2026:AHC-LKO:80624-DB

AFR
Reserved

HIGH COURT OF JUDICATURE AT ALLAHABAD
LUCKNOW

CIVIL MISC REVIEW APPLICATION No. - 11 of 2026

State Of U.P. Thru. Prin. Secy. Deptt. Revenue U.P. Lko.
And Others
.....Applicant(s)

Versus

Yamuna Prasad Gupta
.....Opposite Party(s)

Counsel for Applicant(s)	:	C.S.C.
Counsel for Opposite Party(s)	:	Shrawan Kumar Verma

Court No. - 9

HON'BLE RAJESH SINGH CHAUHAN, J.
HON'BLE SHREE PRAKASH SINGH, J.

1. Heard Mr. Shailendra Kumar Singh, learned Chief Standing Counsel, assisted by Mr. Vivek Shukla, learned Additional Chief Standing Counsel and Mr. Yogesh Kumar Awasthi, learned Standing Counsel for the review-applicants and Mr. H.G.S Parihar, learned Senior Advocate, assisted by Mr. S.K. Verma, learned counsel for the opposite party.

2. The instant review application has been preferred assailing the Judgment and Order dated 30-08-2022, passed by coordinate Division Bench of this court, in Writ A No. 5482 of 2022 (State of U.P. through Principal Secretary, Department of Revenue, Civil Secretariat, Lucknow and Others Vs Yamuna Prasad Gupta).

3. Brief factual matrix of the case are that the opposite party/Yamuna Prasad Gupta had instituted Claim Petition bearing no. 1026 of 2018, before the State Public Services Tribunal, Lucknow (hereinafter referred to as 'Tribunal') for computation of his services w.e.f. 05-06-1986. i.e. the date prior to regularization of his services. He was regularized with effect from 16-01-2013. The claim petition was allowed vide Judgment order dated 13-06-2017. The State being aggrieved with the order dated 13-06-2017, passed by the 'Tribunal', instituted Writ A No. 5482 of 2022 (State of U.P. & Others

Vs Yamuna Prasad Gupta) before the coordinate Division Bench of this court. The writ petition so instituted has been allowed by the coordinate Division Bench of this court, vide Judgment and Order dated 30-08-2022, while upholding the Judgment and Order passed by the learned 'Tribunal', on the ground that the opposite party is entitled for the benefit, which has been provided to the petitioner of Writ Petition No. 4031(S/S) of 2001. The State being aggrieved filed an S.L.P. bearing no. 29497 of 2023, before the Hon'ble Apex Court, which was dismissed.

4. Now, the present review application has been moved challenging the Judgment and Order dated 30-08-2022 passed in Writ A No. 5482 of 2022.

5. Mr. H.G.S. Parihar, learned Senior Counsel appearing for the opposite party has raised a preliminary objection regarding the maintainability of this review application on the ground that since the writ petition filed by the review applicants against the Judgment and Order passed by the 'Tribunal' has been dismissed and further more, the S.L.P. filed by the review applicants have also been dismissed, therefore, it is not open for the review applicants to maintain the review application. Thus, submission is that the review application is liable to be dismissed.

6. It is argued by the learned counsel for the review-applicants that the Division Bench of this court could not consider the existence of Validation Act,2021, which provides that if the initial services are not as per the rules, the same will not be counted for the purpose of the pensionary benefits of an employee. It is contended that the issue that whether the services of the Seasonal Collection Amins are liable to be counted for the purpose of the pensionary benefits or not is dealt with, in Civil Misc. Review Application bearing no. 121 of 2022 alongwith Special Appeal (Defective) No. 307 of 2022 including the other connected matters, wherein it has been held that the services rendered as Seasonal Collection Amins are not liable to be counted for the purpose of pensionary benefits.

7. Adding his arguments, he submitted that since the Hon'ble Apex Court while passing the Judgment and Order in S.L.P. No. 29497 of 2023, has observed that the question of law is open to be considered, therefore, the present review application is maintainable for it's adjudication on the legal issues, which have been left to be redressed by this court, in Writ A No.

5482 of 2022.

