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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.09.2019

CORAM :

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
and
THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

Review Application (MD) No.139 of 2015

G.Balasundaram

... Review Applicant/Petitioner

Vs.

1.The Secretary
Commercial Taxes and Registration Department
Secretariat, Chennai - 9

2.The Inspector General of Registration
Santhome High Road
Chennai - 28

... Respondents/Respondents

PRAYER : Review Application filed under Order 47 Rule 1 of Civil Procedure Code, to review the judgment dated 28.7.2015 made in W.A. No.836 of 2011.

Prayer in WA(MD) . 836/ 2011 :

Appeal filed under Clause 15 of Letters Patent, against the order dated 26/07/2011 made in WP(MD).No.9703/2006 by this Court.

Prayer in WP(MD) . 9703/ 2006 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for the records of the 1st respondnets in ref. G.O.(Valalyam) ms. no. 769 dated 18/07/2006 commercial tax and registration department and quash the same as ilegal and void and consequently direct the 1st respondents to treat the period of suspension of the petitioner from 26/02/1999 to 13/05/2004 as period spent on duty.

For Petitioner : Mr.G.Balasundaram,
Party-in-Person

For Respondent : Mr.T.M.Pappiah,
Spl. Govt. Pleader



O R D E R

(Order of the Court was made by **S.MANIKUMAR, J.**)

Instant Review Application is filed against the common judgment of this court dated 28.7.2015 made in W.A. Nos.836 of 2011 and 727 of 2015, by which we declined to interfere with the order of the writ court, impugned in the writ appeals. The operative portion of the judgment impugned, reads thus:

"35. In the case on hand, party in person/ Government servant has not been fully exonerated. He has been imposed with a penalty of stoppage of increment for one year without cumulative effect. Therefore, it is not open to him to contend that the entire period of suspension has to be treated as duty, which will have the effect of setting aside the order of suspension. An order of suspension validly passed by the competent authority, taking note of the gravity of charges, and when the disciplinary proceedings have ended in a penalty, proportionality may vary depending upon the gravity and finding on the charges, the period spent during suspension cannot be declared as duty, so long as the suspension is justified.

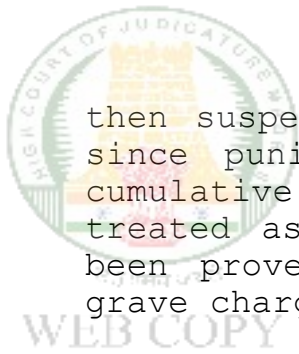
36. Writ Court has considered that there was a delay in passing final orders, on the disciplinary proceedings, even though, the enquiry report was submitted on 25.02.2000 and accordingly applying FR54-B-1(3), has remanded the matter to the Secretary to Government, Commercial Taxes and Registration Department, Chennai for fresh consideration. Directions issued cannot be said to be contrary to fundamental rules.

37. In the light of the above discussion, we are of the view that the request of the party in person cannot be accepted. Appeal filed by the State against the directions, is devoid of merits.

38. For the reasons stated supra, both the writ appeals are dismissed. No costs. Consequently, M.P(MD)No.1 of 2015 is closed."

2. The said judgment is assailed in review, on the grounds that imposition of more than one punishment for the same set of charges, is not correct. The imposition of punishment of stoppage of increment for one year and treating the period of suspension from 26.2.1999 to 24.2.2000, as not on duty, amounts to double jeopardy. According to jurisprudential principle of double jeopardy, no one shall be punished for the same offence more than once.

3. It is the contention of the review applicant that the Hon'ble Division Bench ought to have seen that 11 charges framed against the review applicant, out of which nine charges have been dropped. A substantial portion of the charges had been dropped,



then suspension is unjustified. According to the review applicant, since punishment of stoppage of increment for one year without cumulative effect has been imposed, the suspension period cannot be treated as non-duty. According to him, two charges alleged, have been proved and punishment of stoppage of increment, is not for grave charges.

