

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 14.11.2017

Delivered on : 27.11.2017

CORAM:

THE HONOURABLE **MR.JUSTICE K.K.SASIDHARAN**

and

THE HONOURABLE **MR.JUSTICE M.V.MURALIDARAN**

Review Application No.78 of 2016 in
W.P.No.29802 of 2013

S.Mallikha

...Petitioner

Vs.

1.The Government of India,
Rep. by its Secretary to Government,
Ministry of Home Affairs,
North Block, New Delhi.

2.The State of Tamil Nadu,
Rep. by its Secretary to Government,
Home Department, Fort St.George,
Chennai.

3.Union Public Service Commission,
Rep. by its Chairman,
Dolpur House, Shahjahan Road,
New Delhi.

4.Lalitha Lakshmi

5.V.Jayashree

6.B.Vijayakumari

7.M.V.Jeyagowri

8.N.Kamini

9.Registrar

Central Administrative Tribunal,
Madras Bench, Chennai -104.

... Respondents

Review Application filed under Order 47 Rule 1 read with Section 114 of C.P.C., to review the order dated 02.03.2016 in W.P.No.29802 of 2013.

For Petitioner : Mr.Anand Venkatesh for
M/s.P.Anbarasan and M.Bhairavi

For R1 : Mr.C.V.Ramachandramurthy for R1
For R3 : Mr.V.Chandrasekaran
For R2,R4 to R8 : No appearance

ORDER

K.K.SASIDHARAN,J.

The Division Bench dismissed the writ petition filed by the petitioner on the ground that the Circular Memorandum dated 8 October, 1994 prescribing the method of Maintenance of Personal Files and initiation of Confidential Report was superseded by the Circular Memo dated 11 January, 2000, notwithstanding the fact that the subsequent Circular Memo was not in super session and it was only a revised format issued for writing the confidential report. The unsuccessful writ petitioner has come up with this review petition on the ground that there is an error apparent on the face of the record.

2. We have heard the learned counsel for the review petitioner.

We have also heard the learned counsel for the respondents 1 and 3.

3. The petitioner was appointed directly as Deputy Superintendent of Police, pursuant to the selection made by the Tamil Nadu Public Service Commission. The petitioner joined duty on 26 May, 1997 and served in different capacities. She was promoted as Superintendent of Police on 7 September, 2006. There were 10 vacancies in the Indian Police Service (IPS) under the State cadre. Though the petitioner was fully eligible for consideration to I.P.S., she was denied appointment on the ground that there was an adverse entry against her during the relevant period from 01.04.2004 to 20.01.2005. Though the Reporting Officer and the Scrutinizing Officer recorded that the overall rating was "Average", it was reviewed by the Inspector General of Police, Northern Zone, who was the Accepting Authority. The said authority disagreed with the remarks made by the Reporting Officer and the Scrutinizing Officer and the overall rating of the petitioner was mentioned as "Very Good". While considering the candidature of the eligible officers for recommendation to the Central Government for conferment of I.P.S., the name of the petitioner was omitted by the Government on the ground that the Inspector General of Police has no authority to review the Confidential Report and upgrading the overall rating as "Very Good". The officers, junior to the petitioner were all conferred with I.P.S. The claim of the petitioner was

negated only on the ground of overall rating recorded by the Reporting Officer, which was accepted by the Scrutinizing Officer.

4. The petitioner filed original application before the Central Administrative Tribunal in O.A.No.664 of 2010 challenging the proceedings dated 5 May, 2009 on the file of the Ministry of Home Affairs, Government of India, insofar as it relates to the appointment of respondents 4 to 8 in the said application to the Indian Police Service.

5. The Central Administrative Tribunal dismissed the Original Application primarily on the ground that there is no provision for review of the rating given by the Reporting Officer, which was scrutinized by the Scrutinizing Officer. The Tribunal observed that the petitioner submitted her representation for expunging the adverse remarks beyond the time limit and as such, the State Government was correct in rejecting her candidature.

6. The order passed by the Central Administrative Tribunal was challenged by the petitioner in W.P.No.29802 of 2013. The Division Bench was of the view that the Circular dated 11 January, 2000 would alone govern the situation and not the Circular dated 8 October, 1994.

The Division Bench observed that though the Circular dated 8 October, 1994 provides for three level assessment, the same would have no force in view of the Circular issued by the Director General of Police, Chennai, dated 11 January, 2000, as the period of scrutiny comes under the said Circular. The Division Bench held that the Circular dated 11 January, 2000 issued by the Director General of Police overrides the Circular issued earlier by the Director General of Police dated 8 October, 1994. The writ petition was accordingly dismissed.

