

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI.

REVIEW PETITION NO.01 OF 1999
IN
ORIGINAL APPLICATION NO. 724/98.

THURSDAY, THIS THE 14TH DAY OF JANUARY, 1999.

Coram: Hon'ble Shri Justice R.G.Vaidyanatha, Vice-Chairman,
Hon'ble Shri D.S.Baweja, Member(A).

M.D.Patil.

...Applicant.

V/s.

Union of India & Ors.

...Respondents.

: ORDER ON REVIEW PETITION BY CIRCULATION :

(Per Shri R.G.Vaidyanatha, Vice-Chairman)

This is a Review Petition against our Judgment dt. 11.11.1998. We have perused the Review Petition and the case file.

2. By a Judgment dt. 11.11.1998 we have considered all the contentions of the applicant's counsel and rejected the application at the admission stage. Now in the present Review Petition, the applicant has raised number of grounds. In our view, there is no merit in any of the grounds so as to call for a review of our Judgment dt. 11.11.1998.

3. The first point taken in the Review Petition is ^{about binding that} ~~that~~ the present prayer for regularisation is barred by principles of res-judicata in view of identical relief having been asked and not granted in OA 115/93, which was an earlier application filed by the applicant. The contention now pressed is that there was no arguments and no finding was given on the question of regularisation in the previous OA and therefore there is no bar for the applicant to press that relief again in the present OA. This contention has no merit since principles of constructive res-judicata is a public policy which is evolved to avoid and to discourage multiplicity of proceedings. The Explanation - V to Section 11 of the Code of Civil Procedure, 1908 clearly provides that any relief claimed in the plaint and if not expressly granted it

...2.



must be deemed to have been refused. In our view, this principle applies to the present case. When there was a specific prayer for regularisation in the previous O.A. and since admittedly it is not granted, the principles of constructive res-judicata engrafted in Explanation-V of Section 11 of C.P.C. is attracted and the applicant cannot re-agitate the same matter again in a fresh case.

4. The next point taken is that though the applicant is not possessing the required qualification, he must be given the relief since two other Lecturers have been regularised by orders of the Tribunal. We do not know under what circumstances two other Lecturers were regularised. Here the selection has to be made by the UPSC. It is for the UPSC to decide whether the candidate has the required qualification for the purpose of calling for interview or not. If the UPSC has applied the Rule and if according to the Rule the applicant cannot be called for interview, this Tribunal cannot issue any direction to UPSC to call the applicant for interview. This Tribunal cannot give any direction or mandate to UPSC to do a thing contrary to law. Even if it is accepted that two other candidates have been regularised as per orders of the Tribunal, that is no ground for this Tribunal to issue a mandate to UPSC to do something which is contrary to the Recruitment Rules. Any how, this point has not been pressed when we heard the present application and therefore a new point cannot be raised or urged through the Review Petition. All the concerned documents pertaining to those two Lecturers were not placed before us and were not pressed before us and therefore this matter cannot be raised after the OA has been rejected on merits.

5. As far as, the applicant not possessing the required qualification, we have already given our reasons in our Judgment and same matter cannot be re-agitated again.

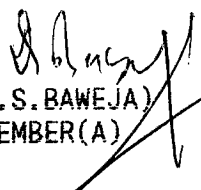
6. Another ground taken is that if a person is working in the post, then



he should be called for interview, even though he does not possess the qualification. In our view, there is no merit in the contention since this Tribunal cannot give any direction to the UPSC to make appointments contrary to the Recruitment Rules.

In our view, none of the grounds mentioned in the Review Petition have any merit. The matter cannot be re-opened and re-agitated under Order 47 Rule 1 CPC. The scope of review under Order 47 Rule 1 CPC is very limited. There is no apparent error on record and there is no discovery of any new facts within the meaning of Order 47 Rule 1 CPC, so as to call for review of our Judgment. We find no merit in the Review Petition.

6. In the result, the Review Petition 1/99 in O.A. 724/98 is rejected by way of Circulation.


(D.S. BAWEJA)
MEMBER(A)


(R.G. VAIDYANATHA)
VICE-CHAIRMAN

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