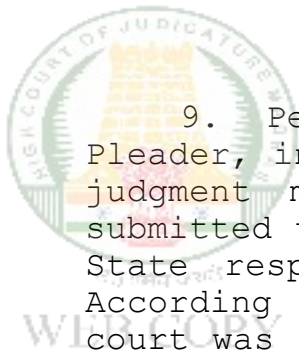
4. It is his further contention of the review applicant that executive instructions issued by Government of India to all the disciplinary authorities relating to suspension of Central Government servants, are also applicable to the State Government servants, under ruling 2(1) of Fundamental Rules.

5. It is the further contention of the review applicant that the observation made by the Tamil Nadu Administrative Tribunal in its order dated 27.8.2002 in O.A. No.7378/2001 is factually not correct, as he was not reinstated in service till the suspension was revoked with effect from 14.5.2004. The statement that he was under suspension from July 1999 and prosecuted for offences in the criminal court is also factually incorrect. The Tribunal has also failed to give any specific valid reason for justifying or upholding the validity of suspension.

6. It is the further contention of the review applicant that the observation made in para 21 of the order in W.A.Nos.836 of 2011 and 727 of 2015, dated 28.07.2015, is not correct, as he has all along been challenging the validity of suspension, in his application before the Tribunal, writ petition and writ appeal before this court. It is his further contention that when interim suspension is not followed by an order of dismissal, removal or compulsory retirement and the employee is reinstated, he would normally be entitled to treat the period of suspension as period on duty and would also be entitled to full pay and allowances for that period.

7. It is his further contention that the order made in W.P. No.14133 of 2006 dated 1.11.2006 in K.Karthikeyan vs. Secretary to Government, was not raised before the Hon'ble Division Bench, at the time when the writ appeal was argued. Placing reliance on FR 2(1) of the Fundamental Rules, applicable to Central Civil Rules, Mr.G.Balasundaram, review applicant/party-in-person, submitted that the same be applicable to Tamil Nadu Government servants as well.

8. Inviting the attention of this court to the doctrine of proportionality, party-in-person submitted that for the misconduct, he has been punished with stoppage of increment for the period 26.2.1999 to 24.2.2000 and there is also a penalty of non-payment of salary during the suspension period. He further submitted that when a minor penalty is imposed, respondents are not right in refusing salary for the period of suspension and thus, prayed to review the order dated 28.07.2015 made in W.A. Nos.836 of 2011.



9. Per contra, Mr.T.M.Pappiah, learned Special Government Pleader, inviting the attention of this court to paragraph 18 of the judgment made in W.A. (MD) Nos.836 of 2011 and 727 of 2015, submitted that both the appeals filed by the party in person and the State respectively were dismissed by a well considered order. According to him, there is no double jeopardy. Attention of this court was also invited to paragraph 18 of the common order. For the above reasons, learned Special Government Pleader prays for dismissal of the review application.

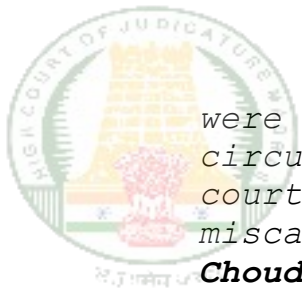
Heard Mr.G.Balasundaram, Party-in-Person and Mr.T.M.Pappiah, Special Government Pleader and perused the materials available on record.

10. Before advertng to the submissions of Mr.G.Balasundaram, Party-in-Person, let us consider few decisions on review.

(i) The Hon'ble Supreme Court in **Lily Thomas v. Union of India**, reported in **2000 (6) SCC 224**, while considering the scope of review and the limitations imposed on its exercise under, Article 137 of the Constitution of India, held as follows:

"52. The dictionary meaning of the word "review" is the act of looking, offer, something again with a view to correction or improvement. It cannot be denied that the review is the creation of a statute. This Court in **Patel Narshi Thakershi & Ors. Vs. Pradyunmarsinghji Arjunsinghji [AIR (1970) SC 1273]**, held that the power of review is not an inherent power. It must be conferred by law either specifically or by necessary implication. The review is also not an appeal in disguise. It cannot be denied that justice is a virtue which transcends all barriers and the rules or procedures or technicalities of law cannot stand in the way of administration of justice. Law has to bend before justice. If the Court finds that the error pointed out in the review petition was under a mistake and the earlier judgment would not have been passed but for erroneous assumption which in fact did not exist and its perpetration shall result in miscarriage of justice nothing would preclude the Court from rectifying the error. This Court in **S.Nagaraj & Ors.etc. Vs. State of Karnataka & Anr.etc. [1993 Supp. (4) SCC 595]** held:

