

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19-01-2018

CORAM

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

Review Application (Writ).No.704 of 2017

and

W.M.P.No.36640 of 2017

in

W.P.No.18662 of 2017

Dr.M.Rajendran,
Dean,

IRT Perundurai Medical College and Hospital,
Perundurai Sanatorium,
Perundurai-638 053,
Erode District.

..Applicant/Petitioner/3rd Respondent

Vs.

1.M.Daisyrani

..Respondent/Respondent/Petitioner

2.The Institute of Road Transport
Represented by its Director,
100 Feet Road,
Taramani,
Chennai-600 113.

3.The Director of Medical Education,
No.162, Periyar EVR High Road,
Kilpauk,
Chennai-600 010.

4.The Superintendent of Police,
Erode District,
Erode.

5.The Inspector of Police,
Perundurai Taluk Police Station,
Perundurai. .. Respondents/Respondents/Respondents
1,2,4 & 5

Prayer: Review Application filed under Order 47 Rule 1 read with Section 114 of CPC, against the order of this Court dated 10.11.2017 made in W.M.P.Nos.30130 of 2017 in W.P.No.18662 of 2017.

For Review Petitioner : Mr.V.P.Sengottuvel

For Respondent-1 : Mr.M.Radhakrishnan

For Respondent-2 : Ms.Kala Ramesh

For Respondents-3 to 5 : Mr.Sricharan Rengarajan,
Additional Government
Pleader.

ORDER

The grounds raised in the present review petition is that the writ petitioner has suppressed the fact of earlier complaint and the proceedings made against her right from 7.9.1998 onwards by the Dean and the Medical Superintendent of the Medical College Hospital for dereliction of duty and arrogant attitude. It is further stated that on several occasions, the writ petitioner had been warned for taking leave without permission from the Medical Superintendent, which resulted in enquiry.

2. The review petitioner has narrated the instances of

misconduct against the writ petitioner and the ground raised in the review petition is that those instances of misconduct committed by the writ petitioner has not been narrated nor brought to the notice of this Court at the time of hearing of the writ petition. It is further stated that the sexual harassment complaint given by the writ petitioner against the review petitioner is nothing but an attempt made by her not only to derail the enquiry to be conducted pursuant to the charge memo dated 25.10.2016 but also to stop this review petitioner from proceeding with the disciplinary proceedings. It is stated that the writ petitioner on 15.10.2016 and on 20.10.2016 misconducted herself by not signing the Attendance Register in the morning shift and signed the Attendance Register both for morning shift and evening shift in the evening and the same came to be noticed by the Nursing Superintendent and was reported to the review petitioner and therefore, a revised charge memo was issued on 31.10.2016.

3. In other paragraphs of the grounds filed in support of the review petition narrates various instances showing that the writ petitioner has committed certain misconducts and the charges were framed against her and in order to escape from the clutches of the disciplinary proceedings, the writ petitioner has given a false complaint

against the review petitioner stating that she was sexually harassed by the review petitioner.

4. The review petitioner has further stated that the Dean and the Head of the Institution (review petitioner) constituted a Internal Complaint Committee in terms of the Central Act 14 of 2013 on 10.8.2016, i.e., much before the alleged complaint made by the writ petitioner and the Committee constituted by the review petitioner, cannot be brushed aside as it consists of members from the faculty working under the review petitioner. In other words, the review petitioner is of the opinion that he, as a Dean himself, has constituted a valid Internal Complaint Committee to go into the allegations of sexual harassment against the staff members. Thus, the said Committee alone is competent to look into the complaint against the review petitioner and there cannot be any other Committee.

5. At the outset, this Court is of the opinion that on a reading of the entire grounds, the review petitioner had made an attempt to bring out to the notice of this Court that the writ petitioner has committed various misconducts and the departmental disciplinary proceedings are pending against her and with this background, the writ petitioner has

preferred a false complaint against the review petitioner to escape from the clutches of the departmental disciplinary proceedings.

6. While considering the writ petition, this Court passed an order on 25.7.2017, directing the respondents to constitute a Internal Committee under Section 4 of the Act, within a period of two weeks and thereafter proceed with the enquiry on merits and in accordance with law. The respondents 1 and 2 were directed in view of the fact that the complaint was made against the third respondent, who is none other than the Dean and the Head of the Institution. Thus, this Court was of the opinion that the Committee constituted by the Dean, cannot be allowed to proceed with the enquiry and the members of the Committee are subordinates to the third respondent working in the same institution. Considering all those aspects, this Court has directed the respondents 1 and 2 to constitute an Internal Committee under Section 4 of the Act. Thereafter, the third respondent filed a petition in WMP Nos.30130 and 30131 of 2017. In the clarification petition also, this Court once again considered the issues and passed an order on 10.11.2017 stating as follows:

