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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.04.2018

C O R A M

THE HON'BLE Mr.JUSTICE S.M.SUBRAMANIAM

Rev.Application.No.60 of 2018

C.Govindasamy ... Applicant/Petitioner

Versus

- 1.The District Collector,
Ariyalur District,
Ariyalur.
- 2.The Block Development Officer.
Jayamkondam Panchayat Union,
Jayamkondam, Ariyalur District.
- 3.The President,
Pillaiyarpalayam Panchayat,
Ariyalur District, Ariyalur.
- 4.The Assistant Director (Panchayat),
Collectorate Office,
Ariyalur, Ariyalur District. ... Respondents/Respondents

Review application filed under Order 47 Rule I of the Code of Civil Procedure read with Section 114 of the Code of Civil Procedure against the order in W.P.No.33618 of 2015 dated 14.09.2017 dismissing the Writ Petition and the same to be reviewed.

Prayer in W.P.No.33618 of 2015: Praying to issue a Writ of Certiorarified Mandamus toTo call for the records made in Na.Ka. No.4179/ 2015/VU/a.4 dated 29.9.2015 on the file of the first respondent herein and quash the same as illegal and direct the first respondent herein to re-appoint the petitioner as Panchayat Clerk in Ariyalur District with backwages and attendant benefits.

For Petitioner	... Mr.R.Sankarasubbu
For Respondents 1, 3 & 4	... Mr.V.Kadhirvelu, Special Government Pleader
For Respondent 2	... Mr.Gunasekaran



ORDER

The present Review Application is filed to review the order dated 14.09.2017 passed in W.P.No.33618 of 2015.

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2. Mr.R.Sankarasubbu, learned Senior Advocate appearing on behalf of the review petitioner made a submission that he was unable to appear before this Court, at the time of hearing of the writ petition filed in W.P.No.33618 of 2015 and therefore, the present Review Application is filed in order to submit the factual circumstances, which was not considered in the order dated 14.09.2017. The grounds for review are extracted here under:

"i) The order needs to be reviewed as no opportunity to the Applicant to place his case.

ii) The order is violative of Article 21 of the Constitution of India.

iii) The Honourable Court has not consider the earlier order of this Honourable Court in W.P.No.22440 of 2015 dated 24.07.2015. The order is a well favourable order and the same was not considered in the proper perspective."

3. Mainly, it is stated that the earlier order passed in favour of the writ petitioner in W.P.No.22440 of 2015 dated 24.07.2015 was not considered. Secondly, it is contended that the order is in violation of Article 21 of the Constitution of India. Thirdly, the order deserves to be reviewed on the ground that no opportunity to the applicant to place his case was provided. In respect of the ground that no opportunity was provided to the writ petitioner, this Court is of an opinion that when the matter was taken up for hearing, there was no appearance on behalf of the writ petitioner and accordingly, based on the facts submitted by the learned counsel for the respondents, the case was decided.

4. The learned counsel for the petitioner now filed an additional typed set of papers in the Review Application and all these documents now submitted in the additional typed set of papers were available with the petitioner, even at the time of filing of the present writ petition. However, these documents were not filed along with the writ petition and now presented in this Review Application, in the open Court at the time of hearing.

5. On a perusal of the additional typed set of papers, the Service Register is enclosed and other receipts in respect of collection of water charges are also enclosed and at Page No.36 of the typed set of papers, the order of termination dated 06.06.2003 was filed. The writ petitioner was terminated from service by the President and Executive Authority,



Pillaiyarpalayam Panchayat in proceedings dated 06.06.2003. On a perusal of the said order, it is seen that the charge memo by way of show cause notice was issued to the writ petitioner and thereafter, on receipt of the explanation, he was terminated from service. The learned counsel for the petitioner states that based on an improper enquiry, the writ petitioner was terminated from service and therefore, the order deserves to be set aside.

6.It is contended that in the earlier order dated 14.09.2017 passed by this Court, it is stated that the writ petitioner had not preferred any appeal, challenging the termination order. In this regard, the learned counsel for the petitioner states that on 22.09.2007, the petitioner had submitted an appeal to the District Collector and the same is enclosed in Page No.7 of the typed set of papers filed along with the Review Application. On a plain reading of the said appeal, this Court is of an opinion that it was not properly filed, challenging the order of termination. However, the petitioner made a request to the District Collector that again he should be appointed on the ground that the President of Panchayat terminated him erroneously. Except these two sentences, there is no ground raised in respect of the challenge of termination orders. It is pertinent to note that no specific ground, questioning the validity of the order of termination had been raised in the said appeal dated 22.09.2007. Relying on these documents, the learned counsel for the petitioner states that the order earlier passed in W.P.No.33618 of 2015 dated 14.09.2017 is to be reviewed. The District Collector in proceedings dated 19.10.2009 also considered the case of the writ petitioner is yet another contention raised. However, another appeal was submitted on 01.12.2014 to the District Collector to set aside the order of termination.

