

IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDERS RESERVED : 04.08.2016

ORDERS DELIVERED: 19.08.2016

DATED: 19.08.2016

CORAM

**THE HONOURABLE MR. JUSTICE A.SELVAM
AND
THE HONOURABLE MR. JUSTICE K.RAVICHANDRABAABU**

Rev.APPLN(W) No.261 of 2015

in

W.P.No.12397 of 2012

R.Baskaradoss

... Applicant

Vs.

1.The State of Tamil Nadu,
Rep. By its Secretary to Government,
Personnel & Administrative Reforms (SAT) Department,
Fort St.George, Chennai 600 009.

2.The Deputy Secretary to Government (AR),
Personnel & Administrative Reforms Department,
Fort St.George, Chennai 600 009.

3.The Registrar General,
High Court of Madras,
Chennai 600 104.

... Respondents

Prayer:- Review Application filed under section 114 and Order 47 Rule 1 & 2 of C.P.C. to review the order of this court in W.P.No.1239 of 2013 dated 04.09.2014.

For Applicant
For Respondent

: Mr.V.Chandrasekaran
: Mr.P.Jagadeesh for R1
Special Government Pleader
Mr.R.Suresh Kumar for R2

O R D E R

(Order of the Court was made by K.RAVICHANDRABAABU,J.)

This review application is filed seeking to review the order passed in W.P.No.12397 of 2012 dated 04.09.2014. The applicant herein is the writ petitioner.

2.The said writ petition was filed challenging G.O.Ms.No.171, Personnel and Administrative Reforms (SAT) Department dated 29.06.2007 in so far as clause 4(iii) is concerned and consequently for a direction to the respondents to grant appropriate seniority to the petitioner in the cadre of Section Officer/Court Officer/Appeal Examiner in the High Court Service with effect from 07.10.1998.

3.The above said writ petition was taken up for final disposal along with three other similar writ petitions and after hearing both sides, a common order was passed on 04.09.2014, dismissing all the writ petitions, however by making it clear that except for seniority, the erstwhile service of the respective petitioners may be counted for the purpose of calculation of pension and other terminal benefits, if not already extended to them.

4.The dismissal of those writ petitions was on the reasons that the petitioners had consented to be junior most to the persons already serving in the High Court in the cadre in which they were allowed to join; that High Court Service is governed by the Madras High Court Service Rules framed under Article 229 of the Constitution of India; that Rule 5(b) of the said Rules stipulates that seniority of a member of the service, division, category or sub category or post shall be determined by the date of his first appointment to the service, division, category, sub category or post and that the petitioners have not impleaded the persons likely to be affected in case of sustaining their claim over the seniority. It was also pointed out that if the request of the petitioners is accepted, the seniority of the staff of the High Court and promotional prospects based on the seniority already fixed will be disturbed.

5.Now, the present review is filed mainly by contending that the petitioner has not given any consent to forego the seniority and that when he was only transferred from the erstwhile Tamil Nadu Administrative Tribunal to the High Court Service, he cannot be placed below the junior most position in the respective category taking into consideration of his joining of service at the Madras High Court.

6. We heard the learned counsel appearing for the applicant and the learned counsel appearing for the respondents and perused the materials placed before us.

7. First of all, we would like to make it very clear that the scope under the review jurisdiction is not to be construed as that of an appeal to canvas the correctness or otherwise of the order already passed by way of rearguing the matter. In other words, under the guise of review, the matter cannot be reopened and agitated once again on merits by reiterating the contentions already raised and rejected by the court.

8. At this juncture, it is useful to refer to the decision of the Hon'ble Supreme Court reported in **2013(8) SCC 320, (Kamlesh Verma vs Mayawati)**, wherein 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.

9. Further, in another decision of the Honourable Supreme Court reported in **(2014) 5 SCC 75 (Subramanian Swamy v. 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 v. Rambhai - (2007) 15 SCC 513: (2010) 3 SCC (Cri) 584: AIR 2003 SC 2095)."

10.Perusal of the grounds raised in this review, as discussed supra, would only show that they are nothing but an attempt to reopen and reagitate the matter on merits which is not permissible under review jurisdiction.

11.Admittedly, the applicant herein was originally appointed as Typist in the Survey and Land Records Department on 17.11.1982 and thereafter, appointed as Assistant in Tamil Nadu Administrative Tribunal on 01.02.1995. He was then promoted as Section Officer (Manager) in the Tribunal on 07.10.1998. Thereafter, he was deputed to the Tamilnadu Dr.Ambedkar Law University, Chennai as Section Officer on 11.10.2004, after the Tamilnadu Administrative Tribunal became defunct. The applicant's request for absorption into the Tamilnadu Dr.Ambedkar Law University was not accepted and he was informed that his service was no longer required. Thus, on

27.06.2007, he was relieved from the University service and directed to report for duty before the Government for further posting. He reported before the Government on 28.06.2007. Thereafter, G.O.Ms.No.171 dated 29.06.2007 came to be issued transferring the petitioner to the High Court Service with the condition that he will be absorbed in the High Court and placed before the junior most position in the respective category maintaining his seniority in the Tribunal. Therefore, it is evident that the applicant, who was re-deployed in the High Court Service, is certainly governed by the Madras High Court Service Rules wherein Rule 5(b) specifically states that the seniority of the member of a service in a category or post shall be determined by the date of his first appointment to the service, category or post.

12.Hence, it is clear that clause 4(iii) of G.O.Ms.No.171 dated 29.06.2007 has only reflected the relevant rule position under Rule 5(b) of the Madras High Court Service Rules. Therefore, the said clause in the impugned order is only indicating the seniority position as provided under the said Rule and thus, it is not an independent making of the first respondent or outside the purview of the Rules. Admittedly, the applicant has not chosen to challenge the said Rule and what was challenged in the writ petition is only the order

redeploying him to the High Court Service by stipulating such condition with regard to his seniority. Therefore, in so far as the seniority issue is concerned, the applicant is not entitled to challenge the G.O., when the unquestioned Rule 5(b) of the Madras High Court Service Rules is very clear on that aspect, even assuming that he has not given any consent to be placed in the junior most position.

13.Learned counsel for the applicant sought to contend that he was only transferred to the High Court Service and therefore Rule 5(b) of the said Rule should not be applied to his case. This again, is nothing but a ground already urged and rejected while considering the main writ petition. In any event, as Rule 5(b) was not put to challenge, we are of the view that the applicant is not entitled to raise such ground again that too, by filing this review application. Accordingly, we find no merits in this review application and thus, the same is dismissed. No costs.

(A.S,J.) (K.R.C.B,J.)
19.08.2016

Index :Yes/No
Internet:Yes/No
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A.SELVAM,J.

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TO
THE HON'BLE MR.JUSTICE A.SELVAM

FROM
JUSTICE.K.RAVICHANDRABAABU