

In the High Court of Judicature at Madras

Reserved on	15.09.2017
Judgment Pronounced on	22.09.2017

Coram:

The Hon'ble Mr.Justice **M.VENUGOPAL**
and
The Hon'ble Mr.Justice **P.D.AUDIKESAVALU**

Review Application No.203 of 2015 in
W.A.No.1688 of 2014

K.Devendran

..Applicant

Vs.

1. The Presiding Officer,
1st Additional Judge, Labour Court,
Chennai.

2. The Tamilnadu State Transport
Corporation Limited
(Villupuram Division III)
rep. By its General Manager,
Kancheepuram Region,
Kancheepuram.

..Respondents

Prayer: Review Application filed under Order 47, Rule 1 r/w Section 114 of Civil Procedure Code praying to Review the Judgment dated 15.04.2015 in W.A.No.1688 of 2014 and allow the Review Application.

For Applicant

:

Mr.A.L.Namasivayam

ORDER

[Order of the Court was made by M.VENUGOPAL, J.]

The Applicant / Appellant / 2nd Respondent has filed the instant Review Application No.203 of 2015 as against the Judgment dated 15.04.2015 in W.A.No.1688 of 2014 passed by this Court.

2. Heard the Learned Counsel for the Applicant.

3. According to the Learned Counsel for the Applicant, the Judgment of this Court dated 15.04.2015 in W.A.No.1688 of 2014 requires to be Reviewed because of the fact that certain essential points were not dealt with.

4. The Learned Counsel for the Applicant submits that the Judgment of this Court dated 15.04.2015 in W.A.No.1688 of 2014 suffers from an 'Apparent Error on the Face of Record'. The Learned Counsel for the Applicant contends that the 2nd Respondent / Transport Corporation / Writ Petitioner (in W.P.No.25483 of 2008) had failed to furnish materials as regards the punishment before the Labour Court, Chennai. Furthermore, it is represented on behalf of the Review

Applicant that there is no proof for any of the punishment / penalties suffered by the Workman in I.D.No.488 of 2002 and as such, the Order of the Learned Single Judge stating that there were 72 punishments on the employee was an alarming picture regarding the misconduct were not at all worth mentioning, because of the reason that those punishments were not at all established before the Labour Court.

5. The Learned Counsel for the Applicant brings it to the notice of this Court that the Labour Court held that one charge relating to the remittance of daily collection amount that there was a shortage of Rs.724/- only was proved on the basis that this was remitted into the Tamilnadu State Transport Corporation's Accounts.

6. The Learned Counsel for the Applicant emphatically takes a stand that the 1st Respondent / Labour Court had correctly held that punishment was highly disproportionate in all respects for the workman, who had served in the 2nd Respondent / Transport Corporation for nearly 18 years. Also, it is projected on the side of the Review Applicant that the stand of the 2nd Respondent / Transport Corporation to the effect that past records 'Was Wrong' that too when the workman had reached

superannuation.

7. The Learned Counsel for the Applicant proceeds to point out that the Review Applicant in continuing service as a Conductor for nearly about two decades and therefore, he is entitled to claim regular pension, since he served for more than 10 years. Likewise, there is a credit of Provident Fund in the Petitioner's Account apart from the employee's contribution and besides this, for each and every year of his service, he is entitled for DCRG, calculating service of every six months and this would come to nine months DCRG in his entire service.

8. The Learned Counsel for the Applicant comes out with a plea that the aforestated arguments were not considered at all by the Appellate Court while passing the Judgment in W.A.No.1688 of 2014 dated 15.04.2015 and in this regard, there is a violation of 'Principles of Natural Justice'. Moreover, the Learned Counsel for the Applicant strenuously takes a plea that the very livelihood of the Petitioner is at stake after servicing department for 18 years.

9. Lastly, the Learned Counsel for the Applicant prays for allowing

the present Review Application No.203 of 2015 by directing the 2nd Respondent / Transport Corporation to sanction the regular pension for the total 18 years of service rendered by the Applicant right from the year 1994 together with all the terminal benefits such as DCRG, Commutation, Provident Fund, Amount on Leave at credit and such other benefits, as the Corporation usually grants to a regular employee.

10. At this juncture, this Court very pertinently points out the observation of the Learned Single Judge made in W.P.No.25483 of 2008 at Paragraph Nos.9 and 10, which runs as under:

“9. This Court is unable to agree with the submission of the second respondent workman. Admittedly, the second respondent while serving as conductor in the petitioner Corporation suffered charge memo containing two charges. The first charge implicating him for having committed offence of charge of intoxication. Of course, the said charge was not proved. However, in respect of the 2nd charge, it was found that he had committed a shortage of Rs.724/- while remitting the collection for which the Labour Court had found that it has been proved. The Petitioner Corporation after considering the report of the Enquiry Officer and also by taking note of his previous records which show that the second respondent has suffered 72 more punishments for

various misconducts, thought fit to impose an order of punishment of dismissal. Learned Labour Court so surprisingly while examining the legality of the dismissal order should have taken into account the past records of 72 punishments.

