



## BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

## CORAM

THE HONOURABLE MR. JUSTICE P.N.PRAKASH  
AND  
THE HONOURABLE MS. JUSTICE V.M.VELUMANI

Review Application (MD) No.191 of 2017  
and CMP (MD) No.8401 of 2017 in  
W.A. (MD) No.385 of 2014 and  
Review Application (MD) No.62 of 2017  
and WMP (MD) Nos.13534 & 13535 of 2017  
in W.P. (MD) No.7899 of 2013

|                                    |                                      |
|------------------------------------|--------------------------------------|
| Judgment reserved on<br>05.12.2017 | Judgment pronounced on<br>22.12.2017 |
|------------------------------------|--------------------------------------|

A.Rebekkal ... Petitioner in both Rev.Appls.

Vs.

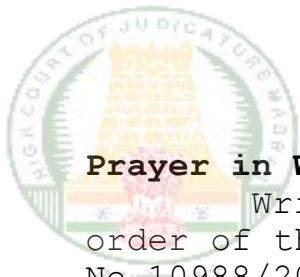
1.The District Elementary  
Educational Officer,  
Sethuramanpillai Colony,  
Tiruchirapalli - 620 010. ... 1<sup>st</sup> Respondent in both Rev.Appls.

2.The Additional Assistant  
Elementary Educational  
Officer, Manaparai,  
Tiruchirapalli District. ... 2<sup>nd</sup> Respondent in both Rev.Appls.

3.S.Amalorpavam  
Secondary Grade Assistant,  
St.Antony's Primary School,  
Manjampatti, Manaparai,  
Tiruchirapalli District. ... 3<sup>rd</sup> Respondent in Rev.Aplc.(MD)  
No.191/2017

4.The Correspondent,  
St.Antony's Primary School,  
Manjampatti, Manaparai,  
Tiruchirappalli District. ... 4<sup>th</sup> Respondent in Rev.Aplc.(MD)  
No.191/2017

**Common Prayer :** Review Applications are filed under Order 47 Rule 1  
r/w Article 227 of the Constitution of India to review the common  
Judgment dated 22.04.2016 passed in W.A. (MD) No.385 of 2014 and  
W.P. (MD) No.7899 of 2013 respectively.

**Prayer in WA(MD). 385/ 2014 :**

Writ Appeal under Clause 15 of Letters Patent against the order of the Learned Single Judge, dated 21.01.2014 made in WP.(MD). No.10988/2013.

**Prayer in WP(MD). 10988/ 2013 :**

Writ Petition is filed under Article 226 of the Constitution of India, for the issue a Writ of Mandamus, directing the respondent to approve the appointment of the petitioner made in as sanctioned and approved post of secondary grade teacher in the St.Antonys Primary School, manjampatti, manaparai, tiruchirappalli district with salary all attendant benefits and emoluments from the date of appointment (ie) 08/03/2013 in terms with the judgement of the Full Bench of this Court in 2006(5) CTC 385 and W.A.No.1263/2001 dated 22/01/2004 is concerned.

**Prayer in WP(MD). 7899/ 2013 :**

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to Writ particularly in the nature of Writ of Mandamus directing the 1st respondent to approve the appointment of petitioner dated 18/06/2012 as secondary grade teacher as St.Antonys Primary School, Manjampatti, Manapparai Union, Trichy District and further direct the 1st respondent to grant salary and other benefits to the petitioner.[prayer amended as per order dt 30/7/2013 in mp(md)1/2013].

For Petitioners : Mr.Ajmal Khan,  
Senior Counsel for  
M/s.Ajmal Associates

For Respondents : Mr.VR.Shanmuganathan  
Special Govt. Pleader  
for R1 & R2 in both Reviews.

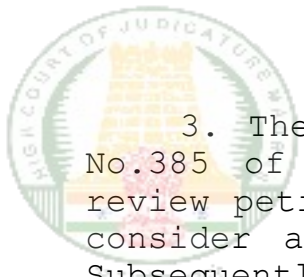
Mr.R.Srinivasulu for  
Mr.M.Joseph Thatheus Jerome  
for R3 in Rev.Aplc(MD)No.191/2017.

