

In the High Court of Judicature at Madras

Reserved on	19.07.2017
Judgment Pronounced on	24.07.2017

Coram:

The Hon'ble Mr.Justice **M.VENUGOPAL**

and

The Hon'ble Mr.Justice **S.BASKARAN**

Review Application No.40 of 2017 in
W.A.No.26 of 2008

Jeyaretnakumar

..Applicant

Vs.

1. The State of Tamilnadu,
Rep. by its Secretary to Government,
Home Department, Fort, St. George,
Chennai – 600 009
2. The Director of Prosecution,
Tamilnadu Slum Clearance Board Complex,
No.5, Kamarajar Salai, II Floor,
Chennai – 600 005
3. The Deputy Director of Prosecutions,
No.22, Raja Muthaiah Salai,
Periamet, Chennai – 600 003

..Respondents

Prayer: Review Application filed under Order 47, Rule 1 and 2 r/w
Section 114 of CPC praying to review the Judgment dated 01.02.2008
in W.A.No.26 of 2008 and allow the Review Application.

For Applicant : Mr.R.N.Amarnath
For Respondents : Mr. K.Dhananjayan
Spl. Government Pleader

ORDER

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

The Applicant has filed the present Review Application No.40 of 2017 as against the Judgment dated 01.02.2008 passed by the Hon'ble Division Bench of this Court in Writ Appeal No.26 of 2008.

2.Heard both sides. No counter is filed on behalf of the Respondents 1 to 3, despite opportunity being provided.

3.The Learned Counsel for the Applicant contends that the Applicant / Petitioner was recruited as Assistant Public Prosecutor - Grade II by the Tamilnadu Public Service Commission, Chennai, pursuant to the notification issued on 29.03.1995. It is represented on behalf of the Applicant that the Applicant belongs to Backward Class Community.

4. According to the Learned Counsel for the Applicant, as per the notification issued by the Tamilnadu Public Service Commission in respect of others, who do not claim any reservation on the 'Basis of Community' the age limit was fixed as below 34 years as on 01.07.1993. Further, in respect of other cases, it is the specific plea of the Applicant that there is no age limit fixed in the notification.

5. Advancing his arguments, the Learned Counsel for the Applicant projects an argument that the observation of this Court in the Judgment in W.A.No.26 of 2008 dated 01.02.2008 that only on the basis of date of birth as 01.06.1960, the Applicant / Writ Appellant entered service and that he would not have been eligible for appointment to the post had the age been corrected and entered as '09.02.1961' is an incorrect finding, opposed to facts and therefore an error apparent on the face of record, in the Judgment had crept in, which needs to be corrected.

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6. The Learned Counsel for the Applicant strenuously submits that the Judgment in Division Bench of this Court in W.A.No.26 of 2008

dated 01.02.2008, which had recorded the finding in question, of course, on the basis of finding of the Learned Single Judge, in W.P.29526 of 2007 dated 02.11.2007 is without any basis.

7.Expatiating his contention, the Learned Counsel for the Applicant / Petitioner brings it to the notice of this Court and if the date of birth of the Applicant / Petitioner is taken as 01.06.1960, as entered in the S.S.L.C., Book, then he would have completed 35 years as on 01.07.1995. That apart, if the date of birth of the Petitioner / Applicant is taken as 02.09.1961, as entered in the birth certificate, his age as on 01.07.1995 would have been 34. In this connection, the Learned Counsel for the Applicant takes a pinpointed plea that in either cases, the Applicant was eligible to be appointed for the post of Assistant Public Prosecutor – Grade II on the date of his appointment.

8.The Learned Counsel for the Applicant contends that the Applicant as on 01.07.1995 was below 34 years of age and further, the notification of the TNPSC dated 29.03.1995 enjoined that for the post of Assistant Public Prosecutor Grade II for the Tamilnadu Public Service, the age of the Applicant ought to be below 34 years as on 01.07.1995,

and added further that no age limit for Scheduled Castes, Scheduled Tribes, Most Backward Classes / Denotified Communities, Backward Classes and Destitute Widows of all Castes.

