

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.02.2020

CORAM

THE HON'BLE Dr. JUSTICE ANITA SUMANTH

Cont.P.No.1763 of 2019 and
Rev.Appln.No.3 of 2020 in
WP.No.32186 of 2017

Cont.P.No.1763 of 2019

The Secretary,
Sacred Heart College (Autonomous),
Tirupattur – 635 601,
Vellore District.

...Petitioner

Vs

1.Mangat Ram Sharma, IAS,
Secretary to Government of TN,
Department of Higher Education,
Fort St. George, Chennai – 600 009.

2.Dr.C.Jothi Venkateshvaran,
The Director of Collegiate Education,
College Road, Chennai – 600 006.

3.Dr.K.Ezhilan,
The Joint Director of Collegiate Education,
Vellore Region,
Vellore District – 635 006.

... Respondents

Prayer: Contempt Petition filed to punish the respondents herein for their willful and deliberate disobedience and defiance of the Orders of this Court dated 21.03.2019 in Writ Petition No.32186 of 2017 under Section 11 of the Contempt of Courts Act, 1971 and close the breach thereof.

Rev. Appln.No.3 of 2020

1.The State of Tamil Nadu,
Rep. by its Secretary,
Department of Higher Education,
Fort St. George,
Chennai – 600 006.

2.The Director of Collegiate Education,
College Road, Chennai – 600 006.

3.The Joint Director of Collegiate Education,
Vellore Region, Vellore District – 635 115.

.. Review Applicants/Respondents 1 to 3
Vs.

1.The Secretary,
Sacred Heart College (Autonomous),
Tirupattur – 635 601,
Vellore District. ... Respondent/Petitioner

2.The Thiruvalluvar University,
Rep. by its Registrar,
Serkadu, Vellore District – 635 115. ... Respondent/4th Respondent

Prayer: Review Application filed under Clause 47 Rule 1 of C.P.C. R/W Section 114 of the CPC, to review the order dated 21.03.2019 passed by this Court made in W.P.No.32186 of 2017.

For Petitioner: Mr.Isaac Mohanlal, Senior Counsel
for Mr.Godson Swaminathan

(Petitioner in Cont.P.No.1763 of 2019 and
respondent in Rev.Appln.No.3 of 2020)

For Respondents: Mr.A.Kumar, Additional Advocate General assisted by
Mr.V.Kadhirvelu, Special Government Pleader

(Respondents in Cont.P.No.1763 of 2019 and
Petitioners in Rev.Appln.No.3 of 2020)

COMMON ORDER

The writ petition has been filed by the Sacred Heard College, a private minority institution, seeking a Certiorarified Mandamus quashing order dated 24.05.2017 passed by the Joint Director of Collegiate Education. The impugned order related to applications filed by nine individuals seeking the position of Assistant Professors and Librarian in the petitioner College. The posts are at entry level and the appointments appear to have been made in line with the procedure normally forward by minority private institutions, which is as per self- codified system of administration. The applications came to be rejected by the 3rd respondent on the sole ground that prior permission had not been obtained from the Director of Collegiate Education. The matter was contested by way of counter and the learned counsel for the petitioner as well as the learned Additional Advocate General assisted by the Special Government Pleader had been heard in the original instance.

2.On 21.03.2019 the writ petition was allowed after noting the facts, and in line with a decision of the Division Bench of this Court in the case of *P.Ravichandran Vs. State of Tamil Nadu, rep. by Secretary to Government* [(2013) 7 MLJ 641] affirmed by the Supreme Court in SLP(C)No.887 of 2015 by judgement dated 29.01.2019. This decision was cited by the petitioner for the proposition that no prior permission is required to be sought by an Institution in

(Regulation) Act, 1976 (in short 'Act') and the Tamil Nadu Private Colleges (Regulation) Rules, 1976) (in short 'Rules'). The relevant portion of the decision cited was extracted under paragraph-4, where I have stated as follows:

'4. There is a categorical finding in the aforesaid decisions to the effect that there is no requirement under the Tamil Nadu Private Colleges (Regulation) Act 1976 and Tamil Nadu Private College (Regulation) Rules to obtain prior permission to fill a vacant post in an Aided College that has already been sanctioned for the relevant Academic Year.'

