

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.03.2015

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THE HON'BLE MR.JUSTICE SATISH K. AGNIHOTRI
AND
THE HON'BLE MR.JUSTICE M.VENUGOPAL

Review Application Nos.24 and 25 of 2015

A.L.Chidambaram

.. Applicant in
both review applications

Vs.

1. The Presiding Officer,
Principal Labour Court,
Chennai.
2. The Management of
Madras Atomic Power Project
Employees Consumers Cooperative
Stores Shopping Centre Ltd.,
Kalpakkam.

.. Respondents in
both review applications

These Review applications are filed under Order 47 Rule 1 CPC read with Section 114 of CPC against the common judgment dated 10.02.2015 passed in W.A.Nos.1759 and 1760 of 2014.

For spPLICANT : Mr.M.V.Ananthakrushnan

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COMMON ORDER

(Order of the Court was made by **SATISH K. AGNIHOTRI, J.**)

The applicant seeks review of the common judgment dated 10.02.2015 passed in W.A.Nos.1759 and 1760 of 2014.

2. The stand of the applicant is that findings as recorded in paragraph 25 of the judgment are based on mistake of law. Secondly, the Court has not appreciated and understood the scope and ambit of Section 41(2) of the Tamil Nadu Shops and Establishment Act, 1947 (for short “the Shops Act”). The Court has also not appreciated properly, the observation made by the Division Bench of this Court in its order dated 6.11.2007 passed in W.A.No.871 of 2001. It is further urged that there are five decisions by the Division Benches of this Court, holding that the grant of backwages is inherent in setting aside the order of dismissal. The same has not been considered in proper perspective. If the Court had taken a contrary view, the proper course was to refer the matter to a larger Bench as the coordinate Bench had taken a contrary view. It is lastly contended that the judgment sought to be reviewed will have a far-reaching consequence. Thus, the review is necessary.

3. The learned counsel has relied on a decision of a Division Bench of this Court in *Tata Iron Steel Co. Ltd. Vs. G.Ramakrishna Ayyar and another*¹, wherein, it was observed that reversal of the decision of the employer in respect of dismissal follows the effect that as if the order is non-est and as such, reinstatement with backwages as if the employee had never been properly dismissed from service.

1 (1950) LLJ 1043

4. The learned counsel also relied on the amended provisions of Section 41-A of the Shops Act and also Section 17-B of the Industrial Disputes Act, 1947, which basically deals with grant of last drawn wages during the pending proceedings in higher courts. There is no quarrel on this issue, but, the issue involved in the instant case was not the grant of last drawn wages during the pending proceedings before the higher courts, but, the grant of backwages after setting aside the reinstatement order. It is further contended that in service matters, particularly, under the provisions of the Shops Act, if dismissal order is set aside, the grant of full backwages is inherent, unlike a declaration granted under the common law in the Civil Court.

5. We have given anxious consideration to the aforestated contentions and also perused the documents filed by the applicant in support of his contentions. We are of the opinion that the grounds raised by the applicant do not come within the ambit and scope of review jurisdiction under the provisions of Order 47 Rule 1 CPC read with Section 114 of CPC.

6. All the aforestated contentions have been considered properly in the judgment dated 10.02.2015 sought to be reviewed in this application and no apparent error has been shown warranting review.

7. The Supreme Court, in *Kamlesh Verma vs. Mayawati and Others*², after referring to and considering various decisions on the scope of review in *T.C. Basappa vs. T. Nagappa*³, *Sow Chandra Kante vs. Sk. Habib*⁴, *Northern India Caterers (India) Ltd. vs. Lt. Governor of Delhi*⁵, *Col. Avtar Singh Sekhon vs. Union of India*⁶, *Meera Bhanja vs. Nirmala Kumari Choudhury*⁷, *Parison Devi vs. Sumitri Devi*⁸, *Kerala SEB vs. Hitech Electrothermics & Hydropower Ltd.*⁹ and *Jain Studios Ltd. vs. Shin Satellite Public Co. Ltd.*¹⁰, summarised the principle of maintainability of a review as under:

"Summary of the principles

20. Thus, in view of the above, the following grounds of review are maintainable as stipulated by the statute:

20.1. When the review will be maintainable:

(i) Discovery of new and important matter or evidence which, after the exercise of due diligence, was not within knowledge of the petitioner or could not be produced by him;

(ii) Mistake or error apparent on the face of the record;

(iii) Any other sufficient reason.

The words "any other sufficient reason" have been interpreted in *Chhajju Ram v. Neki* and approved by this Court in *Moran Mar Basselios Catholicos v. Most Rev. Mar Poulouse Athanasius* to mean "a reason sufficient on grounds at least analogous to those specified in the rule". The same principles have been reiterated in *Union of India v. Sandur Manganese & Iron Ores Ltd.*

2 (2013) 8 SCC 320

3 AIR 1954 SC 440

4 (1975) 1 SCC 674

5 (1980) 2 SCC 167

6 1980 Supp SCC 562

7 (1995) 1 SCC 170

8 (1997) 8 SCC 715

9 (2005) 6 SCC 651

10 (2006) 5 SCC 501

20.2. When the review will not be maintainable:

(i) A repetition of old and overruled argument is not enough to reopen concluded adjudications.

(ii) Minor mistakes of inconsequential import.

(iii) Review proceedings cannot be equated with the original hearing of the case.

(iv) Review is not maintainable unless the material error, manifest on the face of the order, undermines its soundness or results in miscarriage of justice.

(v) A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected but lies only for patent error.

(vi) The mere possibility of two views on the subject cannot be a ground for review.

(vii) The error apparent on the face of the record should not be an error which has to be fished out and searched.

(viii) The appreciation of evidence on record is fully within the domain of the appellate court, it cannot be permitted to be advanced in the review petition.

(ix) Review is not maintainable when the same relief sought at the time of arguing the main matter had been negatived."

8. In the light of the aforestated well settled principles of law, the applicant has failed to establish any manifest error, except that according to the applicant, there was wrong appreciation of facts and law and as such, there is no case for review of the common judgment dated 10.02.2015 passed in W.A.Nos.1759 and 1760 of 2014.

9. Resultantly, both the review applications are dismissed. No costs.

(S.K.A., J.) (M.V., J.)
26.03.2015

Index : Yes
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To

The Presiding Officer,
Principal Labour Court,
Chennai.

SATISH K. AGNIHOTRI, J.

and

M.VENUGOPAL, J.
vvk

Common Order
in
Rev. Application Nos.24 & 25 of 2015

26.03.2015