

In the High Court of Judicature at Madras

Reserved on	07.09.2017
Judgment Pronounced on	20.09.2017

Coram:

The Hon'ble Mr.Justice **M.VENUGOPAL**
and
The Hon'ble Mr.Justice **P.D.AUDIKESAVALU**

Review Application No.73 of 2016 in
W.A.No.449 of 2016

1. The Director General of Police
Tamil Nadu, Chennai – 04

2. The Superintendent of Police
The Nilgiris District,
Udhagamandalam

..Applicants

Vs.

R.Manikandan

..Respondent

Prayer: Review Application filed under Order 47, Rule 1 r/w Section 114 of Civil Procedure Code praying to Review the Judgment dated 07.04.2016 in W.A.No.449 of 2016 and allow the Review Application.

For Applicants : Mr.K.V.Dhanapalan
Special Government Pleader

For Respondent : Ms.Sudha Rani

ORDER

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

The Applicants have preferred the instant Review Application as against the Judgment dated 07.04.2016 in W.A.No.449 of 2016 passed by this Court.

Review Applicants' Pleas

2. The Learned Special Government Pleader for the Applicants / Appellants / Respondents submits that the Judgment of this Court dated 07.04.2016 in W.A.No.449 of 2016 suffers from an 'Error Apparent on the Face of Record'.

3. The Learned Special Government Pleader for the Applicants contends that the Respondent / Writ Petitioner was a minor, aged 10 years at the time of death of his father, who served as Grade I, Police Constable. Further, it is represented on behalf of the Applicants that an Application praying for 'Compassionate Appointment' was made after nine years, which disentitles the Respondent for securing an 'Appointment on Compassionate Ground'.

4.The Learned Special Government Pleader for the Applicants vehemently takes a plea that 'Compassionate Ground Appointment' is neither a 'Legacy' nor an 'Inheritable' Right, which can be exercised at the sweet Will of the Respondent / Petitioner. However, the said appointment is only to get over the immediate crisis and the intending indigent circumstances.

5. At this juncture, the Learned Special Government Pleader for the Applicants brings it to the notice of this Court that the Government of Tamil Nadu through its Letter (Ms.) No.202, Labour and Employment Department dated 06.10.2007 had clarified that the time of filing an Application for employment under 'Compassionate Ground' is three years from the date of death of Government Servant and that the same shall be applicable to all cases including where the Government Servant had died in service even before 26.06.1995. However, this Court had overlooked the Policy Decision of the Government.

6. Expatiating his submission, the Learned Special Government Pleader for the Applicants projects an argument that Smt.Vijayakumari,

is the second wife of late Ramasamy (Deceased Grade I – Police Constable) and that she had married the said Ramasamy, during the life time of Pappammal (First Wife of the deceased) and therefore, her marriage is deemed to be void, as per Government Letter (Ms) No.34, Labour and Employment Department dated 16.04.2002 in and by which the children born out of void marriages are not entitled to claim an 'Appointment on Compassionate Ground'.

7. The Learned Special Government Pleader for the Review Applicants strenuously submits that the Respondent / Writ Petitioner's mother, Vijayakumari (2nd Wife of deceased, Ramasamy, father of the Respondent / Writ Petitioner) had made a categorical statement on 06.02.1995 before the Sub Inspector of Police, Namakkal Police Station, wherein it was stated in the year 1980, her marriage with late P.C.783, Ramasamy, took place at Mudalaipatti in a proper manner, thereafter, her husband while working at Masanangudi Police Station at Masanangudi, she lived with him for a month and during that time, her husband's first wife, Pappammal was residing with them and later on her husband got transferred to Salembody Police Station and at that time, Pappammal picked up a quarrel with them, asked two of them to

lead a happy family life and by so saying that she would not interfere with her family members left the place etc., Further, the said Vijayakumari till her husband's death, lived with him for 15 years and during that time, her husband's first wife, Pappammal never returned, even for the news about the death of her husband, she had not attended and that her husband had not given any information about Pappammal.

8. In effect, the contention of the Review Applicants is that the Respondent / Petitioner's mother, Vijayakumari had admitted in her statement on 06.02.1995 that when she lived with her husband, late Ramasamy (P.C.783 at Masanangudi) and when her husband worked at the Masinakudi Police station, she had admitted that the first wife of her husband, Pappammal was living / residing with them and therefore, this makes candidly clear that Vijayakumari, mother of the Respondent / Petitioner is the second wife of deceased, Ramasamy and hence, the Respondent / Petitioner being the son of the second wife of deceased, Ramasamy namely, his father, is not entitled to get the benefit of 'Compassionate Appointment'. Therefore, the Order of the 1st Review Applicant / Director General of Police, Tamilnadu in Memorandum

R.C.No.116466/CA/2/2008 dated 09.02.2009 (after obtaining clarification from the Government) stating that the request of the Respondent / Petitioner for 'Appointment on Compassionate Ground' cannot be considered, is a correct and valid one in the eye of Law. Moreover, the Respondent / Petitioner submitted an Application seeking 'Appointment on Compassionate Ground' with a delay of 9 years from the date of death of his father, Ramasamy and in any event, based on the Government Letter No.34 dated 16.04.2002, the claim of the Respondent / Petitioner was rejected, which is per se correct and free from any error.

