



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.03.2018

CORAM:

THE HONOURABLE Mr. JUSTICE M.VENUGOPAL
AND
THE HONOURABLE Mr. JUSTICE S.BASKARAN

Rev.Aplc(MD).No.37 of 2018 in
W.A.(MD).No.1420 of 2017 and
C.M.P.(MD)No.2919 of 2018

1. The Principal Secretary to Government,
School Education (G1) Department,
Chennai.
2. The Director of Elementary Education,
College Road, Chennai.
3. The District Elementary Educational Officer,
Collectorate, Dindigul District, Dindigul.
4. The Assistant Elementary Educational Officer,
Assistant Elementary Education Office,
Sanarpattai, Dindigul District. ... Petitioners

Vs.

M.Natarajan ... Respondent

Prayer: Review Application filed under Order 47 Rule 1 and 2 of Civil Procedure Code r/w. Section 114 of the Civil Procedure Code, to review the Judgment dated 20.11.2017 in W.A.(MD).No.1420 of 2017 passed by this Court.

Prayer in WA(MD). 1420/ 2017 :

Writ appeal is filed under Clause 15 of Letter Patent against the order of this Hon'ble Court dated 21.06.2016 made in WP(MD) 10891/2016

Prayer in WP(MD). 10891/ 2016 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus directing the respondents to extend the benefits of the government orders in G.O.Ms. No. 210 dated 14.08.2009 and G.O.Ms. No. 190 dated 12.07.2010 in favour of the petitioner and further directing the respondents to count the service rendered by



the petitioners before 01.06.1988 as Secondary Grade Teacher for the purpose of fixation of selection Grade/Special Grade Scale of pay in the post of Middle School Graduate Headmaster and further to grant arrears of pay to the petitioner.

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For Petitioners

: Mr.C.Munusamy

Spl. Government Pleader (Edn)

ORDER

(Order of the Court was made by M.VENUGOPAL, J.)

Heard the Learned Special Government Pleader (Education) for the Petitioners .

2.At the outset, this Court points out that C.M.P.(MD)No.1897 of 2018 in Rev.Appln.(MD)Sr.No.5855 of 2018 in W.A.(MD)No.1420 of 2017 filed by the Petitioners for Condonation of Delay of 20 days in filing the Review Application, is allowed by this Court.

3.Since this Court is disposing of the Review Application No.37 of 2018 at the admission stage itself, notice is not ordered to the Respondent/Writ Petitioner.

4.The Petitioners/Appellants have preferred the present Review Application seeking to Review the Judgment dated 20.11.2017 in W.A.(MD).No.1420 of 2017 passed by this Court.

5.Earlier, this Court in W.A.(MD).No.1420 of 2017 on 20.11.2017 preferred by the Appellants, at paragraph 7 to 9 had observed the following:

"7.Apart from that, the similarly placed Middle School Graduate Headmaster, after passing of the Government Order in G.O.Ms.No.210, dated 14.08.2009 filed number of Writ Petitions before this Court and obtained orders for extension of the benefits of the aforesaid Government Order in G.O.Ms.No.210, dated 14.08.2009. The primordial plea of the Respondent/ Petitioner is that G.O.Ms.No.190, School Education (G1) Department, dated 12.07.2010 passed by the First Appellant/First Respondent restricting the operation of G.O.Ms.No.210, dated 14.08.2009 to those persons, who had secured orders of the Court on or before 12.07.2010, is untenable in Law. Further, the Respondent/Petitioner pleads that he is also a similarly placed Teacher like that of other teachers and therefore, entitled to the benefits of the Government Order in



G.O.Ms.No.210, dated 14.08.2009 and G.O.Ms.No.190 dated 12.07.2010 and therefore, his length of service before 01.06.1998 in the post of Secondary Grade Teacher ought to be reckoned for the purpose of grant of Special Grade in the post of Middle School Graduate Headmaster and that he is entitled to be granted salary in the scale of pay of Rs.2200-75-2800-100-4000 and that the benefits of the G.O.Ms.No.210, dated 14.08.2009 also should be extended to and in his favour.

8.It is not in dispute that subsequently in W.A.Nos.815 of 2010 etc., the judgment was passed on 07.07.2011 on the ground that the cause of action is a continuous one etc., and ultimately it was held that the Government should have extended the benefits of G.O.Ms.No.210 and 234 to all the similarly situated employees.

