



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 22.01.2020

DELIVERED ON : 14.02.2020

CORAM

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

AND

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

AND

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

W.A (MD) No.686 of 2015

and

M.P. (MD) No.1 of 2015

1.The Director General of Police,
Dr.Radha Krishna Salai,
Chennai - 600 004.

2.The Commissioner of Police,
Chennai Police, Chennai -7.

3.The Joint Commissioner of Police,
South Zone, Chennai.

4.The Deputy Inspector General of Police,
NIB CID, Chennai.

... Appellants/Respondents

Vs.

C.Vijaya Baskar

... Respondent/Petitioner

Prayer: Writ Appeal filed under Clause 15 of the Letter Patent, to set aside the order of this Court passed in W.P.(MD)No.13611 of 2011, dated 12.07.2013.

Prayer in WP(MD). 13611/ 2011 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorari, calling for the records relating to the impugned show cause notice issued by the 1st respondent in his proceedings Rc.No.048379/ GB 2(2)/2011 dated 25.10.2011 and quash the same as illegal.



For Appellants

: Mr.VR.Shanmuganathan
Special Government Pleader

For Respondent

: Mr.M.Ajmal Khan, Senior Counsel
for M/s.Ajmal Associates

WEB COPY

JUDGMENT

(Judgment of the Court was delivered by **S.S.SUNDAR, J.**)

This Larger Bench is constituted by Honourable The Chief Justice for resolving the controversy in view of conflicting judgments delivered by different Division Benches of this Court, while interpreting Rule 15A of Tamil Nadu Police Subordinate Service (Discipline and Appeal) Rules, 1955 (Herein after referred to as "the Rules").

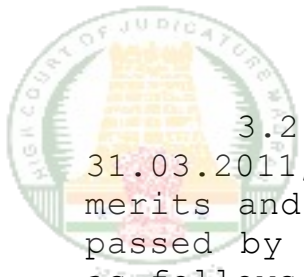
2.The questions referred to this Bench are as follows:

"(i)Whether the view taken in the case of **R.Krishnaswamy Vs. the Director General of Police and another**, reported in **2005(2) MLJ 353**, is in direct conflict with the subsequent Judgment in the case of **the Secretary to Government Vs. N.Karunanithi**, in W.A.Nos.604 and 720 of 2016, which has not noticed the earlier Judgement?

(ii) Whether in the light of the provisions of Rule 15-A of the Tamil Nadu Police Subordinate Service (Discipline and Appeal) Rules, 1955, the Head of the Department has the authority to exercise his suo motu power of review, after an order has been passed by the authority subordinate to it or not?"

3.The brief facts leading to the above Writ Appeal are as follows:

3.1.A charge memo alleging serious charges against the respondent was issued by the third appellant by his proceedings vide PR.4/NIB/2008, dated 17.09.2008 under Rule 3(b) of the Rules. After conducting enquiry, the Enquiry Officer submitted a report holding that the charges on both counts are proved and that the third appellant imposed a punishment of censure by order, dated 04.02.2011. The punishment of censure was deferred for six months. Thereafter, the second appellant herein set aside the order of punishment inflicted by the third appellant, by order dated 31.03.2011. The second appellant purported to have exercised his power of suo motu review, as the appellate authority without any appeal being filed by respondent.



3.2.It is to be noted that while passing the order on 31.03.2011, the second appellant did not consider the matter on merits and after referring to the charges and the nature of order passed by the third appellant, the second appellant has observed as follows:

"I am the appellate authority to review this file. I have carefully perused the PR file and all other connected records in detail. The delinquent is a directly requited Sub-Inspector of Police who is having clean records of service. Considering his service rendered in the department, the punishment of Censure deferred for six months awarded in PR.No.04/NIB/2008 u/r 3(b) of TNPSS (D&A) Rules 1955 is hereby cancelled."

