

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.06.2019

CORAM :

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
AND
THE HONOURABLE MR.JUSTICE SUBRAMONIUM PRASAD

Review Application No.115 of 2019

1. The Government of Tamil Nadu
rep. By its Secretary to Government
Environment and Forest Department
Secretariat
Chennai 600 009.
2. The Principal Chief Conservator of Forest
Head of the Forest Department
Panagal Maligai
Saidapet
Chennai 600 015.
3. The Divisional Forest Officer
Interface Forestry Division
Salem District.

.... Petitioners

vs.

R. Azhaharasan

.... Respondent

Application filed under Order 47 Rule 1 read with Section 114 of the Civil Procedure Code, to review the order made in W.A.No.2796 of 2018, dated 02.01.2019.

For Petitioner : Mr.Akil Akbar Ali

ORDER

(Order of the Court was made by Justice S.MANIKUMAR)

Instant review petition has been filed to review the order, dated 02.01.2019, in W.A.No.2796 of 2018, by which, we confirmed the order of the learned single Judge, dated 15.12.2017 made in W.P.No.22740 of 2010.

2. It is the case of the 2nd respondent that on 08.07.1997, he was appointed as a Jeep Driver on daily wage basis. But was not absorbed in the regular establishment in the regular time scale of pay, as per the existing rules. He preferred W.P.No.22209 of 2008, seeking regularisation as Jeep Driver. In the said writ petition, a learned single Judge directed to consider his representation for regularization in the regular post, as per Tamil Nadu Forest Subordinate Service Rules, after getting representation from the respondent. Accordingly, his representation was considered by the 2nd petitioner herein and rejected the claim, vide Proceedings No.52469/2008 S2, dated .03.2009 (Signed on 16.04.2009), on the ground that the respondent was not eligible for regularization of his temporary service, covered under daily wages. Further, it

was stated that the respondent has not completed 10 years of service, as per G.O.Ms.No.22, P & A.R. Department, dated 01.01.2006.

3. Aggrieved by the same, the respondent filed W.P.No.22740 of 2010 and a learned single Judge, vide order, dated 15.12.2017, directed the petitioners to regularize the services of the respondent, as driver, from the date of his initial appointment. Against which, W.A.No.2796 of 2018 was filed and we confirmed the order of the learned single Judge, passed in W.P.No.22740 of 2010, dated 15.12.2017, following the similar orders passed in W.P.Nos.19456 to 19458 of 2013, dated 04.09.2017. Seeking review, instant review petition has been filed, on the grounds inter alia that,

(a) The respondent has been given the benefit of the orders in W.P.Nos.19456 and 19458 of 2013, cited in the order copy of W.P.No.22740 of 2010, on completion of 10 years, wherein it is clearly stated to regularize his service as driver from the date of petitioner initial appointment.

(b) The above orders would lead to further litigations claiming regularization from the date of initial appointment which would cause great hardship and financial implications to the government.

(c) Further, on going through the order copy of W.P.No.22740

of 2010, it is clear that the respondent has claimed relief only based on WP.(MD)No.11106 of 2013. In this case, this Court had passed orders on 1.12.2016, as mentioned below:-

"the respondents are hereby directed to regularize the service of the petitioner from the date of completion of 10 years service."

(d) In a similar cases of W.P.Nos.19456 to 19458 of 2013, this Court had passed order as given below:-

"all the petitioners are directed to be regularized from the date of completion of ten years from the date of initial appointment with all attendant and consequential benefits."

(e) The applicants reserve their right to raise additional grounds and when necessary if so advised."

4. Though learned counsel for the review petitioner emphasised that only on completion of 10 years, the respondent can be regularised, ie., the date of completion of 10 years and not from the initial date of appointment, we are not inclined to do so, for the reason that review is not an appeal in disguise. Review can be made only if there is any mistake apparent on the face of the record or there is any clerical error in the order sought to be reviewed. Reference can be made to a few decisions, on the point of review.

