

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **31.07.2019**

CORAM:

THE HONOURABLE MR. **JUSTICE K.K.SASIDHARAN**

and

THE HONOURABLE MR. **JUSTICE P.T.ASHA**

Review Application (Writ) No.688 OF 2017

in Review Application No.206 of 2014

1.Directly Recruited Puducherry Government
Trained Graduate Teachers Association,
rep. By its President M.Selvakumar,
D.No.2, Subramaniam Koil Street,
Kosapalayam,
Union Territory of Puducherry 605 013

2.M.Selvakumar

... applicants

versus

1.Secretary to Government of India,
Ministry of Human Resource Development,
Department of School Education & Literacy,
B-Wing, Ground Floor, Shastri Bhavan,
UT-1, Selection, New Delhi.

2.Secretary to Government,
(Education), Chief Secretariat,
Government of Puducherry,
Union Territory of Puducherry 605 001.

3.The Director of School Education,
Government of Puducherry,
Kamaraj Centenary Education Complex,
Puducherry 605 005.

4.The Central Administrative Tribunal,
rep. By its Registrar,
Addl. City Civil Court Building,

High Court Campus, Chennai 104. ... respondents

Petition filed to review the order passed in Review petition No.206 of 2014, dated 27.02.2015 in W.P.No.6185 of 2013.

For petitioner : Mr.M.Selvakumar, Party in person

For respondents : Mr.Syed Mustafa, Spl.G.P.,
for respondents 2 and 3

ORDER

This review application filed after the dismissal of the Special Leave Petition seeks review of the order dated 27 February 2015 in Review Petition No.206 of 2014 in W.P.No.6185 of 2013. It is a second review application in respect of the order in W.P.No.6185 of 2013.

2. The review applications filed by the Union Territory of Puducherry to review the order dated 14 March 2013 in W.P.No.6185 of 2013 pursuant to the liberty granted by the Hon'ble Supreme Court by order dated 26 August 2013 in SLP No.14704 of 2013, was entertained by this Court, resulting in passing a detailed order dated 27 February 2015.

3. This Court restored the order dated 4 May 2012 in O.A.No.545 of 2009, on the file of the Madras Bench of the Central Administrative Tribunal.

4. The review applicants challenged the order dated 27 February 2015 in Rev.Appl.No.206 of 2014 before the Hon'ble Supreme Court in SLP No.14704 of 2013. The Special Leave Petition was dismissed without giving liberty to file review application. Thereafter, the applicants filed the present review application, invoking Order 47 Rule 1 CPC.

5. The 2nd applicant, on behalf of the applicants, contended that the order passed by this Court in the review application is liable to be reviewed as certain vital aspects were not considered. The second applicant took us through various Government Orders and the order in W.P.No.6185 of 2013 and contended that this Court wrongly decided the review petition in favour of the Union Territory of Puducherry. The second applicant canvassed arguments which were considered and rejected by this Court in Rev.Appl.No.206 of 2014.

6. The learned Special Government Pleader appearing for the Union Territory of Puducherry while supporting the order passed by this Court in Rev.Appl.No.206 of 2014, contended that the review petition is not maintainable in view of the dismissal of the Special Leave Petition, without liberty.

Discussion :-

7. There are two issues raised in this review application, the first and foremost being maintainability, on account of the dismissal of the Special Leave Petition.

8. The issue is no longer ***res integra*** in view of the recent judgment rendered by the Hon'ble Supreme Court.

9. The Supreme Court held that review application is maintainable even after the dismissal of the Special Leave Petition in ***Khoday Distilleries Ltd. and ors. vs. Sri Mahadeshwara Sahakara Sakkare Karkhane Ltd., 2019(4) SCC 376.***

10. The Supreme Court in ***Khoday Distilleries Ltd.,*** referred to the earlier judgment in ***Kunhayammed vs. State of Kerala, 2000(6) SCC 359,*** and summarized its conclusion in the following words:-

"44. To sum up, our conclusions are:

(i) Where an appeal or revision is provided against an order passed by a court, tribunal or any other authority before superior forum and such superior forum modifies,

reverses or affirms the decision put in issue before it, the decision by the subordinate forum merges in the decision by the superior forum and it is the latter which subsists, remains operative and is capable of enforcement in the eye of law.

(ii) The jurisdiction conferred by [Article 136](#) of the Constitution is divisible into two stages. The first stage is upto the disposal of prayer for special leave to file an appeal. The second stage commences if and when the leave to appeal is granted and the special leave petition is converted into an appeal.

(iii) The doctrine of merger is not a doctrine of universal or unlimited application. It will depend on the nature of jurisdiction exercised by the superior forum and the content or subject-matter of challenge laid or capable of being laid shall be determinative of the applicability of merger. The superior jurisdiction should be capable of reversing, modifying or affirming the order put in issue before it. Under [Article 136](#) of the Constitution the Supreme Court may reverse, modify or affirm the judgment-decree or order appealed against while exercising its appellate jurisdiction and not while exercising the discretionary jurisdiction disposing of petition

for special leave to appeal. The doctrine of merger can therefore be applied to the former and not to the latter.

(iv) An order refusing special leave to appeal may be a non-speaking order or a speaking one. In either case it does not attract the doctrine of merger. An order refusing special leave to appeal does not stand substituted in place of the order under challenge. All that it means is that the Court was not inclined to exercise its discretion so as to allow the appeal being filed.