"19. Review literally and even judicially means reexamination or re-consideration. Basic philosophy inherent in it is the universal acceptance of human fallibility. Yet in the realm of law the courts and even the statutes lean strongly in favour of finality of decision legally and properly made. Exceptions both statutorily and judicially have been carved out to correct accidental mistakes or miscarriage of justice. Even when there was no statutory provision and no rules

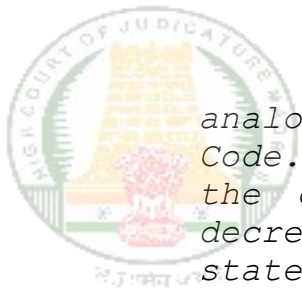


were framed by the highest court indicating the circumstances in which it could rectify its order the courts culled out such power to avoid abuse of process or miscarriage of justice. In **Raja Prithwi Chand Law Choudhury v. Sukhraj Rai [AIR 1941 FC 1]** the Court observed that even though no rules had been framed permitting the highest Court to review its order yet it was available on the limited and narrow ground developed by the Privy Council and the House of Lords. The Court approved the principle laid down by the Privy Council in **Rajumder Narain Rae v. Bijai Govind Singh {1836} 1 Moo PC 117** that an order made by the Court was final and could not be altered:

'...nevertheless, if by misprision in embodying the judgments, by errors have been introduced, these Courts possess, by Common Law, the same power which the Courts of record and statute have of rectifying the mistakes which have crept in.... The House of Lords exercises a similar power of rectifying mistakes made in drawing up its own judgments, and this Court must possess the same authority. The Lords have however gone a step further, and have corrected mistakes introduced through inadvertence in the details of judgments; or have supplied manifest defects in order to enable the decrees to be enforced, or have added explanatory matter, or have reconciled inconsistencies.'

Basis for exercise of the power was stated in the same decision as under:

'It is impossible to doubt that the indulgence extended in such cases is mainly owing to the natural desire prevailing to prevent irremediable injustice being done by a Court of last resort, where by some accident, without any blame, the party has not been heard and an order has been inadvertently made as if the party had been heard.' Rectification of an order thus stems from the fundamental principle that justice is above all. It is exercised to remove the error and not for disturbing finality. When the Constitution was framed the substantive power to rectify or recall the order passed by this Court was specifically provided by Article 137 of the Constitution. Our Constitution-makers who had the practical wisdom to visualise the efficacy of such provision expressly conferred the substantive power to review any judgment or order by Article 137 of the Constitution. And clause (c) of Article 145 permitted this Court to frame rules as to the conditions subject to which any judgment or order may be reviewed. In exercise of this power Order XL had been framed empowering this Court to review an order in civil proceedings on grounds



analogous to Order XLVII Rule 1 of the Civil Procedure Code. The expression, for any other sufficient reason in the clause has been given an expanded meaning and a decree or order passed under misapprehension of true state of circumstances has been held to be sufficient ground to exercise the power. Apart from Order XL Rule 1 of the Supreme Court Rules this Court has the inherent power to make such orders as may be necessary in the interest of justice or to prevent the abuse of process of Court. The Court is thus not precluded from recalling or reviewing its own order if it is satisfied that it is necessary to do so for sake of justice."

The mere fact that two views on the same subject are possible is no ground to review the earlier judgment passed by a Bench of the same strength.