(i) The Hon'ble Supreme Court in **Lily Thomas v. Union of India**, reported in **2000 (6) SCC 224**, while considering the scope of review and the limitations imposed on its exercise under, Article 137 of the Constitution of India, held as follows:

“52. The dictionary meaning of the word "review" is the act of looking, over, 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 & Ors. Vs. Pradyunmarsinghji Arjunsinghji** [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 miscarriage of justice nothing would preclude the Court from rectifying the error. This Court in **S.Nagaraj & Ors.etc. Vs. State of Karnataka & Anr.etc.** [1993 Supp. (4) SCC 595] held:

"19. Review literally and even judicially means re-

examination or re-consideration. Basic philosophy inherent in it is the universal acceptance of human fallibility. Yet in the realm of law the courts and even the statutes lean strongly in favour of finality of decision legally and properly made. Exceptions both statutorily and judicially have been carved out to correct accidental mistakes or miscarriage of justice. Even when there was no statutory provision and no rules were framed by the highest court indicating the circumstances in which it could rectify its order the courts culled out such power to avoid abuse of process or miscarriage of justice. In **Raja Prithwi Chand Law Choudhury v. Sukhraj Rai [AIR 1941 FC 1]** the Court observed that even though no rules had been framed permitting the highest Court to review its order yet it was available on the limited and narrow ground developed by the Privy Council and the House of Lords. The Court approved the principle laid down by the Privy Council in **Rajunder Narain Rae v. Bijai Govind Singh (1836) 1 Moo PC 117** that an order made by the Court was final and could not be altered:

'...nevertheless, if by misprision in embodying the judgments, by errors have been introduced, these Courts possess, by Common Law, the same power which the Courts of record and statute have of rectifying the mistakes which have crept in.... The House of Lords exercises a similar power of rectifying mistakes made in drawing up its own judgments, and this Court must possess the same authority. The Lords have however gone a step

further, and have corrected mistakes introduced through inadvertence in the details of judgments; or have supplied manifest defects in order to enable the decrees to be enforced, or have added explanatory matter, or have reconciled inconsistencies.”

Basis for exercise of the power was stated in the same decision as under:

‘It is impossible to doubt that the indulgence extended in such cases is mainly owing to the natural desire prevailing to prevent irremediable injustice being done by a Court of last resort, where by some accident, without any blame, the party has not been heard and an order has been inadvertently made as if the party had been heard.’

Rectification of an order thus stems from the fundamental principle that justice is above all. It is exercised to remove the error and not for disturbing finality. When the Constitution was framed the substantive power to rectify or recall the order passed by this Court was specifically provided by Article 137 of the Constitution. Our Constitution-makers who had the practical wisdom to visualise the efficacy of such provision expressly conferred the substantive power to review any judgment or order by Article 137 of the Constitution. And clause (c) of Article 145 permitted this Court to frame rules as to the conditions subject to which any judgment or order may be reviewed. In exercise of this power Order XL had been framed empowering this Court to review

an order in civil proceedings on grounds analogous to Order XLVII Rule 1 of the Civil Procedure Code. The expression, for any other sufficient reason in the clause has been given an expanded meaning and a decree or order passed under misapprehension of true state of circumstances has been held to be sufficient ground to exercise the power. Apart from Order XL Rule 1 of the Supreme Court Rules this Court has the inherent power to make such orders as may be necessary in the interest of justice or to prevent the abuse of process of Court. The Court is thus not precluded from recalling or reviewing its own order if it is satisfied that it is necessary to do so for sake of justice."

The mere fact that two views on the same subject are possible is no ground to review the earlier judgment passed by a Bench of the same strength.

53. This Court in **M/s.Northern India Caterers (India) Ltd. Vs. Lt.Governor of Delhi [AIR 1980 SC 674]** considered the powers of this Court under Article 137 of the Constitution read with Order 47 Rule 1 CPC and Order 40 Rule 1 of the Supreme Court Rules and held:

"It is well settled that a party is not entitled to seek a review of a judgment delivered by this Court merely for the purpose of a rehearing and a fresh decision of the case. The normal principle is that a judgment pronounced by the Court is final, and departure from that principle is justified only when circumstances of a substantial and compelling character make it