8. Upon considering the submissions of learned counsels for the parties and after perusal of the records, two sets of issues are cropped up for consideration. Firstly that whether after the S.L.P. is dismissed by the Hon'ble Apex Court, the review application is maintainable or not? and secondly that whether the question of law, which has been opened to be considered in abovenoted S.L.P. will apply between the parties or other than the parties.

9. Fact remains that the opposite party instituted the Claim Petition before the 'Tribunal' against the order dated 13-06-2017 passed by the District Magistrate, Amethi, whereby the representation of the opposite party was disposed of, declining the calculation of the services rendered by the opposite party prior, 16-01-2013.

10. Being aggrieved, the opposite party instituted Claim Petition before the 'Tribunal' bearing Claim Petition No. 106 of 2018, which was decided finally vide Judgment and Order dated 12-10-2020. The operative portion of the Judgment and Order dated 12-10-2020, passed by the 'Tribunal', is given as follows :-

" आदेश

आलोच्य आदेश दिनांकित 13-06-2017 (संलग्नक सं0-1) निरस्त किया जाता है। विपक्षीगण को निर्देशित किया जाता है कि वे याची के सेवा निवृत्तिक लाभ के सम्बन्ध में माननीय उच्च न्यायालय द्वारा प्रताप नारायण पाण्डेय बनाम उ०प्र० राज्य व अन्य में दिये गये निर्णय के आधार पर याची को दिनाँक 05-06-1986 से नियमित संग्रह अमीन मानते हुए उपलब्ध शासनादेशों के आधार पर निर्णय की सत्यप्रतिलिपि प्राप्त होने के दो माह के अन्दर पुनः विधि सम्मत, तर्क संगत व मुखरित आदेश पारित करें।

उभय पक्ष वाद व्यय स्वयं वहन करेंगे।"

11. Vide the abovenoted order, the learned 'Tribunal' has set aside the order passed by the District Magistrate, Amethi and directed that the opposite party/claim petitioner is entitled for the post retiral dues and consideration of his services as Regular Collection Amin since 05-06-1986, in parity with Pratap Narain Pandey (in Writ Petition No. 4031 (S/S) of 2001).

12. The review applicants have instituted Writ A No. 5482 of 2022, which was dismissed vide Judgment and Order dated 30-08-2022 and thereafter, the S.L.P. (Civil) bearing no. 29497 of 2023 was instituted before the Hon'ble Apex Court, that too, has been dismissed. The order dated 14-08-2023 passed by the Hon'ble Apex Court in the S.L.P. (Civil) no. 29497 of 2023 reads as under :-

"Delay condoned.

2. In the peculiar facts and circumstances of the case, we do not find any merit in the Special Leave Petition. Accordingly, the same is dismissed.

3. However, the question of law, if any, is kept open.

4. Pending application(s), if any, shall stand disposed of."

13. From bare reading of the abovenoted order, it reveals that in the facts and circumstances of the case, the matter was considered and Hon'ble Apex Court did not find any merit in the S.L.P., therefore, it resulted into dismissal. The subsequent observation after dismissal of the S.L.P. is that 'the question of law, if any, is kept open'. After dismissal of the S.L.P by the Hon'ble Apex Court, the instant review application has been moved, wherein the preliminary objection has been raised by the learned counsel for the opposite party regarding its maintainability.

14. The maintainability of the review application in the given situation has been settled by the Hon'ble Apex Court in the case of **Kunhayammed And Others Vs State of Kerala And Another,** reported in **(2000) 6 Supreme Court Cases 359** and the conclusion has been sum up in paragraph no. 44 of the said Judgment, which is extracted as under :-

***"44.** To sum up, our conclusions are:*

> *(i) Where an appeal or revision is provided against an order passed by a court, tribunal or any other authority before superior forum and such superior forum modifies, reverses or affirms the decision put in issue before it, the decision by the subordinate forum merges in the decision by the superior forum and it is the latter which subsists, remains operative and is capable of enforcement in the eye of law.*

(ii) The jurisdiction conferred by Article 136 of the Constitution is divisible into two stages. The first stage is upto the disposal of prayer for special leave to file an appeal. The second stage commences if and when the leave to appeal is granted and the special leave petition is converted into an appeal.

