

SHIV CHARAN SINGH  
v  
STATE OF PUNJAB AND ORS.

NOVEMBER 17, 2006

[ARIJIT PASAYAT AND LOKESHWAR SINGH PANTA, JJ.]

*Constitution of India, 1950:*

*Article 136—Appeal challenging order of High Court rejecting application for review—Held, not maintainable—Code of Civil Procedure, 1908 —Order 47, Rule 7.*

The present appeal was filed challenging the order of a Division Bench of the High Court dismissing the application for review of an order passed in a writ petition.

**Dismissing the appeal, the Court**

**HELD:** Challenge in this appeal is only to the order passed in the review application. Such an appeal is not maintainable. The appeal is dismissed. However, this order shall not stand in the way of consideration of the Special leave Petition stated to have been filed separately challenging the basic order.

[144-F; 145-C]

*Shanker Motiram Nale v. Shirolalsing Gannusing Rajpur*, [1994] 2 SCC 753; *Susel Finance & Leasing Co. v. M. Lata and Ors.*, [2004] 3 SCC 675 and *M.N. Haider and Ors. v. Kendriya Vidyalaya Sangathan and Ors.*, [2004] 13 SCC 677, relied on.

CIVIL APPELLATE JURISDICTION : Civil Appeal No.5023 of 2006.

From the final Judgment and Order dated 12-8-2005 of the High Court of Punjab and Haryana at Chandigarh in Review Application No.85/2005 in C.W.P. No.17615/2001.

S.K. Upadhyay and Indra Makwana for the Appellant.

Sarup Singh, R.K. Pandey and A.K. Sinha for the Respondents.

A The Judgment of the Court was delivered by

ARIJIT PASAYAT, J. Leave granted.

B Challenge in this appeal is to the order passed by a Division Bench of the Punjab and Haryana High Court dismissing the application for review filed in respect of the order in CWP No.17615 of 2001 which was dismissed on 12.8.2005. The said writ petition was dismissed on the ground that the writ petitioner was absent for about three years. The High Court found the writ petitioner to be a habitual absentee and, therefore, felt that he did not deserve any relief in the quantum of punishment. It is to be noted that while issuing notice on 6.11.2001 the following order had been passed by the High Court:

C “Learned counsel for the petitioner at the time of arguments stated that the petitioner has put in ten years of service and he has been deprived of the retiral benefits in view of the impugned order. He confines the prayer in the writ petition only to the quantum of punishment.”

D Learned counsel for the appellant submitted that the High Court is not right in holding that the review petition was not entertainable in view of the materials which were placed for consideration. Those materials clearly show that the High Court did not take note of the correct factual position while dismissing the writ petition.

E Learned counsel for the respondents submitted that the High Court has rightly held that the review petition was not maintainable.

F Challenge in this appeal is only to the order passed in the review application. Such an appeal is not maintainable.

In *Shanker Motiram Nale v. Shirolalsing Gannusing Rajput*, [1994] 2 SCC 753 it was observed as follows:

G “The appeal is obviously incompetent. It is against an order of a Division Bench of the High Court rejecting the application for review of a judgment and decree passed by a learned Single Judge, who seems to have retired in the meantime. It is not against the basic judgment. Order 47 Rule 7 of CPC bars an appeal against the order of the court rejecting the review. On this basis, we reject the appeal. No cost.

H

I.A. No.1/93 (Application for substitution).

A

No orders are necessary in view of the rejection of the appeal.”

The position has been re-iterated in *Suseel Finance & Leasing Co. v. M. Lata and Ors.*, [2004] 13 SCC 675 and *M.N. Haider and Ors. v. Kendriya Vidyalaya Sangathan and Ors.*, [2004] 13 SCC 677.

B

It is stated by learned counsel for the appellant that the basic order dated 20.8.2004 passed by the High Court has been challenged by filing a special leave petition on 9.10.2006. However, dismissal of this present appeal shall not stand on the way of consideration of the Special Leave Petition stated to have been filed on 9.10.2006. The same shall be dealt with in accordance with law.

C

The appeal is dismissed. No costs.

R.P.

Appeal dismissed.