

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 27.09.2019

PRONOUNCED ON: 06.11.2019

CORAM

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN
AND
THE HONOURABLE MR.JUSTICE R.MAHADEVAN

Review Application No.173 of 2019 in W.A.No.98 of 2017
and
W.A.No.1541 of 2019 and C.M.P.No.10589 of 2019

Review Application No.173 of 2019:

J.Sathish ... Petitioner/Appellant

-vs-

- 1.The Member Secretary,
Tamil Nadu Pollution Control Board,
No.76, Mount Road, Guindy,
Chennai.
- 2.The Chairman,
Tamil Nadu Pollution Control Board,
No.76, Mount Road, Guindy,
Chennai.
- 3.The Principal Secretary to Government,
Higher Education Department,
Fort St.George, Chennai-600 009.
- 4.The Secretary to Government,
Environment Department,
Fort St.George, Chennai-600 009. ..Respondents/Respondents

W.A.No.1541 of 2019:

J.Sathish ..Appellant/Petitioner

-vs-

- 1.The Secretary to Government,
Government of Tamil Nadu,
Environmental and Forest Department,
Secretariat, Fort St.George,
Chennai-600 009.

2.The Member Secretary,
Tamil Nadu Pollution Control Board,
No.76, Mount Road, Guindy,
Chennai-600 032.

..Respondents

Review Application filed under Order XLVII Rules 1 and 2 r/w
Section 114 of the Code of Civil Procedure, against the judgment
dated 05.06.2017 passed by this Court in W.A.No.98 of 2017.

W.A.No.98/2017:

Appeal filed under Clause 15 of the Letters Patent against
the order passed by this Court in W.P.No.33124/2014 dated
13.06.2016.

W.P.No.33124/2014:

This Writ Petition filed under Article 226 of the
Constitution of India, praying for the issuance of a Writ of
Mandamus, directing the respondents 1 & 2 to consider and pass
appropriate orders on the representation dated 20.11.2014
submitted by the petitioner within a time limit that may be
fixed by this Court.

Writ Appeal filed under Clause 15 of the Letters Patent,
against the order passed by this Court in W.P.No.10953 of 2019
dated 10.04.2019.

W.A.No.1541/2019:

W.P.No.10953 of 2019:

Writ Petition filed under Article 226 of the Constitution of
India, seeking for an issuance of a Writ of Mandamus, directing
the respondents herein to grant age relaxation to the
petitioner in respect of the upper age limit of 35 years for SC/
ST candidates for participating in the selection process for the
post of Assistant Engineer (Engineering Services) in the Tamil
Nadu Pollution Control Board pursuant to the Notification No.
01/ 2019 dated 06.03.2019 grant preference to the petitioner in
the said selection process for the post of Assistant Engineer
select and appoint the petitioner as Assistant Engineer in the
light of the orders passed by this Honorable Court in W.P.No.
33124 of 2014 dated 13.06.2016 and W.A.No. 98 of 2017 dated
05.06.2017.

Review Application No.173 of 2019:

For Petitioner :	Mrs.AL.Ganthimathi
For Respondents:	Mr.Abdul Saleem for R1 & R2
	Mrs.P.Rajalakshmi,
	Special Govt.Pleader for R3 & R4

W.A.No.1541 of 2019:

For Appellant : Mr.AR.L.Sundaresan, Sr.Counsel
for Mrs.AL.Ganthimathi

For Respondents: Mr.Abdul Saleem

COMMON JUDGMENT

R.MAHADEVAN, J.

The facts necessitated for filing of Review Application No.173 of 2018, are as follows:

The case of the review petitioner is that he was not allowed to participate in the interview for the post of Assistant Engineer in Tamil Nadu Pollution Control Board, on the ground that the educational qualification acquired by him was not equivalent to the qualification prescribed for the said post. Even though subsequently it was clarified by the Government in G.O.Ms.No.190, dated 18.11.2014, issued by the Higher Education Department, that the degree in M.E.(Environmental Management) awarded by Anna University, acquired by him, is equivalent to M.E.(Environmental Engineering), the qualification prescribed by the Tamil Nadu Pollution Control Board for the post of Assistant Engineer, since the recruitment process for the said post for the year 2012 have been completed, he was informed that he can apply only in the next recruitment. In the circumstances, W.P.No.33124 of 2014 was filed before this Court contending that as on the date of original notification issued for selection, the review petitioner was qualified for the post of Assistant Engineer for which applications have been called for; that merely because there was a doubt in respect of the qualification of the review petitioner, he was not allowed to participate in the personal interview. It was also submitted before this Court that among the 12 candidates, 4 candidates did not join and since the review petitioner did not participate in the interview, he was not considered for the said post. It was also put forth before the Writ Court that since as per G.O.Ms.No.190, dated 18.11.2014, the qualification acquired by the review petitioner as on the date of application, is equivalent to the qualification prescribed for the said post, he has to be given appointment. On the other hand, the learned Special Government Pleader appearing on behalf of the State submitted before the writ Court, that the said G.O. did not give retrospective effect and hence the review petitioner cannot claim appointment on the basis of the same.

2.After hearing the parties, this Court affirmed the view expressed by the learned Special Government Pleader that the review petitioner cannot claim appointment on the basis of

original notification since he did not participate in the interview, because even though he could have participated in the interview, it is not sure that he will get appointment. However, a direction was given to the Tamil Nadu Pollution Control Board to give some preference to the appellant at least in the next selection process, by order dated 13.06.2016.

3.Challenging the order passed in the writ petition, the writ appeal in W.A.No.98 of 2017 was filed by the review petitioner.

4.After hearing both the sides, this Court held that since the review petitioner did not participate in the interview, he cannot claim appointment on the basis of the original notification; that the clarification by the Government in G.O.Ms.No.190 was not made at the time of the recruitment process in question. Further, since the prayer made in the writ petition was only for a direction to consider the representation of the review petitioner and that the review petitioner had not challenged any appointment made in the recruitment process in question, this Court disposed of the writ appeal directing the respondent Board to consider the case of the review petitioner for appointment to the said post, preferably in the next selection process as per law, by judgment dated 05.06.2017.

5.Now the present Review Application has been filed seeking to review the said judgment dated 05.06.2017 so as to give a clear direction by recognising the degree obtained by the review petitioner with effect from the date on which it was obtained by him, without giving any room for any doubt as to the entitlement of the review petitioner in the next selection process.

6.When this Review Application was taken up on 19.09.2018 by this Court, it has been brought to the knowledge of this Court that the review petitioner, challenging the legality of the order dated 10.04.2019 made in W.P.No.10953 of 2019, has filed W.A.No.1541 of 2019. In the light of the facts and circumstances, this Court directed the Registry to tag the said writ appeal also along with the Review Application after obtaining appropriate orders and pursuant to the same, W.A.No.1541 of 2019 has been posted along with the present Review Application.

7.W.A.No.1541 of 2019 has been filed challenging the order passed by a learned single Judge of this Court in W.P.No.10953 of 2019, dismissing the prayer of the writ petitioner/ review petitioner herein for a direction to grant age relaxation to him in respect of the upper age limit of 35 years for SC/ST candidates for participating in the selection process for the

post of Assistant Engineer (Engineering Services) in the Tamil Nadu Pollution Control Board, pursuant to the Notification No.01/2019 dated 06.03.2019 and to grant preference to him in the said selection process for the post of Assistant Engineer, select and appoint him as Assistant Engineer in the light of the order passed by this Court in W.P.No.33124 of 2014 dated 13.06.2016 and the judgment of this Court in W.A.No.98 of 2017 dated 05.06.2017.

8.While dismissing the writ petition in W.P.No.10953 of 2013, the learned single Judge held that the High Court cannot issue any direction to grant age relaxation in violation of the recruitment notification; that the power of judicial review cannot be exercised so as to grant age relaxation to a candidate for the purpose of participation in the selection process to the post of Assistant Engineer; that the power of judicial review can be exercised only in the event of illegality or irregularity or violation of the statute and rules, and not otherwise. The learned single Judge has also observed that the prescription of age limit, educational qualification and other criteria for selection are the administrative prerogative of the employer and the power of judicial review in these aspects are certainly limited and only in the event of unconstitutionality or violation of the statutes, the Court can interfere and not otherwise.