53. This Court in **M/s.Northern India Caterers (India) Ltd. Vs, Lt,Governor of Delhi [AIR 1980 SC 874]** considered the powers of this Court under Article 137 of the Constitution read with Order 47 Rule 1 CPC and Order 40 Rule 1 of the Supreme Court Rules and held:

"It is well settled that a party is not entitled to seek a review of a judgment delivered by this Court merely for the purpose of a rehearing and a fresh decision of the case. The normal principle is that a judgment pronounced by the Court is final, and departure from that principle is justified only when circumstances of a substantial and compelling character make it necessary to do so. *Sajjan Singh v. State of Rajasthan*, (1965) 1 SCR 933 at p.@48. For instance, if the attention of the Court is not drawn to a material statutory provision during the original hearing. *G.L. Gupta v. D.N. Mehta*, (1971) 3 SCR 748 at p.760. The Court may also reopen its judgment if a manifest wrong has been done and it is necessary to pass an order to do full and effective justice. *O.N.Mohindroo v. Dist. Judge, Delhi*, (1971) 2 SCR 11 at p.27. Power to review its judgments has been conferred on the Supreme Court by Art. 137 of the Constitution, and that power is subject to the provisions of any law made by Parliament or the rules made under Art.145. In a civil proceeding, an application for review is entertained only on a ground mentioned in O. XLVII, Rule 1 of the Code of Civil Procedure and in a criminal proceeding on the ground of an error apparent on the face of the record. (Order XL, R.1, Supreme Court Rules, 1965). But whatever the nature of



the proceeding, it is beyond dispute that a review proceeding cannot be equated with the original hearing of the case, and the finality of the judgment delivered by the Court will not be reconsidered except where a glaring omission or patent mistake or like grave error has crept in earlier by judicial fallibility. Chandra Kanta v. Sheikh Habib (1975) 3 SCR 935."

54. Article 137 empowers this Court to review its judgments subject to the provisions of any law made by Parliament or any rules made under Article 145 of the Constitution. The Supreme Court Rules made in exercise of the powers under Article 145 of the Constitution prescribe that in civil cases, review lies on any of the ground specified in Order 47 Rule 1 of the Code of Civil Procedure which provides:

"Application for review of judgment -(1) Any person considering himself aggrieved -

(a) by a decree or order from which an appeal is allowed, but from which, no appeal has been preferred.

(b) by a decree or order from which no appeal is allowed, or

(c) by a decision on a reference from a Court of Small Causes, and who, from 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."

Under Order 40 Rule 1 of the Supreme Court Rules no review lies except on the ground of error apparent on the face of the record in criminal cases."

(ii) In **Aribam Tuleshwar sharma v. Aibam Pishak Sharma** reported in **AIR 1979 SC 1047**, the Hon'ble Supreme Court held that,

"there is nothing in Article 226 of the Constitution to preclude a High Court from exercising the power of review which inheres in every court of plenary jurisdiction to prevent miscarriage of justice or to correct grave and palpable errors committed by it. But, there are definitive limits to the exercise of the power of review. The power of review may be exercised on the discovery of new and important matter or evidence which,



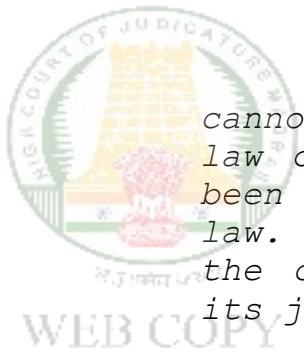
after the exercise of due diligence was not within the knowledge of the person seeking the review or could not be produced by him at the time when the order was made; it may be exercised where some mistake or error apparent on the face of the record is found; it may also be exercised on any analogous ground. But, it may not be exercised on the ground that the decision was erroneous on merits. That would be the province of a court of appeal. A power of review is not to be confused with appellate powers which may enable an appellate court to correct all manner of errors committed by the subordinate court."

(iii) In yet another decision in **Rajindersingh vs. Lt. Governor**, reported in **2005 (13) SCC 289**, at paragraph Nos.15 and 16, the Hon'ble Supreme Court held that law is well settled that the power of judicial review of its own order by the High Court inheres in every Court of plenary jurisdiction to prevent miscarriage of justice. Power of judicial review extends to correct all errors to prevent miscarriage of justice. It was further held that Courts should not hesitate to review their own earlier order, when there exists an error on the face of record and the interest of justice so demands in appropriate cases.