necessary to do so. **Sajjan Singh v. State of Rajasthan, (1965) 1 SCR 933 at p.948.** For instance, if the attention of the Court is not drawn to a material statutory provision during the original hearing. **G.L. Gupta v. D.N. Mehta, (1971) 3 SCR 748 at p.760.** The Court may also reopen its judgment if a manifest wrong has been done and it is necessary to pass an order to do full and effective justice. **O.N.Mohindroo v. Dist. Judge, Delhi, (1971) 2 SCR 11 at p.27.** Power to review its judgments has been conferred on the Supreme Court by Art.137 of the Constitution, and that power is subject to the provisions of any law made by Parliament or the rules made under Art.145. In a civil proceeding, an application for review is entertained only on a ground mentioned in O. XLVII, Rule 1 of the Code of Civil Procedure and in a criminal proceeding on the ground of an error apparent on the face of the record. (Order XL, R.1, Supreme Court Rules, 1966). But whatever the nature of the proceeding, it is beyond dispute that a review proceeding cannot be equated with the original hearing of the case, and the finality of the judgment delivered by the Court will not be reconsidered except where a glaring omission or patent mistake or like grave error has crept in earlier by judicial fallibility. **Chandra Kanta v. Sheikh Habib (1975) 3 SCR 935."**

54. Article 137 empowers this Court to review its judgments subject to the provisions of any law made by Parliament or any rules made under Article 145 of the Constitution. The Supreme Court Rules made in exercise of the

powers under Article 145 of the Constitution prescribe that in civil cases, review lies on any of the ground specified in Order 47 Rule 1 of the Code of Civil Procedure which provides:

"Application for review of judgment -(1) Any person considering himself aggrieved -

(a) by a decree or order from which an appeal is allowed, but from which, no appeal has been preferred.

(b) by a decree or order from which no appeal is allowed, or

(c) by a decision on a reference from a Court of Small Causes, and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgment to the Court which passed the decree or made the order."

Under Order 40 Rule 1 of the Supreme Court Rules no review lies except on the ground of error apparent on the face of the record in criminal cases."

(ii) In **Aribam Tuleswar Sharma v. Aibam Pishak Sharma** , reported in **AIR 1979 SC 1047**, the Hon'ble Supreme Court held that,

"there is nothing in Article 226 of the Constitution to preclude a High Court from exercising the power of review which inheres in every court of plenary jurisdiction to prevent miscarriage of justice or to correct grave and palpable errors committed by it. But, there are definitive limits to the exercise of the power of review. The power of review may be exercised on the discovery of new and important matter or evidence which, after the exercise of due diligence was not within the knowledge of the person seeking the review or could not be produced by him at the time when the order was made; it may be exercised where some mistake or error apparent on the face of the record is found; it may also be exercised on any analogous ground. But, it may not be exercised on the ground that the decision was erroneous on merits. That would be the province of a court of appeal. A power of review is not to be confused with appellate powers which may enable an appellate court to correct all manner of errors committed by the subordinate court."

(iii) In yet another decision in **Rajindersingh v. Lt. Governor** reported in **2005 (13) SCC 289**, at paragraph Nos.15 and 16, the Hon'ble Supreme Court held that law is well settled that the power of judicial review of its own order by the High Court inheres in every Court of plenary jurisdiction to prevent miscarriage of justice. Power of judicial review extends to correct all

errors to prevent miscarriage of justice. It was further held that Courts should not hesitate to review their own earlier order, when there exists an error on the face of record and the interest of justice so demands in appropriate cases.

(iv) In **Union of India v. Kamal Sengupta** reported in **2008 (8) SCC 612**, the Hon'ble Supreme Court, at Paragraphs 14 and 15, has held that,

"14. At this stage it is apposite to observe that where a review is sought on the ground of discovery of new matter or evidence, such matter or evidence must be relevant and must be of such a character that if the same had been produced, it might have altered the judgment. In other words, mere discovery of new or important matter or evidence is not sufficient ground for review ex debito justitiae. Not only this, the party seeking review has also to show that such additional matter or evidence was not within its knowledge and even after the exercise of due diligence, the same could not be produced before the Court earlier.

15. The term 'mistake or error apparent' by its very connotation signifies an error which is evident per se from the record of the case and does not require detailed examination, scrutiny and elucidation either of the facts or the legal position. If an error is not self-evident and detection thereof requires long

debate and process of reasoning, it cannot be treated as an error apparent on the face of the record for the purpose of Order 47 Rule 1 CPC or Section 22(3)(f) of the Act. To put it differently an order or decision or judgment cannot be corrected merely because it is erroneous in law or on the ground that a different view could have been taken by the Court/Tribunal on a point of fact or law. In any case, while exercising the power of review, the concerned Court/Tribunal cannot sit in appeal over its judgment/decision."