3.3.About eight months later, the first appellant herein, issued a show cause notice, as to why any of the penalties referred to in Rule 2 of the Rules should not be imposed on the respondent. The show cause notice is again by exercising the power of *suo motu* review, as contemplated under Rule 15A of the Rules. Challenging the said show cause notice, dated 25.10.2011, the respondent filed the Writ Petition in W.P.(MD)No.13611 of 2011. In the Writ Petition, the respondent herein contended that the first appellant has no power under Rule 15A of the Rules, to review the punishment for the second time.

3.4.The learned Single Judge of this Court following another judgment of this Court in a Writ Petition in W.P.No.13541 of 2007, allowed the Writ Petition. It is to be noted that the precedent relied upon by the learned Single Judge is another judgment of a learned Single Judge of this Court which in turn relied upon the judgment of the Tamil Nadu State Administrative Tribunal, dated 14.11.2002, wherein, the Tribunal has held that there cannot be a review of review and that no application for review shall be preferred more than once in respect of the same order by referring to Rule 15A(3) and 15A(4) of the Rules. Apart from relying upon the judgment of State Administrative Tribunal, the order of learned Single Judge in W.P.No.13541 of 2007, which was relied upon by the learned Single Judge to allow the Writ Petition, also refers to the language employed in Rule 15A(1)(i) of the Rules, where, the word "or" is used, instead of "and". It was further observed in the order that successive review applications are barred under Rule 15A(4) of the Rules and that the Head of the Department cannot invoke *suo motu* power of review. Challenging the order passed in W.P.(MD)No.13611 of 2011, the respondents in the Writ Petition preferred the above Writ Appeal.

4.When the matter came up for hearing, the learned Special Government Pleader relied upon the judgment of Division Bench of the case of **R.Krishnaswamy Vs. the Director General**



of Police and another, reported in **2005 (2) MLJ 353**. However, in view of the conflicting judgment of this Court, in the case of **The Secretary to Government and another vs N.Karunanithi**, decided on 16.09.2016, the Division Bench headed by the Honourable The Chief Justice referred the issue to a Larger Bench to answer the two questions formulated by Division Bench and that is how the matter is posted before us.

5.The learned Special Government Pleader appearing for the appellants submitted that the judgment of Division Bench of this Court in the case of N.Karunanithi, was rendered by relying upon the judgment of another Division Bench in the case of **the Director General of Police, Tamil Nadu vs P.Selvaraju**, decided on 29.09.2015 and the previous judgment, which was followed by the later Division Bench may also be considered. The learned Special Government Pleader further submitted that the interpretation of Rule 15A of the Rules in R.Krishnaswamy's case, is well founded and that in the subsequent judgments of the two Division Benches have not construed Rule 15A of the Rules following the well settled principles of law and the rule of construction emphasised / followed by Honourable Supreme Court in several cases.

6.The learned Special Government Pleader further submitted that the second appellant though purported to have exercised the power of *suo motu* review, decided the matter on the administrative side in a routine manner. It was also submitted by the learned Special Government Pleader that the second appellant had, in fact, passed the order as an Appellate Authority, even though he has power to review the order of third appellant *suo motu* or on application. The learned Special Government Pleader then submitted that the power of review can be exercised, only when there is a glaring omission or patent mistake or error.

7.By relying upon the judgments of Honourable Supreme Court, the learned Special Government Pleader submitted that in a review petition, there cannot be re-appreciation of evidence to reach a different conclusion, even if it is possible. The learned Special Government Pleader referring to Rule 15A of the Rules submitted that there is no specific bar under Rule 15A for the State Government or the Head of the Department to review any order, even if it is an order exercising the power of *suo motu* review by the appellate authority. The learned Special Government Pleader then submitted that Rule 15A(4) of the Rules has no application, when the power of review is exercised *suo motu*.

8.The learned Senior Counsel appearing for the respondent submitted that the impugned show cause notice issued by the first



appellant is without jurisdiction, as the *suo motu* review power is not available to the first appellant for the second time under Rule 15A(1)(ii) of the Rules. Stating that the power of *suo motu* review had already been exercised by the appellate authority, namely, the second appellant, the learned Senior Counsel for the respondent submitted that Rule 15A does not empower the first appellant to exercise the power of *suo motu* review. The learned Senior Counsel for the respondent then submitted that the word "or" used in Rule 15A(1) instead of "and", makes the difference. According to him, the word "or" would suggest that the power of *suo motu* review can be exercised by anyone of the authorities specified in Rule 15A(1) of the Rules and not by all authorities one after another.