9.When W.A.No.1541 of 2019 has been taken up by this Court on 27.04.2019, this Court held that the documents available on record clearly indicates that the review petitioner was not at fault during the earlier non-selection and it was only on account of the doubt raised by the Tamil Nadu Pollution Control Board that he could not be interviewed pursuant to the earlier application. Holding so, this Court permitted the review petitioner to submit the application manually pursuant to the Notification dated 06.03.2019 to the Tamil Nadu Pollution Control Board, pending disposal of the writ appeal. This Court has also directed the Board to accept the application and permit him to take part in the selection process, making it clear that such direction would be subject to the result of the intra Court appeal.

10.We have heard the learned counsel on either side, who have reiterated their submissions made before this Court in the earlier proceedings, and perused the materials available on record carefully and meticulously.

11.The fact remains that as on the date of original notification issued for the earlier process of selection, the review petitioner was qualified for the post of Assistant Engineer for which applications have been called for. But merely

because there was a doubt in respect of his qualification, he was not allowed to participate in the personal interview and since he did not participate in the interview, he was not considered for the said post. Thus the review petitioner was not at fault during the earlier process of selection. By the time the Department clarified the factual position regarding the qualification acquired by the review petitioner, the selection process was over and hence he could not participate in the interview. In this connection, since the review petitioner was not at fault, this Court directed the authorities to give some preference to him in the next selection process, in the order dated 13.06.2016 made in W.P.No.33124 of 2014. Further, in the judgment dated 05.06.2017 passed in W.A.No.98 of 2017, Division Bench of this Court directed the Board to consider his case for appointment to the said post preferably in the next selection process. Thereafter, the Board issued another Notification bearing No.01/2019 calling for applications for direct recruitment inter alia for 73 vacancies in the post of Assistant Engineer in the Government Services of the Tamil Nadu Pollution Control Board. The review petitioner made a detailed representation dated 18.03.2019 to the Board requesting that his candidature may be considered for appointment to the post of Assistant Engineer (Environment) by relaxing the upper age limit by 2 years as a special case. Thereafter, the writ petition in W.P.No.10953 of 2019 has been filed for a direction to grant age relaxation to him in respect of the upper age limit of 35 years for SC/ST candidates for participating in the selection process. The said writ petition was dismissed by order dated 10.04.2019 with the observations, as stated supra.

12. Under normal circumstances, we are in agreement with the stand taken by the learned single Judge in the order passed in W.P.No.10953 of 2019 dated 10.04.2019 that the power of judicial review in respect of relaxation of age limit, educational qualification and other criteria, are limited and this Court can interfere only in the event of violation of the statutes / rules. But the case on hand rests completely on a different footing. It has to be borne in mind that it is not the fault on the part of the review petitioner for his non-selection in the earlier process and only due to the same, this Court directed to give some preference to him at least in the next selection process in the order made in W.P.No.33124 of 2014 and thereafter in the appeal made in W.A.No.98 of 2017, this Court directed the Board to consider the case of the review petitioner for appointment to the said post, preferably in the next selection process as per law.

13. Further, in the appeal in W.A.No.1541 of 2019 challenging the order passed by the learned single Judge in W.P.No.10953 of 2019 dated 10.04.2019, this Court has already

permitted the review petitioner to submit the application manually pursuant to the Notification dated 06.03.2019 and directed the Board to accept the application and permit him to take part in the selection process, based on the submission made by the learned Standing Counsel for the Board that under identical circumstances, a learned single Judge of this Court by order dated 26.04.2019 in W.P.No.12509 of 2019, directed the Tamil Nadu Pollution Control Board to receive the application manually at the instance of the petitioner therein, subject to the result of the writ petition. The said order has been passed holding that though there is a reference in the order passed by the learned single Judge and the judgment of the Division Bench to the effect that the review petitioner should be considered in the next selection process, there is no positive direction for giving him the relief.