7. The petitioner by placing reliance on the Circular dated 8 October, 1994 contended that the subsequent Circular dated 11 January, 2000 was not in super session of the earlier Circular, which contains a provision for a review by the Accepting Authority. It is the case of the petitioner that the Circular dated 11 January, 2000 was issued by the Director General of Police only for introducing a Revised Format. The said Circular has nothing to do with the earlier Circular. There is not even a mention about the earlier Circular dated 8 October, 1994 in the subsequent Circular dated 11 January, 2000. The Division Bench therefore committed an error, which is apparent on the face of the record by observing that the Circular dated 11 January, 2000 would supersede the earlier Circular dated 8 October, 1994.

8. The Director General of Police issued a Circular Memorandum dated 8 October, 1994 for Maintenance of Personal Files and initiation of Confidential Reports. The Circular contained a detailed procedure with regard to recording remarks by the Reporting Authority, review by the Scrutinizing Authority and the views of the Accepting authority. The petitioner was working as Additional Superintendent of Police. As per the Circular dated, 8 October 1994, the Reporting Authority in respect of Additional Superintendent of Police is the Superintendent of Police. The Deputy Inspector General of Police is the Reviewing Authority. The Accepting Authority is the concerned Inspector General of Police. Therefore, it is clear that it is a three tier procedure. The information recorded by the Reporting Authority would be reviewed by the Reviewing Authority. Thereafter, it would be considered by the Accepting Authority. It is therefore very clear that the Accepting Authority has got a definite role to play in the matter.

9. The Confidential Report of the petitioner was recorded by the the Superintendent of Police, Tiruvannamalai District, in his capacity as the Reporting Officer on 4 April, 2005. The Deputy Inspector General of Police, Vellore Range, in her capacity as Scrutinising Officer agreed with the views expressed by the Reporting Officer. The Confidential

Report was forwarded to the Inspector General of Police, who is the Accepting Authority. The Inspector General of Police very clearly recorded his opinion and the ultimate rating as "Very Good". The report was for the period from 01.04.2004 to 20.01.2005.

10. The Confidential Report of the petitioner for the period from 01.04.2004 to 20.01.2005 was considered by the State Government before it was sent to the Central Government. The State Government recorded its views that the Inspector General of Police has no authority to offer remarks, in view of the Circular dated 11 January, 2000.

11. The core question that arises for consideration is as to whether the subsequent Circular dated 11 January, 2000 would supersede the earlier Circular dated 8 October, 1994.

12. The Director General of Police revised the format with respect to the Confidential Report on Group A and B Officers by issuing the Circular dated 11 January, 2000. The comprehensive Circular issued earlier by the Director General of Police dated 8 October, 1994 was not superseded by the Circular Memo dated 11 January, 2000. The Circular Memorandum dated 8 October, 1994 contained the manner and

method by which the Confidential Report should be prepared and signed by the concerned officers. However, that is not the case of the Circular Memo dated 11 January, 2000. It was issued only for revising the format. There is no express mention in the Circular dated 11 January 2000 that it was issued in super session of the Circular dated 8 October, 1994. The Circular itself starts with a statement that the revised format for writing confidential Report is enclosed herewith for initiating Confidential Report in the rank of and above Deputy Superintendent of Police, including Superintendent of Police (Non IPS) with immediate effect.

13. There is no procedure indicated in the Circular dated 11 January, 2000 as to how Confidential Report should be prepared. The Circular dated 11 January, 2000 has therefore to be read along with the Circular dated 8 October, 1994.

14. The case of the petitioner was rejected only on the ground that the Inspector General of Police has no authority to review the Confidential Report and express his opinion. The Circular dated 11 January, 2000 was the basis for forming such an opinion by the Government. The very Circular was also the reason for rejecting the

Original Application by the Tribunal as well as the writ petition by this Court.

15. The documents available on record indicates that rejection of the candidature of the petitioner for I.P.S. was only on the ground that her Confidential Report for the period from 01.04.2004 to 20.01.2005 was not good as she was given only "Average". While arriving at such a conclusion, the over all rating given by the Accepting Authority was ignored by the Government. But for the overall rating recorded by the Reporting Authority and the Scrutinizing Authority, the case of the petitioner would have been considered by the Central Government. This Court also committed an error while placing reliance on the Circular dated 11 January, 2000 and ignoring the earlier Circular dated 8 October, 1994.