(iii) The doctrine of merger is not a doctrine of universal or unlimited application. It will depend on the nature of jurisdiction exercised by the superior forum and the content or subject-matter of challenge laid or capable of being laid shall be determinative of the applicability of merger. The superior jurisdiction should be capable of reversing, modifying or affirming the order put in issue before it. Under Article 136 of the Constitution the Supreme Court may reverse, modify or affirm the judgment-decree or order appealed against while exercising its appellate jurisdiction and not while exercising the discretionary jurisdiction disposing of petition for special leave to appeal. The doctrine of merger can therefore be applied to the former and not to the latter.

(iv) An order refusing special leave to appeal may be a non-speaking order or a speaking one. In either case it does not attract the doctrine of merger. An order refusing special leave to appeal does not stand substituted in place of the order under challenge. All that it means is that the Court was not inclined to exercise its discretion so as to allow the appeal being filed.

(v) If the order refusing leave to appeal is a speaking order, i.e., gives reasons for refusing the grant of leave, then the order has two implications. Firstly, the statement of law contained in the order is a declaration of law by the Supreme Court within the meaning of Article 141 of the Constitution. Secondly, other than the declaration of law, whatever is stated in the order are the findings recorded by the Supreme Court which would bind the parties thereto and also the court, tribunal or authority in any proceedings subsequent thereto by way of judicial discipline, the Supreme Court being the Apex Court of the country. But, this does not amount to saying that the order of the court, tribunal or authority below has stood merged in the order of the Supreme Court rejecting the special leave petition or that the order of the Supreme Court

is the only order binding as res judicata in subsequent proceedings between the parties.

(vi) Once leave to appeal has been granted and appellate jurisdiction of Supreme Court has been invoked the order passed in appeal would attract the doctrine of merger; the order may be of reversal, modification or merely affirmation.

(vii) On an appeal having been preferred or a petition seeking leave to appeal having been converted into an appeal before the Supreme Court the jurisdiction of High Court to entertain a review petition is lost thereafter as provided by sub-rule (1) of Rule 1 of Order 47 CPC."

15. From bare reading of Sub. clause (iv) of paragraph no. 44, it emerges that in the event of speaking and non speaking order, while refusing the Special Leave to Appeal, the doctrine of merger would not attract, as the refusal of the Special Leave to Appeal means that the court was not inclined to exercise it's discretion and nothing else. It has further been observed that in case of refusing the Special Leave to Appeal by a speaking order, it has two implications; *firstly* that the law is declared within the meaning of Article 141 of the Constitution of India and *secondly,* other than the declaration of law, but, it does not amount to merger of the orders of the court below in the orders of the Hon'ble Apex Court. It is more particularly held in the Judgment that once Leave to Appeal is granted, it amounts to invoke the appellate jurisdiction by the Hon'ble Apex Court and under these circumstances, the orders passed in the Civil Appeal, would attract the merger.

16. Hon'ble Supreme Court in the case of **Khoday Distilleries Limited(Now Known as Khoday India Limited) And Others Vs Sri Mahadeshwara Sahakara Sakkare Karkhane Limited Kollegal (Under Liquidation) Represented by the Liquidator** reported in **(2019) 4 Supreme Court Cases 376,** has reiterated the law rendered in the case of **Kunhayammed (Supra)**. The relevant paragraphs no. 18,19 & 20 of the said Judgment are extracted as follows :-

18. *Explaining the doctrine of merger, the Court held that logic behind this doctrine is that there cannot be more than one decree or operative orders governing the same*

