

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : **11.09.2015**

CORAM

THE HONOURABLE MR. JUSTICE K.RAVICHANDRABAABU

Review Application No.**105** of **2015**

in

W.P.No.9010 of 2013

and

M.P.No.1 of 2015 and Cont.P.No.2119 of 2014

The General Manager,
The Chennai Metro Water Supply and
Sewerage Board,
No.1, Pumping Station Road,
Chintadripet, Chennai - 600 002.

... Petitioner

- Vs -

V.Suresh Babu

.. Respondent

Prayer:- Review Application filed under Order 47, Rule 1 r/w
Section 114 of Code of Civil Procedure, praying to review the order
of this Court dated 07.02.2014 made in W.P.No.9010 of 2013.

For petitioner : Mr.N.Ramesh

For respondent : Mr.S.Sivakumar

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ORDER

This petition is filed seeking review of the order passed by this Court in W.P.No.9010 of 2013 dated 07.02.2014.

2. The above writ petition was filed by the respondent herein, challenging the order passed by the petitioner herein, dated 03.12.2012 and for further direction to the petitioner herein, to appoint the respondent herein, in any suitable post on compassionate ground. Through the said impugned proceedings dated 03.12.2012, the request made by the writ petitioner seeking for compassionate appointment was rejected. This Court after hearing both sides and after following the decision of the Hon'ble Division Bench reported in **2008 5 MLJ 795 (H.Anwar Basha Vs. Registrar General (incharge))** and another decision reported in **2009 1 MLJ 54 (N.Panneerselvam Vs. Secretary to Government and others)** allowed the writ petition and set aside the impugned order and consequently directed the petitioner herein, to pass appropriate orders on the writ petitioner's request for compassionate appointment within a period of two weeks from the date of receipt of a copy of the said order.

3. When the order passed by this Court was not complied with within the time stipulated therein, the writ petitioner filed

Contempt Petition in Cont.P.No.2119 of 2014 on 27.06.2014. After notice in the contempt petition, the petitioner herein filed this review application on 15.09.2014.

4. Heard Mr.N.Ramesh, learned counsel appearing for the petitioner and Mr.S.Sivakumar, learned counsel appearing for the respondent.

5. A perusal of the grounds raised in the review application would show that they are nothing but the grounds raised on merits, thereby calling upon this Court to reopen the matter and hear the same on merits and decide once again. The review petitioner sought to rely on an order passed by Government of Tamil Nadu in G.O.Ms.No.34, Labour and Employment Department (Q1) dated 16.04.2002 to contend that persons like that of the writ petitioner cannot seek for compassionate appointment. Thus, it is contended that in view of the above G.O.Ms.No.34, dated 16.04.2002, the writ petitioner is not entitled to the relief sought for in the writ petition.

6. In fact, the very same G.O. was taken into consideration in an order made in W.P.No.16211 of 2007 dated 30.08.2007 by a learned Single Judge of this Court and it was

found therein that there cannot be two criteria for the purpose of giving protection of family pension and DCRG on one hand and deny the same benefit for compassionate appointment on another hand. The said order in W.P.No.16211 of 2007 dated 30.08.2007 was in fact referred to in the subsequent decision reported in **2009 1 MLJ 54**, which in turn, was relied on by this Court while passing the above said order in the writ petition. Therefore, I am of the view that the review petitioner is not entitled to re-argue the matter once again in respect of the very same G.O.

7. Further, the review petitioner sought to distinguish the decision of the Hon'ble Division Bench referred to by this Court reported in **2008 (3) MLJ 795** stating that the facts of such decision are totally different and distinguishable. In my considered view, such contention of the petitioner cannot be countenanced in view of the specific observation made by the Hon'ble Division Bench in the above said decision in paragraph No.30 that legitimacy or illegitimacy cannot be a stumbling block for the person like that of the writ petitioner to get employment. Paragraph No.30 reads as follows:

"30. The object of the compassionate appointment to a son or daughter or near relative, who would take care of the family of the Government Servant,

who dies in harness, leaving his family in indigent circumstances is to mitigate the sufferings of the bereaved family. In this connection, it has to be noted whether the person appointed on compassionate grounds is continuing to support his family or not. As seen from Exs.P-18 and P-19, the delinquent was shown as one of the family members of Shaik Hyder. If that is taken into account, the delinquent would definitely come under the dependants. Therefore, the object under which the compassionate appointment has been provided to the bereaved family of Shaik Hyder has been rightly met. As such, the legitimacy or illegitimacy cannot be a stumbling block for the petitioner to get employment. Hence, the impugned order, in our considered view, suffers from illegality and perversity and the same is liable to be set aside."

8. It is the further contention of the review petitioner that the Government Advocate who appeared in this matter at the time of hearing the writ petition was not authorised to appear as there are different standing counsels for the Chennai Metro Water Board. This Court cannot be expected to go into such question especially when the Government Advocate who appeared on that day did not raise any objection to that effect. On the other hand, the order

came to be passed after hearing both sides. This sort of inter se dispute between two wings of the same Government has to be sorted out within themselves and that cannot be stated as a ground for review, more particularly, when this Court has passed a reasoned order by following earlier decisions.

9. It is well settled that the scope of review under Order 47 Rule 1 is very limited and such jurisdiction cannot be invoked for re-appreciation of evidence or re-arguing the matter on merits once again. In the decision reported in **2013 (8) SCC 320 (Kamlesh Verma Vs. Mayawati and others)** the Hon'ble Supreme Court has observed as to when the review will not be maintainable as follows:

"16.(B) 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 re-heard 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 negated."

10. Following the above decision the Division Bench of this Court (wherein I was a party) held in Review Appln.No.167 of 2014 as follows:

"2.....In a recent decision of the Honourable Supreme Court reported in 2013 (8) SCC 320 (Kamlesh Verma Vs. Mayawati), it has been held that a repetition of old and over-ruled argument is not enough to

reopen the concluded adjudications and that mere possibility of two views on the subject, cannot be a ground for Review. It is also observed therein that the 3 appreciation of evidence on record is fully within the domain of the appellate Court and it cannot be permitted to be advanced in the Review Petition.

3. Further, in another recent decision of the Honourable Supreme Court reported in 2014 (5) SCC 75 (Subramanian Swamy Vs. State of T.N), it has been observed in paragraph 52 as follows:

"52. ... Thus, even an erroneous decision cannot be a ground for the court to undertake review, as the first and foremost requirement of entertaining a review petition is that the order, review of which is sought, suffers from any error apparent on the face of the order and in absence of any such error, finality attached to the judgment/order cannot be disturbed. (Vide - Rajender Kumar Vs. Rambhai - 2007 (15) SCC 513 : 2010 (3) SCC (Cri) 584 : AIR 2003 SC 2095)."

4. Thus, we find that the grounds raised in this Review Application are not the grounds warranting Review of the judgment."

11. Therefore, considering all the above stated facts and circumstances, I am of the view that the review applicant has not made out any ground for reviewing the order passed by this Court. Accordingly, the review application is dismissed. Consequently, the connected miscellaneous petition is closed. The Registry is directed to post the Contempt Petition in Cont.P.No.2119 of 2014 after four weeks for reporting compliance. No costs.

11.09.2015

Index: Yes
Internet: Yes
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Note: Post Cont.P.No.2119 of 2014 after four weeks.

K.RAVICHANDRABAABU, J.

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