

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.06.2018

CORAM :

THE HONOURABLE Mr.JUSTICE R.SUBBIAH

Review Application No.23 of 2018
in
W.P.No.24521 of 2015

- 1.The Director of Municipal Administration,
Chepauk, Chennai-600 005.
- 2.The Commissioner,
Sembakkam Municipality,
Sembakkam, Chennai-600 073. ... Petitioners

Vs.

A.Sezhian

... Respondent

Review Application has been filed under Order 47 Rule 1 of CPC read with Section 114 of CPC seeking to review the order dated 30.09.2016 in W.P.No.24521 of 2015 passed by this Court.

For Petitioners : Mr.S.Gunasekaran, AGP (writs)

For Respondent : Mrs.Dakshayani Reddy

ORDER

This Review Application has been filed seeking to review the order dated 30.09.2016 passed by this Court in W.P.No.24521 of 2015.

2.The respondent herein has filed the writ petition in W.P.No.24521 of 2015 seeking for a mandamus directing the review applicants herein/respondents therein to consider his representation dated 23.05.2015 and to post him to any non-sensitive post in any of the Municipalities under the control of the 1st review applicant as per the judgment of the Hon'ble Supreme Court of India in **Ajay Kumar Choudhry's case** and the Judgment of the Hon'ble Division Bench of this Court in **W.A.No.862 of 2015, dated 21.07.2015.**

3.This Court, after hearing both sides, following the decision of the Hon'ble Supreme Court in **Ajay Kumar Choudhry Vs. Union of India** reported **2015(2) SCALES 432**, has given direction to the respondents as follows_

"8.Accordingly, this Court directs the petitioner to give a fresh representation to the 2nd respondent, within a period of two weeks from the date of receipt of a copy of this order. On such representation being made, the 2nd respondent is directed to consider the same, positively and pass appropriate order with regard to the reinstatement of the petitioner in any non-sensitive post, within a period of three weeks thereafter."

Now, the present Review Application has been filed by the respondents seeking to review of the order passed by this Court.

4.Mr.S.Gunasekaran, learned Additional Government Pleader (writs) appearing for the Review Applicants, submitted that this Court has passed the order dated 30.09.2016 by placing reliance on the judgment of the Hon'ble Supreme Court in the case of **Ajay Kumar Choudhry Vs. Union of India** reported **2015(2) SCALES 432**, in which it has been held that the currency of punishment should not be extended beyond three months, if within this period, the Memorandum of charges/chargesheet is not served on the delinquent official and if charge memo/sheet is served, a reasoned order must be passed for extension of the suspension. In this regard, the learned Additional Government Pleader appearing for the review applicants submitted that the respondent herein was arrested by the Director of Vigilance and Anti Corruption on 13.11.2014 in a corruption case and he was remanded to judicial custody till 27.11.2014; that he was placed under suspension as per Rule 17(e) of Disciplinary and Appeal Rules. The criminal case was investigated and chargesheet was filed within a period of nine months. Immediately after the suspension, the respondent herein made a representation on 29.01.2015 to review his suspension order. The Commissioner, Sembakkam Municipality, considered the said representation of the respondent herein and by order dated 11.02.2015, rejected the same under the existing Rules and Regulations of the Government. Aggrieved over the same, the respondent herein preferred a writ petition in W.P.No.2424 of 2015 and on 23.02.2015 this Court has also passed an order

in the said writ petition directing the 2nd review applicant herein to consider and dispose of the representation dated 24.11.2014 given by the respondent herein. Subsequently, on 11.03.2015, the 2nd review applicant herein has also considered and passed an order on the representation of the respondent herein, rejecting the claim of the respondent herein. Thereafter, the charge-memo was issued on 19.05.2016 and the same was served on 25.05.2016. In this regard, the learned Additional Government Pleader (writs) appearing for the Review Applicants submitted that since the representation of the respondent herein was pending with them, the review applicants were not in a position to issue charge-memo within a period of three months. Further, immediately after the dismissal of the representation of the respondent herein, charge-memo was issued to the respondent herein. This Court has passed the impugned order only on 30.09.2016, on which date the respondent herein was issued with a charge-memo. Moreover, the respondent herein is involved in a corruption case; therefore, the judgment of the Hon'ble Supreme Court in the case of **Ajay Kumar Choudhry Vs. Union of India** reported **2015(2) SCALES 432**, cannot be relied upon in this case. Thus, the learned Additional Government Pleader appearing for the review applicants sought for reviewing the order passed by this Court.