9. Lastly, it is the submission of the Learned Special Government Pleader for the Applicants that this Court had failed to take note of the fact that the Respondent / Petitioner and his immediate family are not in 'Poverty' presently.

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Decisions Cited on Review Applicants' Side:

10. The Learned Special Government Pleader for the Applicants cites the decision of this Court in **Baskaran V. The Commissioner of**

College Education and two others, 1995 (II) CTC at page 513 at Special Pages 527 and 528 wherein at Paragraph 26(3) it is observed as under:

“26(3) If a mistake is committed by an erroneous assumption of a fact which is allowed to stand, would cause miscarriage of justice, then also an application for review can be entertained.”

Also, the Learned Special Government Pleader for the Applicants refers to the aforesaid decision at Page Nos.529 and 530 at Paragraph No.29, wherein among other things it is observed as under:

“29..... latches etc., vide

- 1.Rajalashmiah V.State of Mysore (AIR 1967 SC 993)*
- 2. Rabindra Nath V. Union of India (AIR 1970 SC 470)*
- 3. J.N.Maltiar V. State of Bihar (AIR 1973 SC 1343)*
- 4. Amrit Lal V. Collector, C.E.C. Revenue (AIR 1975 SC 538)*
- 5. State of Orissa V. Arun Kumar (AIR 1976 SC 1639)*
- 6. State of Orissa V. P.Samantrav (AIR 1976 SC 2017)*
- 7. Gian Singh V. The High Court of Punjab and Haryana (AIR 1980 SC 1894)*
- 8. G.C.Gupta V. N.K.Pandey (AIR 1988 SC 268) and*
- 9. High Court of M.P. V. Mahesh Prakash (AIR 1994 SC 2595)*

11. The Learned Special Government Pleader for the Applicants relies on the decision of **Hon'ble Supreme Court in Aribam Tuleshwar Sharma V. Aribam Pishak Sharma and Others, (1979) 4 Supreme Court Cases 389** wherein at Paragraph No.3 it is observed as under:

"3.....It is true as observed by this Court in Shivdeo Singh V. State of Punjab (AIR 1953 SC 1909), there is nothing in Article 226 of the Constitution to preclude a High Court from exercising the power of review which inheres in every court of plenary jurisdiction to prevent miscarriage of justice or to correct grave and palpable error committed by it. But, there are definitive limits to the exercise of the power of review. The power of review may be exercised on the discovery of new and important matter or evidence which, after the exercise of due diligence was not within the knowledge of the person seeking the review or could not be produced by him at the time when the order was made; it may be exercised where some mistake or error apparent on the face of the record is found; it may also be exercised on any analogous ground."

12. The Learned Counsel for the Applicants draws the attention of this Court to the decision of Hon'ble Supreme Court, **S.Nagaraj and**

Others V. State of Karnataka and Another reported in 1993 Supp (4) Supreme Court Cases Page 595 at Special Page 599 wherein it is observed as under:

“Rectification of an order stems from the fundamental principle that justice is above all. It is exercised to remove the error and not for disturbing finality. Apart from Order XL Rule 1 of the Supreme Court Rules, the Supreme Court has the inherent power to make such orders as may be necessary in the interest of justice or to prevent the abuse of process of court. The Court is thus not precluded from recalling or reviewing its own order if it is satisfied that it is necessary to do so for sake of justice.”

Also, in the aforesaid decision at Page 599, it is observed as under:

“..... It is the duty of the court to rectify, revise and re-call its orders as and when it is brought to its notice that certain of its orders were passed on a wrong or mistaken assumption of facts and that implementation of those orders would have serious consequences.”

Contentions of Respondent

13. Per contra, it is the submission of the Learned Counsel for the Respondent / Writ Petitioner that the Judgment of this Court dated 07.04.2016 passed in W.A.No.449 of 2016 in affirming the Order of the

Learned Single Judge dated 26.02.2013 in W.P.No.23475 of 2011 does not suffer from any legal infirmities.

14. The Learned Counsel for the Respondent contends that in 'Law', 'Review' is not an 'Appeal' in disguise, where an erroneous decision is reheard and corrected, but, lies only for a 'Patent Error'. To lend support to this contention, the Learned Counsel for the Respondent cites the decision of the **Hon'ble Supreme Court in Sasi (Dead) through Legal Representatives V.Aravindakshan Nair and others, (2017) 4 Supreme Court Cases at Page 692.**

15. The Learned Counsel for the Respondent takes a plea that an 'Error, which is not self evident and is to be detected by a process of reasoning cannot be termed as an 'Error Apparent on the Face of Record, justifying a 'Court of Law' to exercise its power of Review'.

Applicants.

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Applicants' reply (With reference to Government Orders / Letters)

16. The Learned Special Government Pleader for the Applicants refers to G.O.Ms.No.560, Labour and Employment, 3.08.1977 issued by

the Government of Tamil Nadu, which deals with 'Employment Assistance to Families of Deceased Government Servants' in public service in and by which in Sl.No.(2), the term 'Near Relative' is defined and restricted to include only the wife / husband / son/unmarried daughter of the Government Servant, who died in harness. The cases of Near Relatives such as brothers/sisters etc., of the deceased Government Servants should be excluded.

