

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 29.04.2019

CORAM :

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
and
THE HONOURABLE MR.JUSTICE M.VENUGOPAL

Review Application Nos.135 & 136 of 2017
and C.M.P. Nos.15560 & 15561 of 2017

Review Application No.135 of 2017

Chennai Metro Water Supply & Sewerage Board
Rep. by its Managing Director
No.1, Pumping Station Road
Chintadripet, Chennai - 600 002

... Petitioner

Vs.

A.Paranjothi

... Respondent

PRAYER : Review Application filed under Section 114 r/w Order 47
Rule 1 of Civil Procedure Code, praying to review the order passed in
W.A. No.1157 of 2015 in W.P. No.4781 of 2014 dated 31.08.2015.

Review Application No.136 of 2017

1.Chennai Metro Water Supply & Sewerage Board
Rep. by Board of Directors
No.1, Pumping Station Road
Chintadripet, Chennai - 600 002

2.The Principal Secretary/Managing Director
Chennai Metropolitan Water Supply
& Sewerage Board
No.1, Pumping Station Road

Chintadripet, Chennai - 600 002

... Petitioners

Vs.

Y.Amarnath

... Respondent

PRAYER : Review Application filed under Section 114 r/w Order 47 Rule 1 of Civil Procedure Code, praying to review the order passed in W.A. No.1158 of 2015 in W.P. No.21722 of 2014 dated 31.08.2015.

For Petitioners in : Mr.V.Perumal
both revisions

For Respondent : Mr.N.Venunathan
Party in person

COMMON ORDER

(Order of the Court was made by **S.MANIKUMAR, J.**)

Review Applications have been filed against the common judgment of this court dated 31.08.2015 made in W.A. Nos.1157 and 1158 of 2015, by which we declined to interfere with the orders the learned single Judge dated 19.06.2014 made in W.P. No.4781 of 2014 and order dated 02.03.2015 made in W.P. No.21722 of 2014, impugned in the writ appeals.

2. After the dismissal of the writ appeals, the petitioner herein had preferred Special Leave Petitions before the Hon'ble Supreme Court and after obtaining liberty from the Hon'ble Supreme Court vide

order dated 26.10.2015 passed in SLP (C) No.29369 and 29533 of 2015, challenging the very same common judgment, these review petitions have been filed.

3. The main grounds on which the common judgment assailed in these review petitions are that, the petitioner Board vide its Resolution No.124/2004 dated 16.08.2004 has resolved to implement automatically any amendment to the rules regarding the estimation of vacancies and preparation of panel for promotion to the Tamil Nadu State Government Servants issued by the Government of Tamil Nadu from time to time to the Board employees; that at the time of hearing writ appeals, the petitioner was unable to explain properly, the effect of the Board Resolution No. 124/2004 dated 16.08.2004, the rules regarding the estimation of vacancies and preparation of panel for promotion to Tamil Nadu State Government Servants Issued by the Government of Tamil Nadu from time to time to the Board Employees by G.O/Circular/instructions, are automatically applicable to the employees of the Board and that no formal amendment/adoption is required to be made by the petitioner Board; that after the pronouncement of judgment of this Hon'ble Court in DIG of Police v. V.Rani and others reported in (2011) 3 CTC 1 29 , which struck down

the prevailing circulars/instructions, for preparation of panels as not having been supported by statutory provision, the Government of Tamil Nadu issued G.O. Ms. No.22 Personnel and Administrative Reforms (S) Department dated 24.02.2014, which brought about amendments to the Tamil Nadu State and Subordinate Service Rules retrospectively, to various Government Orders and instructions issued from time to time, to ensure that the legal validity of the processes and procedure already, in place are not disturbed and proper legal sanctity is continually provided for the preparation of approved lists and consequent promotions in force; that the concept 'check period' has been given statutory backing in view of G.O. Ms. No.22, and promotions to officials cannot be made during the check period, after the imposition of the punishment. According to the petitioner, it is pertinent to note that the clause is given retrospective effect from 27.08.2003; that the case of the respondents in both the review applications is squarely covered by the aforesaid G.O. Ms. No.22 and the learned single Judge applied earlier judgment of a Hon'ble Division Bench of this court in DIG of Police vs. V.Rani and others, which no longer applies to the case of the respondent and granted him relief; that an incorrect precedent has been set due to failure of the counsel to point out the Board's Resolution dated 16.08.2004, which in effect,

