

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

**Dated:03.03.2015**

**Coram**

**THE HONOURABLE Mr. JUSTICE SATISH K.AGNIHOTRI  
AND  
THE HONOURABLE Mr. JUSTICE M.VENUGOPAL**

**Review Application No.137 of 2014**

M.Siril Bernard

... Applicant/Appellant

V.

The Registrar,  
University of Madras,  
Centenary Building,  
Chepauk, Chennai – 600 005.

... Respondent

Prayer: Review Application filed under Section 114, read with Order XLVII, Rule 1 of Civil Procedure Code against the order passed by this Court in W.A.No.1796 of 2011 dated 28.06.2012

For Applicant : Mr.A.Amalraj

**ORDER**

**(Order of the Court was made by M.VENUGOPAL, J.)**

The Applicant/Appellant has preferred the instant Review Application seeking to review the order passed by this Court in W.A.No.1796 of 2011 dated 28.06.2012.

2. According to the Learned Counsel for the Applicant, this Court should have seen that the Respondent/University had appointed 'Temporary Clerks' for the periods from 1978 to 1983 and in the said exercise, the Applicant was appointed as 'Temporary Clerk' on 24.04.1981 and accordingly, 175 Temporary Clerks were appointed *in toto* for the periods from 1978 to 1983 including the Review Applicant.

3. The Learned Counsel for the Applicant projects an argument that the fact remains that all the 175 Temporary Clerks including the Applicant were combined together, regularising their services with effect from 24.12.1983, re-designating their respective appointments as 'Junior Assistants' after obtaining individual declaration to the effect that they should not claim seniority from the respective dates of original appointment, but fixing 24.12.1983 as common seniority date to all the 175 candidates including the Applicant for all purposes.

4. The Learned Counsel for the Applicant proceeds to contend that the Review Applicant's name has arrayed as Serial No.127 out of 175, which was approved by the Syndicate of the Respondent/University pursuant to the Syndicate Resolution dated 27.04.1988. Furthermore, the said seniority list as such was operated for further

promotions and in the said exercise, the Review Applicant was promoted as 'Assistant' with effect from December 1990, taking into account his appointment with effect from 24.12.1983, and thereafter the said cadre was re-designated as 'Assistant Section Officer' by an order dated 23.09.1994. Likewise, the Applicant's name was moved for Selection Grade to the post of Assistant Section Officer on 23.09.2004.

5.The Learned Counsel for the Applicant submits that it is the specific case of the Respondent/University that the staff those who joined later than 24.12.1983 be regularised on the respective dates of their joining duty and that the monetary benefits be given accordingly and since the Petitioner joined duty only on 28.12.1983 in accordance with the decision of the Syndicate, the Applicant was informed through communication No.F1 (Estt)/96/1368 dated 18.04.1996 that his service was regularised in the University with effect from 28.12.1983.

6.Added further, it is brought to the notice of this Court that the Respondent, as per Minutes of the Meeting of the Establishment Committee held on 26.07.2012, passed certain resolutions and Agenda No.5 reads as under:

***"To consider the request of Thiru.A.Abdul  
Jaleel, 'Assistant Section Officer' (SG) to***

***revise seniority and place him before Thiru.M.Swaminathan, Section Officer in the seniority together with the office note and orders of the Vice Chancellor thereon.***

***The Committee considered the inconsistency in the date of appointment, the date of joining and the date of increment granted to Thiru.A.Abdul Jaleel and also considered the consequence on the seniority of other Staff due to any decision on changing his date of joining from 27.12.1983 to 24.12.1983.***

***Resolved that supernumerary post of 'Assistant Registrar' be created with the approval of the Finance Committee and Thiru.A.Abdul Jaleel be promoted as and when eligible for promotion presuming that his date of joining is 24.12.1983 and the supernumerary post will cease as and when he retires or gets relieved from the University."***

7.The Learned Counsel for the Applicant contends that this Court dismissed W.A.No.1796 of 2011 on 28.06.2012 and immediately thereafter the Respondent took a decision by correcting the error in the fixation of seniority of A.Abdul Jaleel, admittedly, one among 5 Junior Assistants placed on the same footing as that of the Applicant.