Also that in the aforesaid G.O.Ms.No.560, Labour and Employment, 3.08.1977, as stated supra, Sl.No.(4) enjoins as under:

“(4) The appointing authorities are responsible for satisfying themselves about the indigent circumstances of the family of the deceased Government Servant before appointment is offered. They need not insist on the production of any certificate from the applicant.”

17.The Learned Special Government Pleader for the Applicants seeks in aid of the Letter bearing No.39924/Q1/95-1 dated 11.10.1995 of Labour and Employment Department (issued by the Government of Tamil Nadu) wherein it is among other things mentioned as follows:

“...2. In this connection, the District Collector, Tirunelveli Kattabomman District has sought for clarifications whether the time limit of three years period specified in the

Government Order are applicable to the dependents of the Government Servants who died / to the date of issue of the / prior Government order. In this connection, it is clarified that the time limit of three years period specified in the Government Order 1st cited is applicable only to the dependents of the Government Servants those who died while in service on or after 26.06.1995 and above orders are not applicable to the past cases. Further the Government clarified, that the age limit of 50 years of appointment under the Scheme in the case of Windows as ordered in the side, Government Order is also applicable only to the Windows of the Government Servants those who died on or after 26.06.1995..."

18. That apart, on behalf of the Applicants, the Learned Special Government Pleader adverts to the Letter (Ms.) No.202 dated 08.10.2007 of Labour and Employment Department issued by the Secretary to Government of Tamilnadu wherein at Paragraph No.5, it is among other things stated as follows:

"5..... The crux of the matter is that the time limit shall be 3 years for filing of applications from the date of death Government Servant and is applicable to all cases, including where the Government Servant has died in service even prior to 26.06.1995 also."

19. Advancing his arguments, the Learned Special Government Pleader for the Applicants places heavy reliance on the Letter (Ms) No.34 dated 16.04.2002 Labour and Employment (Q1) Department of Government of Tamilnadu wherein at Paragraph No.2, it is observed as follows:

“2. It has now been brought to the notice of the Government for clarification by various department as to whether children of the deceased Government Servants born through unlawful second marriage / wife are eligible for compassionate ground appointment. The matter has been examined in detail. It is considered that children born out of void marriages are entitled for the benefit in respect of the property of the deceased Government Servants ie., family pension and death com retirement gratuity and that compassionate appointment cannot be equated to the states of the property of the deceased. As such, the word 'Son or Unmarried daughter' as used in the scheme of compassionate appointment has to be construed only to mean son or daughter born through lawful wedlock.”

20. The Learned Special Government Pleader for the Applicants also points out the contents of G.O.Ms.No.2899, Labour and Employment Department dated 23.12.2008 whereby it is clarified that the 'Legally adopted son / unmarried adopted daughter of the deceased

Government servant is eligible for compassionate appointment only if the adoption was made and registered by the deceased Government servant'.

21. The Learned Special Government Pleader for the Applicants refers to G.O.Ms.No.155 Labour and Employment Department dated 16.07.1993 issued by the Government of Tamil Nadu wherein at Paragraph No.2, interalia it is observed as under:

"2..... It is therefore necessary to ascertain whether family is having immovable property like houses, lands etc., income from which is substantial to sustain the family without extra help. The Government therefore direct that the criteria indigent circumstances is that the family should not own any or landed properties or if owned, the income from which is sufficient to sustain the family, a certificate from the Tahsildar this effect will have to be produced."

22. Also, in the aforesaid G.O.Ms.No. 155, Labour and Employment Department dated 16.07.1993 at Paragraph Nos.3 to 6 it is observed as under:

"3. In regard to the second condition mentioned in para... above, it is considered that if a member of the family is already in employment and supports the family then the

restriction may be applied. When a dependent of the family is employed, the factors to be ascertained are, whether he is regularly employed and he is actually supporting family etc.,

4. However, the restriction that only one of the dependants will be entitled for appointment on compassionate grounds will continue.

5. Only the dependants of the deceased Government servant viz., wife / husband / son / unmarried daughter will be eligible for appointment. If the widow is not educationally qualified / eligible for appointment, she could be given a job like sweeper. The Government also direct that a married daughter who is deserted by her husband and living with widowed or divorced daughter living with the family may be considered, if the widow of the deceased Government servant gives her consent in writing.

6. Age restrictions of 30 in the case of sons / unmarried daughters or 40 in the case of widow / widower will continue.

23. The Learned Special Government Pleader for the Applicants refers to G.O.Ms.No.120 Labour and Employment Department dated 26.06.1995 wherein at Paragraph Nos.2(1) and (2), it is mentioned that the Application for Appointment on 'Compassionate Ground' should be made within three years from the date of death of Government servant.

Also that the maximum age limit for such appointment was raised to 50 in the case of deceased Government Servants.

Discussions

24. In this connection, it is not out of place for this Court to pertinently point out that the Respondent / Petitioner in W.P.No.23475 of 2011 at Paragraph No.2 of his affidavit had clearly averred that his Father (Late Thiru.Ramasamy) had worked as Grade I Police Constable 783 at Nilgiris District and while in service, he expired on 15.06.1994. Further, his father (late) had married Tmt.Pappammal, who expired on 17.06.1983. It is the categorical averment of the Respondent / Petitioner in Paragraph No.2 of his affidavit in W.P.No.23475 of 2011 to the effect that after the death of his father's first wife, on 12.11.1983, his father, married his mother, Tmt.Vijayakumari and hence the marriage of his mother is valid, as per Hindu Marriage Act, 1955.