subject-matter at a given point of time. When a decree or order passed by an inferior court, tribunal or authority is subjected to a remedy available under law before a superior forum, then, though the decree or order under challenge continues to be effective and binding, nevertheless, this finality is to put in jeopardy. Once the superior court disposes of the dispute before it in any manner i.e. either by affirming the decree or order or by setting aside or by modifying the same, it is the decree of the superior court, tribunal or authority which is the final binding and operative decree and the decree or order of the lower court, tribunal or authority gets merged into the order passed by the superior forum. The Court also clarified that this doctrine is not of universal or unlimited application. The nature of jurisdiction exercised by the superior forum and the content or subject-matter of challenge laid or which could have been laid will have to be kept in view. The Court thereafter discussed the provision pertaining to the appellate jurisdiction that is exercised by the Supreme Court conferred upon it by Articles 132 to 136 of the Constitution of India. Insofar as jurisdiction under Article 136 is concerned, it explained that Article 136 opens with a non obstante clause and conveys a message that even in the field covered by the preceding articles, jurisdiction conferred by Article 136 is available to be exercised in an appropriate case. It is an untrammelled reservoir of power incapable of being confined to definitional bounds; the discretion conferred on the Supreme Court being subjected to only one limitation, that is, the wisdom and good sense or sense of justice of the Judges. No right of appeal is conferred upon any party; only a discretion is vested in the Supreme Court to interfere by granting leave to an applicant to enter in its appellate jurisdiction not open otherwise and as of right.

19. *Exercise of jurisdiction under Article 136 and the manner in which it is dealt with is clarified as under : (Kunhayammed case [Kunhayammed v. State of Kerala, (2000) 6 SCC 359] , SCC pp. 371-72, para 14)*

> *"14. The exercise of jurisdiction conferred on this Court by Article 136 of the Constitution consists of two steps : (i) granting special leave to appeal; and (ii) hearing the appeal. This distinction is clearly demonstrated by the provisions of Order 16 of the Supreme Court Rules framed in exercise of the power conferred by Article 145 of the Constitution. Under Rule 4, the petition seeking special leave to appeal filed before the Supreme Court under Article 136 of the Constitution shall be in Form 28. No separate application for interim relief need be filed, which can be incorporated in the petition itself. If notice is ordered on the special leave petition, the petitioner should take steps to serve the notice on the respondent. The petition shall be accompanied by a certified copy of the judgment or order*

appealed from and an affidavit in support of the statement of facts contained in the petition. Under Rule 10 the petition for grant of special leave shall be put up for hearing ex parte unless there be a caveat. The court if it thinks fit, may direct issue of notice to the respondent and adjourn the hearing of the petition. Under Rule 13, the respondent to whom a notice in special leave petition is issued or who had filed a caveat, shall be entitled to oppose the grant of leave or interim orders without filing any written objections. He shall also be at liberty to file his objections only by setting out the grounds in opposition to the questions of law or grounds set out in the SLP. On hearing, the Court may refuse the leave and dismiss the petition for seeking special leave to appeal either ex parte or after issuing notice to the opposite party. Under Rule 11, on the grant of special leave, the petition for special leave shall, subject to the payment of additional court fee, if any, be treated as the petition of appeal and it shall be registered and numbered as such. The appeal shall then be set down for hearing in accordance with the procedure laid down thereafter. Thus, a petition seeking grant of special leave to appeal and the appeal itself, though both dealt with by Article 136 of the Constitution, are two clearly distinct stages. In our opinion, the legal position which emerges is as under:

(1) While hearing the petition for special leave to appeal, the Court is called upon to see whether the petitioner should be granted such leave or not. While hearing such petition, the Court is not exercising its appellate jurisdiction; it is merely exercising its discretionary jurisdiction to grant or not to grant leave to appeal. The petitioner is still outside the gate of entry though aspiring to enter the appellate arena of the Supreme Court. Whether he enters or not would depend on the fate of his petition for special leave;

(2) If the petition seeking grant of leave to appeal is dismissed, it is an expression of opinion by the Court that a case for invoking appellate jurisdiction of the Court was not made out;

(3) If leave to appeal is granted the appellate jurisdiction of the Court stands invoked; the gate for entry in the appellate arena is opened. The petitioner is in and the respondent may also be called upon to face him, though in an appropriate case, in spite of having granted leave to appeal, the Court may dismiss the appeal without noticing the respondent.

(4) In spite of a petition for special leave to appeal having been filed, the judgment, decree or order against which leave to appeal has been sought for, continues to be final, effective and binding as between the parties. Once leave to appeal has been granted, the finality of the judgment, decree or order

appealed against is put in jeopardy though it continues to be binding and effective between the parties unless it is a nullity or unless the Court may pass a specific order staying or suspending the operation or execution of the judgment, decree or order under challenge."