will open floodgates of litigation, by past and present employees of the Board seeking parity with the respondent and upsetting the process and procedure, which were already taken place over a long period of time defeating the very purpose, for which G.O. Ms. No.22 was issued by the Government of Tamil Nadu.

Heard the learned counsel for the parties and perused the materials available on record.

4. Brief facts as averred in the review petitions are that the petitioner is a statutory body formed by an Act called Chennai Metropolitan Water Supply and Sewerage Act, 1978. According to Regulation 22A of CMWSSB Employees Service Regulations 1978, all the appointment by promotion to a service or class or category for grade thereof shall be made by the authority from the list of approved candidates. Such list shall be prepared in the prescribed manner by the appointing authority. 1st April of every year is fixed as crucial date.

5. Mr.A.Paranjothi / Respondent in Review Application No.135/2017, was not included in the panel for the year 2013-2014, for promotion as Executive Engineer, for the reason that punishment of

stoppage of increment for one year without cumulative effect imposed against him vide proceedings NO.CMWSSB/P&A/VC2/16452/2008, dated 06.11.2009, was within a check period of five years, on the crucial date. His name was passed over till any clarification issued by the Government.

6. In W.P. No.4781 of 2014, A.Paranjothi has sought for a prayer, to quash the proceedings NO.CMWSSB/P&A/STF/RA1/16128/2013, dated 28.01.2014, in which, his name was not included for the abovesaid reasons, and for a consequent direction to revise the panel of Assistant Executive Engineers, fit for promotion, as Executive Engineers, for the year 2013-2014, and to place him in the panel, above Thiru G.Nagarajan, and to give all consequential benefits. In the Writ Petition, Paranjothi has contended that the appellants ought not to have considered the punishment with reference to check period, for denying promotion and promotion can be denied only during the currency of punishment. According to him, the period of punishment was one year, commencing from 06.11.2009, and, it expired on 05.11.2010, and, therefore, when the impugned panel was drawn for the year 2013-2014, there was no currency of punishment, and hence, he ought to have been included in the panel of Assistant Executive

Engineers, fit for promotion to the post of Executive Engineer, for the year 2013-2014.

7. Before the Writ Court in W.P.No.21722 of 2014, Mr.Y.Amarnath (respondent in Review Application No.136 of 2017) has sought for a writ of certiorarified mandamus, calling for the records from the Board and prayed to quash the order, dated 10.05.2012, bearing proceedings No. P&A/STF/RA1/16190/2012, communicated by the second respondent therein, in so far as passing over of his name, in the panel, and to quash the same.

8. Mr.Y.Amarnath has further submitted that his name was not included in the panel to the post of Executive Engineer for the year 2012-13, on the ground that the punishment of stoppage of increment for one year was in operation during the check period of five years. According to him, the punishment was over by 01.04.2010 and, as such, there was no impediment to include his name in the panel, prepared on 10.05.2012. Though he was subsequently promoted as Executive Engineer on 03.02.2014, in Writ Petition, he has prayed for a writ of certiorari, to quash the order, dated 10.05.2012, in which, his name was not included to the post of Executive Engineer from the date

on which his immediate junior was promoted.

9. In both the Writ Petitions, after advertng to the pleadings and arguments advanced by the learned counsel for the parties, at paragraph 5 of the order made in W.P. No.4781 of 2014, a learned single Judge has opined that the reason stated by the appellant to deny inclusion of the names of the respondents in the panel was not legal.

