

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.03.2017

<i>Date of Reserving the Judgment</i>	<i>Date of Pronouncing the Judgment</i>
17.03.2017	27.03.2017

Coram

The Hon'ble Mr. Justice **T.S. SIVAGNANAM**

AND

The Hon'ble Mr. Justice **G.CHOCKALINGAM**

R.A.No.104 of 2016
and WMP.No.25182 of 2016

The Registrar General,
High Court,
Madras.

... Applicant/1st respondent
in both W.Ps.,

Vs

- 1.Swarnam J.Natarajan,
Principal Sub Jdge,
Thiruvannamalai.
- 2.G.T.Ambika,
10th Assistant Judge,
City Civil Court, Chennai.
- 3.The Secretary to Government,
Law Department,
Government of Puducherry.
- 4.G.Sendil Kumar
II Additional District Judge,
CBI Cases, Coimbatore.

5.S.Mohanakumari,
Additional District Judge,
Kancheepuram at Chengalpattu

6.S.Isvarane,
Sub Judge, Mahe.

7.V.Safana Devi,
14th Additional Judge,
City Civil Court, Chennai.

... Respondents

Prayer:-Review Application filed under Order XLVII Rule 1 read with 114 of CPC, to review the common order dated 28.11.2014, in W.P.Nos.9350 and 13629 of 2009, on the file of this Court.

For Applicant ..Mr.V.Ayyadurai
Addl. Advocate General

For Respondents ..Mr.K.M.Vijayan Senior counsel for
Mr.A.Edwin Prabakar for R1

Mr.Vijayanarayan Senior counsel for
Ms.V.Yamuna Devi for R2

Mrs.Reena Ishwarya
Addl. Govt. Pleader (Pondy) for R3

Mr.AR.L.Sundaresan Senior counsel for
Mr.V.Vasanthakumar for R5

Mr.S.Shivashanmugam for R4

JUDGMENT

T.S.SIVAGNANAM,J.

This Review Application has been filed by the Registrar General of this Court to review the order and direction in W.P.Nos.9350 and

13629 of 2009, dated 28.11.2014.

2. The respondents 1 and 2 herein were the petitioners in those two Writ Petitions, wherein they sought for issuance of a Writ of Certiorarified Mandamus, to quash the proceedings of the Review Applicant in ROC.No.17/2009-Con.B2, dated 05.05.2009, in so far as it promotes the respondents 4 to 7 herein as Civil Judges (Senior Division) in the Pondicherry Judicial Service and consequently to direct the applicant to first fix the seniority of the Civil Judges (Junior Division), as per the merit list prepared, pursuant to the notification No.87/2001, dated 06.08.2001 and promote the respondents 1&2/Writ Petitioners as Civil Judges (Senior Division) with effect from 05.05.2009. The Writ Petitions were allowed by common order dated 28.11.2014, and the operative portion of the order reads as follows:-

64. We wonder, how, when the rules emphasise that rosters are only intended for determining the number of vacancies to be reserved and not meant for determining the order of appointment or seniority; the relative seniority of all direct recruits has to be determined by the order of merit in which they are selected for such appointment on the recommendations of the Selection Committee; the Pondicherry Judicial Service (Cadre and Recruitment) Rules,1996 in para 8 of the Annexure to the said Rules provide that a list of suitable candidates shall be prepared in the order of merit on the basis of aggregate of marks secured in the competitive examination including viva-voce; that in the High Court's notification calling for applications, it has been clearly stated in para 8 (a) relating to 'Procedure of Selection' that the selection will be made based on the result of the written examination and viva-voce examination i.e.,

the selection will be made on the basis of the total marks obtained by the candidates, the first respondent had blindly and simply clarified to the Government/second respondent, that according to the roster, the arrangement of the candidates, rank wise, was proper. The said clarification only shows the non-application of mind on the part of the first respondent, which irregularity, in fact, has made the petitioners to knock the doors of this Court, seeking justice. The said attitude of the first respondent is not appreciable. We also add, that the first respondent, being the higher judiciary and guardian of justice, instead of being a role model to other institutions for perfection and integrity, has become the cynosure of criticism, for its unjust and arbitrary action in the case on hand.

65. In view of the mandate of [Article 234](#) of the Constitution, the High Court has to take a decision on the suitability of a candidate on the administrative side and it cannot act arbitrarily on the matter. Having given the wrong picture of roster and the incorrect clarification with regard to appointment and promotion, the Government of Puducherry and the High Court respectively have erred in discharging their responsibilities under [Article 234](#). Therefore, the petitioners shall succeed in their prayer. Respondents 1 and 2 are directed to re-fix the seniority of the petitioners and also the impleaded fifth respondent in W.P.No.9350 of 2009 over and above respondents 3 and 4 and also respondent 5 in W.P.No.13629 of 2009 and provide them with all consequential benefits flowing therefrom.

66. However, noticing that the petitioners as well as respondents 3,4 and 5 have been selected to the cadre of Civil Judge, Junior Division, and also subsequently promoted as Civil Judge, Senior Division, and on verification of the judgments of the candidates, after analysing the Annual Confidential Reports and also the reports of the Selection Committee of this Court, it is open to the first respondent to give protection to the promoted candidates, who are now in the position of Civil Judge, Senior Division, while re-fixing seniority among them and publish their seniority position in the Annual List of the Judges of Subordinate Judiciary of Puducherry, as in the case of Tamil Nadu cadre.