**COMMON ORDER**

**V.M.VELUMANI, J.**

The issues and parties involved in both the Review Petitions are interlinked. Therefore, these petitions are disposed of by this common order.

2. Review Application (MD) No.191 of 2016 has been filed to review the order dated 22.04.2016 passed in W.A. (MD) No.385 of 2014 and Review Application No.62 of 2017 has been filed to review the order dated 22.04.2016 passed in W.P. (MD) No.7899 of 2013.

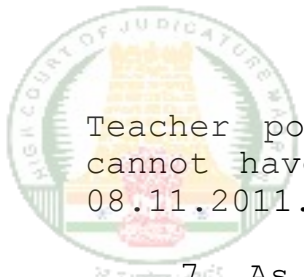


3. The review petitioner is the second respondent in W.A.(MD) No.385 of 2014 and petitioner in W.P.(MD) No.7899 of 2013. The review petitioner filed writ petition originally for a direction to consider and pass orders on her representation dated 14.03.2013. Subsequently, the prayer in the writ petition was amended as per the order of this court dated 30.07.2013 made in M.P (MD) No.1 of 2013 in W.P. (MD) No.7899 of 2013 for a writ of mandamus directing the first respondent herein / The District Elementary Educational Officer, Trichy to approve her appointment dated 18.06.2012 as secondary grade teacher at St. Antony's Primary School, Manjampatti, Manapparai Union, Trichy District and for a further direction to the first respondent to grant salary and other benefits to the petitioner.

4. According to the petitioner, St. Antony's School is a Minority Primary School receiving Grant-in-Aid from the Government. The petitioner was appointed on 18.06.2012 in the vacancy that arose due to promotion of one Padmanabhan as Head Master on 01.06.2012. Her appointment was not approved on the ground that she did not pass Teachers Eligibility Test (TET). In the said circumstances, the petitioner gave representation on 14.03.2013 to the first respondent through the second respondent to approve her appointment subject to the condition stipulated in G.O.Ms.No.173 (School Education) dated 08.11.2011 and filed W.P (MD) No.7899 of 2013 for the relief as stated above.

5. The third respondent in the Review Petition (MD) No.191 of 2017 was transferred to St.Antony's Primary School from the school of same Management at Kumbakonam to the present school on 08.03.2013 and she sought for approval of her transfer. The approval was not granted and she filed W.P.(MD) No.10988 of 2013. This court, by order dated 21.01.2014, allowed the writ petition. The respondents 1 & 2 herein filed W.A.(MD) No.385 of 2014 against the third respondent herein/petitioner in W.P.(MD)No.10988 of 2013 and petitioner herein / second respondent in W.P.(MD)No.10988 of 2013 and 4<sup>th</sup> respondent herein / 3<sup>rd</sup> respondent in W.P.No.10988 of 2013. When the Writ Appeal was taken up for hearing, the W.P.(MD) No.7899 of 2013 filed by the petitioner herein was also taken up alongwith Writ Appeal and both the Writ Appeal and Writ Petition were heard by the Division Bench of this Court.

6. The contention of the petitioner before the Division Bench was that she was appointed in a vacancy that arose due to promotion of one Padmanabhan as Head Master on 01.06.2012. She contended that in view of G.O.Ms.No.173 (School Education) dated 08.11.2011, she had five years time to pass Teachers Eligibility Test and also contended that she passed the Teachers Eligibility Test during March 2014 and therefore her appointment must be approved. The Division Bench of this Court, by order dated 22.04.2016 rejected her contention on the ground that she was appointed after G.O.Ms.No.181 (School Education C2) dated 15.11.2011 which fixed a pass in Teacher Eligibility Test mandatory for appointment of Secondary Grade



Teacher post in Government Schools and held that the petitioner cannot have the benefit of G.O.Ms.No.173 (School Education) dated 08.11.2011.