20. *The Court thereafter analysed number of cases where orders of different nature were passed and dealt with these judgments by classifying them in the following categories:*

(i) Dismissal at the stage of special leave petition — without reasons — no res judicata, no merger.

(ii) Dismissal of the special leave petition by speaking or reasoned order — no merger, but rule of discipline and Article 141 attracted .

(iii) Leave granted — dismissal without reasons — merger results .

17. In paragraph no. 20 of Judgment and Order of **Khoday Distilleries Limited (Supra),** three categories enumerated. In the first category, it has been observed that if the Special Leave Petition is dismissed without giving reasons, the doctrine of res-judicata or merger would not attract,whereas in case the Special Leave Petition is dismissed with speaking and reasoned order, there would be no merger, but, rule of discipline and Article 141 of the Constitution of India would attract and under third situation, when the Leave is granted and the dismissal is without reasons, even then, the merger will apply.

18. The case in hand is of the first category, where the Special Leave Petition has been dismissed without giving any reason and therefore, the doctrine of merger would not attract in the instant case. The rights of the review applicants for instituting the review application undoubtedly is uninterrupted and maintainable. Thus, we do not find substance in the preliminary objection raised by the other side, therefore, the same stands rejected.

19. Now, coming to the merit of the review application, it is apparent that opposite party was appointed in the year 1986 on the post of Seasonal Collection Amin and his services were regularized in the year 2013 and in the year, 2016, he has been retired. For counting the services for payment of the pensionary benefits from the date of initial appointment of the opposite party was found genuine and therefore, 'Tribunal' has passed the order which

has been upheld by the writ court. It is also not irrelevant to consider here that one of the identically situated employee of the department namely, Pratap Narain Pandey, instituted Writ Petition No. 4031(S/S) of 2001, whereby he has been given the benefit of computation of his services rendered as Seasonal Collection Amin and likewise the other employees of the department were also given the benefit of the same. The opposite party has also been given all the benefits including the pensionary benefits, in compliance of the order of writ court. Thus, on the other counts also that once other employees of the department have been given the pensionary benefits while computing their services rendered as Seasonal Collection Amins, why the opposite party be deprived of the same at this stage, more particularly when the department has already given all the benefits to him.

20. It is of worth consideration that while filing the written submissions before the 'Tribunal', the review applicants did not take the objection regarding the effect and operation of the Validation Act, 2021. The 'Act,2021' provides that if initial services are not as per the rules, those will not be counted for the purpose of grant of pensionary benefits. Further more, at the time of instituting the writ petition before this court, the said ground was also not taken and even it was not raised before the Hon'ble Apex Court and now, for the first time, at the stage of review, the 'Act,2021' brought into the notice of the court and contention raised that the tribunal and the writ court have ignored the relevant provision of the 'Act,2021'.

21. We have noticed that Hon'ble the Apex Court while dismissing the Special Leave to Appeal has opened the question of law to be considered. We find from the observations of the Hon'ble Apex Court that the Hon'ble Apex Court has gone into the merits of the case and the S.L.P. has been dismissed. Therefore, the question of law is not open to be considered in between the same parties, of the S.L.P.

22. In view of the aforesaid submissions and discussions, the questions formulated in preceding paragraphs are answered as follows :-

(i) The review application is maintainable even the SLP is dismissed to the extent it is concluded by the Apex Court in case of **Kunhayammed** (supra) and **Khoday Distilleries Limited**(supra).

(ii) In facts and circumstances of the instant case, the question of law is not open between the parties of the SLP (Civil) No. 29497 of 2023. However, it must open for other parties, in future.

23. Consequently, the instant review application is hereby **dismissed**.

24. Consigned to records.

(Shree Prakash Singh,J.) (Rajesh Singh Chauhan,J.)

November 6, 2026
AKS/Mayank

Digitally signed by :-
MAYANK PRATAP SINGH
High Court of Judicature at Allahabad,
Lucknow Bench