant controverting such denial in his rejoinder, the objections

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raised by the respondents has been duly recorded by the Tribunal in para 4(i) of its orders.

(ii) Regarding the memo dated 4.12.2018, it has been recorded in the Tribunal's orders that the functioning of the Commissionerate and the Directorate General of Central Excise Intelligence (renamed as Directorate General of Goods and Service Tax Intelligence) are distinct and that the Directorate does not have an expenditure head 'Wages'. Accordingly, in the event the applicant's services were to be continued consequent to GFR 2017, the respondents had no option but to process the pecuniary claims of the applicant under 'Office Expenses'.

(iii) The reference of Pay & Accounts Office was not confined to mere observations but it was in the form of an objection to the practice of making payment through 'Office Expenses' to a worker not engaged through an agency. This fact has also been noted by this Tribunal in its orders.

This Tribunal has also reasoned as follows while discussing the distinction between payment from the head 'Wages' vis-à-vis 'Office Expenses' as follows:-

" We also understand from the submissions of the respondents that the Office of the Directorate of Goods & Service Tax Intelligence does not have a budget head of 'Wages' but only 'Office Expenditure' under which payment is mandated (under O.M. dated 22.5.2018) only to a service provider. Consequently, if the applicant is to continue to work as and when required with the respondent authorities, his services which are "non consultancy" in nature can be paid from "office expenses" through a service provider. It is also given to understand that the applicant, although engaged on "as and when basis" was receiving his payments from 'Office Expenses' which is no longer applicable for payment of casual workers after the introduction of Rule 198 of GFR, 2017."

(iv) Regarding the applicability of the Hon'ble High Court of Rajasthan at Jodhpur (supra), such orders of the Hon'ble High Court in Rajasthan in Jodhpur in Civil Writ Petition No. 1924/2011 dated 19.3.2015 were issued prior to announcement of GFR 2017



and hence its applicability is distinguishable from the present matter.

"5. The scope of review of an order under order 47 Rule 1 CPC states as follows:

"Any person considering himself aggrieved –

(a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred.

(b) by a decree or order from which no appeal is allowed, or

(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."

Accordingly, a review is maintainable on the following grounds:

- i) *Discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge of the petitioner or could not be produced by him;*
- ii) *Mistake or error apparent on the face of the record;*
- iii) *Any other sufficient reason.*

Tribunal's power to review its own order the above grounds has been well recognised as ruled by the Hon'ble Apex court in the case of **Gopal Singh vs. State Cadre Forest Officers' Assn, and Others, (2007)9 SCC 369**].

The Hon'ble Apex Court in **Aribam Tuleshwar Sharma v. Aribam Pishak Sharma, (1979) 4 SCC 389=AIR 1979 SC 1047** has held that there are definite limits to the exercise of the power of review and, in particular, that *the power of review may not be exercised on the ground that the decision was erroneous on merits. That would be the province of a court of appeal. A power of review is not to be confused with appellate powers which may enable an appellate court to correct all manner of errors committed by the subordinate court"*

In **Parsion Devi & Ors vs Sumitri Devi & Ors (1997) 8 SCC 715**, the Hon'ble Court held that *"In exercise of the jurisdiction under Order 47 Rule 1 CPC it is not permissible for an erroneous decision to be "reheard and corrected. A review petition, it must be remembered has limited purpose and cannot be allowed to be "an appeal in disguise."*

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In the **State of West Bengal and Ors. Vs. Kamal Sengupta and Anr., reported in (2008) 8 SCC 612**, the Hon'ble Apex Court had stated as follows:

"where a review is sought on the ground of discovery of new matter or evidence, such matter or evidence must be relevant and must be of such a character that if the same had been produced, it might have altered the judgment."

Hence, the principle derived from the above judgments (supra) may be summed up as follows:-

- (i) The power of the Tribunal to review its order/decision under Section 22(3) (f) of the Act is akin/analogous to the power of a civil court under Section 114 read with Order 47 Rule 1 CPC.
- (ii) The Tribunal can review its decision on either of the grounds enumerated in Order 47 Rule 1 and not otherwise.
- (iii) The expression "any other sufficient reason" appearing in Order 47 Rule 1 has to be interpreted in the light of other specified grounds.
- (iv) An error which is not self-evident and which can be discovered by a long process of reasoning, cannot be treated as an error apparent on the face of record justifying exercise of power under Section 22(3) (f).
- (v) An erroneous order/decision cannot be corrected in the guise of exercise of power of review.
- (vi) A decision/order cannot be reviewed under Section 22(3) (f) on the basis of subsequent decision/judgment of a coordinate or larger Bench of the tribunal or of a superior court.
- (vii) While considering an application for review, the tribunal must confine its adjudication with reference to material which was available at the time of initial decision. The happening of some subsequent event or development cannot be taken note of for declaring the initial order/decision as vitiated by an error apparent.
- (viii) Mere discovery of new or important matter or evidence is not sufficient ground for review. The party seeking review has also to show that such matter or evidence was not within its knowledge and even after the exercise of due diligence, the same could not be produced before the court/tribunal earlier."

6. This review applicant has not established:

(a) that there are any errors or mistakes apparent on the face of record.

(b) That new or important matters that were not within his knowledge/possession was subsequently furnished in this review application, and,

(c) Has not advanced in any other sufficient reason in the light of other specified grounds.

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Considering the above legal position and the grounds raised by the applicant in the present review application, it is obvious that he intends that the Tribunal should reappreciate the entire evidence brought on record in the O.A. to arrive at a different conclusion. In such circumstances of the case, there is hardly any scope for review of the order dated 14.1.2020 of this Tribunal in O.A. No. 1618 of 2018.

7. In the context of the above, we do not consider the review application as sustainable and reject the same on merits.

No costs.

(Dr. Nandita Chatterjee)
Administrative Member

(Bidisha Banerjee)
Judicial Member



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