3. Thereafter, I had concluded in the light of the discussion in that order that the writ petition was to be allowed. The 3rd respondent i.e. the Joint Director of Collegiate Education, Tirupattur was directed to approve the appointments of the nine teaching staff and disburse the grant-in-aid towards their salary and allowances with effect from the respective dates of their appointment, as follows:

Sl.No.	NAME	POST
1	Dr.A.Prabhu	Tamil
2	Dr.K.A.Maria Arockiaraj	English
3	Dr.U.Ramesh	Economics
4	Dr.D.Ajay	Mathematics
5	Dr.G.Theophil Anand	Physics
6	Dr.J.Anto Pradeep	Physics
7	Dr.M.Nahresn Manuel	Chemistry
8	Dr.Clayton Micheal Fonceca	Social Work
9	Mr.M.Selvan	Librarian

5. The present Contempt Petition came to be filed since despite representations from the College/the individuals in question post passing of the above order, the same was not complied with. The contempt petition was listed on 16.10.2019 when Mr.Kadhirvelu, learned Special Government Pleader was present in Court and accepted notice for the respondents. At his request to obtain instructions, it was adjourned to 07.11.2019. On 11.11.2019 when the matter came up, Mr.Kadhirvelu, specifically stated that the order would be complied with and sought two weeks for compliance. Thus, it was listed on 25.11.2019 for compliance. On 25.11.2019 it was brought to the notice of the Court that Dr.S.Jayakumar, one of the nine individuals had been relieved from the petitioners' college with effect from 31.05.2013 and one Dr.J Anto Pradeep, had been employed only for the period 06.02.2017 to 30.05.2018. Therefore, this Court directed that the aforesaid periods of employment be verified and if found correct, the positive direction in order dated 21.03.2019 be applicable only in relation to the actual periods of appointment. Again, at request of Mr.Kadhirvelu, time for compliance was extended by two weeks. On 10.12.2019 Mr.Kadhirvelu, stated that a Writ Appeal had been filed challenging order dated 21.03.2019 under W.A.SR.No.154267 of 2019 on 09.12.2019 and at his request, this matter was adjourned to 20.12.2019. On 20.12.2019 the following order was passed:

'Today Mr.Kadhirvelu, learned SGP sings a different tune and states that instead of writ appeal a Review Application under Sr.No.156830 along with condone delay application under

Sr.No.35925 has been filed. Mr.Kadirvelu is directed to serve the papers upon the petitioner.

2.List this contempt petition along with the condone delay application on 07.01.2020.'

6. The matter came up thereafter for condonation of delay in filing the Review Petition, and recording the submission of the petitioner/respondent in Review to the effect that they have no objection for condonation of delay, the delay was condoned and the Review Application directed to be listed for hearing. It is thus that the Contempt and Review Applications have come up for hearing together today, for hearing on merits.

7.Heard Mr.A.Kumar, learned Additional Advocate General assisted by Mr.Kadhirvelu, learned Special Government Pleader for the review petitioner and Mr.Isaac Mohanlal, learned Senior Counsel for Mr.Godson Swaminathan, learned counsel for the petitioner in contempt petition/respondent in review.

8.The main ground argued in review before me is that the reliance placed upon the decision of this Court in the case of *P.Ravichandran (supra)* was misplaced, since that decision states at paragraph-20(4) that the College Committee while filling up vacancies should follow the procedures set out in Rules 11(1A) to 11(4)(ii) of the Tamil Nadu Private Colleges (Regulation) Rules 1976 (in short 'Rules'). The grounds raised in the review petition are, violation of (i) Rules 7 and 11(4)(ii) of the Rules and (ii) Section 10(2) of the Tamil Nadu Private

9. Detailed submissions have been made by Mr. Mohanlal, on the inapplicability of the prescription in Rules 11(1A) to 11(4)(ii), to a private minority college. He takes me through the definition of a 'College Committee' in Section 2 of the Act which directs one to a 'College Committee' referred to in Section 11, which deals with a college committee, its constitution and functions. Section 11 defines the constitution of a College Committee and commences by saying that every private college, not being a minority college, shall have a college committee comprising of certain designated persons. Thus, even within the ambit of private colleges, minority colleges appear to have been carved out as a separate category as far as constitution of a College Committee is concerned. This is perhaps, on account of the freedom in administration that has been extended to minority institutions in terms of Article 31 of the Constitution of India.