9.The Learned Counsel for the Applicant submits that the Applicant had applied for the post of Additional Public Prosecutor Grade -II on 11.04.1996 and that he crossed the age of 35 years on 01.07.1995 and inasmuch as he belong to Backward Class Community, as per notification of TNPSC no age limit was prescribed. It is further represented on behalf of the Applicant that he had not availed any advantage in his favour, as observed in the Judgment of this Court in W.A.No.26 of 2008 dated 01.02.2008.

10.The Learned Counsel for the Applicant points out that the Applicant must be member of the Bar and should have had not less than 5 years of active practice in Criminal Courts and in the instant case, the Applicant had applied for the post of Additional Public Prosecutor Grade II twice in Tamilnadu General Services and he is not successful in his endeavour.

11.The Learned Counsel for the Applicant brings it to the notice of this Court that the Applicant gave an Application to the 2nd Respondent / The Director of Prosecution, Chennai (through proper channel) on 21.10.1998 stating that his Date of Birth was wrongly mentioned in SSLC Book as 01.06.1960 and that his actual date of birth was 09.02.1961 etc.,

12.The Learned Counsel for the Applicant takes a prime stand that the Applicant's parents gave a anti-Date of Birth to admit the Applicant in school at an early date and as such, the mistake had crept in and it was known to him after ascertaining from the birth register. Therefore, the Applicant in his Petition dated 21.10.1998 addressed the 2nd Respondent, making a request that his Date of Birth entered in Service Register as 01.06.1960 may be altered to his actual date of birth as 09.02.1961. Indeed, the Applicant in his Petition dated 21.10.1998 had stated specifically that he had filled up the prescribed format for alteration of date of birth with necessary enclosures.

13.The Learned Counsel for the Applicant draws the attention of this Court to the effect that the Applicant filed O.A.No.7760 of 2001

before the Tamilnadu Administrative Tribunal, Chennai against the 1st Respondent (State of Tamilnadu Rep. By Secretary to Government, Home Department, Chennai – 9) seeking for issuance of passing of an order by the Tribunal in directing the Respondent, therein namely, the State of Tamilnadu rep. By Secretary to Government, Home Department, Secretariat, Chennai to pass orders in his Application dated 23.08.2000 seeking alteration of his date of birth in his service register, in the said O.A.No.7760 of 2001, the Tribunal had passed the following order on 07.12.2001, which runs as under:-

“The Applicant seems to have given a representation praying for alteration of Date of Birth in his Service Register. The applicant now wants a direction from this Tribunal to the respondents directing them to consider and pass orders. Respondents are directed to pass orders on the representation made by the applicant as early as possible. This order does not reflect with regard to the merits of the case of the applicant.”

14.The Learned Counsel for the Applicant contends that the Applicant submitted his application for alteration of date of birth in the prescribed format on 21.07.2003 and that the Office of Director of Prosecution, Chennai – 2 (2nd Respondent) had issued a Memo to the

Applicant marking a copy to the Deputy Director, Prosecutor, Chennai among other things mentioning that his request to alter his date of birth to 01.06.1960 to 9.21961 was examined in detail in consultation with Special Commissioner and Commissioner for Revenue Administration, Chennai. The Special Commissioner and Commissioner Revenue Administration had informed that as per Rule 49(F) of Tamilnadu State and Subordinate Rules, his request for alteration of Date of Birth cannot be considered and that the request may be rejected, since he has not indicated any valid or proper reasons to prove his date of birth 09.02.1961 and further the order of Tamilnadu Administrative Tribunal in O.P.No.4241 of 1991 dated 12.03.1999 was cited to strengthen the rejection of his request.

15. The Learned Counsel for the Applicant contends that the Government had accepted the views of Spl. Commissioner and Commissioner for Revenue, Chennai and ultimately, the request of the Applicant for alteration of his date of birth was rejected.