"5. Be that as it may. The very purpose and object of the Act is to deal with the allegations made by an employee alleging

sexual harassment at the work place. The very purpose of the Sexual Harassment of Women at Work Place (Prevention, Prohibition and Redressal) Act, 2013 is to cull out the truth behind the allegations made in the complaint. This being the factum to be considered, this Court is of the opinion that if any complaint is received by the authorities or committees constituted for such purpose from any women employee, they are bound to deal with the same in accordance with the Act. In the present case, the Chairperson appointed by proceedings dated 10.8.2010 is Dr.G.Subbulakshmi, MD, Professor & HOD of Anatomy. Except the sixth member who is a Social Welfare Officer, all other members in the committee are functioning under the control of the Dean of the I.R.T Perundurai Medical College and Hospital, Perundurai, Perundurai Sanatorium, Erode District, against whom the complaint was made by the writ petitioner/first respondent herein. Therefore, all members in the committee are subordinates to the Dean against whom the allegations were made by the writ petitioner. When the majority of six members out of seven members in the committee are subordinates of the Dean of the institution, who issued the order to constitute a

committee, then, there will be a reasonable apprehension that the enquiry may be vitiated. Thus, it is necessary for the petitioner in WMP No. 30131 of 2017 namely The Director of Institute of Road Transport, Taramani to appoint an independent committee as contemplated under Section 4 of the Act, so as to conduct an impartial, fair and free enquiry in to the allegations made by the writ petitioner/first respondent in her complaint.

6. This being the factum to be considered by the first respondent in the writ petition, this Court is of the opinion that no further modification or clarification is required in these writ miscellaneous petitions and this Court expects the learned counsel for the petitioners to apprise this legal position to ensure appointment of appropriate committee in accordance with the Section 4 of the Act.

7. Thus, all the merits and the demerits were considered both in the order passed in the writ petition as well as in the order passed in the clarification petition. This being the factum, the present review petition filed once again raising certain grounds on factual aspects deserves no consideration. However, those points cannot be adjudicated in this review petition. Thus, the merits and the demerits

in relation to the facts and the circumstances as narrated in this review petition, cannot be considered.

8. This apart, those grounds raised in respect of the alleged misconduct committed by the writ petitioner, cannot have any relevance in respect of the complaint given by the writ petitioner against the review petitioner. The complaint of sexual harassment has to be dealt with independently and in accordance with the Act. Simply, because the employee is facing some departmental proceedings, neither the competent authority nor the Court, shall brush aside the complaint of sexual harassment made by the woman staff of any institution. So also the review petitioner cannot try to escape from the clutches of the complaint made by the writ petitioner under the Sexual Harassment Act.

9. Thus, the statement of the review petitioner that the complaint under the Sexual Harassment Act, was preferred only to escape from the departmental proceedings, cannot be accepted and deserves no consideration at all. Every complaint filed under the Sexual Harassment Act, has to be dealt in accordance with the provisions of the Act and the Rules and there cannot be any other way

out to deal with such complaints. Such complaints must be properly enquired into in the interest of the institution and actions are to be initiated under the provisions of the Act.

10. This Court is of the opinion that the review petitions are not maintainable either under Section 114 of CPC or under Order 47, Rule 1 of CPC for the reasons that review petitions can be maintained under any of the ingredients of the Order 47, Rule 1 of CPC and more importantly, when there is a mistake or an error apparent on the fact of the record.

11. The Review petitioner has not made out any single ground for reviewing the said judgement and there is no defect or error apparent on the face of the record. The review petitioner did not made out any ground, so as to attract the ingredients of Order 47, Rule 1 CPC. The Hon'ble Supreme Court has held in **Persion Devi and Ors v. Sumithra Devi & Ors [1997 (8) SCC 715]**, that reviewing a judgment on error apparent on the face of the record, is distinct from erroneous decisions.

12. An erroneous decision will not provide a cause for the

petitioner to file the present Review Petition. Contrarily, order can be reviewed only if there is an error apparent on the face of the record. The Hon'ble Supreme Court has made out a distinction between the error apparent on the face of the record and erroneous decisions. However, the grounds raised in the present review petition do not establish any error apparent on the face of the record and the present review petition is devoid of merits.

13. Further, the Hon'ble Supreme Court has held that the review jurisdiction cannot be used as an Appellate Jurisdiction and as defined, the word "mistake" or "error" apparent on the face of the record. As per Order 47, Rule 1 CPC, the judgment may be opened to review, *inter alia*, if there is a mistake or an error apparent on the face of the records. An error which is not self-evident and has to be detected by a process of reasoning can hardly said to be an error apparent on the face of the record justifying the Court to exercise its power of review in exercise of the jurisdiction under Order 47 Rule 1 CPC. It is impermissible for an erroneous decision to be "re-heard and corrected" and there is a clear distinction between an erroneous decision and an error apparent on the face of the record.

14. The review petition has got a limited purpose and cannot be

allowed to be an Appeal in disguise. The cases made across the country, it is invariably held that the grounds enumerated under Order 47, Rule 1 CPC is imminent and in the absence of satisfying the ingredients, no review petition would lie. The review petition is not a process of re-hearing of the whole matter, which had been earlier finally disposed of and the present review petition filed by the review petitioner herein exactly attempting to do the same. The review petition should be accepted or rejected has to be decided with reference to the grounds on which the review is permissible and not on the merits of the claim. The Hon'ble Supreme Court in the case of **Lily Thomas vs. Union of India** reported in **AIR 2000 SC 1650** held that a review petition is for a correction of mistake and not for substitution of views. A point which may be a good ground for an appeal need not be a good ground for a petition for review. Thus, an erroneous view of evidence or of law is no ground for a review, though, it may be a good ground for an appeal. The grounds of the present review petition do not make out an evidence or error on the judgement of this Court.