16. Order 47 of CPC permits the aggrieved to file a review application on account of discovery of new and important matter or evidence which was not within his knowledge, in spite of due diligence. It also provides for review on account of some mistake or error apparent on the face of the record. The third ground permits the aggrieved to file a review '**for any other sufficient reason**' .

17. There is no definition for the term "for any other sufficient reason". The Court has to consider the grounds raised by the applicant to decide as to whether those reasons would constitute "sufficient reason" for the purpose of exercising the review jurisdiction.

18. The Supreme Court in ***Lily Thomas v. Union of India*** [2000(6) SCC 224] observed that law has to bend before justice. The Supreme Court said:

"52. The dictionary meaning of the word "review" is "the act of looking, offer something again with a view to correction or improvement". It cannot be denied that the review is the creation of a statute. This Court in *Patel Narshi Thakershi v. Pradyumansinghji Arjunsinghji* held that the power of review is not an inherent power. It must be conferred by law either specifically or by necessary implication. The review is also not an appeal in disguise. It cannot be denied that justice is a virtue which transcends all barriers and the rules or procedures or technicalities of law cannot stand in the way of administration of justice. Law has to bend before justice. If the Court finds that the error pointed out in the review petition was under a mistake and the earlier judgment would not have been passed but for erroneous assumption which in fact did not exist and its perpetration shall result in miscarriage of justice nothing would preclude the Court from rectifying the error."

19. The Supreme Court in **BCCI v. Netaji Cricket Club [(2005) 4 SCC 741]** indicated the scope of review jurisdiction under Order 47 Rule 1 of Code of Civil Procedure. The Supreme Court said:

"89. Order 47, Rule 1 of the Code provides for filing an application for review. Such an application for review would be maintainable not only upon discovery of a new and important piece of evidence or when there exists an error apparent on the face of the record but also if the same is necessitated on account of some mistake or for any other sufficient reason.

90. Thus, a mistake on the part of the court which would include a mistake in the nature of the undertaking may also call for a review of the order. An application for review would also be maintainable if there exists sufficient reason therefore. What would constitute sufficient reason would depend on the facts and circumstances of the case. The words 'sufficient reason' in Order 47, Rule 1 of the Code is wide enough to include a misconception of fact or law by a court or even an Advocate. An application for review may be necessitated by way of invoking the doctrine "actus curiae neminem gravabit".

20. The Supreme Court in **Rajender Singh v. Lt. Governor, Andaman and Nicobar Islands [(2005) 13 SC 289]** observed that

<http://www.judis.nic.in> the review jurisdiction is intended to correct errors to prevent

miscarriage of justice. The review jurisdiction is available, in case, interest of justice so demands in appropriate cases.

21. The term "for any other sufficient reason" is not rigid. In case, the aggrieved party is in a position to point out sufficient reasons warranting review, the Court should not close its gate on mere technicalities.

22. In the subject case, the petitioner by producing materials clearly made out a case for review within the meaning of Order 47 Rule 1 of CPC. We are therefore of the view that the Review Petition deserves to be allowed.

23. We direct the State to accept the Confidential Report signed by the Inspector General of Police for the period from 01.04.2004 to 20.01.2005 and forward the same along with other material papers to the Ministry of Home Affairs, Government of India for consideration of the case of the petitioner afresh for appointment to the I.P.S.

24. We direct the Ministry of Home Affairs, Government of India, to consider the name of the petitioner for appointment to I.P.S. by taking into account the service records for the period from 01.04.2004 to 20.01.2005 including the entry "Very Good" recorded by the Inspector General of Police and the earlier order dated 5 May 2009 appointing Police Officers junior to the petitioner in the Indian Police Service. Such exercise shall be completed within a period of four months from the date of receipt of a copy of this order.

25. In the up shot, we allow the review petition. Consequently, the writ petition filed by the petitioner in W.P.No.29802 of 2013 is also allowed. No costs.

(K.K.SASIDHARAN.,J.) (M.V.MURALIDARAN.,J.)
27 November 2017

Index : Yes/No
svki

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K.K.SASIDHARAN.,J.
and
M.V.MURALIDARAN.,J.
(svki)

To

- 1.The Secretary to Government,
The Government of India,
Ministry of Home Affairs,
North Block, New Delhi.
- 2.The Secretary to Government,
The State of Tamil Nadu,
Home Department, Fort St.George,
Chennai.
- 3.The Chairman,
Union Public Service Commission,
Dolpur House, Shahjahan Road, New Delhi.
- 4.The Registrar
Central Administrative Tribunal,
Madras Bench, Chennai -104.



Order in
Rev.Application No.78 of 2016

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