THE STATE OF MAHARASHTRA AND ANR.

v.

SHRI PRABHAKAR BHIKAJI INGLE

MARCH 11, 1996

[K. RAMASWAMY AND G.B. PATTANAIK, JJ.]

Code of Civil Procedure, 1908 : Order 47, Rule 1.

Review—Administrative Tribunal—Removal of employee from service—Confirmation of removal order by Tribunal—Special Leave against Order of Tribunal—Dismissal of SLP by Supreme Court by a non-speaking order—Supreme Court's order communicated to Tribunal—Thereafter Tribunal reviewing its own Order—Exercise of review power—Held deleterious to judicial discipline—Once the order passed is confirmed by Supreme Court that becomes final—Thereafter Tribunal cannot review its order which stands merged with the order passed by this Court.

Consititution of India, 1950 : Article 136

Special Leave Petition—Dismissal—Non speaking order—Thereafter review by Administrative Tribunal—Principle of res judicata—Applicability of.

Code of Civil Procedure, 1908 : Section 11.

Res judicata—Principle of—What is.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4505 of 1996.

From the Judgment and Order dated 2.11.95 of the Maharashtra High Court in R.P. No. 22/95 in O.A. No. 1169 of 1993.

S.K. Dholakia and D.M. Nargolkar for the Appellants.

A.P. Mohanty for the Respondents.

The following Order of the Court was delivered :

Leave granted.

We have heard the counsel on both sides. Admittedly, the respondent had filed O.A. No. 1169/93 in the Maharashtra Administrative Tribunal, Bombay against the order passed by the Commissioner of Police, Bombay removing him from service. The Commissioner had exercised his power under Art. 311(2)(b) of the Constitution holding that in the circumstances it was not practicable to conduct an enquiry against the respondent. That order came to be confirmed by the Tribunal dismissing the O.A. on March 6, 1995. Against that, the respondent filed SLP (C) No. 11433/95 which was dismissed by this Court on 25.8.95. Pending the SLP, the respondent filed a review application in the Tribunal. The Tribunal after receipt of the order passed by this Court dismissing the SLP, by the impugned order dated 2.11.95 reviewed the order and set aside the order of dismissal. Thus this appeal by special leave.

It is contended for the respondent that the dismissal of the SLP does not preclude the Tribunal from reviewing the order since the dismissal was a non-speaking order. We fail to appreciate the contention of the respondent. It is true that this Court has held that the dismissal of SLP without speaking order does not constitute *res judicata*. The principle of *res judicata* is founded on public policy that the parties cannot be permitted to have the controversy directly or substantially in issue between the same parties or those claiming under the parties in the subsequent suit in the same proceedings in the subsequent stages cannot be raised once over. It is a sound principle of public policy to prevent vaxation.

But in this case, when the self-same main order was confirmed by this Court, the question arises whether the Tribunal has had power under Order 47, Rule 1 CPC or any other appropriate provision under the Tribunals Act to review the orders passed by it and confirmed by this Court by refusing to grant leave. We find that the exercise of the review power is deleterious to the judicial discipline. Once this Court has confirmed the order passed by the Tribunal, that becomes final. Therefore, the Tribunal cannot have any power to review the previous order which stands merged with the order passed by this Court.

It is next contended by the learned counsel for the respondent that though the Tribunal was communicated with the order of this Court dated 25.8.95, it has thereafter passed the order. It would mean that though it had knowledge of dismissal of the order passed by this Court, the Tribunal

has exercised the power of review and that, therefore, it cannot be said to be illegal. We are wholly unable to appreciate the contention of the learned counsel. We could appreciate that if the Tribunal had no knowledge of dismissal of the SLP it might, in certain circumstances, review its earlier order, e.g., if it was found that the order was vitiated by any manifest error of law apparent on the face of the record. But having received the communication that this Court has already upheld its order, the Trubunal's exercise of power can be said to be audacious and without any judicial discipline. Under those circumstances, we do not think that the Tribunal is justified in reviewing its own order when this Court had confirmed the order passed earlier.

The appeal is accordingly allowed. The review order is set aside. But in the circumstances without costs.

Appeal allowed.