

ITEM NO.101

COURT NO.5

SECTION XV

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Civil Appeal Nos.8959-8962 of 2013

LIC OF INDIA AND ORS

Appellant(s)

VERSUS

KRISHNA MURARI LAL ASTHANA AND ANR ETC.

Respondent(s)

WITH C.A. No.6995/2013

(With appln.(s) for impleadment as party respondent and appln.(s) for implementation of Court's order and office report)

C.A. No.9223/2013

(With appln.(s) for intervention and office report)

C.A. Nos.9409-9410/2013

(With interim relief and office report)

S.L.P.(C)...CC No. 5437-5440/2015

(With appln.(s) for c/delay in refiling SLP and appln.(s) for c/delay in filing SLP and office report)

Date : 08/04/2015 These appeals were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE DIPAK MISRA
HON'BLE MR. JUSTICE PRAFULLA C. PANT

For Appellant(s)

Mr. Kailash Vasdev, Sr. Adv.
Mr. Ashok Panigrahi, AOR
Mr. Santosh Kumar, Adv.

Mr. B. Krishna Prasad, AOR

For Respondent(s)

Mr. Nidhesh Gupta, Sr. Adv.
Mr. V. Shekhar, Sr. Adv.
Mr. R.K. Singh, Adv.
Mr. Gaurav Kumar, Adv.

Signature Not Verified

Mr. B.N. Dubey, Adv.

Digitally signed by

Chetan Kumar

Date: 2015.04.09

Mr. Ashutosh Dubey, Adv.
Mr. Rameshwar Prasad Goyal, AOR

16:19:29 IST

Reason:

Mr. Jay Savla, Adv.
Ms. Renuka Sahu, Adv.

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Mr. Ravi Mishra, Adv.

Ms. Sushma Manchanda, Adv.
Ms. Rekha Pandey, Adv.

Mr. B.K. Prasad, Adv.
Ms. Sushma Suri, AOR

Mr. Rajiv K. Garg, Adv.
Mr. G.N. Sridharan, Adv.
Mr. Ashish Garg, Adv.
Mr. Sanjay Gupta, Adv.
Mr. T.L. Gupta, Adv.

Dr. Kailash Chand, AOR

Mr. R.K. Singh, Adv.
Mr. Gaurav Kumar, Adv.
Mr. B.N. dubey, Adv.
Mr. Robin Khokhar, Adv.
Mr. Sajith. P, AOR

UPON hearing the counsel the Court made the following
O R D E R

Mr. Nidhesh Gupta, learned senior counsel appearing for the respondents has raised a preliminary objection that the present appeals are not maintainable, inasmuch as the judgment which is impugned in the present appeals was assailed earlier in S.L.P.(C) Nos.16117-16118 of 2011 and this Court on 15th July, 2011 had disposed of the same. To appreciate the controversy in a proper perspective, the order dated 15th July, 2011, is reproduced below:

"These petitions are directed against order dated 21.1.2011 passed by the Division Bench of the Rajasthan High Court whereby the special appeals filed petitioners against the order of the learned Single Judge in the matter of grant of dearness allowance to the respondents were dismissed.

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We have heard learned counsel for the petitioners and perused the record.

Since the petitions filed by the petitioners for review of the order passed by the Division Bench are pending consideration, these petitions are disposed of with a request to the Division Bench of the High Court to make an endeavour to decide the review petitions as early as possible, but latest within three months from the date of receipt/production of copy of this order.

We also direct that till the disposal of the review petitions, the proceedings initiated against the officers of petitioner No.1 under the Contempt of Courts Act, 1971, shall remain stayed."

In pursuance of the aforesaid order, the review that was pending before the High Court was taken up by the High Court and was dismissed on 19th August, 2011. The order passed by the High Court in review application reads as follows:

"Having regard to the facts of this particular case, as narrated by the learned Single Judge and which were taken into account by us while hearing the appeal, we do not find any error apparent on the face of the record so as to call for interference in the review jurisdiction. The review petition is accordingly, dismissed.

Consequent upon the dismissal of review petition, the stay application, filed therewith, does not survive and that also stands dismissed."