5. Countering the submissions made by the learned Additional Government Pleader (writs) appearing for the review applicants, it is submitted by the learned counsel Mrs. Dakshayani Reddy appearing for the

respondent that in the said judgment in **Ajay Kumar Choudhry Vs. Union of India** reported **2015(2) SCALES 432**, the Hon'ble Supreme Court has categorically held that the currency of suspension order should not be extended beyond three months, if within this period, the Memorandum of charges/chargesheet is not served on the delinquent official and if charge memo/sheet is served, a reasoned order must be passed for extension of the suspension. In this record, the Principal Secretary to Government also issued Letter No.13519/N/2015-1, dated 23.07.2015, to all Principal Secretaries to Government of all the Departments of Secretariat and all Heads of Departments to follow the directions issued by the Hon'ble Supreme of India on the limitations relating to the period of suspension, in letter and spirit. Considering the said orders/directions, this Court has passed the impugned order on 30.09.2016 directing the review applicants to consider the representation of the respondent herein positively, since the charge-memo was not issued within a period three months. The learned counsel for the respondent submitted that absolutely there is no error in the order passed by this Court and the review applicants have not made out any case for reviewing the order passed by this Court. Thus, she sought to dismissal of the review application.

6.Keeping the submissions made on either side, I have carefully gone through the entire materials available on record. It is the main contention of the learned Additional Government Pleader appearing for the Review

Applicants that since the petitioner's representation seeking revocation the suspension order was pending with them, they were not in a position to issue charge-memo immediately; however, they issued the charge-memo even before this Court passes the order in the writ petition on 30.09.2016. But, this Court is not unable to appreciate the said submission made by the learned Additional Government Pleader for the review applicants. The pendency of the representation with the review applicants cannot be a ground to reject the prayer made by the respondent herein in the writ petition. It is admitted case that the charge-memo was issued only after a period of 1 ½ years from the date of suspension of the petitioner. Therefore, the judgment in the case of **Ajay Kumar Choudhry Vs. Union of India** reported **2015(2) SCALES 432** is squarely applicable to the present facts of the case also. Moreover, I am of the opinion that the object of directing the authorities to post the respondent herein in a non-sensitive post is that the respondent should not be kept idle by paying subsistence allowance without extracting any work from him. In this regard, a reference can be placed in an unreported judgment of this Court in **W.P.No.29195 of 2010, etc., batch, dated 02.07.2012 (G.Mathivanan Vs. The Director of Municipal Administration, Chepauk, Chennai)**, wherein it has been held as follows_

"7.Apart from this, in all these cases, after a period of 6 months, the petitioners are entitled to get 75% of

emoluments as subsistence allowance. Instead of keeping them idle and paying 75% of salary by way of allowance, by transferring them to a far away place and posting them in a nonsensitive post, after extracting work, they can be paid salary. However, the same can be done without detriment to the action initiated against them. In the criminal case, some of them or a few of them may be exonerated or they may be punished. But, as on date, not only finality has not been reached but there is no progress. Under such circumstances, in the opinion of this Court, continuance of their suspension is unreasonable following the judgment of the Division Bench.

8. In view of this, the suspension orders passed in all these writ petitions are set aside. However, the respondents are at liberty to post these petitioners in a far away place from the station of occurrence and post them in a nonsensitive post and if for any reason, the authorities are of the opinion that their continuance in service is a hindrance for the action initiated against them, they can re-examine the issue and they are at liberty to take appropriate action."

