IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.07.2017

CORAM:
THE HON'BLE MR.JUSTICE S.VAIDYANATHAN

Review Application (Writ) No.275 of 2014
in W.P.No.24958 of 2011

M.Kotti .. Review Petitioner

vs.

1. The Indian Bank Staff Co-operative Society Ltd.,
X-341, rep. by its Secretary,
No.253, Angappa Naicken Street,
Chennai 600 001.

2. The Secretary,
The Indian Bank Staff Co-operative Society Ltd.,
X-341, rep. by its Secretary,
No.253, Angappa Naicken Street,
Chennai 600 001.

3. The Disciplinary Committee,
The Indian Bank Staff Co-operative Society Ltd.,
No.253, Angappa Naicken Street,
Chennai 600 001.

4. The Central Registrar of Co-operative Society,
Government of India,
Ministry of Agriculture,
Department of Agriculture and Co-operation,
Krishi Bhavan, New Delhi - 110 001. ... Respondents

Review Application filed under Order 47 Rule 1 C.P.C. seeking to review the order dated 22.09.2014 passed by this Court in W.P.No.24958 of 2011.

For Petitioner	:	Mr.R.Sethu Pandian for M/s.A.L.Namasivayam
For Respondents 1 to 3	:	Mr.V.Kannan
For 4th Respondent	:	Mr.J.Madhana Gopal Rao, Senior Central Govt. Standing Counsel

ORDER

The writ petitioner has come up with this Review Petition seeking to review the order dated 22.09.2014 passed by this Court in W.P.No.24958 of 2011 on the ground that he is entitled and eligible to receive balance 50% of the Subsistence Allowance, apart from pension, bonus and amount for leave at his credit.

2. The petitioner in this Review Petition was a Sub Staff in the Indian Bank Staff Co-operative Society Ltd., Chennai. He was placed under suspension on 11.06.2008 and paid Subsistence Allowance. Subsequently, charges were framed against him and Charge Memo was issued to him on 06.04.2009 for misbehaving with the staff members of the respondent/Society using vulgar words. Thereafter, the petitioner submitted an explanation.

3. According to the petitioner, no enquiry was conducted and he is

entitled to 100% Subsistence Allowance on completion of 180 days as per the Payment of Subsistence Allowance Act and that the petitioner had the benefit of the same. The petitioner approached this Court by way of a Writ Petition in W.P.No.24958 of 2011, wherein, the petitioner challenged the Charge Memo issued by the 2nd respondent seeking to quash the same and also for a consequential direction to the respondents to permit him to join duty in the 1st respondent/Society with retrospective effect from 11.06.2009 with all attendant benefits.

4. When the above Writ Petition came up for hearing on 22.09.2014, it was represented by both parties that a settlement had been arrived at and that as the employees' contribution has already been paid, the remaining contribution under the heads, 'Provident Fund Employer's Contribution with interest, gratuity and 50% of the Subsistence Allowance, totalling Rs.3,68,375/-, was paid to the petitioner by way of a cheque, which he had agreed to receive in full quit of his claim.

5. On acceptance of the cheque and acknowledgment given thereof and recording the statement, this Court ordered the release of the amount to the tune of Rs.87,873/- lying in the deposit before the authority concerned under the Payment of Subsistence Allowance Act to the respondent/Society.

6. When the matter stood thus and finality having been attained, the present Review Petition has been filed, contending that the petitioner is entitled to 100% Subsistence Allowance, as there is a delay on the part of the respondent/Society in proceeding with the enquiry.

7. When the present Review Petition came up for hearing on 07.07.2017, it was represented by the learned counsel for the petitioner/workman that there was delay in commencing the enquiry proceedings and the default is on the part of the Management, to which, learned counsel for the respondent/Society submitted that an order of interim stay was granted in the Writ Petition, which was subsequently made absolute and the Writ Petition got disposed of, against which the present Review Petition is filed. Learned counsel appearing for the respondent/Society undertook to produce the interim order granted in the original Suit as well as in the Appeal Suit on the next hearing date.

8. When the matter came up for hearing today, learned counsel for the respondent/Society produced the original orders passed in the Original Suit as also in the Appeal Suit. However, learned counsel for the petitioner

submitted that the order of interim injunction was granted only for a period of four months and there was no order of interim stay from proceeding with the enquiry and that the petitioner was superannuated on 30.04.2013 A.N. He further submitted that the Subsistence Allowance was paid to the writ petitioner only till 21.02.2010 and thereafter, it got reduced to 50% from 22.02.2010 till 30.04.2013.