10. In W.P.No.4781 of 2014, filed by A.Paranjothi (respondent in Review Application No. 135/2015 and W.A.No. 1157 of 2015), vide order, dated 19.06.2014, the learned single Judge, at paragraph 6, has ordered as follows :

"6. In view of the above, the writ petition is allowed with a direction to the respondent to include the name of the petitioner in the panel for the year 2013-2014 for promotion to the post of Executive Engineer and promote him from the date on which his immediate junior was promoted and pay him all service benefits. Such consequential order giving promotion to the petitioner shall be issued by the respondent within a period of six weeks from the date of receipt of a copy of this order. No costs. Connected miscellaneous petition is closed. "

11. In W.P.No.21722 of 2014, filed by Y.Amarnath (respondent in Review Application No.136/2017 and W.A.No.1158 of 2015), vide order, dated 02.03.2015, the learned single Judge, at paragraph 5, has ordered as follows :

"5. In the result, the impugned order dated 10.05.2012 passed by the 1st respondent is set aside. The 1st respondent is directed to pass consequential order giving promotion to the petitioner from the date on which his immediate junior was promoted. He should also be given all the consequential benefits except monetary benefits. Such exercise shall be completed within a period of six weeks from the date of receipt of a copy of this order."

12. Being aggrieved by the directions issued by the learned single Judge, allowing the Writ Petitions, the petitioner herein has filed Writ Appeal Nos.1157 and 1158 of 2015.

13. In the Writ Appeals, Mr.V.Perumal, learned counsel for the Petitioner Board, made his submissions, that as per G.O.Ms.No.22, Personnel & Administrative Reforms (S) Department, dated 24.02.2012, amendments have been issued to Tamil Nadu State and Subordinate Service Rules, in short, "the Rules", wherein Rule 4 (a) of the said Rules now mandates, inter alia, that a panel for promotion can

be made only on the basis of Schedule VII to the Rules. According to him, Item (1-HH) inserted in Schedule VII of the abovesaid Rules reads that "Any punishment (other than 'Censure') imposed on a member of service within a period of five years prior to the crucial date and a punishment of 'Censure' imposed within a period of one year, prior to the crucial date, shall be held against a member of service and his name shall not be considered for inclusion in the approved list". Insertion further reads that "Any punishment, concluding 'censure', Imposed on a member of service after the crucial date, but before actual promotion or appointment, shall be held against the member of service and he shall not be given promotion or appointment.

14. With reference to the Hon'ble Full Bench decision of this High Court in **Deputy Inspector General of Police v. V.Rani** reported in **2011 (3) CTC 129**, Mr.V.Perumal, learned counsel for the Board, further submitted that the Hon'ble Full Bench held that the concept of check period, Introduced by various Government letters, issued by the Government, has no statutory backing. Therefore, the Government have thought it fit to make an amendment to the Rules, by issuing G.O.Ms.No.22, Personnel and Administrative Reforms (S) Department, dated 24.02.2014, and, that, therefore, decision of the Hon'ble Full

Bench, rendered earlier to the amendment made, ought not to have applied to the case of the respondents, when the respondents sought for quashing of the orders impugned in the Writ Petitions.

15. It is his further submission that both the respondents were inflicted with punishment of stoppage of increment, within the check period of five years and in the light of the recent G.O.No.22, dated 24.02.2014, giving a statutory backing, by the inclusion in Schedule VII of the Rules, the learned single Judge ought not to have quashed the orders impugned in the Writ Petitions, and, consequently, ought not to have issued any directions to the appellant Board, to promote the respondents to the post of Executive Engineers in the Board, and place them in the seniority list, above their immediate juniors in service.