14.As we have already pointed out, it is not the fault on the part of the review petitioner for his non-selection in the earlier selection process and only due to the same, this Court directed to give some preference to him at least in the next selection process in the order made in W.P.No.33124 of 2014, followed by the judgment in the writ appeal directing the Board to consider the case of the review petitioner for appointment to the said post, preferably in the next selection process. But, in the order passed in W.P.No.10953 of 2019 dated 10.04.2019, the learned single Judge has observed that if such claims are entertained, similar claim would be made by many number of persons and that mere observation of High Court in this regard, would not confer any right for age relaxation. In this connection, it is to be noted that nowhere in the order passed by the learned single Judge in W.P.No.33124 of 2014 dated 13.06.2016 or in the judgment of the Division Bench in W.A.No.98 of 2017 dated 05.06.2017, it is stated that some preference may be given to age relaxation. But, when a Division Bench of this Court has directed the authorities to consider the case of the review petitioner preferably in the next selection process for appointment, it is not correct to dilute it stating that it is a mere observation. Even though the Division Bench has not observed about age relaxation, considering the facts and circumstances of the case, directed the authorities to consider the case of the review petitioner in the next selection process, only due to the fact that this is a special case and this situation has arisen not due to the fault on the side of the review petitioner, but only due to the delay on the part of the Board to issue the clarification as regards equivalence. Hence it cannot be construed that such situation applies for all.

15.At this juncture, it would be appropriate to refer to the decision of the Hon'ble Supreme Court in the case of Official Liquidator v. Dayanand and others, reported in (2009) 1 SCC

(L&S) 943, in which the aspect of judicial discipline has been discussed in detail. Paragraphs 75 to 92 of the said judgment are relevant and the same are extracted as under:

75.By virtue of Article 141 of the Constitution, the judgment of the Constitution Bench in Secretary, State of Karnataka vs. Uma Devi (2006 SCC (L&S) 753) is binding on all the courts including this Court till the same is overruled by a larger Bench. The ratio of the Constitution Bench judgment has been followed by different two-Judges Benches for declining to entertain the claim of regularization of service made by ad hoc/temporary/ daily wage/casual employees or for reversing the orders of the High Court granting relief to such employees - Indian Drugs and Pharmaceuticals Ltd. vs. Workmen [2007 (1) SCC 408], Gangadhar Pillai vs. Siemens Ltd. [2007 (1) SCC 533], Kendriya Vidyalaya Sangathan vs. L.V. Subramanyeswara [2007 (5) SCC 326], Hindustan Aeronautics Ltd. vs. Dan Bahadur Singh [2007 (6) SCC 207]. However, in U.P. SEB vs. Pooran Chand Pandey [2007 (11) SCC 92] on which reliance has been placed by Shri Gupta, a two-Judges Bench has attempted to dilute the Constitution Bench judgment by suggesting that the said decision cannot be applied to a case where regularization has been sought for in pursuance of Article 14 of the Constitution and that the same is in conflict with the judgment of the seven-Judges Bench in Maneka Gandhi vs. Union of India [1978 (1) SCC 248].

76.The facts of U.P.SEB vs. Pooran Chand Pandey (supra) were that the respondents (34 in number) were employed as daily wage employees by the Cooperative Electricity Supply Society in 1985. The Society was taken over by Uttar Pradesh Electricity Supply Board in 1997 along with daily wage employees. Earlier to this, the Electricity Board had taken a policy decision on 28.11.1996 to regularize the services of its employees working on daily wages from before 4.5.1990, subject to their passing the examination. The respondents moved the High Court claiming benefit of the policy decision dated 28.11.1996. The learned Single Judge of the High Court held that once the employees of the society became employees of the Electricity Board, there was no valid ground to discriminate them in the matter of regularization of service. The Division Bench approved the order of the Single Bench. A two-Judges Bench of this Court dismissed the appeal of the Electricity Board. In para 11 of its judgment, the two-Judges Bench distinguished Secretary, State of Karnataka vs. Uma Devi (supra) by observing that the ratio of that

judgment cannot be applied to a case where regularization has been sought for in pursuance of Article 14 of the Constitution. The two-Judges Bench then referred to State of Orissa vs. Sudhanshu Sekhar Misra [AIR 1968 SC 647], Ambica Quarry Works vs. State of Gujarat [1987 (1) SCC 213], Bhavnagar University vs. Palitana Sugar Mill Pvt. Ltd. [2003 (2) SCC 111], Bharat Petroleum Corpn. Ltd. vs. N.R.Vairamani [2004 (8) SCC 579] and observed:

"16. We are constrained to refer to the above decisions and principles contained therein because we find that often Umadevi (3) case is being applied by courts mechanically as if it were a Euclid's formula without seeing the facts of a particular case. As observed by this Court in Bhavnagar University and Bharat Petroleum Corpn. Ltd. a little difference in facts or even one additional fact may make a lot of difference in the precedential value of a decision. Hence, in our opinion, Umadevi (3) case cannot be applied mechanically without seeing the facts of a particular case, as a little difference in facts can make Umadevi (3) case inapplicable to the facts of that case."