25. It comes to light that on 16.10.2002, the Tahsildar, Namakkal had issued a certificate to the effect that the Respondent / Petitioner's family is in 'Indigent Circumstances' and that there is no income from any property. Furthermore, the Respondent / Petitioner's mother on

04.10.2003 had applied for 'Appointment on Compassionate Ground' before the 2nd Respondent therein / Superintendent of Police, Nilgiris District and on 29.10.2003, 29.01.2004 and 06.04.2004, the said authority had entertained the request of his mother for 'Compassionate Appointment' and his application dated 20.11.2003. As a matter of fact, the Respondent / Petitioner had produced certain certificates, which were called for by the Superintendent of Police, Nilgiris District.

26. Indeed, the Superintendent of Police, Nilgiris District (2nd Review Applicant/ 2nd Respondent in Writ Petition) issued a Memorandum on 19.08.2005 stating that his Application for 'Appointment on Compassionate Ground' was under consideration by the 1st Review Applicant / Director General of Police, Chennai and his name was kept in the waiting list for appointment. Also that the Superintendent of Police, Nilgiris District had issued another memorandum on 29.01.2009 to the effect that his application for 'Appointment on Compassionate Ground' was pending before the 1st Review Applicant / Director General of Police, Chennai.

27. The 2nd Review Applicant / Superintendent of Police, Nilgiris District on 18.03.2009, through Memo bearing C.No.A2/26792/2008, had issued an order to the effect that in terms of Government Letter (Ms) No.34 dated 16.04.2002, 'Children born out of void marriage are not entitled for Compassionate Ground Appointment' and since he is born through second wife, his request for 'Compassionate Ground Appointment' cannot be conceded'. The grievance of the Respondent / Petitioner in the Writ Petition was that on 19.05.2009, the Superintendent of Police, Nilgiris District, Udhagamandalam, 2nd Review Applicant had again passed a similar order that the marriage of his mother is a void marriage and he cannot be given 'Compassionate Ground Appointment', which is also assailed in the Writ Petition.

28. The Respondent / Petitioner again submitted a representation before the Superintendent of Police, Nilgiris District to consider his case for 'Compassionate Appointment' and on 21.02.2011, the 2nd Review Applicant / 2nd Respondent in Writ Petition had issued a Memorandum stating that as per Government Instructions, the 'Compassionate Appointment' cannot be given, as the family cannot be considered to be in indigent circumstances. The Respondent / Petitioner in the Writ

Petition took a plea that on earlier occasion, the ground of rejection was that he is the son of second wife and therefore, the Review Applicants' cannot take a different stand after two years.

29. The Learned Special Government Pleader for the Applicants brings it to the notice of this Court that one Chinnu, brother of deceased, Ramasamy (father of the Respondent / Petitioner) had submitted an undated Application before the Sub-Inspector of Police, Namakkal wherein he had averred that his family does not know as to which Village / Place, Pappammal belongs to and only when all his family members had scolded Ramasamy, he married, his sister's daughter Vijayakumari (Chinnu's sister daughter) in a proper manner and out of the said wedlock, there were three children and that the said Pappammal has no issues etc.,

30. The Respondent / Petitioner had filed an Appeal on 04.07.2011 before the 1st Review Applicant against the rejection order of the 2nd Review Applicant / Superintendent of Police / Nilgiris District, Udhagamandalam and the 1st Review Applicant passed an impugned order on 04.08.2011 by placing reliance on G.O.Ms.No.120, Labour and

Employment Department dated 26.02.2005 to reject the Respondent / Petitioner's case. The prime plea taken on behalf of the Respondent / Writ Petitioner is that the family is in indigent circumstances without proper food and shelter and his family requires his assistance.

31. The Learned Single Judge, after contest, passed an order on 26.02.2013 in W.P.No.23475 of 2011 by making the following observations at Paragraph No.5 and in the said back drop of the matter, ultimately while setting aside the orders of the Respondents 1 and 2 (Review Applicants') allowed the Writ Petition by directing the Respondents therein (Review Applicants') to consider the claim of the Respondent / Petitioner to provide employment consequent to the death of his father, Ramasamy, who worked as Grade-I Police Constable in Namakkal District and the said exercise in this regard was directed to be carried out within a period of six weeks from the date of receipt of a copy of the Order.

"5. The petitioner seems to be prosecuting the matter from the beginning and the petitioner's mother was made to understand that her application for appointment on compassionate ground was pending with the Director General of Police. Therefore, the respondents cannot now

harbour that the petitioner has approached the authorities seeking appointment on compassionate ground very belatedly. The petitioner in fact seems to have produced the certificate from the Tahsildar, Namakkal District dated 16.10.2002 wherein he has stated that the family of the petitioner is in indigent circumstances.”