7. As far as teachers appointment in minority private schools before conduct of Teachers Eligibility Test is concerned, the Government, by G.O.Ms.173 (School Education), gave an exemption subject to the condition that they should acquire the said minimum qualification within five years from the date of appointment. This Court held that G.O.Ms.No.173 (School Education) dated 08.11.2011 is not applicable to the petitioner since she was appointed after G.O.Ms.No.181 (School Education C2) dated 15.11.2011 and she did not possess pass in Teachers Eligibility Test at the time of appointment. She was not qualified to be appointed as Secondary Grade Teacher on 18.06.2012. This Court dismissed the Writ Appeal confirming the order passed in W.P. (MD) No.10988 of 2013 holding that if a vacancy arose on account of transfer, superannuation or death, the same cannot result in surplus posts.

8. The third respondent in Review Application (MD) No.191 of 2016 was transferred to the post for the vacancy that arose on the death of a teacher. In view of this fact, the writ appeal filed by the respondents 1 & 2 was dismissed. This Court, also held that W.P.(MD) No.7899 of 2013 filed by the petitioner was dismissed and therefore Writ Appeal automatically deserves to be dismissed.

9. Against the said common order dated 22.04.2016 passed in W.A.(MD) No.385 of 2014 and W.P. (MD) No.7899 of 2013, the petitioner have filed two separate review applications.

10. The learned Senior Counsel appearing for the review petitioner contended that the Division Bench of this Court failed to consider that Teachers Eligibility Test is not applicable to minority institution as per the judgment of the Hon'ble Apex Court reported in 2014 (4) MLJ 486 SC [Pramati Educational & Cultural Trust ® & Ors. vs. Union of India & Ors.]. The Division Bench failed to consider the said judgment and failed to consider that Teachers Eligibility Test is not applicable to minority institutions. The petitioner has passed Teachers Eligibility Test during August 2013 itself and the same was not considered by this Court. The writ petition was dismissed without considering these facts and therefore the judgment of this Court is liable to be reviewed. By hearing the writ petition alongwith writ appeal, the petitioner has lost her opportunity to file an appeal before this Court. This court failed to consider the order passed in W.A.Nos.653 to 655 of 2016 filed by the Government and orders passed therein on 20.04.2016. The learned Senior Counsel, in support of his contention, relied on the following judgments -

(i) 2014 (4) MLJ 486 (SC) [Pramati Educational & Cultural Trust & Ors. vs. Union of India & Ors.]  
<https://hcservices.ecourts.gov.in/hcservices/>



(ii) 2016 (7) MLJ 155 [State rep. By its Secretary to Government vs. Government Film and TV Employees Welfare Association & Ors.]

(iii) 2012 (6) SCC 1 [Society for Unaided Private Schools of Rajasthan for vs. Union of India and another]

11. The learned counsel for the third respondent in the common counter affidavit referred to various judgments of the Hon'ble Apex Court and contended that there is no error in the judgment and order of this court and review petitions are devoid of merits. He further contended that the judgment relied on by the learned Senior Counsel for the review petitioner is not applicable and the judgment of the Hon'ble Apex Court reported in 2012 (6) SCC 1, cited supra alone is applicable.

12. The learned Special Government Pleader appearing for the respondents 1 and 2 contended that the judgments relied on by the learned Senior Counsel for the petitioner are subsequent to the judgment of this court passed by the Division Bench. Both the appointment of the petitioner and third respondent were made in surplus posts and hence both are not entitled for any approval.

13. Heard the learned Senior Counsel appearing for the petitioner, the learned counsel for third respondent, the learned Special Government Pleader appearing for the respondents 1 and 2 and perused the materials available on record.