"18. We may further point out that a seven-Judge Bench decision of this Court in Maneka Gandhi vs. Union of India has held that reasonableness and non-arbitrariness is part of Article 14 of the Constitution. It follows that the Government must act in a reasonable and non-arbitrary manner otherwise Article 14 of the Constitution would be violated. Maneka Gandhi case is a decision of a seven-Judge Bench, whereas Umadevi (3) case is a decision of a five-Judge Bench of this Court. It is well settled that a smaller Bench decision cannot override a larger Bench decision of the Court. No doubt, Maneka Gandhi case does not specifically deal with the question of regularisation of government employees, but the principle of reasonableness in executive action and the law which it has laid down, in our opinion, is of general application."
[Emphasis supplied]

77. We have carefully analyzed the judgment of the two-Judges Bench and are of the considered view that

the above reproduced observations were not called for. The only issue which fell for consideration by two-Judges Bench was whether the daily wage employees of the society, the establishment of which was taken over by the Electricity Board along with the employees, were entitled to be regularized in terms of the policy decision taken by the Board and whether the High Court committed an error by invoking Article 14 of the Constitution for granting relief to the writ petitioners. The question whether the Electricity Board could frame such a policy was neither raised nor considered by the High Court and this Court. The High Court simply adverted to the facts of the case and held that once the daily wage employees of the society became employees of the Electricity Board, they could not be discriminated in the matter of implementation of the policy of regularization. Therefore, the two-Judges Bench had no occasion to make any adverse comment on the binding character of the Constitution Bench judgment in Secretary, State of Karnataka vs. Uma Devi (3) (2006 SCC (L&S) 753).

78. There have been several instances of different Benches of the High Courts not following the judgments/orders of coordinate and even larger Benches. In some cases, the High Courts have gone to the extent of ignoring the law laid down by this Court without any tangible reason. Likewise, there have been instances in which smaller Benches of this Court have either ignored or bypassed the ratio of the judgments of the larger Benches including the Constitution Benches. These cases are illustrative of non-adherence to the rule of judicial discipline which is sine qua non for sustaining the system. In Mahadeolal Kanodia vs. Administrator General of W.B. [1960 (3) SCR 578], this Court observed:

"19. If one thing is more necessary in law than any other thing, it is the quality of certainty. That quality would totally disappear if Judges of coordinate jurisdiction in a High Court start overruling one another's decisions. If one Division Bench of a High Court is unable to distinguish a previous decision of another Division Bench, and holding the view that the earlier decision is wrong, itself gives effect to that view the result would be utter confusion. The position would be equally bad where a Judge sitting singly in the High

Court is of opinion that the previous decision of another Single Judge on a question of law is wrong and gives effect to that view instead of referring the matter to a larger Bench. In such a case lawyers would not know how to advise their clients and all courts subordinate to the High Court would find themselves in an embarrassing position of having to choose between dissentient judgments of their own High Court." [Emphasis added]

79. In *Lala Shri Bhagwan vs. Ram Chandra* [AIR 1965 SC 1767], Gajendragadkar, C.J. Observed:

"18. ... It is hardly necessary to emphasize that considerations of judicial propriety and decorum require that if a learned Single Judge hearing a matter is inclined to take the view that the earlier decisions of the High Court, whether of a Division Bench or of a Single Judge, need to be reconsidered, he should not embark upon that enquiry sitting as a Single Judge, but should refer the matter to a Division Bench or, in a proper case, place the relevant papers before the Chief Justice to enable him to constitute a larger bench to examine the question. That is the proper and traditional way to deal with such matters and it is founded on healthy principles of judicial decorum and propriety. It is to be regretted that the learned Single Judge departed from this traditional way in the present case and chose to examine the question himself."