(iv) In **Union of India v. Kamal Sengupta** reported in **2008 (8) SCC 612**, the Hon'ble Supreme Court, at Paragraphs 14 and 15, has held that,

"14. At this stage it is apposite to observe that where a review is sought on the ground of discovery of new matter or evidence, such matter or evidence must be relevant and must be of such a character that if the same had been produced, it might have altered the judgment. In other words, mere discovery of new or important matter or evidence is not sufficient ground for review ex debito justitiae. Not only this, the party seeking review has also to show that such additional matter or evidence was not within its knowledge and even after the exercise of due diligence, the same could not be produced before the Court earlier.

15. 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. 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 CPC or Section 22(3)(f) of the Act. 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 concerned Court/Tribunal cannot sit in appeal over its judgment/decision."

(v) Referring to various decisions of the Hon'ble Apex Court as well as this Court, a Hon'ble Division Bench of this Court, in **Infant Jesus Teacher Training vs. M.Manikandan (Rev.Appn.No.38 of 2010 in W.A.No.1145 of 2009, dated 31.08.2010)**, considered the scope of review and at paragraphs 14, 31 and 32, held as follows:-

"14.Considering the scope of review jurisdiction and holding "mistake or error apparent on the face of the record must be self evident and does not require a process of reasoning, in *Parsion Devi v. Sumitri Devi*, ((1997) 8 SCC 715), the Supreme Court has held as under:

"7. It is well settled that review proceedings have to be strictly confined to the ambit and scope of Order 47 Rule 1 CPC. In *Thungabhadra Industries Ltd. v. Govt*, of A.P.(AIR 1964 SC 1372 = (1964) 5 SCR 174) (SCR at p. 186) this Court opined:

"What, however, we are now concerned with is whether the statement in the order of September 1959 that the case did not involve any substantial question of law is an error apparent on the face of the record. The fact that on the earlier occasion the Court held on an identical state of facts that a substantial question of law arose would not per se be conclusive, for the earlier order itself might be erroneous. Similarly, even if the statement was wrong, it would not follow that it was an error apparent on the face of the record, for there is a distinction which is real, though it might not always be capable of exposition, between a mere erroneous decision and a decision which could be characterised as vitiated by error apparent. A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected, but lies only for patent error."

.....

31. The review proceeding is not by way of an appeal. Holding that the review must be confined to error apparent on the face of the record and re-appraisal of the entire evidence on record for finding the error would amount to exercise of Appellate Jurisdiction, which is not permissible, in *Meera Bhanja v. Nirmala Kumari Choudhury*, (1995) 1 SCC 170, the Supreme Court held as under:

"8. It is well settled that 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. In connection with the limitation of the powers of the court under Order 47, Rule 1, while dealing with similar jurisdiction available to the High Court while seeking to review the orders under Article 226 of the Constitution of India, this Court, in the case of Aribam Tuleshwar Sharma v. Aribam Pishak Sharma ((1979 (4) SCC 389), speaking through Chinnappa Reddy, J., has made the following pertinent observations: (SCC p. 390, para 3) "It is true as observed by this Court in Shivdeo Singh v. State of Punjab (AIR 1963 SC 1909), there is nothing in Article 226 of the Constitution to preclude the High Court from exercising the power of review which inheres in every Court of plenary jurisdiction to prevent miscarriage of justice or to correct grave and palpable errors committed by it. But, there are definitive limits to the exercise of the power of review. The power of review may be exercised on the discovery of new and important matter or evidence which, after the exercise of due diligence was not within the knowledge of the person seeking the review or could not be produced by him at the time when the order was made; it may be exercised where some mistake or error apparent on the face of the record is found; it may also be exercised on any analogous ground.

But, it may not be exercised on the ground that the decision was erroneous on merits. That would be the province of a court of appeal. A power of review is not to be confused with appellate power which may enable an appellate court to correct all manner of errors committed by the subordinate court.

9. Now it is also to be kept in view that in the impugned judgment, the Division Bench of the High Court has clearly observed that they were entertaining the review petition only on the ground of error apparent on the face of the record and not on any other ground. So far as that aspect is concerned, it has to be kept in view that 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. We may usefully refer to the observations of this Court in the case of Satyanarayan Laxminarayan Hegde v. Mallikarjun Bhavanappa Tirumale (AIR 1960 SC 137), wherein, K.C. Das Gupta, J., speaking for the Court has made the following observations in connection with an error apparent on the face of the record:



charge erroneous, it held that the doctrine of double jeopardy is inapplicable in such circumstances and denial of pay on the principle of 'no work no pay', is not a penalty."