10. *While considering the case of the second respondent the learned Labour Court miserably failed to consider not only the claim made by the second respondent which was rightly brought to the knowledge of the Labour Court by filing detailed counter affidavit. A close reading of the same shows that the second respondent has admittedly committed 72 misconducts and the records also show that the second respondent has suffered repeated punishments at the hands of the petitioner corporation.*

Therefore, the petitioner Corporation has rightly imposed the said punishment of dismissal. But, unfortunately, while exercising the power conferred under Section 11A of the Industrial Disputes Act, 1947, the learned Labour Court has not adverted to the counter affidavit filed by the petitioner corporation showing the fact that the second respondent had committed 72 misconducts in which he was repeatedly punished on 72 occasions. Therefore, in my considered view the impugned Award containing the infirmities as indicated above does not allow this Court to support the same. Hence the award, dated 25.02.2008, passed by the first respondent is liable to be set aside and the same is set

aside.”

In fact, the Writ Petition (filed by the Transport Corporation as Petitioner) was allowed.

11. It transpires that the present Review Applicant / Appellant in W.A.No.1688 of 2014 filed a Review Application No.172 of 2014 as against the Order dated 06.02.2014 in W.P.No.25843 of 2008 passed by the Learned Single Judge and the Learned Single Judge on 16.06.2014 dismissed the Review Application by coming to the conclusion that there was no Error Apparent on the face of Record. In fact, the Learned Single Judge while dismissing the Review Petition No.172 of 2014 on 16.06.2014 at Paragraph No.4 in a categorical terms had among other things observed that '.....Moreover, when the petitioner himself proved an incorrigible employee, I do not like to review my order etc.',

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12. At this stage, this Court makes a useful reference to the Judgment of this Court dated 15.04.2015 in W.A.No.1688 of 2014 (Filed by the Review Applicant as an Appellant) wherein at Paragraph Nos.7

and 8, it is observed and held as under:

“7. There is no dispute that the enquiry has not been held as vitiated on account of procedural irregularity or otherwise. It is also not the case of the employee that he was not afforded full opportunity of hearing. The Labour Court has also not found that the enquiry was not proper and as such, the offence of shortage of Rs.724/- is without any basis. In that view of the matter, there was no reason to set aside the dismissal order and to reinstate him with continuity of service and all other attendant benefits, but without backwages. The learned Single Judge has rightly considered all aspects of the matter and set aside the Award, also keeping in view the over all conduct of the employee in his service career.

8. We do not find any irregularity or illegality in the order passed by the learned Single Judge, warranting interference. Resultantly, the Writ Appeal stands dismissed. No costs.”

13. Coming to the aspect of 'Review' it is to be pointed out that Review Judicially and literally means reexamination or reconsideration basically on the premise that a human being is prone to commit error. In law, the ambit of Review is limited, but the scope of interference in an 'Appeal' is very much wider. Undoubtedly, the power of 'Review' is not an inherent one and per contra, it is to be specifically showered

either expressly by a statute / or by necessary implication.

14. Really speaking, under the guise of 'Review', the High Court would not rehear the parties on point of Law afresh. A Court hearing a 'Review Petition' does not act as a Higher Court hearing an 'Appeal'. As such, a Court of Law will strictly restrict itself to find out whether there is an 'Error Apparent on the Face of Record'. To put it precisely, 'Review' lies only either based on the 'Error Apparent on the Face of Record' or on the ground of 'Mistake' or for any other adequate / sufficient reasons. Besides these, in a Review Petition, a Court of Law cannot re-appreciate evidence and arrive at a different conclusion on the questions of facts, different than earlier conclusions arrived at in the subject matter in issue.

15. The well settled proposition of Law is that although provisions of Civil Procedure Code inapplicable per se under Article 226 of the Constitution, the High Court has 'Plenary Powers', which includes 'Power of Review'. Indeed a 'Review Petition' has a limited role and cannot be permitted to act as an 'Appeal in Disguise'. Apart from that, 'Re-appreciation of evidence by the Review Court' is beyond purview of

its Review Jurisdiction.

16. In the upshot of aforestated qualitative and quantitative discussions and also this Court considering the facts and circumstances of the present case and on going through the Judgment of this Court in W.A.No.1688 of 2014 dated 15.04.2015, comes to a resultant conclusion that there are no 'Apparent Errors on the Face of Record' and added further, the Judgment dated 15.04.2015 in W.A.No.1688 of 2014 is a flawless one in the eye of Law. Viewed in that perspective, the present Review Application is devoid of merits.

In fine the Review Application is dismissed. No costs.

M.V.J., & P.D.A.J.,

सत्यमेव जयते [22.09.2017]

Speaking / non speaking order

Index: Yes /No

Internet :Yes / No

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To

1. The Presiding Officer,
1st Additional Judge, Labour Court,
Chennai.
2. The Tamilnadu State Transport
Corporation Limited
(Villupuram Division III)
rep. By its General Manager,
Kancheepuram Region,
Kancheepuram.



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M.VENUGOPAL, J.

and

P.D.AUDIKESAVALU, J.

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**Pre-delivery Order in
Review Application No.203 of 2015**

22.09.2017

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