16. Contra submissions were made by Mr.N.Subramanian and Mr.Balan Haridass, learned counsel who have appeared for the respondents in the appeals, is that Tamil Nadu State Subordinate Service Rules, cannot ipso facto be applicable to Chennai Metropolitan Water Supply and Sewerage Board, which has a separate set of service rules, called Employees Service Regulations, 1978, in short, "the

Regulations" of Chennai Metropolitan Water Supply and Sewerage Board.

17. On the above submission, Mr.V.Perumal, learned counsel for the appellant Board, was requested to get instructions, as to, whether there was any corresponding rule or regulation in the Board, or for that matter, whether the Board has made any amendments to the Regulations.

18. Reverting to the above query, Mr.V.Perumal, learned counsel for the Board, submitted that the Board has separate service regulations and that there is no such amendment in the Regulations, similar to the one made in item (1-HH) to Schedule VII of Tamil Nadu State Subordinate Service Rules.

19. Learned counsel for the respondents invited the attention to Regulation 22 of the Regulations of the Board, and made submissions, that as per the regulations applicable to the employees of the Board, 10% of the promotions subject to a minimum of at least one to Board Services in supervisory or managerial grades shall be made, on grounds of merit, and the balance 90% promotions in these grades in

all promotions to the lower grades, on the basis of only seniority. Regulation 22 further states, that promotion to fill the vacancies, not set apart for merit promotion in the supervisory and managerial categories, will also be decided on the basis of seniority. Even in merit promotions, seniority will be the deciding factor, as between the candidates, eligible for being considered for such promotions, and the Board shall be the deciding authority, for making merit promotions.

20. While the writ appeals were heard, it was the candid admission of Mr.V.Perumal, learned counsel for the Board, that Regulations do not provide for taking into consideration punishments imposed within the check period of five years.

21. In the case of one of the respondents, namely, A.Paranjothi (respondent in Review Petition No.135/2017), punishment of stoppage of increment for one year without cumulative effect was imposed on 06.11.2009 and it expired on 05.11.2010. In the case of Y.Amarnath (respondent in Review Application No.136/2017), punishment of stoppage of increment for one year with cumulative effect was awarded on 27.08.2008 and it expired on 26.08.2009. The panel of Executive Engineers for the year 2012-2013 was drawn on

10.05.2012. Another panel of Executive Engineers for the year 2013-2014 was drawn on 28.01.2014.

22. By applying the Government orders/circulars, issued for the preparation of the panel, as per Rule 4(a) of the General Rules for Tamil Nadu State Subordinate Services, case of the respondents has not been considered for promotion to the post of Executive Engineer in the Board, for the recruitment years, stated supra.

23. Mr.Y.Amarnath has been omitted to be included in the panel for the year 2012-2013. A.Paranjothi has been omitted to be included in the panel for the year 2013-2014. In the writ appeals, respondents stated that by misapplying the circulars/rules applicable to State Government servants, their names have not been considered. In the absence of any amendment to the Regulations of the Board, circular memorandum issued for drawal of panel for Government servants cannot ipso facto be applied to the employees of the Board. Notwithstanding the above, when the validity of circulars or instructions, issued by the Government in the matter of preparation of panels, was tested, a Hon'ble Full Bench of this Court, in the case of **Deputy Inspector General of Police v. V.Rani**, reported in **2011**

(3) CTC 129, has struck down the said instructions/circulars. When those Government instructions/circulars have already been struck down by the Hon'ble Full Bench of this Court, the Board ought not to have applied the same to the employees of the Board.

24. After hearing the arguments at length, and considering the materials available on record, we have passed the following judgment in W.A. Nos.1157 and 1158 of 2015.

*" 22. We have already recorded the submission of Mr. V. Perumal learned counsel for the Board, that there is no such regulation, for taking into consideration punishments imposed within the check period of five years, while a panel is drawn. In **H.C.Sharma and Others v. Municipal Corporation of Delhi**, reported in **AIR 1983 SC 881**, on the facts and circumstances of the said case, the Hon'ble Apex Court in paragraph 37 held as under:*

"37. It would appear from what has been stated above that the Municipal Corporation of Delhi which is a statutory authority is not automatically bound by any decision that may be taken by the CPWD in regard to direct recruitment of Assistant Engineers and that it is open to the Corporation to adopt any policy of the CPWD by a resolution when alone that policy will become binding on the Corporation.