In paragraph 17 in **Madhav Prasad Sharma's** case (cited supra), the Hon'ble Apex Court held that, "Doctrine of double jeopardy enshrined in Article 20(2) of the Constitution of India has no application in the event of there being only one punishment awarded to the respondent under the rules on charges being proved during the course of disciplinary enquiry."

13. As per the hand book for inquiry officers and disciplinary authorities, on the conclusion of the disciplinary proceedings, if a minor penalty is imposed, suspension is regarded as unjustified and full pay and allowances and other consequential benefits are given to him and the period of suspension is treated as duty. Provisions relating to regularization of the period of suspension are contained in Fundamental Rules (FR) 54, 54A and 54B. Broadly, the provisions are:

(a) When the proceedings do not lead to imposition of any penalty, the entire period of suspension will be treated as duty and the Government Servant will be entitled for full pay and allowances for the above period.

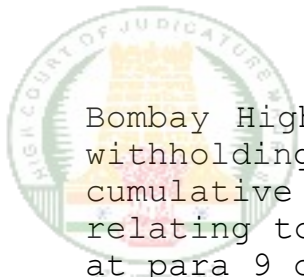
(b) Same will be the position, when at the end of the proceedings, only minor penalty is imposed."

14. As per the Government of India's notification, dated 03.12.1985, the Staff Side of the Committee of the National Council set up to review the CCS (CC&A) Rules, 1965 had suggested that in cases where a government servant, against whom an inquiry has been held for the imposition of a major penalty, is finally awarded only a minor penalty, the suspension should be considered unjustified and full pay and allowances paid for suspension period. Government have accepted this suggestion of the staff side.

15. In **Y.P.Sehgal v. State of Punjab and another**, reported in (1991) 1 SLR 583 (P&H) (DB), the petitioner therein was inflicted with a penalty of censure. He was denied arrears of salary and allowances, other than subsistence allowance granted to him, during the period of suspension. When the order denying the same was challenged by way of writ petition, by observing that the case is squarely covered by the judgment of the Hon'ble Supreme Court, reported in M.Gopal Krishna Naidu v. State of Madhya Pradesh, AIR 1968 SC 240, a Hon'ble Division Bench of the Punjab & Haryana High Court set aside the order and consequently held that the petitioner therein was entitled to the arrears and allowances along with other retiring and pensionary benefits.

16. In **S.P.Naik v. Board of Trustees, Mormugao Port Trust, Goa**, reported in (1999) 3 MHLJ 351, a Hon'ble Division Bench of the

<https://hcservices.ecourts.gov.in/hcservices/>



Bombay High Court, while considering a challenge to the penalty of withholding of two annual increments for two years without cumulative effect and to the finding of the disciplinary authority, relating to the period of suspension, treating the same as non-duty, at para 9 of the said judgment held as follows :

"9. Nevertheless, in so far as the finding of the Disciplinary Authority relating to the period of suspension as 'non-duty' is concerned, there is considerable merit in the submission of the petitioner. Though we do not find any merit regarding the challenge to the penalty of withholding of two annual increments for two years with cumulative effect, which penalty cannot be said to be disproportionate, so as to interfere with in the exercise of writ jurisdiction. This penalty is found to be commensurate with the articles of charge, which have been found to be proved against the petitioner. However, there is considerable force in the contention of the petitioner that in view of imposition of minor penalty, the period of suspension should have been treated as 'on duty'. The Mormugao Port Employees (Classification, Control and Appeal) Regulations, 1964 provide for major and minor penalties. With-holding of increments falls under the category of minor penalty. Regulation 9 deals with nature of penalties. Regulation 11 deals with imposition of major penalties and Regulation 12 deals with the procedure of imposing minor penalties. The penalty of with-holding of increments or promotion falling under Regulation 9(ii) is treated as minor penalty under Regulation 12. When minor penalty is imposed, period of suspension is not to be treated as not on duty. In fact, as per Schedule under the said Regulations, 1964, in case of Officers holding Class I post and above, the Appellate Authority for the imposition of penalty is Central Government. The Government of India, in decision dated 3-12-1985, reported under F.R. 54-B of the Fundamental Rules under heading 'Administrative Instructions', at item No. 3 at page 260 of Swamy's Fundamental Rules, Part-I, Twelfth Edition, has dealt with this issue. In this decision, the Government of India took into consideration the guidelines and instructions on the subject that suspension should be resorted to only in those cases where a major penalty is likely to be imposed on conclusion of the proceedings and not a minor penalty."

