



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 20.12.2018

CORAM

THE HONOURABLE DR. JUSTICE S.VIMALA

AND

THE HONOURABLE MS. JUSTICE V.M.VELUMANI

Review Application (MD) Nos.50 to 52 & 55 of 2015
in WA (MD) Nos.992, 1110, 1116 & 1151 of 2013

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M.Shanthi ... Petitioner in Rev.Aplc (MD) No.50/2015
M.Muthu ... Petitioner in Rev.Aplc (MD) No.51/2015
M.Allirani ... Petitioner in Rev.Aplc (MD) No.52/2015
S.Rohini ... Petitioner in Rev.Aplc (MD) No.55/2015

Vs.

1.The State of Tamil Nadu
Rep.by the Secretary to Govt.,
Social Welfare Department,
Secretariat,
Chennai - 600 009.

2.The Commissioner and
Director of Social Welfare
Department of Social Welfare,
Chennai - 600 005.

.. Respondents 1 & 2 in all the Rev.Applications

3.The District Social Welfare Officer,
Kokkirakulam,
Tirunelveli

.. 3rd Respondent in Rev.Aplc. (MD) No.50/2015

3.The District Social Welfare Officer
Collectorate
Sivagangai District,
Sivagangai.

.. 3rd Respondent in Rev.Aplc. (MD) No.51/2015

3.The District Social Welfare Officer
Collectorate
Sivagangai District,
Sivagangai.

.. 3rd Respondent in Rev.Aplc. (MD) No.52/2015

3.The District Social Welfare Officer
Toovipuram - II,
Tuticorin District,
Tuticorin.

.. 3rd Respondent in Rev.Aplc. (MD) No.55/2015



Common Prayer : Review Applications are filed under Order 47 Rules 1 & 2 and Section 114 of CPC to review the common order dated 17.04.2014 passed in W.A. (MD) Nos.992, 1110, 1116 & 1151 of 2013.

Prayer in WA(MD)No. 992/ 2013 :

to prefer this Memorandum of Grounds of Writ Appeal against the order dated 26.04.2011 made in W.P.(MD) No. 4752 of 2011.

Prayer in WP(MD)No. 4752/ 2011 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a WRIT OF MANDAMUS, directing the Respondents to regularize the Petitioner's service as Helper on completion of 10 years i.e., 19-12-2004 and consequently direct the Respondents to pay the time scale of pay and other allowances to the petitioner on par with the persons regularized to similar post to discharge similar duties.

Prayer in WA(MD)No. 1110/ 2013 :

to prefer this Memorandum of Grounds of Writ Appeal against the order dated 26.04.2011 made in W.P.(MD)No.4749 of 2011.

Prayer in WP(MD)No. 4749/ 2011 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a WRIT OF MANDAMUS, directing the Respondents to regularize the Petitioner's service as Cook on completion of 10 years i.e., 13-08-2007 and consequently direct the Respondents to pay the time scale of pay and other allowances to the petitioner on par with the persons regularized to similar post to discharge similar duties.

Prayer in WA(MD)No. 1116/ 2013 :

to prefer this memorandum of grounds of Writ Appeal against the order dated 26.04.2011 made in WP(MD).No.4748 of 2011.

Prayer in WP(MD)No. 4748/ 2011 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a WRIT OF MANDAMUS, directing the Respondents to regularize the Petitioner's service as Helper on completion of 10 years i.e., 13-03-2006 and consequently direct the Respondents to pay the time scale of pay and other allowances to the petitioner on par with the persons regularized to similar post to discharge similar duties.

Prayer in WA(MD)No. 1151/ 2013 :

to present this memorandum of grounds of Writ Appeal to this Honourable court against the Common order, dated 26.04.2011 in W.P.(MD)No.4664 of 2011 on the file of the Madurai Bench of the High Court Judicature at Madras.

Prayer in WP(MD)No. 4664/ 2011 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus, directing the respondents to regularize the petitioners service as Cook on completion of 10 years i.e., 01.12.2003 and consequently direct the respondents to pay the scale of pay and other allowances to the petitioner on par with the persons regularized to similar post or discharge similar duties.

For Petitioners : Mr.K.C.Ramalingam

For Respondents : Mr.D.Muruganandam
Additional Government Pleader.

COMMON ORDER**V.M.VELUMANI, J.**

The issues and parties involved in all the Review Applications are interlinked and hence, these applications are disposed of by this common order.