7.The petitioner earlier filed in W.P.No.22440 of 2015, for a direction to direct the respondents to consider the representation of the writ petitioner dated 01.12.2014. The writ petition was disposed of on 24.07.2015 with a direction to consider the representation of the writ petitioner dated 01.12.2014 in the light of the proceedings dated 19.10.2009 of the fourth respondent. Relying on the said order, the learned counsel for the petitioner states that the said order was implemented by the District Collector in his proceedings dated 29.09.2015 and the same is under challenge in W.P.No.33618 of 2015. Therefore, the case of the writ petitioner is to be considered in all respects.

8.This Court has to consider the basic facts placed in this petition. Admittedly, the writ petitioner was terminated from service in proceedings dated 06.06.2003. Thereafter, no



action was taken by the review petitioner in respect of the final order of termination. The appeal now set to be filed dated 22.09.2007 that representation itself was submitted after a lapse of four years from the date of order of the termination. Thereafter, relying on the proceedings of the Assistant Director (Panchayat), Ariyalur dated 19.10.2009 W.P.No.22440 of 2015 was filed. It is pertinent to note that the prayer in the earlier writ petition was to direct the respondents to consider the representation of the petitioner dated 01.12.2014. Even at that point of time, in the year 2015, the writ petitioner has not chosen to challenge the order of termination, which was issued on 06.06.2003. Contrarily, a simple Writ of Mandamus was filed for a direction to consider the representation. Thus, this Court has to draw a factual inference that such writ petitions are filed for the purpose of restoring the cause of action, which arose during the year 2003 and circumvent the point of enormous delay in moving the High Court under Article 226 of the Constitution of India. Such writ petitions can never be entertained. The punishment of termination is a major penalty in service. Termination is almost a civil death for an employee. Therefore, such employees must be vigilante in pursuing the matter by filing proper appeal and further, pursuing the matter before the Court of law.

9. In the present case on hand, the writ petitioner was terminated by way of detailed order in proceedings dated 06.06.2003. However, the writ petition in the year 2015 was filed in W.P.No.22440 of 2015 with a simple prayer to consider the representation. Therefore, it is undoubtedly clear that such writ petitions are filed for the purpose of overcoming the point of delay in pursuing the remedy. After obtaining a direction to consider the representation in W.P.No.22440 of 2015, the District Collector passed an order, in order to comply with the directions granted by this court in proceedings dated 29.09.2015 by restoring the cause of action by way of that order, the current writ petition was filed in W.P.No.33618 of 2015. Thus, it is not as if, the writ petitioner has pursued the remedy in accordance with law. Contrarily, the petitioner has adopted a tactics to circumvent the limitation and created a cause of action for adjudication. Such attitude of the litigants are to be deprecated and this Court cannot encourage such litigations.

10. At least, when the first writ petition was filed in the year 2015, the writ petitioner ought to have challenged the termination order. Thus, having knowledge about the order of termination, he had wantonly suppressed the fact regarding the order and projected the case as if he preferred an appeal and the same was kept pending by the authorities for long years and accordingly, this Court also issued directions to consider the representation and pass orders.



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11.The grounds for review now raised is mainly on the ground that the learned counsel for the petitioner was unable to present the complete facts before this Court. Thus, the learned counsel is now heard in full and he had made submissions at length placing all the facts and circumstances. However, this Court is of an opinion that the Review petition cannot be filed for the purpose of adjudicating the facts, which were placed in the original writ petition. Even in order dated 14.09.2017, this Court had considered the fact in relation to the termination of services of the writ petitioner and order dated 06.06.2003 was referred. This apart, the said appeal dated 22.09.2007 was also considered. Taking note of the nature of the appeal submitted by the writ petitioner, this Court made a finding that the writ petitioner sought for re-employment. This Court, based on the affidavit filed by the writ petitioner in writ petition has even extracted the facts and dismissed the writ petition.

12.The scope of review is certainly limited and in order to re-argue and re-adjudicate the matter , no review can be filed. The grounds for appeal cannot be considered in the Review petitions. In the present case on hand, even on merits, this Court is of an opinion that the writ petitioner has not established any point for entertaining the writ petition. In view of the fact that the writ petitioner was terminated from service on 06.06.2003 and no action was taken for many years and first time, he filed a writ petition in the year 2015 and even in that writ petition, the petitioner has failed to challenge the order of termination, contrarily he prayed for a direction to dispose of his representation. Thus, this Court is not inclined to entertain the present Review Application.

13.Accordingly, the Review Application stands dismissed. No costs.

Sd/-
Assistant Registrar(CS V)

//True copy//

Sub Assistant Registrar

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To

1.The District Collector,
Ariyalur District,
Ariyalur.



2.The Block Development Officer.
Jayamkondam Panchayat Union,
Jayamkondam, Ariyalur District.

3.The President,
Pillaiyarpalayam Panchayat,
Ariyalur District, Ariyalur.

4.The Assistant Director (Panchayat),
Collectorate Office,
Ariyalur, Ariyalur District.

+1cc to Mr.S.Gunasekaran, Advocate SR.No.27748

+1cc to Mr.R.Sankarasubbu, Advocate SR.No.27836

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NRI (CO)
GN(10/05/2018)