9.It is admitted that the judgment of first Division Bench in the case of **R.Krishnaswamy**, is not referred to in the subsequent judgments of different Benches of this Court. The issue was considered by the Division Bench in the case of **R.Krishnaswamy**, in the following lines:

"7.The contention of the petitioner is to the effect that power of review has been given in alternative to various authorities and once any such power of review is exercised by such authority, the other authorities are precluded from further reviewing the matter. Even though such a contention *prima facie* appears to be attractive, in our opinion, such contention is unacceptable.

8.An analysis of the aforesaid provision makes it clear that the power of review has been given to the State Government under Rule 15(1)(i) or the Head of the Department or the Appellate Authority or any other authority specified in this behalf by the State Government. So far as the appellate authority is concerned, as contemplated under Rule 15-A(1)(iii) such power is to be exercised within six months from the date of order proposed to be reviewed. So far as any other specified authority contemplated under Rule 15-A(1)(iv) is concerned, such power is to be exercised within time as may be prescribed, and so far as the State Government or Head of the Department is concerned, such power can be exercised at any time. This power of review can be exercised by the concerned authority on its own motion, i.e., *suo motu* or otherwise. In other words, such power of review can also be exercised on the basis of an application, which is contemplated in Rule 15-A (3) . If the power is exercised obviously *suo motu*, there is no filing of any application. Under Rule 15-A

unless
him

10. Moreover, a perusal of the file does not indicate regarding any categorical order of the Commissioner in the purported exercise of power under Rule 15-A. It merely seems that the file had passed through the Commissioner in a routine administrative manner and the Commissioner of Police seems to have agreed with the conclusion of the enquiry officer and the disciplinary authority and thereafter, the file was forwarded to the higher authority, namely the Director General of Police. In other words, mere administrative notes have been furnished and by no stretch of imagination it can be said that an order has been passed confirming the order of punishment in exercise of power under Rule 15-A of TNPSS Rules."

https://hcservices.dcourts.gov.in/references/



"15-A.(1)Notwithstanding anything contained in these rules -

(i) the State Government; or

(ii)the Head of the Department directly under the State Government in the case of the Government Servant in a department or office, under the control of such Head of Department; or

(iii) the appellate authority; within six months from the date of the order proposed to be reviewed; or

(iv) any other authority, specified in this behalf by the State Government by a general or special order, and within such time as may be prescribed in such general or special order may, at any time, either on their or its own motion or otherwise, call for the records of any inquiry and review any order made under these rules, after consultation with the Tamil Nadu Public Service Commission, where such consultation if necessary and may,

(a)confirm, modify or set aside the order; or

(b) confirm, reduce, enhance or set-aside the penalty imposed by the order, or impose any penalty where no penalty has been imposed; or

(c)remit the case to the authority which made the order or to any other authority, directing such authority to make such further inquiry as it may consider proper in the circumstances of the case; or

(d)pass such other orders as it may deem fit:

Provided that no order imposing or enhancing any penalty shall be made by any reviewing authority unless the Government servant concerned has been given a reasonable opportunity of making representation against the penalty proposed. Where it is proposed to impose any of the penalties specified in clauses (d), (e) (3) (h) (i) and (j) of Rule 2 or to enhance the penalty imposed by the order sought to be reviewed to any of the penalties specified in those clauses, no such penalty shall be imposed except after an inquiry in the manner laid down in sub-rule (b) of Rule 3 and after giving a reasonable opportunity to the Government servant concerned of showing cause against the penalty proposed on the evidence adduced during the inquiry and except after consultation with the Tamil Nadu Public Service Commission, where such a consultation is necessary:

Provided further that no power of review shall be exercised by the Head of the Department, unless--

(i)the authority which made the order in appeal; or

(ii)the authority to which an appeal would be, where no appeal has been preferred, is subordinate to him

(2) No proceeding for review shall be commenced



until after-

(i) the expiry of the period of limitation for an appeal; or

(ii) the disposal of the appeal, where any such appeal has been preferred;

(3) An application for review shall be dealt with in the same manner as if it were an appeal under these rules;

(4) No application for review shall be preferred more than once in respect of the same order:

Provided that members of the constabulary (Police Constables and Head Constables) shall be eligible to make one representation to the Government against orders of dismissal or removal from service after exhausting the right of appeal;

Provided further that no application for review shall be entertained, if it has not been made within a period of six months from the date of receipt of the order on which such application for review is prescribed.

"

11. From the plain language employed in Rule 15A of the Rules, it is evident that the power is given to the State Government or Head of the Department or Appellate Authority either on their or its own motion or otherwise to call for the records of any enquiry and review any order made under these Rules. Therefore, the power of review may either by *suo motu* or otherwise. When the review power is exercised on an application, there is a limitation prescribed in Rule 15A(4) of the Rules, which bars the second application for review in respect of the same order. The power of review can be exercised by the Appellate Authority within six months from the date of order proposed to be reviewed. However, the State Government or Head of the Department can exercise the power without any period of limitation specified under the Rules.

12. The Division Bench in R. Krishnaswamy's case, has held that the higher authority is not precluded from exercising the *suo motu* power of review. The Division Bench also observed that if the contention of learned Counsel for the delinquent is accepted, then it will lead to unwanted situation, whereby, the jurisdiction of the higher authorities would be unduly circumscribed by any inferior authority, who may foreclose the discretionary power of review of a higher authority by exercising such review power by himself.

13. The construction of Rule 15A(4) of the Rules in the decision of Division Bench in P. Selvaraju's case is seen from para 14 of the judgement, which are extracted below for



reference:

"14. On a careful reading of the aforesaid provision, it is clear that notwithstanding any contained in the rules, the State Government or the Head of the Department directly under the State Government, in the case of Government servant serving in a department or office under the control of such Head of Department or the appellate authority, other than the State Government or any other authority specified in this behalf by the State Government by general or special order, may exercise the power of review within six months of the date of the order proposed to be reviewed.

15. It is not in dispute that the main order dropping the charges is the order dated 7th February, 2013 passed by the D.I.G. The Additional Director General of Police (Crime), who is the appellate authority, has exercised its review power suo motu within the period of six months from the said order and confirmed the order passed by the D.I.G. Thus, the other functionaries, i.e., the State Government or the Head of the Department are denuded of their power to exercise the review.

16. The power of review, as prescribed under Rule 15.A(1) of the Rules, is in respect of the date of the order proposed to be reviewed. In the case on hand, the first order passed by the D.I.G, dated 7th February, 2013 was taken under suo motu review by the Additional Director General of Police (Crime), who has confirmed the said order on 16th April, 2013. Thus, the subsequent review purported to have been taken by the D.G.P./appellant herein cannot be a review of review.

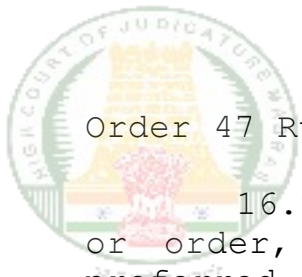
17. In the case on hand, as the facts are not in dispute, the power of review was exercised by the Additional Director General of Police (Crime) under Rule 15.A(1) of the Rules, confirming the order dated 7th February, 2013 passed by the D.I.G. Thus, the subsequent review by any other authority is not permissible. It is luculent that the suo motu power of review can be exercised by either one authority, not all authorities one after another. In respect of clause (iv) of Rule 15.A (1) of the Rules, we are informed that the State Government has not issued any general or special order specifying the authority under Rule 15.A(1)(iv) of the Rules and as such, no power under Clause (iv) is available to be exercised by any other authority.

