

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21/03/2017

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THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

Review Application Nos.84, 85, 86 and 87 of 2016 in
W.P.Nos.35584, 35585, 35586 and 35587 of 2015 &
W.M.P.Nos.20233, 20234, 20235 and 20236 of 2016 &
W.M.P.Nos.24187, 24188, 24189 & 24190 of 2016

Dr.P.Suresh Kumar

... Petitioner in all
Review Applications

Vs

1.Dr.S.Stella

... 1st respondent in
Review Application No.84 of 2016

1.Dr.N.Rexin Alphonse

... 1st respondent in
Review Application No.85 of 2016

1.Dr.I.Jayakumar

... 1st respondent in
Review Application No.86 of 2016

1.Dr.A.N.Shanthi Nirmala

... 1st respondent in
Review Application No.87 of 2016

2.Director of Collegiate Education,
Government of Tamil Nadu,
College Road, Chennai-600 006.

3.The Joint Director of Collegiate Education,
Government of Tamil Nadu,
Tirunelveli Region,
Tirunelveli - 627 007.

4.The Secretary,
Sarah Tucker College,
Tirunelveli District.

... Respondents 2 to 4 in
all Review Applications

Prayer:- Review Applications are filed under Order 47 Rule 1 of Code of Civil Procedure r/w Section 114 of C.P.C. against the common order passed by this Court, dated 16.11.2015 in W.P.Nos.35584 to 35587 of 2015.

For Petitioner
in all Review Applications: M/s.Ramalingam and Associates

For 1st respondent in
all Review Applications : Mr.P.Godson Swaminath

COMMON ORDER

The first respondent in the above Review Applications filed Writ Petitions in W.P.No.35584 to 35587 of 2015, for issuance of a writ of mandamus, directing the Director of Collegiate Education to approve their appointments in the fourth respondent-Sarah Tucker College, Tirunelveli.

2. The case of the writ petitioners is that they were appointed as Assistant Professors in the fourth respondent-Sarah Tucker College arising out of the vacancy in the sanctioned post. However, their appointment was not approved by the authorities. This Court, after hearing both parties allowed the writ petitions, by a common order dated 16.11.2015.

3. A third party to the Writ Petitions, has filed the Review Applications mainly contending that the orders in the Writ Petitions were obtained by suppression of material facts. According to the Review applicant, the Hon'ble Supreme Court in Civil Appeal Nos.10478 to 10498 of 2011 has ordered status quo and a suit in O.S.No.71 of 2015 is pending before the District Munsif Court, Thirunelveli, but they were not brought to the knowledge of this Court at the time of disposal of the writ petitions.

4. The first respondent in Review Applications filed their counter, refuting the allegations made in the Review Applications. The case of the writ petitioners is that the review applicant was appointed as Lecturer in the Department of Economics in St.John's College, Palaymkottai in the year 2008 and the review petitioner along with other employees were terminated by the College in the same year. The termination was challenged by them in batch of Writ Petitions in W.P.No.10699 of 2008 and etc., learned Single Judge dismissed the writ petitions on 28.05.2009, however, the Division Bench in W.A.No.327 of 2009 and etc., batch allowed the Writ Appeal. Against the order, St.John's College, Palaymkottai has preferred Special Leave Petitions, which is pending.

5. It is further stated that the suit O.S.No.71 of 2015 pending on the file of the District Munsif Court was instituted by the review applicant for a declaration to declare the notification / advertisement, dated 10.07.2013 as null and void. According to the writ petitioners both the proceedings are nothing to do with the appointment of the writ petitioners in Sarah Tucker College, Thirunelveli and so, the Review Applications have to be dismissed.

6. Mr.Ramalingam, learned counsel for the review applicant reiterated the allegations made in the Review Applications and submitted the orders obtained suppressing the material facts has to be recalled.

7. Per contra, Mr.Issac Mohanlal, learned Senior Counsel for the first respondent / writ petitioners would urge that the petitioner has no locus standi to maintain the review application. It is contended that the writ petitioners were appointed in Sarah Tucker College as Assistant Professors in Department of Chemistry in the sanctioned vacancy, whereas, the review petitioner got appointment as a lecturer in Department of Economics in St. John's College. Therefore, he is not a person aggrieved in the matter of appointment of the writ petitioners. It is further submitted that the review petitioner was appointed on 11.08.2008 and his service was terminated on 17.11.2008 and the writ petitions, writ appeals and Special Leave Petitions

and the Civil Appeals arose out of the termination of the review petitioner, which has no relevance or connection with the appointment of the writ petitioners in the fourth respondent-Sarah Tucker College.

