the claimant was holding the post of Carpenter which was admittedly a Class IV post and categorised as an inferior post. Re-designation of post was found to be of no consequence and retirement age of 60 years was held to be a condition of service protected by section 115 of the State Reorganisation Act, 1956. Again, the facts and the law laid down therein are totally irrelevant to the controversy in hand.

(7) Learned counsel for the petitioner referred to *Udham Singh Bhatti* v. *State of Punjab and another* (2), wherein the learned Judge found that *prima facie* for the purpose of granting stay during the pendency of the Writ Petition, the petitioner was holding an inferior post as envisaged by the Regulations and no findings were given as such. We fail to understand how it is a precedent, what point of law is laid down in this authority and how it is relevant to the controversy in dispute.

(8) In view of the fact that the petitioner does not belong to an inferior class of service envisaged by the Pepsu Service Regulations, 1952, his age of retirement cannot be taken to be 60 years. The submission that the age of retirement of the petitioner being a Teacher is 60 years, is bereft of any logic or reasoning particularly when the contrary inference can be drawn from the letter of appointment, Copy Annexure P2, by which the petitioner was appointed against the post of one Arjan Singh in the grade of Rs. 40—2—60 per month on the latter's retirement on attaining the age of 55 years.

(9) In view of the above observations, we find no force in the Writ Petition. The same is dismissed, with no order as to costs.

R.N.R.

Before : A. P. Chowdhri, J.

M. R. SACHDEVA,—*Petitioner.*

versus

STATE OF HARYANA AND ANOTHER,—*Respondents.*

Criminal Misc. No. 2436-M of 1989

30th April, 1990

Criminal Procedure Code (II of 1974)—*Ss.* 362, 482—*Expunging adverse remarks from judgment—Inherent powers—When can be exercised.*

(2) 1990 (1) R.S.J. 34.

Held, on the merits of the case, the Courts have applied a three-fold test. These are (a) whether the parties are before the Court; (b) whether the evidence on record justifies that remark; and (c) whether the remarks are necessary for the decision of the case (*vide* The State of Uttar Pradesh *v.* Mohammad Nain, A.I.R. 1964 S.C. 703). Applying the above tests to the present case, I find that admittedly M. R. Sachdeva was not a party in the said previous proceedings, the evidence did not justify the remarks in view of the detailed explanation given by the petitioner and the said remarks was not necessary for the decision of the case.

(Para 7)

Petition under Section 482, *Cr. P.C., praying that in the interest of justice, the above remarks may kindly be expunged from the above said judgment.*

Navkiran Singh, Advocate, *for the Petitioner.*

S. S. Goripuria, Advocate, *for Respondent No.* 1.

D. D. Gupta, Advocate, *for Respondent No.* 2.

JUDGMENT

A. P. Chowdhri, J.

(1) This is a petition under section 482 of the Code of Criminal Procedure (hereinafter referred to as 'the Code') for expunging certain adverse remarks from the judgment dated 30th September, 1988, in Criminal Misc. No. 6057-M of 1988.

(2) Brief facts of the case are that on a petition (Crl. Misc. No. 6057-M of 1988) filed by one Inder Dev Gaur, FIR No. 228, dated 2nd August, 1987, under section 52 of the Indian Post Office Act, 1898, lodged at the instance of petitioner Mr. M. R. Sachdeva, who was Senior Postmaster, was quashed. In the last paragraph of the order quashing the FIR it was observed as under :—

> "After careful consideration and for the reasons mentioned above, I find that the present F.I.R. has been initiated for ulterior reasons and it amounts to an abuse of the process of the Court".

The petitioner seeks expunction of the words 'ulterior reasons' lest these words should affect his service career and it is in these circumstances that he has filed the present petition.

(3) On being asked to do, the petitioner submitted better particulars along with supporting documents in an attempt to explain each and every circumstance relied upon in the principal order referred to above. His effort is to show that the opposite party Inder Dev Gaur had failed to bring the totality of the facts or had twisted some of the facts. The petitioner had no chance to explain those circumstances as he was not made a party in the original proceedings under section 482 of the Code for quashing the F.I.R. filed by Inder Dev Gaur. The petitioner had, therefore, been condemned unheard which was against principle of natural justice and which was a sufficient ground in itself to expunge the aforesaid remarks. A detailed reply has been filed by Inder Dev Gaur controverting the facts and reiterating that the previous F.I.R. had been lodged by the petitioner against him with ulterior motives.

(4) A preliminary objection has been taken by the learned counsel for Inder Dev Gaur, respondent No. 2. The objection is that under section 362 of the Code once the judgment or final order disposing of a case has been signed, the same cannot be altered or reviewed except to correct a clerical or arithmetical error. Reference was made to *Ajit Singh and another* v. *State of Punjab* (1). The learned Judges of the Full Bench heavily relied on *State of Orissa* v. *Ram Chander Agarwala etc.* (2). In the last mentioned authority it was held that the word 'no court' used in Section 362 of the Code includes all Courts and applies in respect of all judgments. It was further held that inherent powers of the Court under section 561-A (under the old Code) cannot be invoked for enabling the Court to review its own order which is specifically prohibited by Section 369 (Old Code) analogus to Section 362 of the present Code. Learned counsel for the respondent specially emphasised that, in the context of inherent powers of the High Court, it was specifically laid down in the aforesaid authority that inherent power cannot relate to any of the matters specifically dealt with by the Code,—*vide* paragraph 16 in Ram Chander Agarwala's case (supra). The contention, therefore, is that if any words were deleted from the aforesaid judgment, it would amount to reviewing the judgment which is not permissible.

(5) The contention of learned counsel for the petitioner, on the other hand, is that the High Court has not only the power under section 482 of the Code to expunge the offending remarks but a

(1) 1982 C.L.R. 363 (FB).

(2) A.I.R. 1979 S.C. 87

duty to prevent the abuse of process of the Court. Learned counsel referred to *Vinod Kumar Jain and others* v. *J. P. Sharma and others* (3), in which this question directly arose. Malik Sharief-Ud-Din. J. who had earlier passed certain remarks expunction of which was sought in a later petition held that the High Court possesses inherent jurisdiction to delete and expunge the offending remarks in the circumstances justifying the said course.

(6) The matter needs no lengthy discussion as the point is squarely covered by the decision in the *State of Uttar Pradesh* v. *Mohammad Naim* (4). Head noted (d) summarises the law in these words :—

> "The High Court can in the exercise of its inherent jurisdiction expunge remarks made by it or by a lower court if it be necessary to do so to prevent abuse of the process of the court or otherwise to secure the ends of justice; the jurisdiction is however of an exceptional nature and has to be exercised in exceptional cases only."

The preliminary objection, is, therefore, over-ruled.

(7) On the merits of the case, the Courts have applied a three fold test. These are: (a) whether the parties are before the Court; (b) whether the evidence on record justifies that remark; and (c) whether the remarks are necessary for the decision of the case,—(*vide The State of Uttar Pradesh* v. *Mohammad Naim*, AIR 1964 S.C. 703). Applying the above tests to the present case, I find that admittedly M. R. Sachdeva was not a party in the said previous proceedings, the evidence did not justify the remarks in view of the detailed explanation given by the petitioner and the said remark was not necessary for the decision of the case.

(8) After careful consideration and for the reasons mentioned above, the petition is allowed and it is directed that the words 'ulterior reasons' shall be deleted from the order dated 30th September, 1988 in Crl. Misc. No. 6057-M of 1988.

P.C.G.

(3) 1986 (2) C.L.R. 110.
(4) A.I.R. 1964 S.C. 703.