32.The Review Applicants / Respondents filed W.A.No.449 of 2016 before this Court, as Appellants and this Court on 07.04.2016 dismissed the Writ Appeal on merits by coming to the conclusion that the Impugned Order of the Learned Single Judge dated 26.02.2013 in W.P.No.23475 of 2011 does not suffer from any material irregularities or patent illegalities in the eye of Law. Moreover, this Court in W.A.No.449 of 2016 while dismissing the Appeal on 07.04.2016 at Paragraph No.7 had observed the following:

“7.The emphatic stand of the Appellants is that children born out of void marriages are entitled for family pension and DCRG and not for compassionate ground appointment. Moreover, the deceased Government Servant viz., Ramasamy had not obtained prior permission for his second marriage and as such, the said marriage was void. Therefore, the Appellants take a plea that the application for compassionate ground appointment sought for by the Respondent/Petitioner was not considered by the First

Appellant/Director General of Police, Tamil Nadu, Chennai and in this regard, he was informed as per memo Rc.No.116456/CA2/2008 dated 09.02.2009.”

Also at Paragraph Nos.10 and 11 of said the Judgment, this Court has made the following observations:

“10.As far as the present case is concerned, one cannot brush aside a primordial fact that the Respondent/Petitioner's deceased father (Ramasamy) married the Respondent/Petitioner's mother only after the death of his first wife. In reality, his deceased father married his mother Vijayakumari on 12.11.1983. In this connection, it is to be remembered that the first wife died on 17.06.1983. Viewed in that perspective, the contra plea taken on behalf of the Appellants is not accepted by this Court. Indeed, the Respondent/Petitioner had produced the certificate from the Tahsildar, Namakkal District dated 16.10.2002, wherein, it was mentioned that the Respondent/Petitioner's family is in indigent circumstances. Apart from that, the Respondent/Petitioner was keeping track of the subject matter in issue from the beginning and also his mother was given to understand that her application for appointment on compassionate ground was pending before the First Appellant/Director General of Police, Tamil Nadu, Chennai.

11.Coming to the plea taken on behalf of the Appellants that the Respondent/Petitioner's deceased

father's second marriage with his mother viz., Vijayakumari is a void one, this Court pertinently points out that by no stretch of imagination, the second marriage of the Respondent/Petitioner's deceased father with his mother cannot be considered to be a void one because of the reason that only after the demise of the first wife, the Respondent's deceased father (Ramasamy) had married his mother. For such a marriage, no prior permission is required to be obtained under any rule or from any authorities.

33. It is relevantly pointed out that Section 5 of the Hindu Marriage Act, 1955 speaks of 'Conditions for a Hindu Marriage'. A marriage may be solemnized between any two Hindus, if the following requisites are satisfied:

- (i) Neither party has a spouse living at the time of marriage;
- (ii) to (v)....”

34. As a matter of fact, it is unfortunate that for a child, the putative marriage of whose parents is null and void or cancelled by a Court of Law on some ground, which is to be mentioned in Sections 11 and 12 of the Hindu Marriage Act, 1955. A reading of Section 16(1) and (2) of the Hindu Marriage Act, unerringly points out that even in a case

of marriage void or voidable under the Act, the children of any such marriage do have the status of 'Legitimate Children'. Their legitimacy is for all purpose including the issue pertaining to 'Succession'.

35. Dealing with the aspect of 'Second Marriage', it is to be noted that the Second Marriage, during the subsistence of first one is void and therefore, the 'Wife' of the Second Marriage cannot lay claim to succeed to the properties of the deceased-husband. In this regard, it is to be remembered that the children born out of such void marriage would however be entitled to inheritance.

36. At this stage, this Court significantly points out the decision of **Hon'ble Supreme Court in Rameshwari Devi V. State of Bihar and Others reported in AIR 2006 SC 735** wherein it is held that the 'Children of Void Marriage are Legitimate One'.

37. It is to be borne in mind that a person cannot approbate and reprobate as per decision of **Hon'ble Supreme Court between Nagubai Ammal V. V.Shama Rao reported in AIR 1956 SC Page 593**. Further in India, a party cannot be allowed to turn the pleadings

round so as to spell out a different case, as per decision of **Hon'ble Supreme Court in Jhandu V. Tariff reported in AIR 1914 P.C. at Page 34.** Also it is well settled that during the course of litigation, a person is not allowed to assume an inconsistent and contradictory position and this is termed as 'Judicial Estoppel'.

'Legal Position of Review'

38. In so far as 'Review' is concerned, a Court of Law cannot enter into a process of taking evidence to establish something which is not on record with a view to create records for the purpose. In fact, 'Review' is permissible only if an error, which is self evident in nature. The term 'Mistake or Error Apparent' by its very character signifies, an error which is perse from the record and does not require a detailed examination, scrutiny and elucidation either of the facts or the Legal provision. If an error is not self evident and to find out the said error, if it requires a lengthy debate or long drawn process of reasoning, it cannot be construed as an 'Error Apparent on the Face of Record' for the purpose of Order 47 Rule 1 of CPC.

39. One cannot ignore a very vital fact that 'Rehearing and Correction' of an erroneous decision is not permissible. Moreover, 'Review' would not be entertained to substantiate the view already taken for arriving at a fresh conclusion in the case. Strictly speaking, 'Review' does not order to a Court of Law to reconsider its decision on merits. Continuing further, a person cannot develop his case, which was not originally pleaded in Writ Petition or in Writ Appeal. In regard to the application of Facts, if there are errors, on that count, the finding of a Court of Law cannot be reversed by means of a 'Review'.