9. From the pleadings, it is very clear that the totality of the circumstances have got to be taken into account. For better appreciation of the case, Section 3 of the Payment of Subsistence Allowance Act is extracted hereunder:

> 3. **Payment of subsistence allowance:** (1) An employee who is placed under suspension shall, during the period of such suspension, be entitled to receive payment from the employer as subsistence allowance, an amount equal to fifty percentum of the wages which the employee was drawing immediately before suspension, for the first ninety days reckoned from the date of such suspension.
>
> Provided that where the period of suspension exceeds ninety days, but does not exceed one-hundred and eighty days, the employee shall be entitled to receive, after the said period of ninety days, a subsistence allowance equal to seventy-five percentum of the wages which the employee was drawing immediately before his suspension.
>
> Provided further that where the period of suspension exceeds one hundred and eighty days, the employee shall be entitled to receive wages in full which the employee was drawing immediately before his suspension.

Provided also that where the enquiry or criminal proceeding is prolonged beyond the period of ninety days for reasons directly attributable to the employee, the subsistence allowance shall, for the period exceeding ninety days, be reduced to fifty percentum of the wages, which the employee was drawing immediately before his suspension.

(2) An employee shall not be entitled to receive any subsistence allowance if he accepts any other employment during the period of his suspension in anyestablishment other than the establishment where he had been working immediately before his suspension.

(3) An employee shall not, in any event, be liable to refund or forfeit any part of the subsistence allowance admissible to him under sub-section (1):

Provided that where the employee is exonerated of the charge based on which his suspension was ordered, the subsistence allowance paid to him for any period shall be adjusted against the full wages admissible to him for the period of suspension.

(4) The subsistence allowance under sub-section (1) shall be paid by the employer to the employee on the date or dates on which the wages due to the employee, but for his suspension, would have become payable.

10. If the delay is on account of the employee in proceeding with the enquiry, the Subsistence Allowance can be reduced to 50% and the remaining amount will be subject to the outcome of the final proceedings. Firstly, it is a false statement made by the learned counsel for the petitioner, that no interim order was granted and he was trying to explain the meaning of interim stay and interim injunction.

11. The ultimate object of the petitioner was to stall the enquiry proceedings, which he has succeeded in the civil proceedings, i.e. as against the order of interim injunction restraining the respondent/Society in any manner functioning as enquiry authority to conduct the departmental enquiry or pass orders against the petitioner pending disposal of O.S.No.501 of 2009, passed in I.A.No.8384 of 2009 in O.S.No.501 of 2009, dated 05.08.2009, there was an appeal, in which, the appellate Court, in C.M.P.No.737 of 2010 in A.S.No.75 of 2010, by an order dated 23.04.2010, granted an order of status quo, and during the pendency of the appeal, the petitioner sought for interim injunction restraining the respondent-society from holding enquiry proceedings pursuant to the notice, dated 01.04.2010 issued by the enquiry authority.

12. In respect of the interim order of status quo passed in the appeal in the civil proceedings, the petitioner would contend that the order of status quo alone was granted and nothing prevented the respondent/Society from proceeding with the enquiry. When there is an order of status quo, the petitioner would be placed under suspension, but the respondent cannot proceed further. If any action is initiated otherwise, the respondent would have to face contempt proceedings.

13. It is not in dispute that the amount that has been paid by way of cheque has been encashed by the petitioner. According to the respondent, serious charges have been framed against the petitioner, more particularly, the charge of misbehaviour towards women was framed and the petitioner was about to be dismissed from service. But, to give a quietus to the matter, the respondent/Society agreed to pay 50% of the Subsistence Allowance, otherwise, they would have contested the matter.

14. The totality of the circumstances makes it clear that the attitude of the petitioner stalled the enquiry proceedings and it could not be proceeded further. Though this Court would have dismissed the Review Petition on the sole ground of Order 47 Rule 1 CPC, since arguments have been addressed and that wrong statements have been made before this Court, on instructions, from the learned counsel for the petitioner, this Court cannot take this submission very lightly.

15. Certainly, it is a fit case for dismissal of the petitioner from service for misbehaviour with women. But the petitioner will have to thank his star for not facing with the order and getting monetary benefits agreed upon by him that has been paid by the respondent/society. Having availed the

benefit and accepted the amount offered by the respondent/society pending the disciplinary proceedings, pursuant to the order of this Court, it is not fair on the part of the petitioner to come forward with this Review Petition.

