



## BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 06.03.2019

CORAM :

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN  
and  
THE HONOURABLE MR.JUSTICE S.S.SUNDAR

Review Application (MD)No.107 of 2016  
IN  
WA(MD)1301 of 2014

K.James

.... Petitioner/Respondent

vs.

1.State rep. by its  
The Chief Secretary,  
Secretariat, Chennai.

2.The Secretary,  
Finance Department,  
Secretariat, Chennai.

3.The Secretary,  
Personal Administration and Reforms,  
Secretariat, Chennai.

4.The Secretary,  
School Education Department,  
Secretariat, Chennai.

5.The Director of Elementary Education,  
DPI Campus, College Road,  
Chennai - 6.

... Respondents

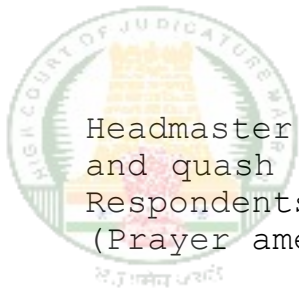
**Prayer:** Review petition filed under Order 47 Rule 1 of C.P.C., to review the judgment passed in W.A.(MD) No.1301 of 2014, dated 02.11.2015 on the file of this Court.

Prayer in WA(MD). 1301/ 2014 :

To prefer the Memorandum of Grounds of the Writ Appeal before this Honourable Court against the order dated 03.06.2014 made in W.P.(MD)No.11332 of 2011.

Prayer in WP(MD). 11332/ 2011 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari or a Writ of Mandamus or any other Writ, or order or direction in the nature of a Writ to call for the records relating to the relevant portion relating to the pay scale of the Middle School



Headmaster in G.O.Ms.No.23 Finance (PC) Department dated 12.01.2011, and quash the same as inappropriate one and consequently direct the Respondents to revise the pay scale of the petitioner (A.E.E.O) (Prayer amended vide court order dt.26/03/2012 in MP.2/2012)

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For Petitioner : Mr.R.Lakshmanan  
For Respondents : Mr.A.K.Baskarapandian Spl.G.P.

### O R D E R

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

This review application is preferred by the respondent in the writ appeal as against the judgment passed in the writ appeal (MD) No.1301 of 2014 dated 02.11.2015.

2.It is well settled that review is not an appeal in disguise. The petitioner unless shows that there is an error apparent on the face of the record, there is no scope for review.

3.In this case, the learned counsel for the petitioner referred to an earlier Government Order that was issued by the Government vide G.O.Ms.No.67 dated 26.02.2011 and submitted that the decision of the Government to equalise pay anomalies in the case of Jailor and Superintendent has not been considered by this Court while disposing of the writ appeal. It is to be noted that this Court has given reasons for not accepting the case of the petitioner relying upon G.O.Ms.No.67 dated 26.02.2011. In para 13 of the judgment in W.A.(MD) No.1301 of 2014 dated 02.11.2015, this Court has held as follows:

"13.But the case on hand is not comparable to the case of a Jailor and the Superintendent. There, there are no two streams where interchangeability is there. Though it is contended by the learned counsel for the respondent that once two posts are interchangeable, the terms and conditions of service as well as the qualifications for both posts should continue to be the same, we do not think so. There are any number of posts which belong to different streams in the Government service. But certain posts require certain qualifications. Therefore, after a post is included in a particular stream, the interchangeability would depend upon the fulfilment of necessary qualification."

4.The learned counsel appearing for the petitioner further relied upon the Full Bench judgment of the **Himachal Pradesh High Court in the case of The Nalagarh Dehari Co-operative Vs. Beli Ram Etc.** reported in **AIR 1981 HP 1**, wherein, it has been held as follows:



"24. The result is that we will answer the first part of the question in the negative, that is a subsequent decision of the Supreme Court or a larger Bench of the same court rendering a decision taking a different or contrary view on a point covered by the said judgment, does not amount to mistake or error apparent on the face of the record. The answer to the second part of the question is that failure of the court to take into consideration an existing decision of the Supreme Court taking a different or contrary view on a point covered by its judgment would amount to a mistake or error apparent on the face of the record. But a failure to take into consideration a decision of the High Court would not amount to any mistake or error apparent on the face of the record."

5. The further argument of the learned counsel appearing for the petition in this review application is that there is an error apparent on the face of the record as a judgment of the Hon'ble Supreme Court has not been considered by this Court while disposing of the writ appeal. He has not referred to the judgment that was relied upon by the petitioner, which had not been considered by this Court while disposing of the writ appeal. It is only an argument in the review application.

6. First of all, the scope of review has been considered in several precedents by this Court. The petitioner for the purpose of reviewing the order of this Court wants us to rehear the whole case once again which is impermissible in a review petition. Even if this Court is required to consider the case of the petitioner by getting into facts and re-assess to come to a different conclusion that would amount to permit rehearing under the guise of review. That would certainly be contrary to the settled principles. If a long drawn process of reasoning is required to find out an error or mistake in the judgment passed earlier, that would fall outside the scope of review as held in several cases.

7. Though the Government has passed a subsequent G.O. And the learned counsel for the petitioner relied upon the said G.O., the decision of this Court cannot be changed in a review application. Hence, this Court does not find any merit in the review application.

8. Accordingly, this review application is dismissed. No costs.

Sd/-

Assistant Registrar (CO)

// True Copy //

Sub Assistant Registrar (CS)



To

- 1.The Chief Secretary, Secretariat, Chennai.
- 2.The Secretary, Finance Department, Secretariat, Chennai.
- 3.The Secretary,  
Personal Administration and Reforms,  
Secretariat, Chennai.
- 4.The Secretary,  
School Education Department,  
Secretariat, Chennai.
- 5.The Director of Elementary Education,  
DPI Campus, College Road,  
Chennai - 6.

+1cc to Mr.R.Lakshmanan, Advocate, SR.No. 51911

**Review Application (MD)No.107 of 2016**  
**06.03.2019**

**ARUL**

**KK/SAR-/22.03.2019/4P-7C**