2. All the review applicants were appointed in Social Welfare Department as helper, cook and Asst. cook on temporary basis and on consolidated pay. They filed Writ Petition W.P (MD) Nos.4752, 4749, 4748 and 4664 of /2011 for regularising their services based on G.O.Ms.No.22 (Personnel and Administrative Reforms (F) Department) Dated 28.02.2006 on the ground that they have completed ten years of service. The writ petitions filed by the review applicants were allowed by this Court on 26.04.2011. The respondents filed W.A. (MD) Nos.992, 1110, 1116 & 1151 of 2013 challenging the said order. The Division Bench of this Court took all these writ appeals alongwith other writ appeals and review applications filed by the Government. The Division Bench of this Court, considering G.O.Ms.No.22 (Personnel and Administrative Reforms (F) Department) Dated 28.02.2006 held that the said Government Order is applicable only to full time daily wage employees appointed against the sanctioned vacancies. The said Government Order is not applicable to the part-time employees, employees receiving consolidated salary and also persons who have completed 10 years of services after 01.01.2006.

3. The Division Bench of this court also considered G.O.Ms.No.74 (Personnel and Administrative Reforms Department) Dated 27.06.2013 which clarified G.O.Ms.No.22 (Personnel and Administrative Reforms (F) Department) Dated 28.02.2006 to the effect that G.O.Ms.No.22 (Personnel and Administrative Reforms (F) Department) Dated 28.02.2006 is not applicable to part time, consolidated employees and employees appointed on temporary basis. The Division Bench of this court also considered various judgments of Hon'ble Apex Court in respect of persons employed on temporary



basis and part time basis. The Writ Appeals were allowed on the ground that G.O.Ms.No.22 (Personnel and Administrative Reforms (F) Department) Dated 28.02.2006 is applicable only to full time daily wage employees against sanctioned vacancies paid not out of contingent fund or on consolidated pay. They must also have completed 10 years of services as on 01.01.2006.

4. The review applicants have come out with the present review applications to re-consider the order passed in Writ Appeals, on the following grounds -

(a) Review applicant were appointed in the existing vacancies and they cannot be considered as part time employees ;

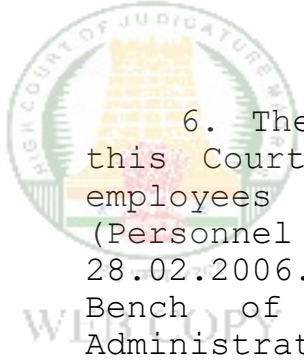
(b) the documents relied on by the review applicant filed in typed set of papers were not considered by the Division Bench of this Court ;

(c) Judgment of the Hon'ble Apex Court reported in AIR 2011 SC 1193 (State of Rajasthan & Ors. v. Daya Lal & Ors.) is applicable to the review applicants and the Hon'ble Apex Court held in the said judgment that persons employed through employment exchange must be regularised ;

(d) The judgment of the Hon'ble Apex Court reported in CDJ Law Journal 2014 SC 146 [Secretary to Government, School Education Department v. Thiru R.Govindasamy and others] is not connected with review applicants' case.

(e) G.O.Ms.No.74 (Personnel and Administrative Reforms Department) Dated 27.06.2013 cannot override the judgment of this Court dated 26.04.2011. The said Government Order is not applicable to the review applicants' case. The findings of the Division Bench that G.O.Ms.No.22 (Personnel and Administrative Reforms (F) Department) Dated 28.02.2006 is not applicable to the review applicants is factually incorrect. The Division Bench of this Court did not consider the statement of Additional Advocate General that review applicants can be permitted to be regularised from the date of the Government Order. In the ground No.10 of the Writ Appeal, it is stated that the Government has taken policy decision and the same will be implemented in a phased manner.

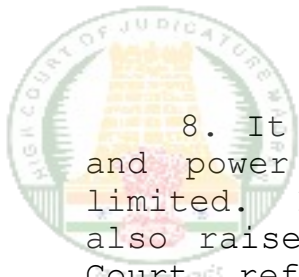
5. We have heard the learned counsel appearing for the review applicants and the learned Additional Government Pleader appearing for the respondents and perused the materials available on record.



6. The Writ Petitions were allowed following the judgment of this Court, confirmed by the Hon'ble Apex Court that part time employees are liable to be regularised as per G.O.Ms.No.22 (Personnel and Administrative Reforms (F) Department) Dated 28.02.2006. In the appeal filed by the Government, the Division Bench of this Court considered G.O.Ms.No.22 (Personnel and Administrative Reforms (F) Department) Dated 28.02.2006, G.O.Ms.No.74 (Personnel and Administrative Reforms Department) Dated 27.06.2013 as well as judgment of the Hon'ble Apex Court reported in **CDJ Law Journal 2014 SC 146**, cited *supra* and allowed the Writ Appeals and Review Applications filed by the Government. This court considered the judgment of Hon'ble Apex Court in **R.Govindasamy's case** cited *supra* as writ petitions filed by review applicants were allowed following the judgment of this Court regularising the services of part time employees. The review applicants, in the writ petition sought regularisation based on G.O.Ms.No.22 (Personnel and Administrative Reforms (F) Department) Dated 28.02.2006 as well as G.O.Ms.No.115 (Social and Welfare and Noon Meal Programme [SW1(2)] Department) Dated 01.06.2010 wherein services of cook, helpers and sweepers who fulfilled the conditions mentioned therein were regularised. Para 2 of the said G.O.Ms.No.22 (Personnel and Administrative Reforms (F) Department) Dated 28.02.2006 reads as follows -