8. At this stage, the Learned Counsel for the Applicant seeks in aid of the decision of the Hon'ble Supreme Court in ***S. Bagirathi Ammal V. Palani Roman Catholic Mission, 2007 (5) CTC 881*** wherein it is held that ***'... the discovery of new and important matter or evidence which, after the exercise of due diligence was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgment to the Court which passed the decree or made the order.'***

9. The Learned Counsel for the Applicant submits that the Applicant/Appellant was in service with effect from 24.04.1981 and as such, the question of joining later than 24.12.1983 does not arise and only in the said circumstances, the Respondent/University had rectified the error crept in the seniority of one A. Abdul Jaleel, whose seniority was erroneously reckoned from 27.12.1983 and on assumption as if he joined later than 24.12.1983. In fact, the Applicant/Appellant was promoted as 'Assistant' taking into account his appointment from

24.12.1983 and the fact remains that 24.12.1983 was Saturday (Holiday) and further, 25.12.1983 was Sunday (Holiday). It is represented on behalf of the Applicant that since 25.12.1983 happened to be a Christmas Day, the Applicant/Appellant took two days casual leave from 26.12.1983 to 27.12.1983 and the casual leave taken by him was approved by the Respondent/University.

10. In this connection, the Learned Counsel for the Applicant contends that the Respondent/University having approved the casual leave of the Applicant from 26.12.1983 to 27.12.1983 and in view of the continuous Government Holidays from 24.12.1983 to 25.12.1983, it is strange that the Applicant/Appellant joined later than 24.12.1983 i.e., on 28.12.1983 and disturb his seniority after years together and denying his further promotions on par with his batch mates of 175 Junior Assistants. As such, the finding arrived at by this Court that the Applicant/Appellant had joined subsequently on 28.12.1983 is contrary to the facts. In short, the aforesaid crucial factors were not taken into account by this Court, while dismissing W.A.No.1796 of 2011 dated 28.06.2012 and therefore, the Applicant is entitled to file the Review Application before this Court and also entitled to obtain the relief on par with A.Abdul Jaleel, who was placed on the same footing erroneously as that of the Applicant.

11.The Learned Counsel for the Applicant submits that the seniority list was kept confidentially but the same was published only in the year 2005 and not in the year 1996 and also that, subsequently further promotions as Section Officers of 175 batch staff had commenced from March 2006. However, it is the plea of the Applicant that instead of operating the original list arraying him as Serial No.127, taking into account his common seniority from 24.12.1983, the entire seniority list was altered and further, after revising the seniority list, promotion to the cadre 'Section Officer' was made in March 2006 and if the original seniority was maintained, the Applicant's name would have been considered for promotion as 'Section Officer', [since by that time he was suitably/appropriately ready for promotion] as per order made in the original seniority list, but to Applicant's surprise, his name was fixed at S.No.125, below the names of 175 staff batch by erroneously taking into account his joining date as 28.12.1983.

12.The Learned Counsel for the Applicant strenuously contends that by means of Official Communication No.F1 (Estt)/88/2671 dated 18.06.1988, the supreme body of the Respondent/University viz., Syndicate had approved the appointment of 175 persons, including the

Applicant with effect from 24.12.1983 and the said approval had become final and absolute and therefore, the question of alteration if any does not arise after lapse of several years and if at all the same was done in the year 1996, the same was not admittedly communicated to the Applicant.

13.The Learned Counsel for the Applicant submits that in W.P.No.1354 of 1991, this Court on 30.09.1991 had observed that before finalising the regrouping of the seniority of the Petitioners as well as the other aggrieved persons, they should be put on notice so as to raise their objection as they may desire and in that Official Communication dated 08.04.1996 served on the Applicant is only a blanket communication and the same is not a show cause notice calling for explanation in any manner whatsoever. Further, this being so, this Court had arrived at a finding that Promotions were effected to the Writ Petitioner/Appellant not only based on seniority but also taking into consideration the subsequent development and also the decision of this Court in W.P.1354 of 1991 dated 30.09.1991 etc.

14.The Learned Counsel for the Applicant contends that based on the Official Communication No.F1/Estt/92/2256 dated 14.05.1992, the

seniority list was erroneously drawn without giving opportunity of hearing and the same was set aside and the patent error is found on the face of the order, inasmuch as no opportunity was given to the Applicant as admitted by the Respondent/University before altering his seniority which was nothing but a glaring error on the part of the Respondent and the said act on the part of the Respondent is in violation of the order in W.P.No.1354 of 1991 dated 30.09.1991. As a matter of fact, this violation of the Respondent/University in altering the Applicant's seniority contrary to the earlier order of this Court was not considered at the time of passing of the Judgment in W.A.No.1796 of 2011 dated 28.06.2012.