8. The learned Senior Counsel would further submit that the Diocese of Thirunelveli issued a notification, dated 10.07.2013 to fill up 48 posts of Assistant Professors in St. John's College and Sarah Tucker College. The review petitioner submitted an application for the post of Librarian in St. John's College, but he was unsuccessful. After the selection process, appointments were made in St. John's College on 30.10.2013 and after lapse of two years, the review petitioner instituted O.S.No.71 of 2015, challenging the notification, dated 10.07.2013. Along with the suit, he filed an application in I.A.No.175 of 2015 for interim injunction, restraining the authorities from making any appointment pursuant to the notification, dated 10.07.2013, but no relief was granted. It is further submitted that another notification, dated 27.08.2014 was issued by the Diocese and in pursuance of the notification published in the year 2014, the writ petitioners were appointed, which is not challenged by the review petitioner till date.

9. According to the learned Senior Counsel, the writ petitioners have not suppressed any material facts as the Civil Appeals arising out of the S.L.P.

and the suit have no relevance for the issues to be decided in the writ petition. I find force in the submissions made by the learned Senior counsel for the first respondent / writ petitioners.

10. It is not in dispute that the writ petitioners were selected and appointed in Sarah Tucker College in Science Department. It is also not equally disputed that the review petitioner was appointed in the St. John's College in Economics Department. Admittedly, both are different institutions, but both of them might come under the control of the Diocese of Thirunelveli. It is further seen that the review petitioner has not challenged the selection of the writ petitioners pursuant to the notification made in the year 2014. In view of the above undisputed facts, I am of the considered opinion that the pendency of the Civil Appeals before the Supreme Court and the suit before the District Munsif have nothing to do with the appointments made to the writ petitioners. Hence, the contention of the learned counsel for the petitioner cannot be countenanced.

11. In ***(2013) 8 SCC 320 [KAMALESH VERMA Vs. MAYAWATI AND OTHERS]***, after considering a number of earlier decisions, in paragraph No.20, the Hon'ble Supreme Court has held as follows:-

"20. Thus, in view of the above, the following grounds of review are maintainable as stipulated by the statute:

20.1 When the review will be maintainable:-

(i) *Discovery of new and important matter or evidence which, after the exercise of due diligence, was not within knowledge of the petitioner or could not be produced by him;*

(ii) *Mistake or error apparent on the face of the record;*

(iii) *Any other sufficient reason.*

The words "any other sufficient reason" has been interpreted in *Chhajju Ram v. Neki*, AIR 1922 PC 112 and approved by this Court in *Moran Mar Basselios Catholicos v. Most Rev. Mar Poulose Athanasius and Others*, 1955 (1) SCR 520, to mean "a reason sufficient on grounds at least analogous to those specified in the rule". The same principles have been reiterated in *Union of India v. Sandur Manganese & Iron Ores Ltd. and Others*, JT 2013 (8) SC 275.

20.2. When the review will not be maintainable:-

(i) *A repetition of old and overruled argument is not enough R.P. No.1223 of 2015 in W.P(C) No.34649 of 2015 to reopen concluded adjudications.*

(ii) *Minor mistakes of inconsequential import.*

(iii) *Review proceedings cannot be equated with the original hearing of the case.*

(iv) *Review is not maintainable unless the material error, manifest on the face of the order, undermines its soundness or results in miscarriage of justice.*

(v) *A review is by no means an appeal in disguise whereby an erroneous decision is re-heard and corrected but lies only for patent error.*

(vi) *The mere possibility of two views on the subject cannot be a ground for review.*

(vii) The error apparent on the face of the record should not be an error which has to be fished out and searched.

(viii) The appreciation of evidence on record is fully within the domain of the appellate court, it cannot be permitted to be advanced in the review petition.

(ix) Review is not maintainable when the same relief sought at the time of arguing the main matter had been negatived."

12. Keeping in mind the dictum laid down by the Hon'ble Supreme Court and in view of my finding, I am of the view that the applicant has not made out a case for review the order 16.11.2015 in W.P.Nos.35584 to 35587 of 2015. In the result, the review applications are dismissed. However, no order as to costs. Consequently, connected miscellaneous petitions are closed.

21/03/2017

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Note: Issue order copy on 24.03.2017

To

1. Director of Collegiate Education,
Government of Tamil Nadu,
College Road, Chennai-600 006.
2. The Joint Director of Collegiate Education,
Government of Tamil Nadu,
Tirunelveli Region,
Tirunelveli - 627 007.

K.KALYANASUNDARAM, J.

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