3. The Registrar General of this Court seeks review of the order on only one ground by contending that the directions contained in

paragraphs 65 & 66 of the order referred above are mutually exclusive culminating in an error apparent on the face of the record. It is further contended that unless and until, the already promoted candidates, who have served in the post of Civil Judge (Senior Division) and further got promoted as District Judge (Entry Level) are reverted, the Writ Petitioners cannot be accommodated in the post of Civil Judge (Senior Division) and in the post of District Judge (Entry Level) following their seniority as determined by the Division Bench in the order dated 28.11.2014, in the post of Civil Judge (Junior Division).

4. Mr.V.Ayyadurai, learned Additional Advocate General appearing for the Review Applicant contended that this Court after allowing the Writ Petitions directed the seniority of the respondents 1 & 2 to be refixed and provide them with all consequential benefits flowing there from. However, in paragraph 66 of the same order, this Court directed the applicant to give protection to the promoted candidates, who were then in the position of Civil Judge (Senior Division), while refixing seniority among them and publish their seniority position in the annual list of the Judges of the subordinate judicial of Puducherry, as in the case of Tamil Nadu cadre. Thus, it is the submission of the learned Senior counsel that the direction given in

paragraph 66 of the order, cannot be implemented without reverting the private respondents and this being contradictory to the relief granted in paragraph 65 of the order, there is an error, which requires to be rectified.

5. Mr.K.M.Vijayan, learned Senior counsel would submit that the first respondent is not interested in seeking for reversion of any of the candidates, but all they seek is for implementation of the direction issued by this Court.

6. Mr.Vijayanarayan learned Senior counsel appearing for the respondents 1 & 2/Writ Petitioners submitted that there is no error in the order passed in the Writ Petitions and the observations made in paragraph 66, uses the expression "it is open to" and therefore, it is for the High Court to decide as to whether protection has to be given to the promoted candidates, as all promotions, which were made were subject to the result of the Writ Petitions.

7. Mr.AR.L.Sundaresan, learned Senior counsel appearing for the private respondents would submit that the respondents 1 & 2/Writ Petitioners are attempting to get a relief, which is beyond the scope of the direction issued in the Writ Petitions and they are not entitled to

seek for such relief in a Review Application filed by the Registrar General.

8. We have heard the Additional Government Pleader appearing for the Government of Puducherry.

9. The settled legal position is that a Review Petition is not an appeal in disguise. The Court, while exercising review jurisdiction cannot embark upon a roving exercise, rehear the matter and pronounce orders. The jurisdiction is limited to the extent to examine as to whether there is any error apparent on the face of the record. Bearing this legal principle in mind, we examine the merits of the Review Application. During the course of argument, it has come to light that by implementing the directions issued in the Writ Petition, more particularly in paragraph 65 of the order, there is no possibility of the respondents 4 to 7 being reverted. Therefore, one such impediment, which was pointed out in the Review Application does not survive any longer.

10. It was the endeavour of the learned Additional Advocate General to impress upon this Court the manner in which selection was

conducted to the post of Civil Judges (Senior Division) and it is submitted that it being a promotional post, the selection is on the basis of merit cum seniority from among the category of Civil Judge (Junior Division) on consideration of entries in the Annual Confidential Reports inclusive of Vigilance Report, evaluation of judgments and work done, as per the procedure prescribed under Rule 8(6) of the Puducherry Judicial Service (Cadre and Recruitment), Rules, 2008. It is further submitted that a Selection Committee was constituted, which considered all the seven candidates, which includes the Writ Petitioners and on the basis of merit cum seniority, suitability, service records and other records of each candidate, recommended drawal of panel for promotion to the post of Civil Judge (Senior Division), wherein the respondents 4 & 5 herein were assigned Rank Nos.1&2 respectively and the first respondent herein was assigned Rank in serial No.4 and promotion order, dated 05.05.2009 was issued. It is further submitted that all the six candidates were selected on merit basis and therefore, the question of refixing seniority is inconsequential.

11. We are not in agreement with the stand taken by the Review Applicant, as the direction issued in paragraph 65 of the order remains unchallenged till date. Therefore, the exercise directed to be

undertaken as per the direction contained in paragraph 65, has to be implemented. We are informed that the Special Leave Petitions filed by the private respondents have been dismissed and in one such case, while granting liberty to file review, the Hon'ble Supreme Court made it clear that in the event, the private respondent is unsuccessful in the review, he cannot re-agitate the matter.

12. The learned Senior counsel for the respondents 1 & 2 would submit that in terms of the directions issued in the Writ Petitions in paragraph 65, the applicant has to first re-fix the seniority in the cadre of Civil Judge (Junior Division), thereafter, in the cadre of Civil Judge (Senior Division) and consequently, in the cadre of District Judge (Entry Level), though it is the stand taken by the applicant that promotion to the post of Civil Judge (Senior Division) is purely based on merit.

13. Admittedly, the respondents 1 & 2 have not filed any review against the order in the Writ Petition. Therefore, at their instance, this Court is not inclined to make any observations nor issue further directions, as it is for the Review Applicant to implement the directions in paragraph 65 of the order.

14. As noticed above, in the present circumstances, there is no fear of reversion of any of the candidates and therefore, Review Applicant need not have any apprehension in that regard and they are required to implement the directions as issued by the Division Bench.

15. For all the above reasons, we find there is no error much less an error apparent on the face of the order dated 28.11.2014, for exercise of review jurisdiction. Accordingly, the Review Application fails and it is dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed.

(T.S.S., J.) (G.C.,J)
27.03.2017

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Index :Yes/No
Internet:Yes/No

To

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