9.Following the decision of the Full Bench of this Court between THE GOVERNMENT OF TAMIL NADU REP. BY ITS SECRETARY, SCHOOL EDUCATION DEPARTMENT, CHENNAI - 9 AND OTHERS v. G.ESWARAN AND OTHERS (Rev.Application No.227 of 2015 etc., W.A.Nos.1744 of 2015, etc., W.P.Nos.29774 of 2016 etc., and Contempt Petition Nos.1545 of 2016 etc., batch, dated 09.12.2016), reported in 2017 (2) MLJ 257, also keeping in mind the common Judgment of the Division Bench of this Court in W.A.(MD)Nos.361 to 363 and 374 to 382 of 2015 dated 11.08.2017, this Court considering the issue(s) centering around the present Writ Appeal, which is squarely covered by the Full Bench decision of this Court, dismisses the present Writ Appeal to prevent an aberration of Justice and in furtherance of substantial cause of Justice. However, there shall be no order as to costs. Consequently, connected Miscellaneous Petition is also dismissed."

and dismissed the Writ Appeal.

6.Assailing the correctness, legality and validity of the impugned Judgment dated 20.11.2017 in W.A.(MD).No.1420 of 2017 passed by this Court, the Petitioners have filed the present Review Application based on the reason that the Hon'ble Division Bench should have seen that the Respondent/Writ Petitioner is not entitled to get the benefits of G.O.Ms.No.234, dated 10.09.2009.

Secondary

11. The Learned Special Government Pleader for the Petitioners forcibly contends that on conferring such Selection Grade /Special Grade, the employees are entitled to higher scale that he would get in the promoted post, but will remain to work in the same post. Besides that, it is a basic rule that if a person works for



more than 10 years in the same post, he is entitled to Selection Grade and further 10 years in the said post, he is entitled to Special Grade.

12.The Learned Special Government Pleader for the Petitioner contends that prior to 01.06.1988 the date on which the V Pay Commission was given effect to the post of Secondary Grade Teachers and the post of Primary School Headmasters were having the same scale of pay and basic for both of them was Rs.610/- and in short, the posts are *inter se* transferable. Furthermore, normally senior most Secondary Grade Teacher will be the Headmaster and that the Headmaster would be getting Special pay of Rs.15/- per month.

13.The Learned Special Government Pleader for the Appellants puts forward a plea that there is an error on the face of record when this Court had disposed of W.A.(MD)No.1420 of 2010 while applying the Judgment reported in **(2017) 2 MLJ 257 (DB) [Government of Tamil Nadu V. G.Eswaran and others]**.

14.The core contention advanced on behalf of the Petitioners/ Appellants is that this Court at the time of disposal of W.A.No.1420 of 2017 should have seen that the Full Bench Judgment, which was referred in W.A.(MD)No.1420 of 2017 is not in favour of Employees and hence, they are not entitled to arrears of the amount and as such, the Court should have disposed of the Writ Appeal in terms of the directions issued thereunder and ought not to have dismissed the Writ Appeal.

15.It is the stand of the Appellants that the Selection Grade Secondary Grade Teachers would draw a time scale of pay 5300-150-8300 (VI Pay Commission) which is admissible to a Primary School Headmaster, in the ordinary scale and that the Primary School Headmaster post will be the first level promotion post for a Secondary Grade Teacher and the following Tabular Column is extracted hereunder:

V Pay Commission

Secondary Grade	Ordinary Grade	Selection Grade	Special Grade
01-06-1998	1200	1400	1640
01-01-1996	4500	5300	5900

VI Pay Commission

Secondary Grade	Ordinary Grade	Selection Grade	Special Grade
01-06-1998	1400	1640	2000
01-01-1996	5300	6500	8000

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The above mentioned column, according to the Petitioners/ Appellants will point out that this type of equalisation if



Selection Grade pay and Ordinary Grade first level promotion pay cease to exist after 01.01.2006 i.e. when the revised scale of pay Rules - 2009 was introduced in 2009 by issuing G.O.Ms.No.234, dated 01.06.2009 which came into effect from 01.01.2006.

16.The Learned Special Government Pleader for the Petitioners vehemently puts forward an argument that if an individual after 10 years and after securing the Selection Grade work for a particular period in the same post for five more years, after getting promoted, for awarding Selection Grade/Special Grade, the service rendered by him in the feeder category with Selection Grade/Special Grade will be taken into account for granting Selection Grade/Special Grade in the promoted post as per G.O.Ms.No.210 dated 11.03.1987; G.O.Ms.No.212, dated 07.08.2000 and G.O.Ms.No.38, dated 05.03.2001.