15. The learned counsel filed the present review petition, was not the counsel appeared in the writ petition or in the clarification

petition thereafter decided. In this regard, this Court has to consider the very fact that whether a different counsel shall be permitted to file review petitions, when they have no knowledge about the arguments advanced by the counsel on record or the counsel appeared in the writ petition or in the clarification petition. The Hon'ble Supreme Court of India in the case of **Tamil Nadu Electricity Board and another Vs. N.Raju Reddiar and another**, reported in **(1997) 9 SCC 736** has observed as follows:

"1.It is a sad spectacle that a new practice unbecoming and not worthy of or conducive to the profession is cropping up. Mr.Mariaputham, Advocate-on-Record had filed vakalatnama for the petitioner-respondent when the special leave petition was filed. After the matter was disposed of, Mr.V.Balachandran, Advocate had filed a petition for review. That was also dismissed by this Court on 24-4-1996. Yet another advocate, Mr.S.U.K.Sagar, has now been engaged to file the present application styled as "application for clarification", on the specious plea that the order is not clear and unambiguous. When an appeal/special leave petition is dismissed, except in rare cases where error of law or fact is apparent on the record, no review can be filed; that too by the Advocate-on-Record who neither appeared nor

was party in the main case. It is salutary to note that the court spends valuable time in deciding a case. Review petition is not, and should not be, an attempt for hearing the matter again on merits. Unfortunately, it has become, in recent time, a practice to file such review petitions as a routine; that too, with change of counsel, without obtaining consent of the Advocate-on-Record at earlier stage. This is not conducive to healthy practice of the Bar which has the responsibility to maintain the salutary practice of profession. In Review Petition No.2670 of 1996 in CA No.1867 of 1992, a Bench of three Judges to which one of us, K.Ramaswamy, J., was a member, had held as under:

"The record of the appeal indicates that Shri Sudarsh Menon was the Advocate-on-Record when the appeal was heard and decided on merits. The review petition has been filed by Shri Prabir Chowdhury who was neither an arguing counsel when the appeal was heard nor was he present at the time of arguments. It is unknown on what basis he has written the grounds in the review petition as if it is a rehearing of an appeal against our order. He did not confine to the scope of review. It would not be in the interest of the profession to

permit such practice. That apart, he has not obtained 'No Objection Certificate' from the Advocate-on-Record in the appeal, in spite of the fact that Registry had informed him of the requirement for doing so. Filing of the 'No Objection Certificate' would be the basis for him to come on record. Otherwise, the Advocate-on-Record is answerable to the Court. The failure to obtain the 'No Objection Certificate' from the erstwhile counsel has disentitled him to file the review petition. Even otherwise, the review petition has no merits. It is an attempt to reargue the matter on merits."

16. In the case of **Kamlesh Verma Vs. Mayawati**, reported in **2013 (8) SCC 320**, the Hon'ble Apex Court held that a repetition of old and over-ruled argument is not enough to reopen the concluded adjudications and that mere possibility of two view on the subject, cannot be a ground for Review. It is also observed therein that the appreciation of evidence on record is fully within the domain of the appellate Court and it cannot be permitted to be advanced in the review petition.

17. In the case of **Subramanian Swamy Vs. State of Tamil Nadu** reported in **2014 (5) SCC 75**, the Hon'ble Supreme Court

reiterated that "Thus, even an erroneous decision cannot be a ground for the court to undertake review, as the first and foremost requirement of entertaining a review petition is that the order, review of which is sought, suffers from any error apparent on the face of the order and in absence of any such error, finality attached to the judgment/order cannot be disturbed."

18. In the case of **Tamil Nadu Electricity Board and another Vs. N.Raju Reddiar and another**, reported in **(1997) 9 SCC 736**, the Hon'ble Supreme Court has again to the extent of dismissing the Review Application with an exemplary costs of Rs.20,000 as it is an abuse of the process of Court in derogation of healthy practice. In the case on hand, also the learned counsel now appearing in the Review Application had not appeared in the writ petition, the review petitioner filed the present review petition only by changing the counsel on record. Thus, this Court is not inclined to consider any of the grounds raised in the present review petition.

19. In view of the above discussions, the review petition is liable to be dismissed on merits, as well as on the ground that the review petition has been filed by a new counsel, who had not appeared in the

S.M.SUBRAMANIAM J.

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main writ petition. Accordingly, the review petition stands dismissed.
However, there shall be no order as to costs. Consequently, connected
miscellaneous petition is also dismissed.

19-01-2018

Index :Yes
Internet :Yes
Speaking Order
Svn

To

- 1.The Director,
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100 Feet Road,
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Chennai-600 113.
- 2.The Director of Medical Education,
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Rev.Appln.No.704 of 2017