(v) If the order refusing leave to appeal is a speaking order, i.e., gives reasons for refusing the grant of leave, then the order has two implications. Firstly, the statement of law contained in the order is a declaration of law by the Supreme Court within the meaning of [Article 141](#) of the Constitution. Secondly, other than the declaration of law, whatever is stated in the order are the findings recorded by the Supreme Court which would bind the parties thereto and also the court, tribunal or authority in any proceedings subsequent thereto by way of judicial discipline, the Supreme Court being the Apex Court of the country. But, this does not amount to saying that the order of the court, tribunal or authority below has stood

merged in the order of the Supreme Court rejecting the special leave petition or that the order of the Supreme Court is the only order binding as res judicata in subsequent proceedings between the parties.

(vi) Once leave to appeal has been granted and appellate jurisdiction of Supreme Court has been invoked the order passed in appeal would attract the doctrine of merger; the order may be of reversal, modification or merely affirmation.

(vii) On an appeal having been preferred or a petition seeking leave to appeal having been converted into an appeal before the Supreme Court the jurisdiction of High Court to entertain a review petition is lost thereafter as provided by sub-rule (1) of Rule 1 of Order 47 CPC."

11. In view of the judgment in **Khoday Distilleries Ltd.**, we hold that the review application is maintainable notwithstanding the dismissal of the Special Leave Petition by the Hon'ble Supreme Court.

12. The next issue is as to whether the applicants have made out a case for review of the earlier order dated 27 February 2015 in Review Petition No.206 of 2014.

13. The applicants have taken several contentions in the review application, which would not come within the meaning of Order 47 Rule 1 of the Code of Civil Procedure. The applicants have framed questions based on the order dated 14 March 2013 in W.P.No.6185 of 2013. This Court considered the review application filed by the Government pursuant to the liberty granted by the Hon'ble Supreme Court and ultimately reviewed the order by supplementing reasons. The order was challenged by the applicants before the Hon'ble Supreme Court. The Special Leave Petition in SLP No.14704 of 2013 was dismissed by order dated 26 August 2013.

14. None of the grounds raised in the review application would come within the meaning of the word "error apparent on the face of the record". The applicants seek rehearing the very review application, without satisfying the ingredients of Order 47 Rule 1 CPC. In fact, the very argument advanced by the second applicant was on the basis of the merits of the claim made in the Writ Petition in W.P.No.6185 of 2013. It would not be possible to exercise the review jurisdiction on the basis of the grounds which were raised earlier and rejected by this Court.

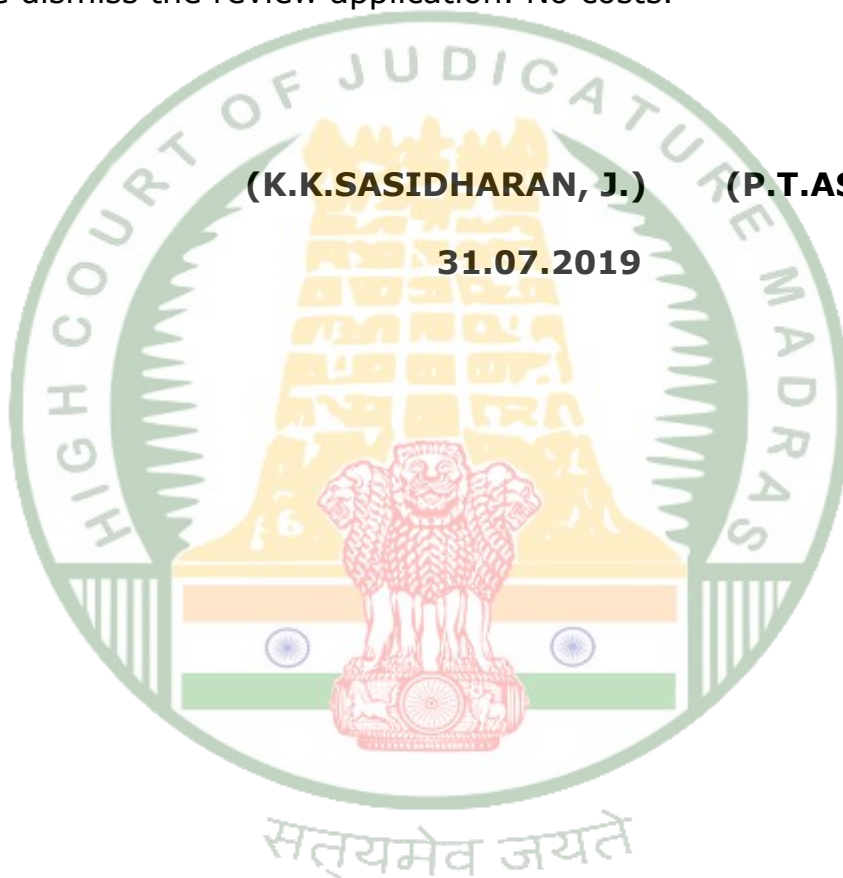
15. We are therefore of the view that the applicants have not made out a case for exercising the review jurisdiction conferred on this Court under Order 47 Rule 1 of the Code of Civil Procedure. We therefore dismiss the review application. No costs.

(K.K.SASIDHARAN, J.)

(P.T.ASHA, J.)

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