

CENTRAL ADMINISTRATIVE TRIBUNAL, CALCUTTA BENCH
KOLKATA

O.A. 643/2012

Date 10-03-2016

Present : Hon'ble Mr Justice Vishnu Chandra Gupta, Judicial Member
Hon'ble Ms Jaya Das Gupta, Administrative Member

Sri Bimal Sarma

...Applicant

-Vs-

Union of India & ors. (KVS)

.....Respondents

LIBRARY

For the petitioner : Mr C. Sinha, Counsel

For the respondents : Mr T.K. Biswas, Counsel

ORDER(ORAL)

JUSTICE V. C. GUPTA, JM:

Heard both sides. On perusal of the allegation made in this O.A. it is clear that that O.A.1566/2010 was filed before this Tribunal was disposed of by an order dated 21.6.2011, which is being extracted herein below :

"When the matter was called out today the Ld. Counsel appeared for Kendriya Vidyalaya Sangathan has brought to our notice the judgment of the Hon'ble High Court in WPCT No. 310 of 2008 Kendriya Vidyalaya Sangathan v. Prem Narayan Pandey and other Writ Petitions has held as under :-

"...As a consequence thereof the preliminary question is answered by holding that incorporation of the word "society" by amendment and incorporation and the word only "servie and post" are contrary to the constitutional provision of Article 323A and being ultra vires to the said provision. Hence the Administrative Tribunal set up under said Principal Act has no jurisdiction to deal with the cases arising out of service dispute of an employee of Kendriya Vidyalaya Sangathan. Notification aforesaid dated 17th December, 1998 relating to 'Society' and including therein "Kendriya Vidyalaya Sangathan" also stand quashed. The order of the Learned Tribunal below impugned accordingly set aside and quashed on that



reasoning. The respondents now may raise his grievance for remedy in appropriate forum, in accordance with law."

2. In view of the judgment of the Hon'ble High Court in WPCT No.310 of 2008 this Tribunal has no jurisdiction to decide this case. Accordingly, Registry is directed to return the O.A to the applicant to approach the appropriate forum.

3. The O.A is thus closed. No costs."

After passing this order in spite of challenging the same the applicant filed another O.A seeking the same reliefs on the ground that by a subsequent judgment the Tribunal shall have jurisdiction with regard to matter of employees of Kendriya Vidyalaya and on that score he wants to pursue this O.A. It is not in dispute that the order passed in the earlier O.A dismissing the same on the ground of jurisdiction has become final in between the parties. If the Tribunal now again entertain this application then it will amounts to reviewing its own order which has been earlier passed in O.A.1566/2010 dated 21.06.2011. Provisions contained in Order 47 Rule 1 CPC in such a situation is applicable. The relevant provision of Order XLVII Rule 1 CPC which are applicable in the matter of review before this Tribunal is re-produced below :

"R. 1. (1) Any person considering himself aggrieved –

- (d) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred,
- (e) by a decree or order from which no appeal is allowed, or
- (f) by a decision on a reference from a [K] 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 was 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.

(2) A party who is not appealing from a decree or order may apply for a review of judgment notwithstanding the pendency of an appeal by some other party except where the ground of such appeal is common to the applicant and the appellant, or when, being respondent, he can present to the Appellate Court the case of which he applies for the review.

[Explanation.- The fact that the decision on a question of law on which the judgment of the Court is based has been reversed or modified

by the subsequent decision of a superior Court in any other case, shall not be a ground for the review of such judgment.]"

The change or review of the judgment on the basis of a subsequent decision would not be a ground for review of such judgment and in view of this legal impediment the application cannot be entertained and liable to be dismissed as such.

2. O.A is accordingly dismissed. No order as to costs.

(Jaya Das Gupta)
Administrative Member

(Justice V.C.Gupta)
Judicial Member

pg