2. Based on the announcement made by the Hon'ble Chief Minister on 08.02.2006, the Government direct that the services of the daily wage employees working in all Government Departments who have rendered 10 years of service as on 01.01.2006 be regularised by appointing them in the time scale o pay of the post in accordance with the service conditions prescribed for the post concerned, subject to their being otherwise qualified for the post.

7. The above Government Order was clarified by the Government by G.O.Ms.No.74 (Personnel and Administrative Reforms Department) Dated 27.06.2013 wherein it was made clear that part time employees and temporary employees working on consolidated pay are not eligible to be regularised as per G.O.Ms.No.22 (Personnel and Administrative Reforms (F) Department) Dated 28.02.2006. The Division Bench of this Court, considering the contentions of the respondents and review applicants and the respondents in Writ Appeals in consonance with G.O.Ms.No.22 (Personnel and Administrative Reforms (F) Department) Dated 28.02.2006 and G.O.Ms.No.74 (Personnel and Administrative Reforms (F) Department) Dated 27.06.2013, allowed the Writ Appeals and Review Applications filed by the Government. In the judgment sought to be reviewed, the Division Bench of this Court has not considered the regularisation of part time employees as writ petitions were allowed following the judgment of this Court regularising the services of part time employees.



8. It is well settled that review application is not an appeal and power of courts to re-consider the earlier order is very limited. Review Applicants cannot re-argue the issue on merit and also raise new point in the review application. The Hon'ble Apex Court, referring to Order 47 Rule 1 CPC, held that error in the order must be self evident and is not to be found out by a process of reasoning. A review application can be entertained only if the review applicant satisfies the ingredients of Order 47 Rule 1 CPC. Order 47 Rule 1 CPC clearly defines the nature, scope and ambit of power to be exercised to entertain a review application. The Hon'ble Apex Court, in the judgment reported in **2017 (4) SCC 692 [Sasi (dead) through legal representatives v. Aravindakshan Nair and others]**, in Paras 8 & 9 has held as follows -

8. In *Parsion Devi V. Sumitri Devi* Parsion Devi Vs. Sumitri Devi, 1997 8 SCC 715, the Court after referring to *Thungabhadra Industries Ltd., Meera Bhanja (Smt) V. Nirmala Kumari Choudhury (Smt).* Meera Bhanja (Smt) V. Nirmala Kumari Choudhury (Smt)., 1995 1 SCC 170 and *Aribam Tuleshwar Sharma V. Aribam Pishak Sharma* Aribam Tuleshwar Sharma V. Aribam Pishak Sharma, 1979 4 SCC 389, held thus:

"9, Under Order 47 Rule 1 CPC, a judgment may be open to review inter alia if there is a mistake or an error apparent on the face of the record. An error which is not self evident and has to be detected by a process of reasoning, can hardly be said to be an error apparent on the face of the record justifying the Court to exercise its power of review under Order 47 Rule 1 CPC. In exercise of the jurisdiction under Order 47 Rule 1 CPC, it is not permissible for an erroneous decision to be 'reheard and corrected'. A review petition, it must be remembered, has a limited purpose and cannot be allowed to be 'an appeal in disguise'".

9. The aforesaid authorities clearly spell out the nature, scope and ambit of power to be exercised. The error has to be self evident and is not to be found out by a process of reasoning. We have adverted to the aforesaid aspects only to highlight the nature of review proceedings."

9. The ratio laid down by the Hon'ble Apex Court in the judgment cited supra is squarely applicable to the facts of the present case and all the review applications are liable to be dismissed as not maintainable.



10. In the result, all the Review Applications are dismissed.
No costs. Consequently, connected Miscellaneous Petitions are closed.

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Sd/-

Assistant Registrar (P&A)

/ True Copy /

Sub Assistant Registrar (CS-II)

To

1. The Secretary to Government,
Social Welfare Department,
Secretariat,
Chennai - 600 009.
2. The Commissioner and Director of Social Welfare
Department of Social Welfare,
Chennai - 600 005.
3. The District Social Welfare Officer,
Kokkirakulam,
Tirunelveli
4. The District Social Welfare Officer
Sivagangai.
5. The District Social Welfare Officer
Tuticorin

**Common Order in
Review Application (MD) Nos.50 to 52 & 55 of 2015
20.12.2018**

RGR
ES/RSK/SAR 2/13.02.2019/7P/6C