15.Finally, the Learned Counsel for the Applicant winds up his argument by contending that the present Review Application filed by the Applicant may be allowed by this Court in view of the fact that the judgment passed by this Court in W.A.No.1796 of 2011 dated 28.06.2012 is not only on the ground of non appreciation of the earlier order passed by this Court in W.P.No.1394 of 1991 dated 30.09.1991, and on the ground of non consideration of relevant documents, but also in view of the subsequent development made in the case of A.Abdul Jaleel placed on the same footing as that of the Applicant by correcting the error by the Respondent/University itself.

16. At this stage, this Court very significantly points out that this Court in W.A.No.1796 of 2011 (filed by the Applicant/Appellant) dated 28.06.2012, in paragraph Nos.16 to 19, as observed the following:

***"16. It is also seen from the perusal of the materials that thereafter, a mass representation was made by the said 175 batch of staff to the effect that all of them be regularised from same date in the post of Junior Assistant even though part of them were appointed as substantive posts on subsequent dates. Accepting their representation, the Syndicate resolved that the 175 batch staff be regularised from the date of their appointments, i.e., 24.12.1983. Accordingly, the seniority was fixed and the same was communicated to all the employees.***

***17. At this juncture, it is to be pointed out that the appellant, without moving his finger during the said period, after a lapse of ten years only, has chosen to make a representation on 13.04.2006 and against the reply, dated 01.06.2006, to the said representation, he filed W.P.No.30733 of 2006 and the learned single Judge, apart from consideration of***

***the merits of the case, on the question of delay of ten years, dismissed the writ petition, against which, the present writ appeal has been filed.***

***18. We have gone through the entire materials placed on record. The affidavit filed by the appellant is very specific and it has not mentioned the communications of the Syndicate from time to time with regard to the fixation of the seniority from the date of joining after excluding persons, who joined on 24.12.1983, out of 175 candidates and fixing the seniority from the date of joining, as per the resolution passed by the Syndicate and Establishment Committee. The petitioner has also not chosen to file any rejoinder to the averments made in the counter affidavit filed by the respondent as to whether he has received the communication of the Syndicate or not. The affidavit filed in the writ petition is very silent about the assertion made by the University.***

***19. In view of the above, we are of the considered opinion that promotions***

***were effected to the writ petitioner/ appellant not only based on the seniority, but also taking into consideration the subsequent development and also the decision of the High Court in W.P.No.1354 of 1991 dated 30.09.1991. On consideration of the objections received from 55 persons, a decision was taken and accordingly, the seniority was fixed in respect of persons, who joined on 24.12.1983 and those appointed and joined subsequent to 24.12.1983 and that has become final in 1996 itself. Now, the appellant cannot file the writ petition, after a lapse of ten years, by stating that he is not aware of the revision of seniority and after the knowledge of arbitrary revision, he brought the irregularity to the knowledge of the respondent on 13.04.2006 requesting him to correct the seniority list so as to enable him to occupy his avenue of promotion as Section Officer in the future available vacancy."***

17.That apart, this Court, while disposing of the aforesaid Writ Appeal, had also opined that the seniority list prepared in the year

1996 had become final and operative and further observed that the statement made by the Appellant (Review Applicant), who is working in the same organisation, after a lapse of 10 years, that he is not aware of the revision of seniority and for the first time, when he had knowledge about the same, he made a representation dated 13.04.2006, is unbelievable and ultimately, dismissed the Writ Appeal.

18.It is to be relevantly pointed out that the power of Review is not an inherent power and must be conferred by law either expressly or by necessary implication. Moreover, in the decision of the Hon'ble Supreme Court in ***Sardar Narender Singh V. IV Additional District Judge, AIR 1994 Supreme Court 1245***, it is held that 'review petition filed by tenant after a gap of more than four years is not maintainable'. Also that, where all the pleas urged in review petition were reiteration of grounds urged during hearing of appeals, review petitions may held as not maintainable, as per decision of the Hon'ble Supreme Court in ***Rajinder Singh V. State of Haryana and others, (2005) 12 Supreme Court Cases 322***. That apart, where the Petitioner had not been acting bona fide, delay in filing review would not be condoned, as opined by this Court.