The above said decision in H.C.Sharma's case would lend support to the case of the respondents.

23. Regulation 22 of the Employees Service Regulations 1978 of Chennai Metro Water Supply and Sewerage Board reads as follows:

"22. Promotion to Supervisory or managerial grade:

10% of the promotions subject to a minimum of at least one to Board Services in Managerial grades shall be made on grounds of merit and the balance 90% promotions to these grades and all promotions to the lower grades on the basis of only seniority. Promotions to fill the vacancies not set apart for merit promotion in the supervisory and managerial categories will also be decided on the basis of seniority. Even for merit promotions, seniority will be deciding factor as between the candidates eligible for being considered for such promotion. The Board shall be the deciding authority for making merit promotions."

24. In both the cases, when the panels were drawn, the period of punishment imposed on the respondents had already expired. Juniors of the respondents have been included and promoted to the post of Executive Engineers. No other impediment was shown except the imposition of punishment within the check period of five years, which condition ought not to have been applied to the respondents.

25. Writ Court has observed that the decision made in *Deputy Inspector General of Police v. V.Rani*, reported in 2011 (3) CTC 129, has to be read as a binding precedent on all the authorities, under Article 141 of the Constitution of India. As observed earlier, the circular/executive instructions, issued for preparation for panel of Government servants are not ipso facto applicable to the employees of the Board, and it is also admitted by the learned counsel, that there is also no corresponding amendment in the Regulations.

26. When the circulars/executive instructions have not been adopted by the Board, the Board is bound to follow Regulation 22 of the Regulations. Even though the Board has contended that the case of the respondents cannot be considered for inclusion in the respective panels on the ground that they are not meritorious, this Court is not inclined to accept the same, for the reason, that on the dates of preparation of panels, period of punishment had already come to an end. Whether meritorious or non-meritorious under the abovesaid Regulations, the respondents are eligible to be considered for promotion, to the post of Executive Engineers. As rightly pointed out by the learned counsel for the respondents, even in merit promotions, seniority will be the deciding factor as between the candidates, eligible for being considered for promotion.

27. For the reasons stated supra, this Court is of

the view, that the appellants have not made out a case, for interfering with the orders impugned in the present appeals. Both the appeals are dismissed. No costs. Connected M.P.Nos.1 o f 2015 are closed.

25. Being aggrieved by the decision made in W.A. Nos. 1157 and 1158 of 2015 dated 31.08,2015, the petitioners have filed appeals, in SLP (C) No.29369 and 29533 of 2015, the Hon'ble Supreme Court, permitted review petitions to be filed.

26. Contention of the Review Applicant vide Resolution No.124/2004 dated 16.8.2004 also, cannot be accepted for the reasons, there were government rules in force, to be applied to the government servants, but, they were instructions, struck down by the Hon'ble Full Bench of this court. Review has been filed only on this ground.

27. Grounds raised in the review application are nothing but the averments made in the counter affidavit and averments made in the writ appeal. 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 reexamination 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 **Rajumder 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 874]*** 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.48. 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, 1965). 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 vs. 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) MU 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)."

In the light of the decisions and discussion, instant review applications are dismissed. However, there shall be no order as to costs. Consequently, the civil miscellaneous petitions are closed.

**(S.M.K., J.) (M.V., J.)
29.04.2019**

Index: Yes/No
Internet: Yes/No
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S.MANIKUMAR, J.

and
M.VENUGOPAL, J.

Asr



Review Application Nos.135 &
136 of 2017 and C.M.P.
Nos.15560 & 15561 of 2017

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