17.The Learned Special Government Pleader for the Petitioners draws the attention of this Court that persons were promoted as Primary School Headmasters after 01.06.1988 approached the Tamil Nadu Administrative Tribunal by filing O.A.No.2997 of 1991 and O.A.No.3010 of 1991 dated 24.09.1993 and the Tribunal came down heavily on the Department for passing such Government Order and paras 3 and 4 of the said Government Order was quashed. Accordingly, G.O.Ms.No.300 dated 07.04.1994 was passed and that G.O.Ms.No.1381 dated 05.01.1990 was recalled. Added further, the persons to whom benefits were given in the meanwhile approached the Court either challenging the recovery or to prevent the recovery. This Court also had not ordered for recovery of the benefits already given to the concerned persons. Based on such directions, G.O.Ms.No.185 dated 16.12.2002 and G.O.Ms.No.160 dated 23.08.2005 came to be passed. However, 63 persons approached the Tribunal and obtained orders as if they are similarly placed persons to whom benefits of G.O.Ms.No.1381 dated 05.10.1990 was given and secured orders to extend the benefits to them (vide order dated 12.07.2002 in O.A.No.68 of 1997 and O.A.No.177 of 1997). While summing up, it is the plea of the Appellants that the Judgment passed by this Court in W.A.(MD)No.1420 of 2017 on 20.11.2017 is an illegal, arbitrary and liable to be reviewed.

18.It is to be borne in mind that for filing of a 'Review' in respect of an decision or order passed by the Court, there must be reasons like creeping in of an error apparent on the face of record. Further, a Review Petition cannot be filed as an 'Appeal in Disguise'. The position of Law is that if an Order/Judgment passed by a Competent Court is not palatable to the concerned Litigant/Party, then, in Law, it is open to him to approach the Competent Higher Forum for redressal of his grievances. Moreover, just because another view is possible in that event also, a 'Review' will not lie in the eye of Law, as opined by this Court.



19. It is to be noted that 'Review' literally and even judicially means re-examination or re-consideration. It cannot be gainsaid that 'Review' and 'Appeal' cannot go altogether. In reality, 'Review' lies only on the ground of an error apparent on the face of record or for any other sufficient reason. Under the guise of 'Review', the High Court would not rehear the parties on point of Law afresh as per decision **Co-operative Agricultural Rural Development Bank Limited V. Smt. Basanti Swain and others, 96 (2003) CLT 159 Orissa (DB)**.

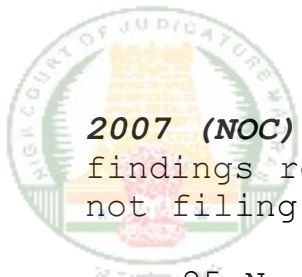
20. At this juncture, this Court aptly points out the decision **Rajeswari and another V. Sri Bhuvaneswari Cycle Mart rep. By its Managing Partner D. Ramasamy reported in 2007 6 MLJ 47 at page 48** wherein it is held that **'An erroneous decision can be corrected only by the Higher Forum and it cannot be corrected by exercising the review jurisdiction'**.

21. It is the settled proposition of Law that a 'Review of the Judgment' cannot be granted in the garb of clarification as per decision of the Hon'ble Supreme Court in **Saurabh Chaudri (Dr.) and others V. Union of India and others, (2004) 5 Supreme Court Cases 618**.

22. The 'Power of Review' is not to be confused with an Appellate power which may enable an Appellate Court to correct an erroneous decision by process of 'Reheard and Corrected'. In short, a Review Petition has a limited role to play and by any means, it cannot be permitted to act as an Appeal in disguise. Even though if two views are possible on the point involved, then, that is not a ground for 'Review' as per decision of the Hon'ble Supreme Court in **Harinagar Sugar Mills Limited and another V. State of Bihar and others, (2006) 1 Supreme Court Cases 509**.

23. One cannot brush aside a prime fact that an error apparent on the face of record must be such an error which strike one on mere looking at the record and would not require any long-drawn process of reasoning on points on which there may conceivably be two opinions as per decision **Abdul Rasheed V. Union of India and others, (2007) 3 Calcutta Head Notes 888, 891 (Cal) (DB)**. A Review which seeks Rehearing of the matter is not maintainable as per decision **J. & K. Bank V. Mohd. Sultan Dar, AIR 2006 JAMMU & KASHMIR 35**.

24. In this connection, it is not out of place for this Court to make a pertinent mention that even an erroneous order or incorrect decision cannot be corrected in 'Review'. Also that, 'Rehearing' of the matter on merits and reappreciation of the arguments raised by the parties in the original order is not permissible in Review, as per decision **MCD V. Anil Prakash, AIR**



2007 (NOC) 1653 (Del.) (DB). If the Petitioner is aggrieved by the findings rendered by a Competent Court, then, the remedy in Law is not filing of a Review Petition, as opined by this Court.

