

HIGH COURT OF JAMMU AND KASHMIR  
AT SRINAGAR

Review No. 01/2015

Date of Order: 07.07. 2015

Basharat Shafi  
S/O Muhammad Shafi  
R/O Buckwara Dalgate Srinagar.

Petitioner-appellant.....

Vs.

1. Dr. Nissar Ahmad Mir  
S/O Abdul Ahad Mir  
R/O Dadasar Tral Kashmir.
2. University of Kashmir through its Registrar  
Hazartbal Srinagar.
3. University of Kashmir through its Vice Chancellor  
Hazartbal Srinagar.

Respondents.....

**Coram:**

**Hon'ble Mr. Justice N. Paul Vasanthakumar, Chief Justice**  
**Hon'ble mr. Justice Ali Mohammad Magrey, Judge**

Appearing counsel:

For Petitioner(s):            Review petitioner present in person.

For Respondent(s):

**N. Paul Vasanthakumar, CJ**

1. This revision application is filed seeking to review the order dated 19.11.2014 made in LPA nos. 41 and 42 of 2010 wherein the petitioner challenged the order passed by the learned Single judge. The review petitioner had challenged the eligibility of Dr. Nissar, first respondent herein, for selection and appointment as Deputy Registrar, University of Kashmir. The Division Bench considered the matter in its entirety and dismissed the appeals. The review petitioner being not satisfied with the order of the Division Bench filed a Special leave to

appeal ( Civil) No. 4411-4412 of 2015 which was dismissed by Hon'ble the Supreme Court by order dated 13.02.2015 and the dismissal order reads as under:-

*"We find no infirmity in the order impugned herein.  
The Special Leave Petitions are dismissed."*

2. After the dismissal of the Special Leave Petitions this review petition has been filed on 19.03.2015 i.e. more than one month after the dismissal of the Special leave Petitions by contending that inspite of the dismissal of the Special Leave Petitions the applicant is entitled to seek review of the order as the High Court has erred in several respects while deciding the Letters Patent Appeals.

3. Heard the petitioner who appeared as party in person.

4. The point arises for consideration in this review at the first instant is as to whether the review petition filed by the applicant, which has been filed after dismissal of the Special Leave Petitions, approving the decision of the Division Bench of this Court, is maintainable. The very issue was already considered by Hon'ble the Supreme Court in the decision reported in **(1998) 7 SCC 386 (Abbai Maligai Partnership Firm v. K. Santhakumaran)** (3 Judge Bench) and it is held that even after dismissal of the Special Leave Petition just by one sentence, reviewing the order by the High Court is an affront to the order of the

Supreme Court. In paragraph 4 Hon'ble the Supreme Court held thus:-

“4. The manner in which the learned Single Judge of the High Court exercised the review jurisdiction, after the special leave petitions against the selfsame order has been dismissed by this Court after hearing learned counsel for the parties, to say the least, was not proper. Interference by the learned Single Judge at that stage is subversive of judicial discipline. The High Court was aware that the SLPs against the orders dated 7-1-1987 had already been dismissed by this Court. The High Court, therefore, had no power or jurisdiction to review the selfsame order, which was the subject-matter of challenge in the SLPs in this Court after the challenge had failed. By passing the impugned order on 7-4-1994, judicial propriety has been sacrificed. After the dismissal of the special leave petitions by this Court, on contest, no review petitions could be entertained by the High Court against the same order,. The very entertainment of the review petitions, in the facts and circumstances of the case, was an affront to the order of this Court. We express our strong disapproval and hope there would be no occasion in the future when we may have to say so. The jurisdiction exercised by the High Court, under the circumstances, was palpably erroneous. The respondents who approached the High Court after the dismissal of their SLPs by this Court, abused the process of the court and indulged in vexatious litigation. We strongly deprecate the matter in which the review petitions were filed and heard in the High Court after the dismissal of the SLPs by this Court. The appeals deserve to succeed on that short ground. The appeals are, consequently, allowed and the impugned order dated 7-4-1994 passed in the review petitions is hereby set aside. The respondents shall pay Rs. 10,000 as costs.”

5. Another 3 Judge Bench of Hon'ble the Supreme Court in the decision reported in **(2000) 6 SCC 359 ( Kunhayammed and ors v. State of Kerala and ors)** considered the very issue again and held that if the SLP is dismissed before granting leave the doctrine of merger will not apply and in some cases the review petition can be proceeded by the High Court. In this case the review petition was filed after dismissal of the SLP. Such review petition cannot be considered by the High Court as per the

decision of Hon'ble the Supreme Court reported in **(2001) 5 SCC 37 ( K. Rajamouli v. A.V.K.N.Swamy)**.

6. It is not the case of the review applicant that he has been granted liberty to file the review by Hon'ble the Supreme Court. On the contrary Hon'ble the Supreme Court in the order specifically held that there is no infirmity in the order of the High Court which is in fact giving a seal of approval to the decision of the High Court. Hence if the review application is entertained it would amount to re-appreciating the Division Bench order which was approved by Hon'ble the Supreme Court. It is worthy to emphasize a point that there must be a finality of judicial proceedings. The party having not convinced the learned Single Judge, Division Bench as well as Hon'ble the Supreme Court, cannot be allowed to reargue the matter as if the High Court and Hon'ble Supreme Court have failed to notice his submissions. Hence as held by Hon'ble the Supreme Court, the attempt on the part of the petitioner is an abuse of process of law.

7. One more aspect of the case is that on facts, as stated supra, the SLP was dismissed on 13.02.2015 and the review petition was filed on 19.03.2015 seeking to review the order of this Court dated 19.11.2014. When the review application was filed seeking review of the order dated 19.11.2014, it could have been filed within 30 days and this review has been filed after a

period of four months. No application seeking condoning the delay has been filed either at the time of filing the review petition or this date. The Registry, without noticing the said issue has wrongly numbered the review application. It is one thing to say that the applicant was prosecuting the matter before Hon'ble the Supreme Court by filing the SLP and the SLP was dismissed on 13.02.2015. Hence the applicant may have got a cause to seek condonation of delay as he may be bonafidely prosecuting the other remedy available, however, the review having been filed after the expiry of the time prescribed i.e. 30 days, necessarily the application seeking condonation of delay is bound to be filed and without such an application the review application is not entitled to be numbered and posted for hearing. Hence the review application is dismissed on that ground also. The registry is directed to see the papers meticulously with regard to limitation and all other aspects before numbering the appeals/revisions and the review applications. Registrar Judicial is directed to issue a Circular to the passing section to follow the mandate of law without fail. No costs.

**(Ali Mohammad Magrey)**  
**Judge**

**(N. Paul Vasanthakumar)**  
**Chief Justice**

**Srinagar.**  
**07.07.2015**  
Anil Raina, Secy