(v) Referring to various decisions of the Hon'ble Apex Court as well as this Court, a Hon'ble Division Bench of this Court, in **Infant Jesus Teacher Training vs. M.Manikandan** (Rev.Appn.No.38 of 2010 in W.A.No.1145 of 2009, dated 31.08.2010), considered the scope of review and at paragraphs 14, 31 and 32, held as follows:-

"14.Considering the scope of review jurisdiction and holding "mistake or error apparent on the face of the record must be self evident and does not require a process of reasoning, in **Parsion Devi v. Sumitri Devi**, ((1997) 8 SCC 715), the Supreme Court has held as under:

"7. It is well settled that review proceedings have to be strictly confined to the ambit and scope of Order 47 Rule 1 CPC. In **Thungabhadra Industries Ltd. v. Govt. of A.P.**(AIR 1964 SC 1372 =

(1964) 5 SCR 174) (SCR at p. 186) this Court opined:

“What, however, we are now concerned with is whether the statement in the order of September 1959 that the case did not involve any substantial question of law is an error apparent on the face of the record. The fact that on the earlier occasion the Court held on an identical state of facts that a substantial question of law arose would not per se be conclusive, for the earlier order itself might be erroneous. Similarly, even if the statement was wrong, it would not follow that it was an error apparent on the face of the record, for there is a distinction which is real, though it might not always be capable of exposition, between a mere erroneous decision and a decision which could be characterised as vitiated by error apparent. A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected, but lies only for patent error.”

.....

31. The review proceeding is not by way of an appeal. Holding that the review must be confined to error apparent on the face of the record and re-appraisal of the entire evidence on record for finding the error would amount to exercise of Appellate Jurisdiction, which is not permissible, in *Meera Bhanja v. Nirmala Kumari Choudhury*, (1995) 1 SCC 170, the Supreme Court held as under:

"8. It is well settled that the review proceedings are not by way of an appeal and have to be strictly confined to the scope and

ambit of Order 47, Rule 1, CPC. In connection with the limitation of the powers of the court under Order 47, Rule 1, while dealing with similar jurisdiction available to the High Court while seeking to review the orders under Article 226 of the Constitution of India, this Court, in the case of Aribam Tuleswar Sharma v. Aribam Pishak Sharma ((1979 (4) SCC 389), speaking through Chinnappa Reddy, J., has made the following pertinent observations: (SCC p. 390, para 3) “It is true as observed by this Court in Shivdeo Singh v. State of Punjab (AIR 1963 SC 1909), there is nothing in Article 226 of the Constitution to preclude the High Court from exercising the power of review which inheres in every Court of plenary jurisdiction to prevent miscarriage of justice or to correct grave and palpable errors committed by it. But, there are definitive limits to the exercise of the power of review. The power of review may be exercised on the discovery of new and important matter or evidence which, after the exercise of due diligence was not within the knowledge of the person seeking the review or could not be produced by him at the time when the order was made; it may be exercised where some mistake or error apparent on the face of the record is found; it may also be exercised on any analogous ground. But, it may not be exercised on the ground that the decision was erroneous on merits. That would be the province of a court of appeal. A power of review is not to be confused with appellate power which may enable an appellate court to correct all manner of errors committed by the subordinate court.

9. Now it is also to be kept in view that in the impugned judgment, the Division Bench of the High Court has clearly observed that they were entertaining the review petition only on the ground of error apparent on the face of the record and not on any other ground. So far as that aspect is concerned, it has to be kept in view that an error apparent on the face of record must be such an error which must strike one on mere looking at the record and would not require any long-drawn process of reasoning on points where there may conceivably be two opinions. We may usefully refer to the observations of this Court in the case of *Satyanarayan Laxminarayan Hegde v. Mallikarjun Bhavanappa Tirumale* (AIR 1960 SC 137), wherein, K.C. Das Gupta, J., speaking for the Court has made the following observations in connection with an error apparent on the face of the record:

“An error which has to be established by a long-drawn process of reasoning on points where there may conceivably be two opinions can hardly be said to be an error apparent on the face of the record. Where an alleged error is far from self-evident and if it can be established, it has to be established, by lengthy and complicated arguments, such an error cannot be cured by a writ of certiorari according to the rule governing the powers of the superior court to issue such a writ.”