16.The Learned Counsel for the Applicant adverts to Rule 49(b) of

Tamil Nadu State and Subordinate Service Rules, which mentions as under:

“After a person has entered service, an application to alter the date of his birth as entered in the official records shall be entertained only if such an application is made within five years of such entry into service. Such an application shall be made to the authority competent to make an appointment to the post held by the applicant at the time of his application and shall be disposed of in accordance with the procedure laid down in sub-rule (a).”

17. The Learned Counsel for the Applicant refers to the relevant portion of Rule 49(a) of Tamil Nadu State and Subordinate Service Rules under the caption of 'Alteration of Date of Birth' which runs as follows:

“49.Alteration of date of birth--(a) If at the time of appointment, a candidate claims that his date of birth is different from that entered in his S.S.L.C. or Matriculation Register or School Records, he shall make an application to the Tamil Nadu Public Service Commission in case where the appointment is made in consultation with the Commission and in other cases to the appointing authority stating the evidence on which he relies and explaining how the mistake occurred. The application shall be forwarded

to the Commissioner of Revenue Administration for report after investigation by an officer not below the rank of a Deputy Collector and, on receipt of the report, the Tamil Nadu Public Service Commission or the appointing authority, as the case may be, shall decide whether the alteration of date of birth may be permitted or the application may be rejected:

Provided that in case of a candidate who was born outside the State of Tamil Nadu, the investigation through the Commissioner of Revenue Administration shall be dispensed with and the Tamil Nadu Public Service Commission, or the appointing authority, as the case may be shall examine and scrutinize the records that may be produced by the candidate and shall decide whether the alteration of date of birth may be permitted or the application may be rejected.”

18. At this juncture, this Court worth recalls and recollects the decision of the **Hon'ble Supreme Court (Secretary & Commissioner, Home Department and others V. R. Kirubakaran)** reported in **AIR 1993 Supreme Court at Page 2647** whereby and whereunder it is observed and laid down as follows:-

“An application for correction of the date of birth should not be dealt with by the tribunal or the High Court

keeping in view only the public servant concerned. Any such direction for correction of the date of birth of the public servant concerned has a chain reaction, inasmuch as others waiting for years, below him for their respective promotions are affected in this process. Some are likely to suffer irreparable injury, inasmuch as, because of the correction of the date of birth, the officer concerned, continues in office, in some cases for years, within which time namely officers who are below him in seniority waiting for their promotion, may lose the promotion forever. Cases are not unknown when a person accepts appointment keeping in view the date of retirement of his immediate senior. This is an important aspect, which cannot be lost sight of by the Court or the Tribunal while examining the grievance of a public servant in respect of correction of his date of birth. As such, unless a clear case on the basis of materials which can be held to be conclusive in nature is made out the Court or the Tribunal should not issue a direction, on the basis of materials which make such claim only plausible. Before any such direction is issued, the Court or the Tribunal must be fully satisfied that there has been real injustice to the person concerned and his claim for correction of date of birth has been made in accordance with the procedure prescribed, and within the time fixed by any rule or order. If no rule or order has been framed or made, prescribing the period within which such application has to be filed, then such application must be filed within the time, which can be held to be reasonable.

The applicant has to produce the evidence in support of such claim, which may amount to irrefutable proof relating to his date of birth. Whenever any such question arises, the onus is on the applicant, to prove about the wrong recording of his date of birth, in his service book. In many cases it is part of the strategy on the part of such public servants to approach the Court or the Tribunal on the eve of their retirement, questioning the correctness of the entries in respect of their dates of birth in the service books. By this process, even if ultimately their applications are dismissed, by virtue of interim orders, they continue for months, after the date of superannuation. The Court or the Tribunal must, therefore, be slow in granting an interim relief for continuation in service, unless prima facie evidence of unimpeachable character is produced because if the public servant succeeds, he can always be compensated, but if he fails, he would have enjoyed undeserved benefit of extended service and merely caused injustice to his immediate junior. (Para 5)

If the date of birth of a public servant, is correct only on basis of a report submitted by a Revenue Officer after holding an enquiry, it will introduce uncertainty, in public services. Correction of the date of birth of public servant is permissible, but that should not be done in a casual manner. Any such order must be passed on materials produced by the public servant from which the irresistible conclusion follows that the date of birth recorded in the service book

was incorrect.