18. It is trite law that the power of review is exercisable for correction of mistake on facts as well as in law, within the limit of statute, dealing with their exercise of power. A review of review cannot lie."



14. Since the third Division Bench has not decided the issue independently, we preferred to consider the judgment of Division Bench in P.Selvaraju's case in W.A.No.775 of 2014 as well as the judgment in N.Karunanithi case in W.A.Nos.604 and 720 of 2016, as the judgments taking contrary view. In P.Selvaraju case, the Division Bench interpreted Rule 15A of the Rules on the basis of limitation prescribed for appellate authority other than State Government as specified in Rule 15A(1)(iii) of the Rules and concluded the issue by saying that the State Government or the Head of the Department are denuded of their power to exercise the power of review, once the appellate authority exercised his review power *suo motu* within the period of six months from the date of the order of Disciplinary Authority. The Division Bench has also observed that the subsequent review by the Head of the Department is impermissible, as there cannot be a review of review. Though we take it that the expression of Division Bench would mean that there cannot be a review of an order passed by exercising the power of review, we are unable to find such logic, from the reading of Rule 15A of the Rules. Though the Division Bench in P.Selvaraju's case has reiterated that a subsequent review by any other authority is not permissible and that the *suo motu* power of review can be exercised by any one of the authorities for once and not by all authorities one after another, we find it difficult to accept the interpretation either on the basis of language employed in Rule 15A of the Rules or by following any known principles of law or Rule on the interpretation of Statute. It is to be noticed that the same Counsel has argued for the delinquent before the Division Bench in R.Krishnasway's case, as well as before the Division Bench in P.Selvaraju's case. However, the earlier judgment in R.Krishnaswamy's case was not brought to the notice of Court.

15. Paragraph 18 of the judgment of Division Bench would only suggest that the Division Bench in P.Selvaraju's case has borrowed the principles reiterated by the Honourable Supreme Court, in the case of **Sow Chandra Kante and another vs Sheikh Habib**, reported in (1975) 1 SCC 674, and **Kamlesh Verma vs Mayawati and others**, reported (2013) 8 SCC 320, while dealing with the scope of review under order 47 Rule 1 CPC. Hence, it is evident that the Honourable Judges while interpreting Rule 15A of the Rules, have imported the principles, which are applicable and reiterated by Honourable Supreme Court in a matter relating to review of a judgment as contemplated under Order 47 Rule 1 CPC. Order 47 Rule 1 CPC should be read along with the Section 114 CPC. The power of review is given to the same Court to review its own order subject to certain limitations. The jurisdiction of Court to deal with an application to review its own order is circumscribed by the limitations found in the language used in



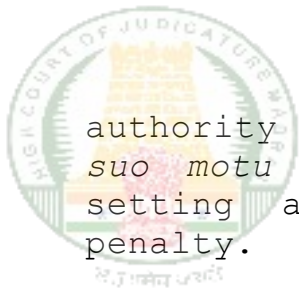
Order 47 Rule 1 CPC.

16.The following are the three grounds, on which a decree or order, from which an appeal lies, but no appeal has been preferred, can be reviewed on application, by the Court, which passed the decree or order under Order 47 Rule 1 CPC:

- 1.Discovery of new and important matter or evidence, which are not produced before the order was passed;
- 2.Mistake or error apparent on the face of the records; and
- 3.For any other sufficient reasons.

17.It is well settled that the power of review of one's order is not an inherent power and it must be conferred by law either specifically or by necessary implication. In other words, it can be said that the power of review is not available to an authority unless, it is conferred by Statute. It is also settled that a second review of an order passed in review is impermissible by virtue of order 47 Rule 9 CPC. The power of review as contemplated under Order 47 Rule 1 CPC is entirely different and any judicial precedent on the interpretation of Order 47 CPC can not be imported while interpreting Rule 15A of the Rules. Hence, no analogy can be drawn from the principles laid down by the Honourable Supreme Court or any other High Court on the interpretation or applicability of Order 47 Rule 1 or Order 47 Rule 9 CPC.