80. In *Union of India vs. Raghubir Singh* [1989 (2) SCC 754], R.S. Pathak, C.J. while recognizing need for constant development of law and jurisprudence emphasized the necessity of abiding by the earlier precedents in following words :

"9. The doctrine of binding precedent has the merit of promoting a certainty and consistency in judicial decisions, and enables an organic development of law, besides providing assurance to the individual as to the consequence of transaction forming part of his daily affairs. And, therefore, the need for a clear and consistent

enunciation of legal principle in the decisions of a court."

81. In *Sundarjas Kanyalal Bhatija and others vs. Collector, Thane* [1989 (3) SCC 396], a two-Judges Bench observed as under :

"22.. In our system of judicial review which is a part of our constitutional scheme, we hold it to be the duty of judges of superior courts and tribunals to make the law more predictable. The question of law directly arising in the case should not be dealt with apologetic approaches. The law must be made more effective as a guide to behaviour. It must be determined with reasons which carry convictions within the courts, profession and public. Otherwise, the lawyers would be in a predicament and would not know how to advise their clients. Sub-ordinate courts would find themselves in an embarrassing position to choose between the conflicting opinion. The general public would be in dilemma to obey or not to obey such law and it ultimately falls into disrepute."

82. In *Dr. Vijay Laxmi Sadho vs. Jagdish* [2001 (2) SCC 247], this Court considered whether the learned Single Judge of Madhya Pradesh High Court could ignore the judgment of a coordinate Bench on the same issue and held:

"33. As the learned Single Judge was not in agreement with the view expressed in *Devilal* case it would have been proper, to maintain judicial discipline, to refer the matter to a larger Bench rather than to take a different view. We note it with regret and distress that the said course was not followed. It is well-settled that if a Bench of coordinate jurisdiction disagrees with another Bench of coordinate jurisdiction whether on the basis of "different arguments" or otherwise, on a question of law, it is appropriate that the matter be referred to a larger Bench for resolution of the issue rather than to leave two conflicting judgments to operate, creating confusion. It is not proper to sacrifice certainty of law. Judicial decorum, no less than legal

propriety forms the basis of judicial procedure and it must be respected at all costs."

83. In Pradip Chandra Parija and others vs. Pramod Chandra Patnaik and others [2002 (1) SCC 1], the Constitution Bench noted that the two learned Judges denuded the correctness of an earlier Constitution Bench judgment in Bharat Petroleum Corpn. Ltd. vs. Mumbai Shramik Sangha [2001 (4) SCC 448] and reiterated the same despite the fact that the second Constitution Bench refused to reconsider the earlier verdict and observed:

"3. We may point out, at the outset, that in Bharat Petroleum Corpn. Ltd. vs. Mumbai Shramik Sangha (2001 (4) SCC 448) a Bench of five Judges considered a somewhat similar question. Two learned Judges in that case doubted the correctness of the scope attributed to a certain provision in an earlier Constitution Bench judgment and, accordingly, referred the matter before them directly to a Constitution Bench. The Constitution Bench that then heard the matter took the view that the decision of a Constitution Bench binds a Bench of two learned Judges and that judicial discipline obliges them to follow it, regardless of their doubts about its correctness. At the most, the Bench of two learned Judges could have ordered that the matter be heard by a Bench of three learned Judges.

* * *

5. The learned Attorney-General submitted that a Constitution Bench judgment of this Court was binding on smaller Benches and a judgment of three learned Judges was binding on Benches of two learned Judges -- a proposition that learned counsel for the appellants did not dispute. The learned Attorney-General drew our attention to the judgment of a Constitution Bench in Sub-Committee of Judicial Accountability v. Union of India (1992 (4) SCC 97) where it has been said that "no coordinate Bench of this Court can even comment upon, let alone sit in judgment over, the discretion exercised or

judgment rendered in a cause or matter before another coordinate Bench" (SCC p. 98, para 5). The learned Attorney-General submitted that the appropriate course for the Bench of two learned Judges to have adopted, if it felt so strongly that the judgment in Nityananda Kar (1991 Supp. (2) SCC 506) was incorrect, was to make a reference to a Bench of three learned Judges. That Bench of three learned Judges, if it also took the same view of Nityananda Kar, could have referred the case to a Bench of five learned Judges.