40. It is to be noted that question(s) not raised before the Learned Single Judge or before the trial Court or before the Appellate Court is certainly not permissible in 'Review Jurisdiction'. In a Review Application, raising entirely new issues / points are not proper. Even if an erroneous decision is arrived at on the merits of the matter in a given case, 'No Review Lies', as opined by this Court.

41. It may not be out of place for this Court to relevantly point out that the 2nd Review Applicant in his Counter in W.P.No.23475 of 2011 at Paragraph No.7 in categorical terms had averred that the Respondent /

Petitioner's father Ramasamy married one Pappammal and she died on 17.06.1983 and after the death of his first wife, his father remarried Vijayakumari (his mother) on 12.11.1983. Also in the Counter to the Writ Petition, the 2nd Review Applicant had also taken a plea that the Respondent / Petitioner's father had not obtained permission from the Police Department and no intimation was given to the Office of the Superintendent of Police, Nilgiris District, Ootacamund as regards the second marriage and therefore, the second marriage of the Respondent / Petitioner's father was considered to be void. Further, the Counter Affidavit to the Writ Petition was sworn by the 2nd Review Applicant / Superintendent of Police, Nilgiris District, Ootacamund on 13.08.2012. However, on behalf of the Review Applicants', a contention is raised before this Court in the Review Application that the Respondent / Petitioner's mother, Vijayakumari had addressed a letter dated 06.02.1995 to the Sub-Inspector, Namakkal Police Station inter alia to the effect that she got married to her maternal uncle late Ramasamy P.C.No.783 in the year 1980 at Mudalaipatti, as per customs and thereafter, they resided at the quarters annexed to Masinakudi Police Station and they lived there for a month and during the time her husband's first wife, Pappammal was also living together with them etc.,

42. In this regard, this Court aptly points out that the plea regarding the Letter / Statement of the Respondent / Petitioner's mother dated 06.02.1995 addressed to the Sub-Inspector of Police Station, Namakkal was not taken either before the Writ Court in W.P.No.23475 of 2011 or before the Division Bench of this Court in Writ Appeal No.449 of 2016. For the first time in Review Application, the Applicants' make an endeavour to fall back upon the alleged letter / statement of the Respondent / Petitioner's mother, Vijayakumari dated 06.02.1995. It is reiterated that in Law, the ground / plea not taken earlier in a original proceedings or before the Appellate Court, as a new plea, cannot be entertained by a Court of Law in Review of Judgment / Order, in the considered opinion of this Court. In fact, a Review Application / Petition is not to be entertained by a Court of Law to substitute a view already taken for fresh decision in a given case.

43. In regard to the Application of Chinnu, brother of deceased, Ramasamy allegedly submitted before the Sub-Inspector of Police, Namakkal, it is to be pointed out that this undated Petition / Application was not projected before the Division Bench of this Court at the time of

hearing of W.A.No.449 of 2016 on behalf of the Review Applicants' / Appellants' / Respondents' side. Only in the present Review Application, the alleged Petition of Chinnu has made mention of at Page No.6 of the typed set dated 01.06.2016, filed on the side of the Review Applicants'.

Character of Writ Proceedings

44. Besides the above, it cannot be brushed aside that the Proceedings of the Writ Petition are undoubtedly summary. The disputed questions of fact / issues cannot be determined in Writ Jurisdiction, as per decision of the **Hon'ble Supreme Court Sumedha Nagpal V. State of Delhi reported in (2000) 9SCC at page 745**. The Area of Article 226 of the Constitution of India is undoubtedly a discretionary one. The plenary power under Article 226 of the Constitution of India is not shackled by any 'Legal Restraint'.

45. It transpires that the 2nd Review Applicant's office, on 19.05.2009 had informed the Respondent / Petitioner that his request for 'Compassionate Ground Appointment' cannot be considered based

on Government Letter (Ms) No.34 dated 16.4.2002 because of the reason that his father's second marriage was considered to be void.

46. The Respondent / Petitioner's mother gave a Petition on 04.10.2003 once again claiming 'Compassionate Ground Appointment' to her son (the Respondent / Petitioner) belatedly after nine years from the date of death of Government Servant and in this regard, the plea of the Review Applicants' is that as per G.O.Ms.No.202 dated 08.10.2007, Labour and Employment Department of Government of Tamilnadu, the time limit for preferring an Application seeking 'Compassionate Ground Appointment' is only three years from the date of death of Government Servant and the same is applicable in all cases including where the Government servant had died even before 26.06.1995 also. The said fact was intimated by the 2nd Review Applicant's office vide its letter dated 17.02.2011 to the Respondent / Petitioner.

47. It cannot be denied that the Respondent / Petitioner was keeping track of the subject matter in issue from the beginning and his mother, Vijayakumari was made to understand that her application for appointment of her son on compassionate ground was pending before

the 1st Review Applicant / Director General of Police, Office of Tamilnadu Chennai.