As there are two appeals, two applications for review were filed and the application for review in D.B. CA 8959-62/13

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Civil Special Appeal (Writ) No.493 of 2010, was also dismissed with a similar order.

Being grieved by the aforesaid rejection of the applications for review, the present appellant, Life Insurance Corporation of India, preferred two petitions, being S.L.P.(C) Nos.29956-29957 of 2011 and this Court vide order dated 8th August, 2013, had passed the following order:

"The applications for substitution are allowed in terms of the prayer made.

This matter has been listed for consideration of I.A. Nos.12-13 of 2013 filed on behalf of respondent No.1 for dismissal of the special leave petitions on the ground that the petitioner-Life Insurance Corporation of India has not questioned judgment dated 21.01.2011 passed by the Division Bench of the High Court dismissing the special appeals filed by it against the order of the learned Single Judge.

Shri Nidhesh Gupta, learned senior counsel appearing for the applicant invited our attention to judgment dated 8.4.2013 passed by a co-ordinate Bench in S.L.P.(C) No.4616 of 2010 Municipal Corporation of Delhi v. Yashwant Singh Negi and argued that the special leave petitions are liable to be

dismissed because the petitioner has not challenged the judgment of the High Court whereby the special appeals were dismissed. he also relied upon the judgment in DSR Steel (Private) Limited vs. State of Rajasthan and others (2012) 6 SCC 782 in support of this argument.

Dr. Abhishek Manu Singhvi, learned senior counsel appearing for the petitioner-Life Insurance Corporation submitted that the defect pointed out by learned senior counsel for the applicant is purely technical and this should not be made

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a ground to deny substantive relief to the petitioner. He relied upon the judgments in Kunhayammed and others v. State of Kerala and another (2000) 6 SCC 359 and Eastern Coal Fields Limited vs. Dugal Kumar (2008) 14 SCC 295 and argued that once the petitions filed for review of the main judgment were dismissed, the same stood automatically merged in the review order and the petitioner's failure to challenge the same is inconsequential.

In our view, in the absence of challenge to the judgment of the Division Bench of the High Court vide which the special appeals filed by the petitioner were dismissed, the special leave petitions filed against the order passed in the review petitions do not merit acceptance, more so, because the learned senior counsel for the petitioner could not show that the order under challenge is vitiated by an error apparent on the face of the record.

With the above observations, I.A. Nos.12-13 of 2013 are allowed and the special leave petitions are dismissed. The interim order passed by this Court stands automatically vacated.

However, it is made clear that this order shall not preclude the SLP petitioner from filing special leave petitions against the judgment of the Division Bench of the High Court by which the special appeals were dismissed. It is also made clear that this order shall not entitle the SLP petitioner to claim condonation of delay as a matter of right and the application, if any, filed for this purpose will be decided on its own merits."

Placing reliance on the aforesaid order, it is submitted by Mr. Nidhesh Gupta, learned senior counsel appearing for the respondents that though in the ultimate paragraph this Court had observed that the order dated

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8th August, 2013, would not preclude the Life Insurance Corporation from filing the special leave petitions against the judgment of the Division Bench of the High Court by which the special leave petitions were dismissed, yet in the earlier orders, while this Court had permitted the Life Insurance Corporation to file review, no liberty was granted to challenge the main order.

Mr. Kailash Vasdev, learned senior counsel appearing for the Life Insurance Corporation, would submit that the later order passed by this Court should not be narrowly construed, inasmuch as in the said order liberty had been granted in express terms. It is urged by him that the earlier order permitted to file an application for review and if a two-Judge Bench had declined to interfere with the special leave petition, it could have very well dismissed, but it has granted liberty to challenge principal/main order by way of independent special leave petition. The essence of submission of Mr. Vasdev is that this Court, in fact, has modified the earlier order and granted liberty and in such a situation that no liberty was granted in the earlier order and, therefore, the Court was denuded of the power to grant liberty in the second order, would amount to questioning the correctness of order passed by the later Bench, which is not permissible.

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Apart from hearing this preliminary objection, we are also intended to hear the case on merits. Learned counsel for the parties are requested to come prepared to argue the matter on 22nd April, 2015.

List the matter on 22nd April, 2015.

(Chetan Kumar)
Court Master

(H.S. Parasher)
Court Master