19. At this juncture, this Court worth recalls and recollects the decision of the Hon'ble Supreme Court in ***State of West Bengal and others V. Kamal Sengupta and another, (2008) 8 Supreme Court Cases 612 at special page 633***, wherein in paragraph 22, it is observed as follows:

***"22. The term 'mistake or error apparent' by its very connotation signifies an error which is evident per se from the record of the case and does not require detailed examination, scrutiny and elucidation either of the facts or the legal position. Further, if an error is not self-evident and detection thereof requires long debate and process of reasoning, it cannot be treated as an error apparent on the face of the record for the purpose of Order 47 Rule 1 of Civil Procedure Code or Section 22(3)(f) of the Administrative Tribunals Act, 1985. To put it differently, an order or decision or judgment cannot be corrected merely because it is erroneous in law or on the ground that a different view could have been taken by the court/tribunal on a point of fact or law. In any case, while exercising the power of review, the court/tribunal concerned cannot sit in appeal over its judgment/decision."***

20.It is to be noted that in the decision of the Hon'ble Supreme Court in ***Meera Bhanja V. Nirmala Kumari Choudhury, (1995) 1 Supreme Court Cases 170***, it is laid down as follows:

***"The review proceedings are not by way of an appeal and have to be strictly confined to the scope and ambit of Order 47, Rule 1, CPC. The review petition has to be entertained only on the ground of error apparent on the face of the record and not on any other ground. An error apparent on the face of record must be such an error which must strike one on mere looking at the record and would not require any long-drawn process of reasoning on points where there may conceivably be two opinions. The limitation of powers of court under Order 47, Rule 1, CPC is similar to the jurisdiction available to the High Court while seeking review of the orders under Article 226."***

21.Further, in the decision of the Hon'ble Supreme Court in ***Thungabhadra Industries Limited V. Government of A.P., AIR 1964 SC 1372***, it is observed that ***'There was real distinction between a mere erroneous decision and a decision which could***

***be characterised as vitiated by "error apparent" and that a "review" was by no means an "appeal" in disguise.'***

22. Moreover, in the decision of the Hon'ble Supreme Court in ***Delhi Administration v. Gurdip Singh Uban and others, (2000) 7 Supreme Court Cases 296, at special page 302 & 303***, the Hon'ble Supreme Court has, inter alia, observed that '***... If parties file review petitions indiscriminately, the time of the Court is unnecessarily wasted, even it be in chambers where the review petitions are listed. Greater care, seriousness and restraint are needed in filing review applications.'***

23. Besides the above, this Court aptly points out the decision of the Hon'ble Supreme Court in ***Parsion Devi and others V. Sumitri Devi and others, (1997) 8 Supreme Court Cases 715, at special page 716***, whereby and whereunder, it is observed and held as follows:

***"Under Order 47, Rule 1 CPC a judgment may be open to review inter alia if there is a mistake or an error apparent on the face of the record. An error which is not self-evidence and has to be detected by a process of reasoning, can hardly be said***

***to be an error apparent on the face of the record justifying the court to exercise its power of review under Order 47, Rule 1 CPC. In exercise of the jurisdiction under Order 47, Rule 1 CPC it is not permissible for an erroneous decision to be "reheard and corrected". There is a clear distinction between an erroneous decision and an error apparent on the face of the record. While the first can be corrected by the higher forum, the latter only can be corrected by exercise of the review jurisdiction. A review petition has a limited purpose and cannot be allowed to be "an appeal in disguise".***

24. On a careful consideration of the Applicant/Appellant's contentions and also this Court, taking note of the entire conspectus of the attendant facts and circumstances of the present case in an integral fashion, comes to an irresistible conclusion that the Applicant/Appellant has not made out a case for 'Review' to the subjective satisfaction of this Court and further, this Court is of the considered view that there is no apparent error on the face of record in the Judgment dated 28.06.2012 in W.A.No.1796 of 2011. In reality, the Applicant/ Appellant has projected the present Review Application in

the guise of an Appeal. Moreover, if the Applicant/Appellant is aggrieved by the Judgment dated 28.06.2012 in W.A.No.1796 of 2011 passed by this Court, which in his understanding has not been correctly decided as per Law or on facts or erroneously decided, such an argument/plea can be agitated/raised in an Appeal before the Superior Forum, but not in a Review Application, in the considered opinion of this Court. That apart, reappraisal of the entire facts or materials on record for finding the error would certainly, in the considered opinion of this Court, amount to exercise of 'Appellate Jurisdiction' which is certainly impermissible. Viewing it from any angle, the Review Application fails.

25.In the result, the Review Application is dismissed. No costs.

S.K.A. J.) (M.V. J.)  
03.03.2015

Index :Yes / No

Internet :Yes / No

Sgl

To

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SATISH K.AGNIHOTRI,J.  
AND  
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