25.No wonder, where the order in question is Appealable, the aggrieved party has an adequate and efficacious remedy and the Court should exercise the power of 'Review' its order with greatest circumspection as per decision of the Hon'ble Supreme Court in **Haridas Das V. Usha Rani Bank (Smt) and others, (2006) 4 SCC 78**. 'Reappraisal of Evidence' is impermissible in Review.

26.The term 'Mistake or Error apparent' by its very connotation points out an error which is evident *per se* from the record of the case and does not require a detailed manner of 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 record for the purpose of Order 47 Rule 1 C.P.C. as per decision of the Hon'ble Supreme Court in **State of West Bengal and others V. Kamal Sengupta and another, (2008) 8 SCC 612, 633**.

27.It is to be noted that 'Erroneous Decision' can be corrected by an Appellate/Higher Authority. However, 'An error apparent on the face of record' can be corrected by a Court of Law under 'Review Jurisdiction'.

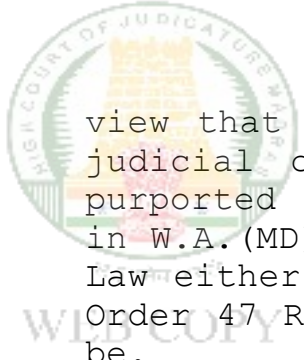
28.It cannot be gainsaid that 'An error apparent on the face of record' is not to be defined either in an elaborate manner or in a precise fashion, in the considered opinion of this Court. The resultant position is that it is for the concerned Competent Court to decide this question judicially resting on the facts and circumstances of a given case.

29.In fact, the ingredients of Section 114 of the Civil Procedure Code and Order 47 Rule 1 C.P.C. specify the ingredients to be complied with prior to the exercise of the power of 'Review', of course, subject to the extent and limitations.

30.As far as the present case is concerned, this Court is of the considered view that while passing the Judgment in W.A.(MD) No.1420 of 2017, this Court had taken note of the Judgment delivered in W.A.No.815 of 2010 etc. 07.07.2011 and also at para 9 of its Judgment, referred to the Full Bench decision of this Court reported in **(2017) 2 MLJ 257 [Government of Tamil Nadu V. G.Eswaran and others]**. Also, this Court borne in mind the common Judgment of the Division Bench of this Court in W.A.(MD)Nos.361 to 363 and 374 to 382 of 2015 dated 11.08.2017 and dismissed the Writ Appeal.

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31.In view of the foregoing, this Court is of the considered



view that the Petitioners are not able to satisfy the subjective judicial conscience of this Court as to the creeping in of a purported apparent error in the Judgment delivered by this Court in W.A.(MD).No.1420 of 2017. Undoubtedly, the scope of 'Review' in Law either under Section 114 of the Civil Procedure Code or under Order 47 Rule 1 C.P.C. is very limited/restricted as the case may be.

32.Considering the fact that even though an endeavour has been made on behalf of the Appellants that in any event the Hon'ble Division Bench in W.A.(MD)No.1420 of 2017, following the Full Bench Judgment reported in **(2017) 2 MLJ 257** (FB) (cited supra), should have disposed of the Writ Appeal in terms of the directions issued thereunder and not to have dismissed the Appeal, this Court comes to an irresistible conclusion that the Review Petition filed by the Appellants is *per se* not maintainable in the eye of Law. Furthermore, at the risk of repetition, it is pertinently pointed out that when this Court in the Judgment in W.A.(MD)No.1420 of 2017 dated 20.11.2017, at para 8, had referred to the Judgment in W.A.No.815 of 2010 etc. batch dated 07.07.2011 and later mentioned in the said Judgment, a decision of the Full Bench as aforesaid, this Court is not inclined to take a different view than the one already arrived at in this regard. Viewed in that perspective, the 'Review Petition' in any event, in Law, is not maintainable '*Ex facie*'.

33.In fine, the Review Petition is dismissed. No costs. It is open to the Review Petitioners/Appellants to approach the Competent Higher Forum for redressal of their grievances in accordance with Law, if they so desire/advised. Consequently, connected Miscellaneous Petition is also dismissed.

Sd/-

Assistant Registrar(CS-II)

/True Copy/

Sub Assistant Registrar

To

1. The Principal Secretary to Government,
School Education (G1) Department,
Chennai.
2. The Director of Elementary Education,
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3. The District Elementary Educational Officer,
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Sgl

AE/KKR/SAR1/13.04.2018/10P/5C

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