18.When scope of Rule 15A of the Rules is not analogous to Order 47 Rule 1 CPC, the general expression of law by the Division Bench in P.Selvaraju's case may not be appropriate. The power conferred on the Appellate Authority or Head of the Department or State Government to review any order passed by the Authority subordinate to it, is subject to the limitations within Rule 15A and no limitation can be inferred beyond the Rule. The power of review under Rule 15A of the Rules is also a power, which is different from the power of an appellate Authority. Rule 15A(2) of the Rules makes the position clear that the power of review is not available to any authority, till the expiry of period of limitation for an appeal or the disposal of the appeal, where an appeal has been preferred. Reading of the Rule 15A in its entirety, makes it explicit that the power of *suo motu* review is independent of the power as an appellate authority and that such power can be exercised by the State Government or Head of the Department or Appellate Authority either on their or its own motion or otherwise, to confirm or modify or set aside the order of punishment or remit the case to the authority, which made the order or to any other authority. Proviso to Rule 15A(1)(iv) of the Rules, though provides for a reasonable opportunity to the Government Servant against the penalty proposed, no corresponding

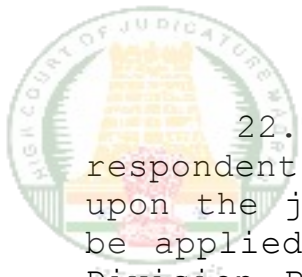


authority is contemplated, even when the power of review, either *suo motu* or on application is exercised and order is passed setting aside the order of Disciplinary Authority imposing penalty.

19. When Rule 15A of the Rules is incorporated, the object appears to be to give the power of *suo motu* review to the Appellate Authority or to the Head of the Department or to the State Government to review any order passed by any subordinate authority. The power of review under Rule 15A of the Rules is a special power and is not limited by any other rule. The *non obstante* clause indicates that Rule 15A of the Rules is not controlled by any other Rule. As it is pointed out earlier, Rule 15A of the Rules empowers the State Government or Head of the Department or Appellate Authority to review any order made under the Rules. By express language, the power is wide enough to include every order that may be passed in exercise of the power conferred under Rules. It is well settled that the normal Rule of interpretation is to read the words of Statute as per language employed. In case of ambiguity, rational meaning has to be given. Only when there is apparent conflict, harmonious meaning to advance the object and intention of the legislature need be given.

20. In the present case, going by plain language, the power is given to the appellate authority or Head of the Department or the State Government to *suo motu* review the order of any subordinate authority subject to certain limitations prescribed in the Rule and this power is not limited by any other Rule. The only limitation under Rule 15A(4) of the Rules is that an application for review cannot be maintained successively before different authorities against the same order. In other words, a second application for review is not maintainable once review application filed under Rule 15A of the Rules is considered and disposed of earlier. Sub Rule (4) of Rule 15A of the Rules cannot be interpreted to apply, when power is exercised *suo motu* to review the order of a subordinate authority.

21. The contention of the learned Senior Counsel for the respondent that the word "or" used in Rule 15A(1) of the Rules instead of "and" would suggest that *suo motu* power of review cannot be exercised by all the authorities under Rule 15A(1) of the Rules one after another cannot be countenanced in the context. First of all, Rule 15A of the Rules deals with the independent power of different authorities specified. In the context, using of the word "and" in Rule 15A(1) is ruled out. No one can imagine of using the word "and" instead of "or", while interpreting Rule 15A(1) of the Rules.



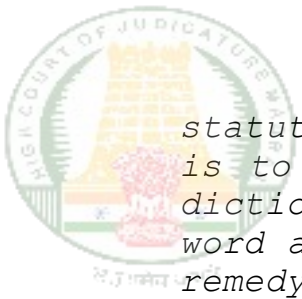
22.The contention of the learned Senior Counsel for the respondent that there cannot be a review of review, by relying upon the judgment of Division bench in P.Selvaraju's case, cannot be applied, as we pointed out earlier that the expression of the Division Bench appears to be by borrowing the principles of law reiterated by Courts on the interpretation of Order 47 Rule 1 or Order 47 Rule 9 CPC.