32. As held by the Hon'ble Supreme Court in AIR 1960 SC 137, (*SATYANARAYAN LAXMINARAYAN HEGDEVS. MALLIKARJUN BHAVANAPPA TIRUMALE*), the error must be apparent on the face

of the record i.e., error must be self-evident and not which has to be established by a long drawn process of reasoning or which has to be searched. In other words, it must be an error and it must be one which must be manifest on the face of the record. Under the guise of review, parties are not entitled to rehearing of the same issue. An error can be said to be apparent on the face of the record only if such error is patent and can be located without any elaborate argument and without any scope for controversy with regard to such error, which stares at the face even by a mere glance of the judgement. The said position of law is reiterated in the decisions reported in (1997) 8 SCC 715, **DELHI ADMINISTRATION VS. GURDIP SINGH UBAN AND OTHERS** (2001(1) MLJ 45 (SC)), **KERALA STATE ELECTRICITY BOARD VS. HITECH ELECTROTHERMICS HYDROPOWER LTD. AND OTHERS** ((2005) 6 SCC 651), **HARIDAS DAS VS. USHA RANI BANK** (2006(4) SCC 78) and **STATE OF WEST BENGAL AND OTHERS VS. KAMAL SENGUPTA** ((2008) 8 SCC 612).” सत्यमेव जयते

5. Order made in W.P.No.22740 of 2010, dated 15.12.2017, is to regularise the respondent, as driver, from the date of his initial appointment. He was found eligible for regularization on completion of 10 years of service. Therefore, directions have been issued to regularise his services on completion of 10 years, but from the date of initial appointment.

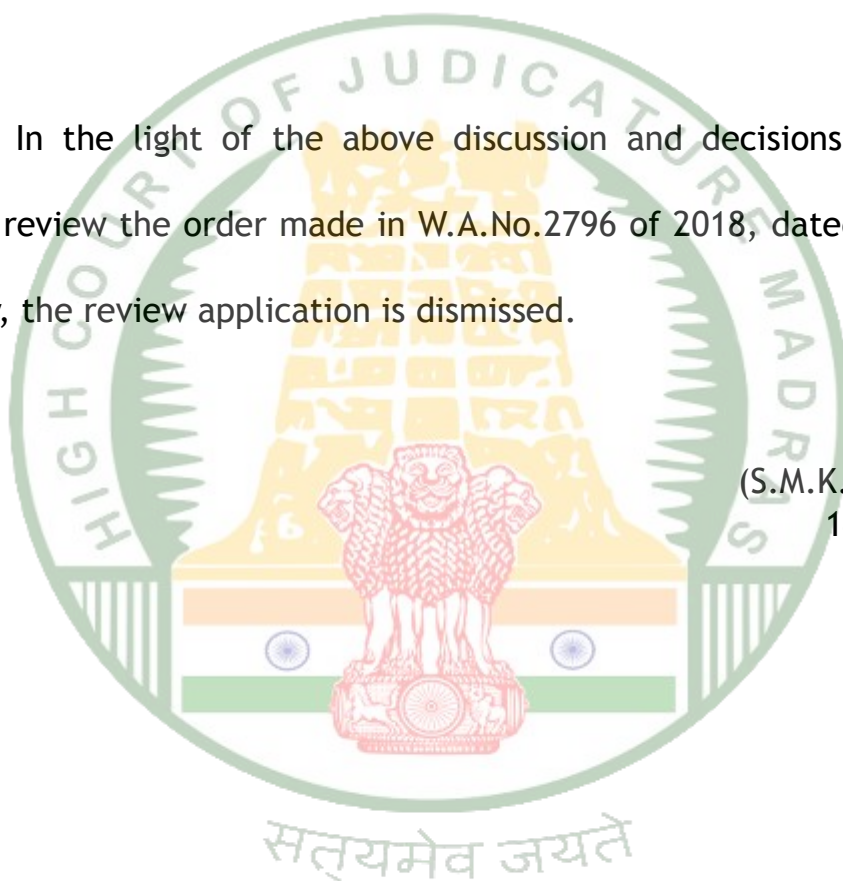
S.MANIKUMAR, J.
and
SUBRAMONIAM PRASAD, J.

skm

6. In the light of the above discussion and decisions, we are not inclined to review the order made in W.A.No.2796 of 2018, dated 02.01.2019. Accordingly, the review application is dismissed.

(S.M.K., J.) (S.P., J.)
14.06.2019

skm



WEB COPY

Review Application No.115 of 2019