(Para 6)

If an application is made for correction of the date of birth mentioned in the service records at an early date or within the time prescribed, the authorities are in much better position to verify the same. Normally, in most of the services, the date of birth is recorded in the service records on the eve of the appointment with reference to the date of birth mentioned in the Matriculation Certificate, Higher Secondary Education Board Certificate or any other certificate of similar nature produced by the applicant for his appointment. As such whenever an application for alternation of the date of birth is made on the eve of superannuation or near about that time, the Court or the Tribunal concerned should be more cautious because of growing tendency amongst a section of public servants to raise such a dispute, without explaining as to why this question was not raised earlier.

(Para 7)

19.The Learned Counsel for the Applicant submits that the Applicant is to retire in February 2018.

20.The Learned Counsel for the Applicant submits that in as much as the Applicant projected his application seeking an 'Alteration of Date of Birth' well within the time prescribed under Rule 49(b) of Tamil Nadu State and Subordinate Services Rules, the Respondents are duty

bound to consider the request of the Applicant seeking alteration of date of birth.

21. Lastly, it is contention of the Learned Counsel for the Applicant that the Respondents had not filed any counter before the Learned Single Judge in W.P.No.29526 of 2007 and before the Hon'ble Division Bench in Writ Appeal, W.A.No.26 of 2008 and further, they had not produced the relevant records.

22. By way of reply, the Learned Special Government Pleader for Respondents submits that the Petitioner had not assigned any valid reasons to his plea of seeking an alteration of date of birth from 01.06.1960 to 09.02.1961 and in fact, the rejection of the 2nd Respondent dated 01.03.2007 negating the claim of the Petitioner is free from any flaw. Apart from that, the Judgment of the Division Bench of this Court in W.A.No.26 of 2008 does not suffer from any legal infirmities, as such, the Review Petition No.40 of 2017 projected by the Applicant is not maintainable in Law and accordingly, it is to be dismissed to sub-serve the ends of justice.

23. In regard to the plea taken on behalf of the Applicant that the

Applicant had not taken advantage of the different date of birth as 01.06.1960 for entering the service etc., it is pointed to be out that the observations of this Court in the Judgment dated 01.02.2008 in Writ Appeal No.26 of 2008 at Paragraph No.2 interalia to the effect that

“....The learned single Judge noticed that though such information was available, it is only on the basis of his date of birth as 1.06.1960 that the appellant entered the service; otherwise, he could not have been eligible for appointment to the post had the age been corrected and entered as 9.2.1961. In view of the fact that the appellant took advantage of a different date of birth as 1.6.1960 for entering the service or otherwise on the basis of his date of birth as 9.2.1961, he could not have been appointed, being below the minimum age prescribed” etc.,
are proper, correct and the same is free from any flaw.

24.Continuing further, this Court aptly points out the decision of Hon'ble Supreme Court, (Executive Engineer, Bhadrak (R&B) Division, Orissa and Others V. Rangadhar Mallik in C.A.No.3517 of 1992 dated 03.09.1992 reported in 1992 (3) All India Service Law Journal at Page 75 wherein it is held as under:-

“Held, that it cannot be said that the action taken by the Government in rejecting the representation was in any

manner illegal or against any principles of natural justice. There was no requirement of any law to give any personal hearing to the respondent before dismissing the representation.”

25.It is to be pointed out that a Person / Government servant cannot claim as a matter of right seeking change of his Date of Birth at the fag end of his career. Moreover, such a prayer at the fag end of a person's career is *per se* not to be entertained, since it may effect the promotions of others, who are yearning for years below him and it would cause undoubtedly an Irreparable Injury and Hardship because of the reason that by virtue of the correction of date of birth, some person may continue in office, for some years within which time many other employees, who are below him in seniority waiting for their promotion, may lose their chance for promotion forever.