23.The Division Bench in **R.Krishnaswamy's** case, bothered to consider one aspect while refusing to accept the contention of the learned Counsel for the delinquent. The Division Bench has considered the possibility of any inferior authority to foreclose the discretionary power of review of a higher authority by exercising such review power by himself. Even in the present case, we find that the Enquiry Officer has found that the charges against the respondent are proved. Though the Disciplinary Authority concurred with the findings, imposed a lesser punishment of censure. The appellate authority without considering the merits, set aside the order of censure without assigning any reason. Though the specific charges, which are very serious, are held to be proved against the respondent, the appellate authority exercising the power of *suo motu* review, set aside the order of punishment for no valid reason. The power of *suo-motu* review is to check whether disciplinary proceedings went in the right direction and therefore, the possible mischief should also be considered while interpreting the provisions of the Rules, as recognised by House of Lords and found place in many judgments of Queen's Bench.

24.The "Mischief" Rule was, of course, recognised by judgments in a different context earlier. When Statutes were made centuries back and new enactment came to rectify certain defects, the interpretation of such new Law should be by considering the plain and unambiguous language employed in new legislation and then to apply the "Mischief" Rule, so as to interpret the law to suppress the mischief. Similarly, Statutes are required to be understood by what is known as a purposive construction. By adopting purposive construction and by applying "Mischief" Rule, several Statutes have been interpreted by Courts for centuries to achieve the desired object of several legislations.

25.In the case of **Kanwar Singh vs. Delshi Administration**, reported in **AIR 1965 SC 871**, the Honourable Supreme Court has held as follows:

"It is the duty of the Court in construing a statute to give effect to the intention of the legislature. If, therefore, giving literal meaning to a word used by the draftsman, particularly in a penal



statute would defeat the object of the legislature, which is to suppress a mischief the court can depart from the dictionary meaning or even the popular meaning of the word and instead give it a meaning which will advance the remedy and suppress the mischief."

WEB COPY

26.The Court should always prefer a construction, which should advance the object, rather than attempts to find some way of circumventing the Rule. Courts are expected to interpret Rule to advance remedy and to suppress any mischief, when two interpretations are feasible.

27.The Honourable Supreme Court in the case of **The Modern Cooperative Transport Society Limited vs Financial Commissioner and Secretary to Government, Haryana and another**, reported in **2002 6 SCC 269**, has considered the word financial interest under Sub Section 2 of Section 68 of Motor Vehicles Act, 1988. Para 13 of the said judgment runs as follows:

"The next question which falls for consideration is what is the nature of the "financial interest" contemplated by the said sub-section. The expression financial interest is capable of a narrower as well as a wider meaning. In the narrower sense it implies direct personal benefit of an economic nature. In the wider sense it may include any interest direct or indirect which a person has in relation to the finances of the undertaking. Such an interest may be the interest of an official who manages the finances of the undertaking or on whom rests the burden of financial accountability. It is trite to say that the intention of the Legislature must be found by reading the statutes as a whole. The Court must ascertain the intention of the Legislature by directing its attention not merely to the Clauses to be construed but to the entire statute; it must compare the Clause with the other parts of the law, and the setting in which the Clause to be interpreted occurs. The rule is of general application as even plainest terms may be controlled by the context. Expression used in a statute should ordinarily be understood in a sense in which they best harmonize with the object of the statute, and which effectuate the object of the Legislature. Therefore, when two interpretations are feasible the Court will prefer that which advances the remedy and suppress the mischief as the Legislature envisioned. Keeping these principles in mind we shall now consider what meaning has to be given to the expression "financial interest" in sub-section (2) of Section 68 of the Act."



28. Apart from relying upon various judgments of Honourable Supreme Court, the learned Senior Counsel for the respondent cited a passage from page 262 of a book, namely, "Craies on Statute Law (5th Edition)", relevant portion of which reads as follows:

"5.If a power is given to the Crown by statute for the purpose of enabling something to be done which is beyond the scope of the royal prerogative. It is said to be an important constitutional principle that such a power, having been once exercised, is exhausted and cannot be exercised again."

