



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 28.08.2017

CORAM

THE HONOURABLE MS. JUSTICE V.M.VELUMANI

Review Application (MD) No.39 of 2015
in
W.P.(MD)No.14224 of 2012

T.Dhanaraj .. Revision petitioner/Petitioner

Vs.

- 1.Tamil Nadu State Transport Corporation
Employee's pension fund Responsdibility Department,
Thiruvalluvar Illam, Pallavan salai,
Chennai 600 002.
- 2.Tamil Nadu State Transport Corporation
(Madurai) Ltd., rep.by its General Manager,
Madurai Region, Bye-Pass Road,
Madurai 10. ..Respondents/Respondents

PRAYER: Review Application filed under Order 47 Rule 1 & 2 read with Section 114 of C.P.C, to review the order dated 19.03.2015 made in W.P.(MD)No.14224 of 2012 on the file of the Hon'ble High Court Madurai Bench, Madurai.

Prayer in WP(MD). 14224/ 2012 :

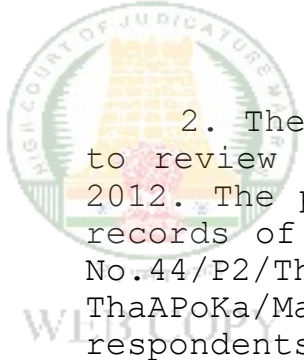
Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for the records of the 1st and 2nd respondents impugned orders dated 15.10.2012 letter No.44/P2/ThaAPoKa VuO NeeThi Po/2012-792 and 21.09.2012 bearing ThaAPoKa/Madurai/Va vaiNeeThi8/1627 respectively and quash the same and direct the respondents to pay Pensionary benefits or to pay the corporate Provident fund and consequently to refund the with held amount of Rs.10,050/- to the petitioner with interest.

For Petitioner : Mr.R.Saravanan

ORDER

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

heard Mr.R.Saravanan, the learned counsel appearing for the petitioner.



2. The petitioner has come out with the present review petition to review the order dated 19.03.2015 passed in W.P.(MD)No.14224 of 2012. The petitioner filed W.P.(MD)No.14224 of 2012 calling for the records of the respondents' impugned orders dated 15.10.2012 letter No.44/P2/ThaAPoKa Vuo NeeThi Po/2012-792 and 21.09.2012 bearing ThaAPoKa/Madurai/Va vaiNeeThi8/1627 respectively and to direct the respondents to pay the pensionary benefits or to pay the Corporate Provident Fund and consequently to refund the withheld amount of Rs.10,050/- to the petitioner with interest.

3. According to the petitioner, he rendered 21 years of unblemished service as Driver in the Second Respondent Corporation. Due to his ill-health, he resigned the job. The respondents accepted his resignation and did not grant pensionary benefits on the ground that on resignation, the past service is forfeited. This Court, considering the Rule 16(e) of Tamil Nadu State Transport Corporation Employees Pension Fund Trust Rules, rejected the claim of the petitioner. Also, followed the judgment of the Hon'ble Apex Court reported in "2005 (8) SCC 325 (Union of India and others V. Braj Nandan Singh)" and held that by resignation, past service of the employee is forfeited.

4. The petitioner has come out with the present review to reconsider the said order on the ground that resignation voluntarily rendered amounts to voluntary retirement and referred to dictionary meaning of resignation and contended that resignation amounts to retirement. The learned counsel appearing for the petitioner also referred to the judgment of the Hon'ble Apex Court rendered in "AIR 1990 SC 1808 (In M/s.J.K.Cotton Spg & Wvg. Mills Company Ltd., Kanpur Vs. State of U.P)". The contention of the learned counsel appearing for the petitioner that 'resignation' is 'retirement' was considered by this Court and was rejected by this Court, considering the earlier judgment of this Court and Hon'ble Apex Court. There is no error in the order sought to be reviewed. The review is not an appeal. The power of the Court to review the order is very limited.

5. The scope of review was considered by the Hon'ble Apex Court in a judgment reported in 2000 (6) SCC 224 [Lilli Thomas and Others Vs. Union of India and Others], wherein, in paragraph 52, it was held as under:

"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 Vs. Pradyumansinghji Arjunsinghji [1971 (3) SCC 844 : 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 a miscarriage of justice nothing would preclude the Court from rectifying the error."

(emphasis supplied)

6. A Division Bench of this Court in a judgment reported in "2014 (3) TLNJ 245 (Civil) [M.Jai Kavitha Vs. The Authorised Officer, Syndicate Bank, Regional Office, Chennai - 1 and others]," has considered the scope of judicial review, wherein the decision of the Honourable Apex Court was noted with approval. Paragraph No.9 of the said Judgment reads as under:

"9.The power of review under Order 47 Rule 1 of CPC can be exercised by a court of law, if the order in question comprises a mistake or an error apparent on the face of record. Once an order is pronounced, it should not be altered, unless there is an apparent error. Law is well settled that erroneous finding is not a ground for review, so also improper consideration for that matter. In review application, the court does not sit in appeal over its own judgment and the said application cannot be treated as an appeal. This position has been ruled by the Supreme Court in Lily Thomas Vs. Union of India [2000 (6) SCC 224]. Therefore, in the absence of any error apparent on the face of record, we are not inclined to interfere with the order in question, except to the extent of deleting of the portions in paragraphs 14 and 15 of the impugned order, with which the applicant is concerned as to having an impact on the proceedings pending before the tribunal, as stated in the foregoing paragraph."

(emphasis supplied)

7. The above two decisions were also followed by me in Review Application (MD) No.142 of 2014, dated 25.11.2014, wherein it has been held that a person in review is not entitled for re-hearing of the issue.

8. In the light of the dicta laid down by the Honorable Apex Court as well as by the Division Benches of this Court, I am of the considered view that the earlier order of the Court can be reconsidered only if there is an error apparent on the face of record and in that event, the said error can be rectified. Otherwise, a Review Application is not at all maintainable. In the present case on hand, the Review Applicant failed to raise any ground, reason or cause, warranting interference at the hands of this Court.



9. Therefore, I do not find any error apparent on the face of record in the judgment, dated 19.03.2015 passed by this Court in W.P.(MD)No.14224 of 2012. Accordingly, the Review Application fails.

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

Sd/-
Assistant Registrar(CSII)

/True Copy/

Sub-Assistant Registrar

+One cc to Mr.R.Saravanan, Advocate, SR.No.75241

gsa
RL/2C/4P/SV/MMS/SAR2/26/9/2017

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