7. Further, it is well settled legal position that a Review Application cannot be entertained to re-argue the grounds which were already agitated. A review is permissible only if it is shown that there is an error apparent on the face of the record or certain vital points which were agitated have not been considered in the order which is sought to be reviewed. In the present

case, the Applicants have not satisfied the above said two aspects. In this context, useful reference can be made to the decision of the Honourable Supreme Court in the case of **(Kamlesh Verma vs. Mayawati and others)** reported in **(2013) 8 SCC 320** wherein the Honourable Supreme Court, after examining various judgments has laid down the circumstances, as to when the Court can review its own judgments. The relevant portion of the judgment is extracted as under:

"12.This Court has repeatedly held in various Judgments that the jurisdiction and scope of review is not that of an appeal and it can be entertained only there is an error apparent on the face of record. A mere repetition through different counsel, of old and overruled arguments, a second trip over ineffectually covered grounds or minor mistakes of inconsequential import are obviously insufficient....."

.....
 "19. Review proceedings are not by way of an appeal and have to be strictly confined to the scope and ambit of Order XL VII Rule 1 of CPC. In review jurisdiction, mere disagreement with the view of the Judgment cannot be the ground for invoking the same. As long as the point is already dealt with and answered, the parties are not entitled to challenge the impugned Judgment in the guise that an alternative view is possible under the review jurisdiction."

8. In the light of the above decision of the Honourable Supreme Court, I am of the view that the grounds raised by the Review Applicants in this Review Application cannot be entertained and the review application is not

maintainable.

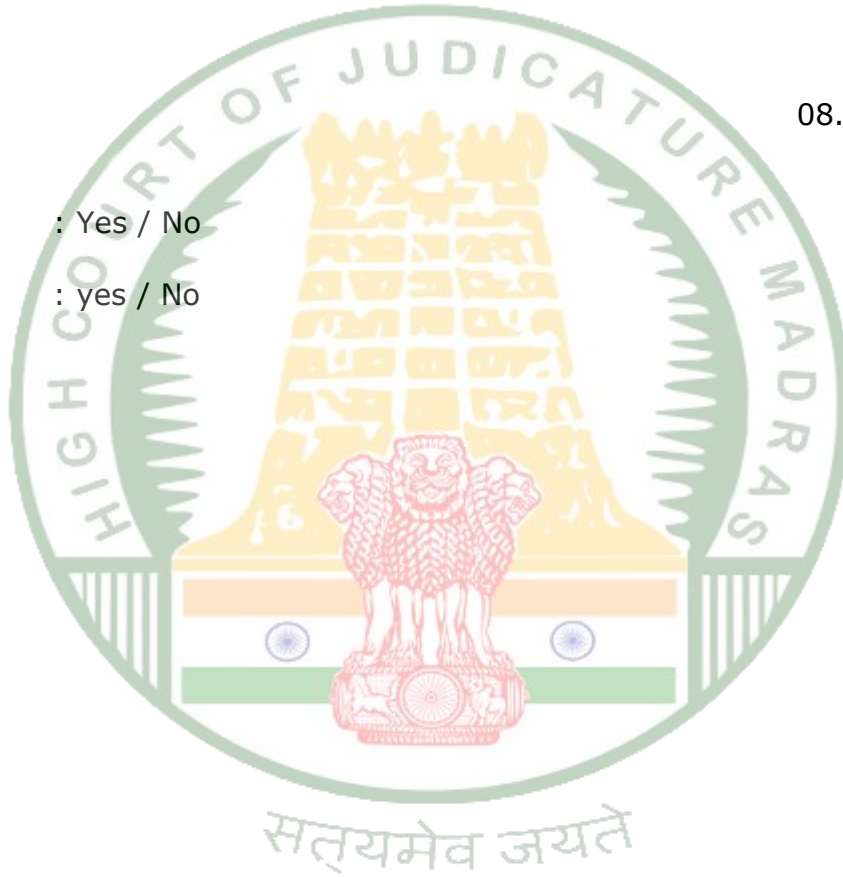
Accordingly, the Review Application is dismissed. No costs. Connected WMP is closed.

08.06.2018

Index : Yes / No

Internet : yes / No

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R.SUBBIAH, J.,

SSV



Review Application No.23 of 2018
in

W.P.No.24521 of 2015

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Pre-delivery judgment in W.P.No.12531/2013

**To,
The Hon'ble Mr.Justice P.D.AUDIKESAVALU**

**From,
Justice R.Subbiah**



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