6. In the present case the Bench of two learned Judges has, in terms, doubted the correctness of a decision of a Bench of three learned Judges. They have, therefore, referred the matter directly to a Bench of five Judges. In our view, judicial discipline and propriety demands that a Bench of two learned Judges should follow a decision of a Bench of three learned Judges. But if a Bench of two learned Judges concludes that an earlier judgment of three learned Judges is so very incorrect that in no circumstances can it be followed, the proper course for it to adopt is to refer the matter before it to a Bench of three learned Judges setting out, as has been done here, the reasons why it could not agree with the earlier judgment. If, then, the Bench of three learned Judges also comes to the conclusion that the earlier judgment of a Bench of three learned Judges is incorrect, reference to a Bench of five learned Judges is justified.
Emphasis supplied]

84. In *State of Bihar vs. Kalika Kuer and others* [2003 (5) SCC 448], the Court elaborately considered the principle of per incuriam and held that the earlier judgment by a larger Bench cannot be ignored by invoking the principle of per incuriam and the only course open to the coordinate or smaller Bench is to make a request for reference to the larger Bench.

85. In *State of Punjab vs. Devans Modern Breweries Ltd.* [2004 (11) SCC 26], the Court reiterated that if a coordinate Bench does not agree with the principles of law enunciated by another Bench, the matter has to be referred to a larger Bench.

86. In Central Board of Dawoodi Bohra Community vs. State of Maharashtra [2005 (2) SCC 673], the Constitution Bench interpreted Article 141, referred to various earlier judgments including Bharat Petroleum Corpn. Ltd. vs. Mumbai Shramik Sangha (supra), Pradip Chandra Parija and others vs. Pramod Chandra Patnaik and others (supra) and held that "the law laid down in a decision delivered by a Bench of larger strength is binding on any subsequent Bench of lesser or co-equal strength and it would be inappropriate if a Division Bench of two Judges starts overruling the decisions of Division Benches of three Judges. The Court further held that such a practice would be detrimental not only to the rule of discipline and the doctrine of binding precedents but it will also lead to inconsistency in decisions on the point of law; consistency and certainty in the development of law and its contemporary status - both would be immediate casualty"

87. In State of U.P. and others vs. Jeet S. Bisht and another [2007 (6) SCC 586], when one of the Hon'ble Judges (Katju, J.) constituting the Bench criticised the orders passed by various Benches in the same case, the other Hon'ble Judge (Sinha, J.) expressed himself in the following words:

"100. For the views been taken herein, I regret to express my inability to agree with Brother Katju, J. in regard to the criticisms of various orders passed in this case itself by other Benches. I am of the opinion that it is wholly inappropriate to do so. One Bench of this Court, it is trite, does not sit in appeal over the other Bench particularly when it is a coordinate Bench. It is equally inappropriate for us to express total disagreement in the same matter as also in similar matters with the directions and observations made by the larger Bench. Doctrine of judicial restraint, in my opinion, applies even in this realm. We should not forget other doctrines which are equally developed viz. Judicial Discipline and respect for the Brother Judges."

88. In U.P. Gram Panchayat Adhikari Sangh vs. Daya Ram Saroj [2007 (2) SCC 138], the Court noted that by ignoring the earlier decision of a coordinate Bench, a Division Bench of the High Court directed that part-

time tube-well operators should be treated as permanent employees with same service conditions as far as possible and observed :

"26.Judicial discipline is self-discipline. It is an inbuilt mechanism in the system itself. Judicial discipline demands that when the decision of a coordinate Bench of the same High Court is brought to the notice of the Bench, it is to be respected and is binding, subject of course, to the right to take a different view or to doubt the correctness of the decision and the permissible course then open is to refer the question or the case to a larger Bench. This is the minimum discipline and decorum to be maintained by judicial fraternity."