10. The administration of a minority college has thus been left to its own devices. As a result thereof, reference to 'committee' in the Act and Rules cannot be held to relate to a Committee constituted by a minority institution.

11. Order 47 Rule 1 of the Civil Procedure Code is categoric in setting out those instances where the Court may consider review of its order. The Supreme Court in *Kamlesh Verma Vs. Mayawati and others* [(2013) 8 SCC 320], paragraphs-19 and 20, sets out the scope for review as follows:

'19. 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 review jurisdiction, mere disagreement with the view of

the judgment cannot be the ground for invoking the same. As long as the point is already dealt with and answered, the parties are not entitled to challenge the impugned judgment in the guise that an alternative view is possible under the review jurisdiction.

Summary of the principles

20) Thus, in view of the above, the following grounds of review are maintainable as stipulated by the statute:

20.1 When the review will be maintainable:-

(i) Discovery of new and important matter or evidence which, after the exercise of due diligence, was not within knowledge of the petitioner or could not be produced by him;

(ii) Mistake or error apparent on the face of the record;

(iii) Any other sufficient reason.

The words "any other sufficient reason" has been interpreted in Chhajju Ram vs. Neki, AIR 1922 PC 112 and approved by this Court in Moran Mar Basselios Catholicos vs. Most Rev. Mar Poulouse Athanasius & Ors., (1955) 1 SCR 520, to mean "a reason sufficient on grounds at least analogous to those specified in the rule". The same principles have been reiterated in Union of India vs. Sandur Manganese & Iron Ores Ltd. & Ors., JT 2013 (8) SC 275.

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 import.

(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 negated.

12. A Division Bench of this Court in Rev. Review Application (AS) No.92 of 2017 and C.M.P.No.10410 of 2017 in *M/s.The Dhanalakshmi Mills Ltd vs. I.R.Krishnamurthy 2.S.Krishnamurthy 3.M.Murugesan* culls out the following situations where a review would lie. They are:

(i) Discovery of new and important matter or evidence which, affect the exercise due diligence, was not within knowledge of the petitioner or could not be produced by him;

(ii) Mistake or error apparent on the face of the record;

(iii) Any other sufficient reason Further the Hon'ble Supreme Court has culled out the following grounds on which a Review application is not maintainable.

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

- (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 negated.*

13. In the matter before me, the State is clearly attempting to re-argue the matter and the tests for review are not satisfied. The issues raised in review are merely a repetition of those raised in counter and no more. The only other point raised, in relation to Dr.J.Anto Pradeep has been addressed in paragraph 5. Though I am inclined to impose a cost upon the respondent, R3/G.Ezhilan, Regional Joint Director of Collegiate Education, Vellore Region, who is present in Court, assures the Court through Mr.Kadhirvelu, learned Special Government Pleader, that the order under review shall be complied with, within a period of two weeks from today.

14. Recording the above, the Review Application is dismissed.

15.As far as the Contempt Petition is concerned, Contempt is writ large on the facts as noted by me earlier. In the light of the dismissal of the Review Petition and recording the specific assurance of Mr.G.Ezhilan, Regional Joint Director of Collegiate Education, Vellore Region and Mr.Kadhirvelu, learned Special Government Pleader to the effect that the impugned order will be complied with within a period of two weeks from today, the Contempt Petition is closed and I initiate no further action as against R3.

SD/-

ASSISTANT REGISTRAR(COMM.CASES)

vs

//Certified to be true copy//

Dated at Madras this day of 2020.

COURT OFFICER(O.S.)

from 25th day of September 2008 the Registry is issuing Certified copies of the Orders/Judgments/Decrees in this format.

SMI/19.08.2020

To

1. The Registrar,
The Thiruvalluvar University,
Serkadu, Vellore District 635 115.

2. The Secretary to Government of TN,
Department of Higher Education,
Fort St. George, Chennai – 600 009.

3.The Director of Collegiate Education,
College Road, Chennai – 600 006.

4.The Joint Director of Collegiate Education,
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