The Hon'ble Division Bench of Bombay High Court has considered the Government of India's Office Memo No.11012-15-85-ESTT (A), dated 3rd December,1985, extracted supra. It is worthwhile to extract the same, as follows,

"The Government of India has ruled that when an



finally minor penalty is awarded, the suspension should be considered unjustified and in terms of F.R. 54-B the employee should be paid full pay and allowances for the period of suspension by passing a suitable order under F.R. 54-B. The same principle has to be applied in the case under consideration. Thus, in our opinion, the petitioner is entitled to full pay and allowances for the period of suspension and the order of the Disciplinary Authority, treating the said period as not on duty is required to be set aside. "

17. In **Y.S.Sachan v. State of Madhya Pradesh** reported in (2003) 4 MPLJ 219, a learned single Judge of the Madhya Pradesh High Court, considered the validity of challenge to a minor penalty of withholding of one increment, and, while sustaining the penalty at para No.8, held as follows :

"8. So far as the salary for the period of suspension is concerned, the petitioner should be paid full salary. A minor penalty has been imposed upon the petitioner. The punishment is so light and therefore the petitioner could not be saddled with the heavier penalty of depriving him the salary for the suspension period. This part of the impugned order is not a speaking order. No reasons have been assigned for depriving the petitioner of his salary for the suspension period. The Government of India has issued a circular dated 3-12-1985 stating there in that where departmental proceedings against a suspended employee for the imposition of a major penalty finally end with the imposition of a minor penalty, the suspension can be said to be wholly unjustified in terms of F.R. 54-B and the employee concerned should, therefore, be paid full pay and allowances for the period of suspension by passing a suitable order under F.R. 54-B. The guideline issued by the Central Government for its employees is just and reasonable and it should be followed by the State Government and its instrumentality. The Jabalpur Development Authority is also such instrumentality and it will also be governed by such interpretation of Rule 54-B of the Fundamental Rules."

18. In **State of M.P.and Another v. Shailendra** reported in (2011) 3 MPLJ 412 (DB), a Hon'ble Division Bench of the Madhya Pradesh High Court, at Paragraph No.5, held as follows :

"5. It is not in dispute that/the departmental proceedings instituted against the respondent, who remained suspended during the period, for the imposition of a major penalty, finally ended with imposition of minor penalty of withholding of two increments without cumulative effect. In the circumstances in view of the Circular 13-1-2015 which was filed with the writ petition as Annexure P-8, as



Y.S.Sachan vs.State of M.P. And others (supra) the respondent was very much entitled for full salary of the period of his suspension..."

19. In the light of the decisions considered on review and denial of salary, during the period of suspension, we are of the view that the decision made in W.A. No.836 of 2011, dated 28.7.2015, requires to be rescinded. Accordingly, done. The appellant is entitled for the period of suspension to be treated as duty. Respondents are directed to pay the difference in the subsistence allowance and any other amount and payable, for the period between 26.02.1999 and 25.02.2000, within a period of two months from today.

20. Hence, the Review Application is allowed.

Sd/-

Assistant Registrar (C.O)

// True Copy //

Sub Assistant Registrar(CS)

asr/skm

To

1.The Secretary
Commercial Taxes and Registration Department
Secretariat, Chennai - 9

2.The Inspector General of Registration
Santhome High Road
Chennai - 28.

+1CC to Mr.G.Balasundram, Party in Person, SR.90282.

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