48. It is to be pointed out by this Court that when the Respondent / Petitioner in Writ Petition had come out with a plea that his deceased father, Ramasamy, married his mother, Vijayakumari on 12.11.1983 after the death of his father's first wife, Pappammal on 17.06.1983, which was not either controverted or repudiated in the counter affidavit dated 13.08.2012 filed by the 2nd Review Applicant / Superintendent of Police, Nilgiris District. Therefore, it was held by this Court in the Judgment in W.A.No.449 of 2016 dated 07.04.2016 that the second marriage of the Respondent / Petitioner's deceased father, Ramasamy with his mother, Vijayakumari is not a void one in Law, because of the reason that the Respondent / Petitioner's mother, Vijayakumari was married by his father only after the demise of his first wife, Pappammal. Really speaking, for such a Second marriage, no prior permission is required to be accorded / obtained under any Rule or from any Authorities, as opined by this Court.

49. Also that the Learned Single Judge in W.P.No.23475 of 2011 while passing the Impugned Order on 26.02.2013 at Paragraph No.4 had mentioned that in W.P.No.17905 of 2007 by means of an order dated 20.08.2009 he had held that the children of the second wife are also entitled for appointment on compassionate ground and further, this was followed in the decision reported in **2010(7) MLJ at Page 644 (M.Uma V. Chief Engineer (Personnel) T.N.E.B.)** and in fact, the Orders passed thereon was complied with and an appointment on compassionate ground was given to the Petitioner therein.

50. It is to be pointed out that although the Hon'ble Division Bench sitting in Appellate Jurisdiction had passed the Impugned Judgment in W.A.No.449 of 2016 on 07.04.2016 affirming the Impugned Order passed by the Learned Single Judge in W.P.No.23475 of 2011 dated 26.02.2013, to fill up any lacunae or gaps in a given case, ordinarily, the litigant / party is not permitted to produce fresh material / evidence. The power of an Appellate Court / Authority to receive or take judicial notice of new documents or available earlier documents, which were not admittedly filed or produced either before the Learned Single Judge or before the Appellate Court at the time of passing the Impugned Order or

Judgment is to be used sparingly, of course, with great caution and circumspection. Further, for non production of the purported statement of Respondent / Petitioner's mother, Vijayakumari dated 06.02.1995- before the Sub Inspector of Police, Namakkal Police Station and the undated application of the Respondent / Petitioner's father's brother, Chinnu, genuine and reasonable reasons should be advanced on behalf of the Applicants' either before the Learned Single Judge or before the First Appellate Court prior to the decisions being arrived at or before passing of an Order/Judgment. The Review Applicants' / Appellants' have heavy onus to satisfy the subjective conscience of this Court that despite due diligence, on their part the aforesaid statement of Vijayakumari and the undated application of Chinnu, Respondent's father's brother would not be either produced before the Learned Single Judge at the time of Passing the Order in the Writ petition or before the Hon'ble Division Bench at the time of passing the Judgment in the Writ Appeal.

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51. It cannot be said that the Review Applicants', in the instance case, was not provided with an ample opportunity to produce the aforesaid statement of Vijayakumari dated 06.02.1995 and the undated

Application of the Respondent/ Petitioner's father's brother, Chinnu. In fact, a Court of Law will not permit a party or litigant to produce additional documents, as evidence in Review Application to fill up Omissions / Lacunae in a given case.

52. Suffice it for this Court to point out that the additional materials, as aforesaid cannot be taken note of to fill up omission or patch up weak points of the Applicants' case. Moreover, a mere assertion in a Petition / Application or otherwise is not enough on the side of Applicants' to establish that despite due diligence, additional evidence would not be filed either before the Learned Single Judge at the time of passing the Orders in the W.P.No.23475 of 2011 dated 26.02.2013 and at the time of passing the Impugned Judgment in W.A.No.449 of 2016 dated 07.04.2016.

53. That apart, the statement dated 06.02.1995 of Vijayakumari (Respondent / Petitioner's Mother) and the undated Application of Respondent/Petitioner's father's brother, Chinnu, which were said to be earlier one, these materials / documents coming to the surface after passing of the Order in W.P.No.23475 of 2011 dated 26.02.2013 and

Judgment in W.A.No.449 of 2016 dated 07.04.2016 could not be taken into consideration.

54. It is to be significantly pointed out that the purported statement of Respondent's mother before the Sub Inspector of Police, Namakkal Police Station and the undated Application of Chinnu, Respondent / Petitioner's father's brother, being new documents not filed either before the Learned Single Judge or before the Hon'ble Division Bench at the time of passing Judgment in W.A.No.449 of 2016 would not be accepted, when no tangible / sufficient / acceptable reasons are shown for not filing at the earliest point of time.

55. It should be remembered that mere discoveries of new materials or old documents subsequent to the Order passed in the Writ Petition and in a Writ Appeal cannot be a decisive factor to prefer a Review Application before the Court of Law, which passes the Judgment / Order in question. In the present case, it appears that the Applicants' were not quite diligent enough to produce the statement of Vijayakumari (the Respondent's mother) dated 06.02.1995 and the application of Respondent /Petitioner's father's brother, Chinnu. A

litigant, while being negligent in not producing the aforesaid materials despite knowledge at a given point of time, the same cannot be looked into by this Court or to be taken into account by a Court of Law.

