



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 22.03.2019

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**THE HONOURABLE Mrs. JUSTICE PUSHPA SATHYANARAYANA
AND
THE HONOURABLE Mrs. JUSTICE T. KRISHNAVALLI**

Rev. Aplc (MD) No. 9 of 2019
in W.A. (MD) No. 1091 of 2017
in W.P. (MD) No. 10913 of 2010

1. The State of Tamil Nadu
rep. by the Home Secretary,
Government of Tamil Nadu,
Government Estate,
Anna Salai, Chennai.
2. The Secretary,
Revenue Department,
Government of Tamil Nadu,
Government Estate,
Anna Salai, Chennai.
3. The District Collector and
District Magistrate,
Madurai District.
4. The Superintendent of Police,
Madurai District.
5. The Inspector of Police,
Solavanthan Police Station,
Madurai District.
6. The Tahsildar,
Vadipatty Taluk,
Madurai District.

.. Petitioners/Appellants/
Respondents 1 - 5 & 7

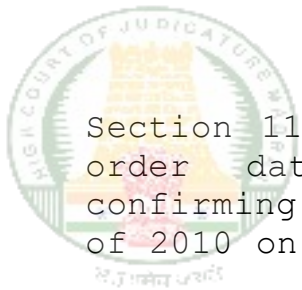
Vs.

1. M. Nithiya

.. Respondent-1/Respondent-1
/Petitioner

2. Dinesh @ Dinesh Kumar

.. Respondent-2/Respondent-2
/Respondent-6



Section 114 of the Code of Civil Procedure praying to review the order dated 12.09.2018 passed in W.A.(MD)No.1091 of 2017 confirming the order dated 15.06.2017 passed in W.P.(MD)No.10913 of 2010 on the file of this Court.

Prayer in WA(MD)1091/2017:

Writ Appeal has been filed under Clause 15 of the Letter patent against the order dated 15.06.2017 in WP(MD)No.10913 of 2010 on the file of this Court.

Prayer in WP(MD). 10913/ 2010 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a WRIT OF MANDAMUS directing the respondents No. 1,2 and 3 to pay compensation to the petitioner for the death of petitioners daughter namely Dhanalakshmi aged nine years, and grant employment to the petitioner on compassionate appointment, consequently directing the respondents to initiate necessary action against the sand offenders operating in Vaigai riverbad at Sholavantan.

For Petitioners : Ms.J.Padmavathy Devi,
Special Government Pleader

O R D E R

The petitioners are before this Court seeking to review the judgment dated 12.09.2018 passed in W.A.(MD)No.1091 of 2017 dismissing their appeal and confirming the order dated 15.06.2017 in W.P.(MD)No.10913 of 2010 passed by the learned Single Judge.

2. The learned Special Government Pleader appearing on behalf of the review petitioners only canvassed the grounds on merits of the case and she has not pointed out any error apparent on the face of the judgment warranting this Court to review the same.

3. It is her submission that the petitioners are no way liable for the accident, and it is the second respondent herein/the sixth petitioner before the writ court, who had committed the offence, against whom criminal prosecution was launched. Even things stood so, the State paid a sum of Rs.1,00,000/- from the Hon'ble Chief Minister Relief Fund on 28.02.011 to the first respondent and hence, the State is not liable to pay any further compensation, as ordered by the writ Court and confirmed in the judgment sought to be reviewed.

<https://hcservices.courts.gov.in/hcservices/>
4. The learned Special Government Pleader submitted that the Government provided employment to the first respondent in the post



of Sweeper, which she quit within a while and the said act would go to show that the first respondent is not in financial crises warranting this Court to award compensation.

5. The learned Special Government Pleader pleaded that this judgment will be taken as a 'precedent' by the similarly placed persons to claim compensation from the Government, besides receiving compensation under the Statute already governing the field, and in fact, they are not entitled to claim compensation twice.

6. It is to be stated, at the outset, that the review application has a limited scope and it cannot be argued as an Appeal. Further, the grounds raised in this review petition have already been raised before the writ Court and having considered the same, the order has been passed.

7. It is well settled proposition of law that an order can be reviewed only if it is shown that there is an error apparent on the face of the record or materials, which are irrelevant, have been taken into consideration to arrive at a conclusion. If the above settled principles are applied to the facts of this case, this Court of the considered view that the petitioners have not made out any case for entertaining the present review application.

8. The argument of the learned Special Government Pleader that the judgment will be taken as a precedent is not a ground to seek review.

9. At this juncture, it is apt to refer to the judgment of the Hon'ble Apex Court in **Kamlesh Verma V. Mayawati and others, (2013) 8 SCC 320**, wherein, in paragraph 20.1 the following conditions are stipulated to maintain a review application :

- (i) *discovery of new and important matter or evidence which, after the exercise of due diligence, was not within the knowledge of the petitioner or could not be produced by him ;*
- (ii) *mistake or error apparent on the face of the record ; and*
- (iii) *any other sufficient reason.*

10. Paragraph 20.2 of the said judgment enlists the situation under which review will not be maintainable, which reads as follows :

"20.2. When the review will not be maintainable :

- (i) A repetition of old and overruled argument is not enough to reopen concluded adjudications.*

(ii) Minor mistakes of inconsequential important.



(iii) Review proceedings cannot be equated with the original hearing of the case.

(iv) Review is not maintainable unless the material error, manifest on the face of the order, undermines its soundness or results in miscarriage of justice.

(v) A review is by no means an Appeal in disguise whereby an erroneous decision is re-heard and corrected but lies only for patent error.

(vi) The mere possibility of two views on the subject cannot be a ground for review.

(vii) The error apparent on the face of the record should not be an error which has to be fished out and searched.

(viii) The appreciation of evidence on record is fully within the domain of the Appellate Court, it cannot be permitted to be advanced in the Review Petition.

(ix) Review is not maintainable when the same relief sought at the time of arguing the main matter had been negatived."

11. It is the case of the learned Special Government Pleader that the decision is erroneous on merits, which would be within the province of appeal. If the petitioners are in disagreement with the judgement, the only remedy open to them is to go on appeal and not filing a review. The power of review cannot be confused with the appellate power.

12. Accordingly, the review application stands dismissed. However, there shall be no order as to costs.

Sd/-

Assistant Registrar (w)

// True Copy //

Sub Assistant Registrar (CS)

To

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KM/ (29.05.2019) 5P 7C