26.It is well settled that if a person / employee fails in his endeavour to seek the alternation of date of his birth from one day to another, then, he may not be conferred with the undeserved benefit of extended service by virtue of an interim order and certainly it would cause serious miscarriage of justice to his immediate junior. Moreover,

the correction of date of birth ought not to be permitted in a routine, casual, lenient, liberal and cavalier manner. Adequate reasons are to be mentioned by the concerned person / Applicant as to why he had not raised the plea of the 'Alteration to Date of Birth' at an earliest point of time.

27. If an individual employee seeks an 'Alteration of his Date of Birth' either in the near about time of his superannuation or on the eve of superannuation, then, a Court of Law, must be doubly careful and caution in accepting to the request taking note of the fact the attitude / tendency among the employees / Government servants to raise such a plea / dispute comes only at the fag end of their career, therefore, such a plea of alteration / correction of his date of birth at the 11th hour is not to be entertained because of the possible wide ranging ramifications and repercussion to follow, which may result in compounding the problem in a manifold way(s).

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28. It cannot be forgotten that a 'Review of Judgment' in a given case, is of course, a serious step and only when a patent mistake or grave error is crept in or glaring omission is there in the earlier judicial

fallibility, the same can be entertained even an inconsequential import or even a minor mistake or a repetition of a old and overruled argument cannot be permitted by a Court of Law as 'Second Innings', in the considered opinion of this Court.

29. To put it precisely, the 'Ambit' and 'Purview' of 'Review' is very much restricted and a 'Review' which seeks rehearing of the matter is clearly impermissible in Law. Further, just because the decision is an erroneous one on the basis of an incorrect or wrong interpretation of Law, then, in that event also it is not a case of 'Review', as opined by this Court. The 'Reappreciation of Evidence' by the Review Courts' is beyond the ambit of 'Review Jurisdiction'. It is true that the High Court with its plenary power has not only the power, but, a primordial duty to set right any apparent error in respect of any Judgment / Order passed by it. In brief, as a 'Court of Record', power and duty to 'Review the Judgment' are inherent in every High Court.

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30. That apart, in 'Review', the 'Court of Law' cannot sit in an 'Appeal' over its own Order and rehearing of the matter is not maintainable ex facie in Law. In reality, 'Review' is an exception to the

General Rule and if the Judgment is signed by the Presiding Deity of the concerned court are delivered, it should not be altered. A 'Review' cannot be heard as an 'Appeal', even if the order is erroneous, it cannot be Reviewed under Section 47 Rule 1 of Civil Procedure Code **as per decision AIR 2006 Kerala at page 167 [C.C.Sivaprasad V. K.Sasidharan & Another]**. Besides this, a 'Review' for correcting the erroneous decision does not lie, in the considered opinion of this Court.

31. Also that 'Review' jurisdiction cannot be pressed into service as an 'Appellate Jurisdiction'. Moreover 'Review' does not lie where there is no error apparent on the face of record. If there is no patent error involved, a Review Petition deserves dismissal, as per decision of the **Hon'ble Supreme Court in Nandi Verdhan Jain V. Chander Kanta Jain and Another reported in (2002) 9 SCC at Page 471**. As a matter of fact 'Review' erases the previous Judgment and therefore, operates as the Law from inception as per decision **M.A.Murthy V. State of Karnataka and Others (2003) 7 Supreme Court Cases 517**.

32. One cannot brush aside an important fact that the 'Power of Review' is not to be confused with an Appellate power. If the Applicant

is aggrieved by the finding of the Court, the remedy is not 'Review'. Under the guise of 'Review', the High Court would not re-hear the parties on point of Law afresh. The term 'Review Judicially and Literally' means Reexamination or ' Reconsideration'. The ambit of interfering in an Appeal is very wide than in 'Review'. If two views are possible on the point involved, the same is not a ground for Review as per decision of Hon'ble Supreme Court in **Harinagar Sugar Mills Limited and Another V. State of Bihar and Others ((2006) 1 Supreme Court Cases 509)**.