56. In the light of foregoing discussions and on an overall assessment of the entire conspectus of the attendant facts and circumstances of the present case in an encircling manner and also this Court bearing in mind yet another fact that from the side of first wife there is no rival claim in regard to the compassionate appointment, (she died being issueless) and in view of the well settled legal position that the purported new issues / alleged new facts, viz., (a) the statement of Respondent's / Petitioner's mother, Vijayakumari dated 06.02.1995 before the Sub-Inspector of Namakkal Police Station and (b) the undated Petition / Application of Chinnu (his father's brother) addressed to the Sub Inspector of Namakkal Police Station, this Court comes to an irresistible conclusion that these issues were not raised before the Learned Single Judge at the time of disposal of the main Writ Petition in W.P.No.23475 of 2011 nor before the Appellate Court at the time of hearing or at the time of passing the Judgment in Writ Appeal No.449 of 2016 and viewed in that perspective, these new facts / issues cannot be

allowed to be raised before this Court. Furthermore, these purported new facts / issues are not self evident errors, which could be deciphered and the same require a long drawn reasoning. Even on that score, the present Review Application filed by the Review Applicants' is per se not maintainable, as opined by this Court. Moreover, 'Rehearing' and correction of the decision arrived at in the Judgment dated 07.04.2016 passed in W.A.No.449 of 2016 is impermissible in Law. In reality, the point(s), which could have been raised at the earlier proceedings, but somehow that were not raised or canvassed before the competent forum, then also, a Court of Law cannot entertain a Review Application / Petition in Law. In short, the Review Applicants' cannot heighten or improve their case, which was not there either in the Original Writ Petition or in the Writ Appeal by placing heavy reliance on the alleged statement of the Respondent / Petitioner's mother dated 06.02.1995 before the Sub Inspector of Police, Namakkal Police Station and the Application / Petition of the Respondent / Petitioner's father's brother, one Chinnu, son of Arumugam, Unjanai of Thiruchengode circle etc., Also the well settled legal proposition to be borne in mind is that 'Review' erases the Original Judgment or Order passed by a competent Court of Law from the inception.

57. In the instant case, based on the facts and circumstances of the present case and on an overall assessment of the same in a real and proper perspective, a proper course of action available / open to the Applicants' in Law, is to prefer a Special Leave Petition before the Hon'ble Supreme Court of India as against the Impugned Judgment in Writ Appeal No.449 of 2016 dated 07.04.2016 as against the Order in W.P.No. 23475 of 2011 dated 26.02.2013 passed by the Learned Single Judge. Looking at from any angle, the present Review Application filed by the Review Applicants' sans merits.

In fine, the Review Application is dismissed. There shall be no order as to costs.

M.V.J., & P.D.A.J.,

सत्यमेव जयते [20.09.2017]

Speaking / non speaking order

Index: Yes /No

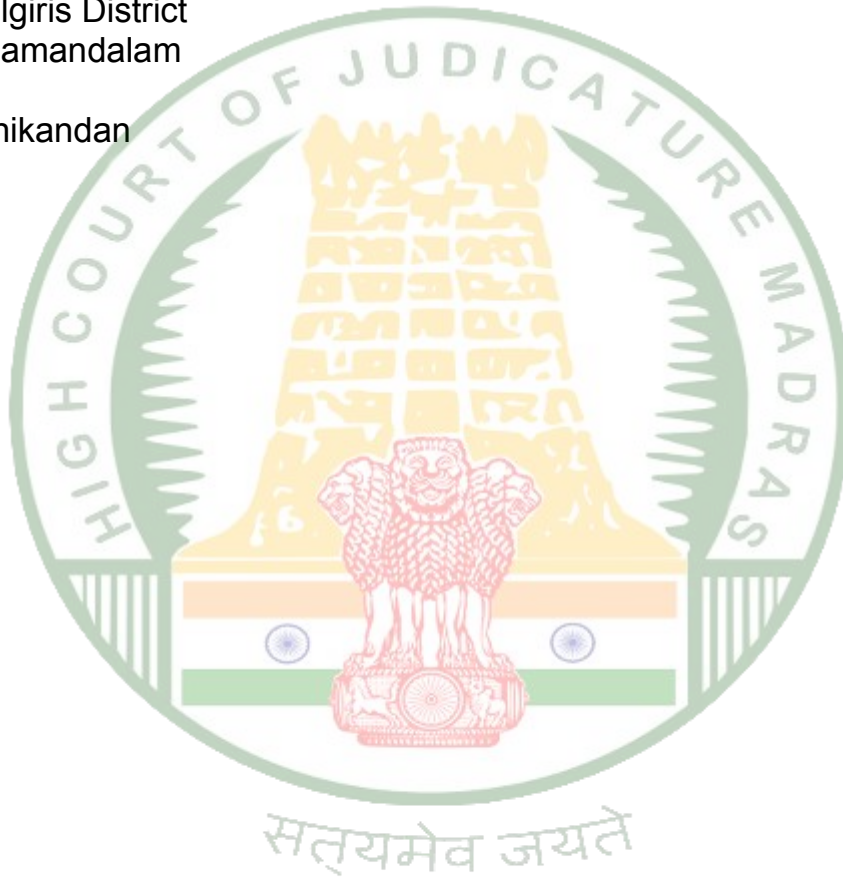
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ssd

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To

1. The Director General of Police
Tamil Nadu, Chennai – 04
2. The Superintendent of Police
The Nilgiris District
Udhagamandalam
3. R.Manikandan



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M.VENUGOPAL, J.
and
P.D.AUDIKESAVALU, J.

ssd



Pre-delivery Order in
Review Application No.73 of 2016

20.09.2017

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