

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

REVIEW PETITION NO:33/96 IN O.A. NO: 514/94

Proounced this the 29th day of August 1996

CORAM: HON'BLE SHRI M.R.KOLHATKAR, MEMBER(A)

Ms. Sheela D. Vaswani
(BY Advocate Shri M.S. Ramamurty)
-versus-

.. Review Petitioner
(Orig. Applicant)

Union of India & Ors.
(By Counsel Shri P.M. Pradhan)

.. Respondents
(Orign. Respondent)

ORDER

(Per M.R. Kolhatkar, Member(A))

In this R.P. the Review Petitioner/
original applicant has sought review of my judgment
dt. 13-10-95 on the ground that there is error
apparent on the face of the record. It is contended
that the Tribunal relying on judgments in Devi Prasad
vs. U.O.I. & Ors. (1993) 25 ATC 524 and J.D. Bhagchandani
v. U.O.I. & Ors. (1992) 21 ATC 457 and Supreme Court
judgment in S.S. Rathore vs. U.O.I. 1990 SCC L&S 50,
had dismissed the O.A. on the ground of limitation. The Review Petitioner contends that in Devi Prasad's
case it is laid down that laches or limitation cannot
apply to cases of fixation of pay where no other party
is affected thereby. Secondly it is contended that the
reliance placed on S.S. Rathore's case is also wrong
because it was ^{the} case of termination of services and not
a case of fixation of pay. The Hon'ble Supreme Court
in M.R. Gupta vs. U.O.I. & Ors. 1995(2) ATJ 567 has ruled
in para 6 that the claim to be paid the correct
salary computed on the basis of proper pay fixation
is a right which subsists during the entire tenure of



service and in para 7 the Apex Court has also explained the ratio in S.S.Rathore's case and its inapplicability to pay fixation claim.

2. In view of these contentions a preliminary hearing to decide the reviewability of the order dt. 13-10-95 was held after giving notice to both the parties. It was made clear that the main question to be considered was whether the judgment dt. 13-10-95 needs review in the light of M.R.Gupta's case.

3. The respondents contended that the S.C. judgment ^{in M.R.Gupta} was pronounced on 21-8-95 and assuming that ratio of M.R.Gupta's case applies to the instant case, it was the duty of the counsel for the applicant who primarily relies on the case to bring ^{it} to the notice of the Hon'ble Tribunal. This should not have been difficult because the facilities for instantaneous communication are available at present and because of the measures taken for computerisation, the access to Supreme Court judgments has been improved. The learned counsel for the review petitioner submits that in spite of the progress in computer assisted means of communication, the lawyers primarily rely on the reports and, therefore, in spite of his best efforts he could not have brought the said ^{SC} judgement to the notice of the Tribunal before Tribunal pronounced its judgment.

4. In my view this Tribunal's judgment

dt. 13-10-95 primarily proceeded on the basis of application of S.S.Rathore's case and the same appears to be misconceived in view of the following observations of the Hon'ble Supreme Court in para 6 and 7 of the judgment in M.R.Gupta's case:

6. "The Tribunal misdirected itself when it treated the appellant's claim as 'one time action' meaning thereby that it was not a continuing wrong based on a recurring cause of action. The claim to be paid the correct salary computed on the basis of proper pay fixation, is a right which subsists during the entire tenure of service and can be exercised at the time of each payment of salary when the employee is entitled to salary computed correctly in accordance with the rules. This right of a Govt. servant to be paid the correct salary throughout his tenure according to computation made in accordance with rules is akin to the right of redemption which is an incident of a subsisting mortgage and subsists so long as the mortgage itself subsists, unless the equity of redemption is extinguished. It is settled that the right of redemption is of this kind. (See Thota China Subba Rao and others v. Mattapalli Raju and Ohter, AIR 1950 Federal Court 1).
7. "Learned counsel for the respondents placed strong reliance on the decision of this Court in S.S.Rathore v. State of Madhya Pradesh, (1989) Supp.1 SCR 43. That decision has no application the present case. That was case of termination of service and, therefore, a case of one time action, unlike the claim for payment of correct salary according to rules throughout the service

giving rise to^a fresh cause of action each time the salary was incorrectly computed and paid. No further consideration of that decision is required to indicate its inapplicability in the present case."

5. Rule 1 under Order 47 of CPC talks of mistake or error apparent on the face of the record or any other sufficient reason as circumstances which warrant an application for review. Rule 4(2) deals with cases where application can be granted. It is well settled that failure to take notice of the law laid down by the Supreme Court is a mistake warranting review. The judgment^{was} pronounced on 13-10-95 and M.R. Gupta's case was decided on 21-8-95 and this court was bound to take notice of the Supreme Court judgment especially to the extent that it has distinguished pay fixation cases and ~~it~~ had said that ratio of S.S. Rathore's case does not apply to pay fixation case.

6. I am, therefore, of the opinion that my judgment dt. 13-10-95 warrants a review.

7. The counsel for the respondents have contended that assuming that the court grants the prayer for review, the matter is required to be re-heard and not decided peremptorily. This contention of the counsel for the respondent is supported^{in my view} by the observation of the Supreme Court in the case of State of MP & Ors. v. Sadashiv Zamindar, JT 1996(5)SC 111 wherein it is stated that when earlier petition was dismissed on point of limitation and review petition was allowed then the Tribunal is bound to give an

opportunity to argue the case on merits.

B. I, therefore, dispose of the R.P.
by passing the following order :

ORDER

Review Petition is allowed. The
order dt. 13-10-95 is recalled
and it is directed that the case
may be fixed for re-hearing on
merits on 3-10-96. Issue notice
to both the parties.

M

(M.R. KOLHATKAR)
Member(A)

Certified True Copy
Date

Section Officer
Central Admin. Tribunal,
Bombay Bench

QC
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