33. Be that as it may, on a careful consideration of the respective contentions and this Court on an overall assessment of the attendant facts and circumstances of the instant case in an encircling fashion comes to an inevitable and irresistible conclusion that there is no apparent error on the face of record in the Division Bench Judgment of this Court dated 01.02.2008 in W.A.No.26 of 2008 and further, based on the well laid down legal principle that 'Review' cannot be held as 'Appeal' in disguise and added further, a 'Review' for correcting an erroneous decision does not lie, this Court, without any hesitation holds

that 'Review Petition' is not maintainable in the eye of Law because of the latent and patent reason that there are no material irregularities or patent illegalities or even no manifest error(s) in the Judgment of Division Bench of this Court in W.A.No.26 of 2008 dated 01.02.2008. Viewed in that perspective, the Review Application sans merits.

34. In fine, the Review Application No.40 of 2017 is dismissed. There shall be no order as to costs.

M.V.J., & S.B.J.,

[24 .07.2017]

Speaking / non speaking order
Index: Yes /No
Internet :Yes / No

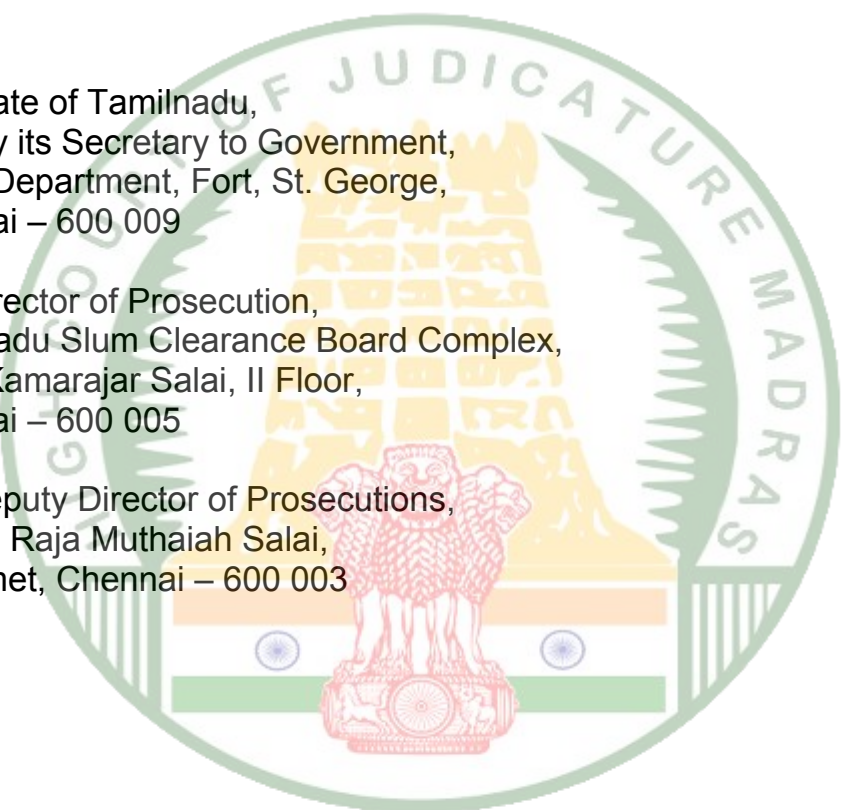
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सत्यमेव जयते

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To

1. The State of Tamilnadu,
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2. The Director of Prosecution,
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The seal of the Tamil Nadu Judicial System is a circular emblem. It features a green outer ring with the text 'TAMILNADU JUDICATURE MADRAS' in white capital letters. Inside the ring is a yellow temple gopuram (tower) with a red lion capital on top. Below the gopuram is a red lion capital on a base. The entire emblem is set against a background of horizontal stripes in green, white, and orange. Below the emblem is the Sanskrit motto 'सत्यमेव जयते' in Devanagari script.

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M.VENUGOPAL, J.
and
S.BASKARAN, J.

ssd



Pre-delivery Order in
Review Application No.40 of 2017

24.07.2017

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