14. The writ petition was dismissed on the ground that the petitioner did not possess a pass in Teachers Eligibility Test as per G.O.Ms.No.181 (School Education) dated 15.11.2011. The Division Bench of this Court held that G.O.Ms.No.173 (School Education) dated 08.11.2011 is not applicable to the petitioner on the ground that the petitioner was appointed after G.O.Ms.No.183 (School Education) dated 15.11.2011. Subsequent pass in Teachers Eligibility Test will not make the petitioner eligible for appointment on 18.06.2012. The learned Senior Counsel for the petitioner sought review of the order on the ground that the Division Bench failed to consider the judgment of the Hon'ble Supreme Court reported in 2014 (4) MLJ 486 SC cited supra and that Teachers Eligibility Test is not a mandatory qualification for appointment of teacher in minority private schools.

15. The learned Senior counsel for the petitioner is not entitled to raise this plea in Review Application as the same amounts to re-arguing the writ petition on new grounds. The petitioner did not raise this plea in the writ petition and in para 3 of the affidavit filed in W.P (MD) No.7899 of 2013, she has stated that even though G.O.Ms.No.181 (School Education-C2) dated





15.11.2011 mandates a pass in Teachers Eligibility Test for appointment of a teacher, as per G.O.Ms.No.173 (School Education) dated 08.11.2011, a teacher appointed in a minority private school before passing Teachers Eligibility Test is given five years time to pass the Teachers Eligibility Test.

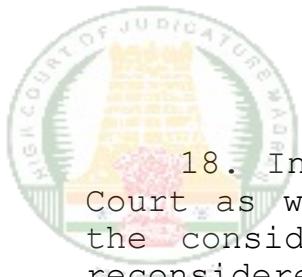
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16. The Division Bench of this Court considered both the G.O.Ms.No.173 (School Education) dated 08.11.2011 and G.O.Ms.No.181 (School Education-C2) dated 15.11.2011 and rejected the said contention of the petitioner. The Division Bench of this Court did not dismiss the writ appeal on the sole ground of dismissal of the writ petition. This Court dismissed the writ petition considering all the above facts and rejected the contention of the petitioner raised in the writ petition and also held that in view of the dismissal of the writ petition, writ appeal is automatically dismissed.

17. It is well settled law that the power of the Court is very limited while considering the review petition. Only when there is an error apparent on the face of the record, earlier order can be re-considered. A review petition is not an appeal and in the guise of review, cannot re-argue the matter on merits. This has been held by the Hon'ble Apex Court in the judgment reported in 2000 (6) SCC 224 [Lilli Thomas and Others Vs. Union of India and Others], wherein, in paragraph 52, it was held as under:

"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 Vs. Pradyumansinghji Arjunsinghji [1971 (3) SCC 844 : AIR 1970 SC 1273] 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 a miscarriage of justice nothing would preclude the Court from rectifying the error. ...."



18. In the light of the dicta laid down by the Honourable Apex Court as well as by the Division Benches of this Court, we are of the considered view that the earlier order of the Court can be reconsidered only if there is an error apparent on the face of record and in that event, the said error can be rectified. Otherwise, a Review Application is not at all maintainable. We do not find any error apparent on the face of record in the judgment, dated 22.04.2016 passed by this Court in W.A. (MD) No.385 of 2014 and W.P. (MD) No.7899 of 2013. Accordingly, the Review Applications fail.

19. In the result, both the Review Applications are dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-  
Assistant Registrar (AE)

/True Copy/

Sub Assistant Registrar

To

1.The District Elementary  
Educational Officer,  
Sethuramanpillai Colony,  
Tiruchirapalli - 620 010.

2.The Additional Assistant  
Elementary Educational  
Officer, Manaparai,  
Tiruchirapalli District.

+1cc to M/S.M.JOSEPH THATHEUS JEROME, Advocate SR.No.94599.  
+1cc to M/S.AJMAL ASSOCIATES, Advocate SR.No.94423.

Common Order in  
Review Application (MD) No.191 of 2017  
and Review Application (MD) No.62 of 2017  
22.12.2017

rgr  
SDS/SKN:RSK/SAR 1/24.01.2018/7P/5C