89.It is interesting to note that in Coir Board, Ernakulam vs. Indira Devi P.S. [1998 (3) SCC 259], a two-Judges Bench doubted the correctness of the seven-Judges Bench judgment in Bangalore Water Supply & Sewerage Board vs. A.Rajappa [1978 (2) SCC 213] and directed the matter to be placed before Hon'ble the Chief Justice of India for constituting a larger Bench. However, a three-Judges Bench headed by Dr. A.S. Anand, C.J., refused to entertain the reference and observed that the two-Judges Bench is bound by the judgment of the larger Bench - Coir Board, Ernakulam, Kerala State vs. Indira Devai P.S. [2000 (1) SCC 224].

90.We are distressed to note that despite several pronouncements on the subject, there is substantial increase in the number of cases involving violation of the basics of judicial discipline. The learned Single Judges and Benches of the High Courts refuse to follow and accept the verdict and law laid down by coordinate and even larger Benches by citing minor difference in the facts as the ground for doing so. Therefore, it has become necessary to reiterate that disrespect to constitutional ethos and breach of discipline have grave impact on the credibility of judicial institution and encourages chance litigation. It must be remembered that predictability and certainty is an important hallmark of judicial jurisprudence developed in this country in last six decades and increase in the frequency of conflicting judgments of the superior judiciary will do incalculable harm to the system inasmuch as the courts at the grass root will not be able to decide as to which of the judgment lay down the correct law and which one should be followed.

91. We may add that in our constitutional set up every citizen is under a duty to abide by the Constitution and respect its ideals and institutions. Those who have been entrusted with the task of administering the system and operating various constituents of the State and who take oath to act in accordance with the Constitution and uphold the same, have to set an example by exhibiting total commitment to the Constitutional ideals. This principle is required to be observed with greater rigour by the members of judicial fraternity who have been bestowed with the power to adjudicate upon important constitutional and legal issues and protect and preserve rights of the individuals and society as a whole. Discipline is sine qua non for effective and efficient functioning of the judicial system. If the Courts command others to act in accordance with the provisions of the Constitution and rule of law, it is not possible to countenance violation of the constitutional principle by those who are required to lay down the law.

92. In the light of what has been stated above, we deem it proper to clarify that the comments and observations made by the two-Judges Bench in UP State Electricity Board vs. Pooran Chandra Pandey (supra) should be read as obiter and the same should neither be treated as binding by the High Courts, Tribunals and other judicial foras nor they should be relied upon or made basis for bypassing the principles laid down by the Constitution Bench.

16. As per the principles enunciated by the Hon'ble Supreme Court, it is clear that High Court cannot sit in appeal in an earlier order passed by it in the same matter, which has already attained finality and set aside that order. Further, the doctrine of precedent is well explained by observing that a coordinate Bench of the High Court is bound by another coordinate Bench where the order has attained finality, and judicial discipline has to be maintained in this regard.

17. In view of the principles enunciated by the Hon'ble Supreme Court and also taking note of the order passed by this Court permitting the review petitioner to take part in the selection process and the facts and circumstances of the case, the order passed by the learned single Judge in W.P.No.10953 of 2019 dated 10.04.2019 is set aside. Making it clear that the candidature of the review petitioner shall not be rejected on the ground of age limit, a positive direction is issued to the

respondent Board to consider the case of the review petitioner for appointment to the said post, if he is otherwise qualified.

18.The Review Application and the Writ Appeal stands disposed of accordingly. No costs. Consequently, the connected miscellaneous petition is closed.

s/d-
Assistant Registrar(CS VIII)

True Copy

Sub-Assistant Registrar

KM

To

- 1.The Member Secretary,
Tamil Nadu Pollution Control Board,
No.76, Mount Road, Guindy, Chennai.
- 2.The Chairman,
Tamil Nadu Pollution Control Board,
No.76, Mount Road, Guindy,
Chennai.
- 3.The Principal Secretary to Government,
Higher Education Department,
Fort St.George, Chennai-600 009.
- 4.The Secretary to Government,
Environment Department,
Fort St.George, Chennai-600 009.
- 5.The Secretary to Government,
Government of Tamil Nadu,
Environment and Forest Department,
Secretariat, Fort St.George,
Chennai-600 009.

+1 CC to M/s.A.L. Gandhimathi, Advocate sr 92200.

Review Application No.173
of 2019 in W.A.No.98 of 2017
and
W.A.No.1541 of 2019 and
C.M.P.No.10589 of 2019

SR(CO)
SP(14/11/2019)