16. Admittedly, the petitioner has not come to the Court with clean hands in filing the present Review Petition. Normally, this Court would like to show some indulgence towards the worker, taking note of the fact that the worker would have been without employment and he would have several kinds of difficulties. But, taking note of the attitude of the petitioner and in the light of Order 47 Rule 1 C.P.C., this Review Petition is not maintainable.

17. At this juncture, it is worth referring to Order 47 Rule 1 C.P.C., which is extracted below:

<u>Order 47 Rule 1 C.P.C.</u>

> **47. Application for review of judgment.-** (1) Any person considering himself aggrieved,—
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> (a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred,
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> (b) by a decree or order from which no appeal is allowed, or
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> (c) by a decision on a reference from a Court of Small Causes,
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> and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be

> produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgment to the Court which passed the decree or made the order.
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> (2) A party who is not appealing from a decree or order may apply for a review of judgment notwithstanding the pendency of an appeal by some other party except where the ground of such appeal is common to the applicant and the appellant, or when, being respondent, he can present to the Appellate Court the case on which he applies for the review.

18. The basic principle to entertain the review under Order 47 Rule 1 C.P.C. is to correct the errors but not to substitute a view. The judgment under review cannot be reversed (or) altered taking away the rights declared and conferred by the Court under the said judgment; once a judgment is rendered, the Court becomes functus officio and it cannot set aside its judgment or the decree; no inherent powers of review were conferred on the Court; the review Court cannot look into the trial Court judgment; it can look into its own judgment for limited purpose to correct any error or mistake in the judgment pointed out by the review petitioner without altering or substituting its view in the judgment under review; the review court cannot entertain the arguments touching the merits and demerits of the case and cannot take a different view disturbing the finality of the judgment; the review cannot be treated as appeal in disguise, as the object behind review is

ultimately to see that there should not be miscarriage of justice and shall do justice for the sake of justice only and review on the ground that the judgment is erroneous cannot be sustained.

19. It is settled law that 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 under 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.

20. In "***Shanmuga Sundara Nadar vs.Tamil Nadu Housing Board, rep. by its Chairman, Madras and others***", reported in **1988 (2) L.W. 57 (MAD.)**, this Court held as under:

> "The power to review is a restricted power which authorises the Court to look through the judgment not in order to substitute a fresh or second judgment but in order to correct it or improve it, because some material which it ought to have considered has escaped consideration or failed to be placed before it for any other reason or because it suffers from a patent error which cannot be sustained by any process of reasoning. The Court cannot under cover of review arrogate to itself the power to decide the case over again because it feels then that the assessment of evidence, etc., done formerly was faulty or even incorrect. An erroneous

> view of evidence of law is not a ground for review. A wrong exposition of the law, a wrong application of the law and failure to apply the correct law have been held to be not a ground for review."

21. In "***Meera Bhanja vs. Nirmala Kumari Choudhury***" reported in **(1995) 1 SCC 170**, the Supreme Court, while considering the scope of the power of review of the High Court under Order 47, Rule 1, C.P.C., held as under:

> "The review proceedings are not by way of an appeal and have to be strictly confined to the scope and ambit of Order 47, Rule 1 C.P.C. The review petition of error apparent on the face of the record and not on any other ground. An error apparent on the face of the record must be such an error which must strike one on mere looking at the record and would not require any long drawn process of reasoning on points where there may conceivably be two opinions. The limitation of powers on court under Order 47, Rule 1, C.P.C. is similar to jurisdiction available to the High Court while seeking review of the orders under Article 226."

22. Having regard to the above facts and the decisions referred to supra, this Court does not find any error apparent on the face of the order passed in the Writ Petition, in order to entertain the present review application.

23. Hence, **this Review Application is dismissed with costs of**

Rs.5,000/- (Rupees Five Thousand only) payable by the petitioner to the Labour Law Practitioners Association, Chennai by way of a Demand Draft within a period of two weeks from the date of receipt of a copy of this order. Consequently, connected M.P.No.1 of 2014 is closed.

24. Mr.S.Ravindran, Senior Counsel and Vice President of Labour Law Practitioners Association and Mr.K.M.Ramesh, Secretary of Labour Law Practitioners Association, shall inform this Court within a week from the date of receipt of costs imposed by this Court.

Index : Yes
Internet : Yes **20.07.2017**
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To:

The Central Registrar of Co-operative Society,
Government of India,
Ministry of Agriculture,
Department of Agriculture and Co-operation,
Krishi Bhavan,
New Delhi-110 001.

S.VAIDYANATHAN,J.

(aeb)

Order in
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