29. This Court is unable to get any support from the text to the submissions of the learned Senior Counsel for the respondent on the interpretation of Rule 15A of the Rules. First of all, the passage quoted by the learned Senior Counsel for the respondent refers to the principles in consonance and in tune with the principle that the power of review of one's own order under the authority is not inherent and unless such power of review is created by a Statute, no power of review can be exercised by the same authority.

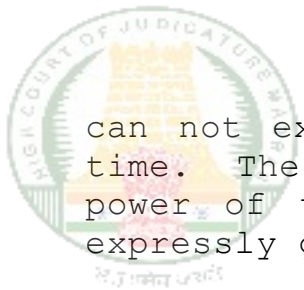
30. The learned Senior Counsel for the respondent relied upon another judgment of Punjab and Haryana High Court, reported in **1980 1 LLR Punjab & Haryana 11**, in the case of **Surjit Singh vs. State of Punjab and others**. A Division Bench of Punjab and Haryana, in para 21 has held as follows:

(21) After hearing the learned counsel for the parties on the first point, we are of the opinion that an order under section 197 of the Code is an administrative order and that the Government has no power to review its earlier order passed under the said section. Even in the case of administrative orders it has been held by the Supreme Court in D. N. Ganguly's case (supra) that in the absence of a provision granting power to the Government to cancel or supersede its earlier order, no such power can be claimed on the strength of section 21 of the General Clauses Act. It may be mentioned that before us the counsel for the State has not relied on the provisions of the General Clauses Act to support the power of the State Government to review its earlier order, but argued purely on the basis of Government's administrative or executive power to pass orders on the same matter from time to time, and no fetter can be placed on such a power of the State Government according to the argument raised. With this broad argument of the learned Counsel for the State, we are not impressed and we, are unable to uphold the same. The Government does not act in administrative capacity while passing an order



under section 197 of the Code and we may say that the Government is exercising a statutory power and that power can be exercised by it only once in whatever way it chooses to do, but later on it cannot change its mind and pass a fresh order taking a different view, otherwise there will be no end to the exercise of this power. In a given case, if we permit the power of review, it may be exercised a number of times on the same facts. We draw support for the above view from the decision of the Supreme Court in D.N.Ganguly's case (supra) as well as from Hardyal Rais case, Venkatesh Yeshwant Deshpande's case, Bherumal's case and Kanta Devi's case (supra). In all these cases, a fresh order was sought to be passed second time and there was no power for doing so under any of the concerned provisions of the statute and reliance was only placed on the provisions of the General Clauses Act where power to rescind or cancel was contained. In all the, aforesaid cases, it was ruled that order could not be passed a second time rescinding, cancelling or varying the earlier order and the orders passed second time were held to be null and void and were quashed. Same is the position here that there is no specific provision empowering the State Government to pass a second order on the same facts either expressly or by necessary implication. There may be difference in passing an administrative order in exercise of its statutory authority under a specific statute in contradiction to its purely administrative or executive authority under Article 162 of the Constitution. Therefore, the general power of the Government to rescind or vary its order has to be kept at a different level than the orders which the Government has the authority to pass on the basis of a statute framed by Parliament or the State Legislature. So far as the decision of the Supreme Court in M/s.Western India Watch Co.'s case (supra), is concerned, the passage quoted above itself has shown the distinction between the cases when the Government refuses to exercise its power and the cases where the Government has exercised its power. This case as well as D.N.Ganguly's case (supra) are under section 10 of the Industrial Disputes Act and a reasonable way to read them would be that if Government has exercised its powers once, it cannot exercise the same power in a given case for the second time. But if the Government has not exercised its power, it has not exhausted its power to act and there is no bar in the exercise of that power."

31.The Punjab and Haryana High Court has considered the
<https://hccourtsonline.gov.in/reserve/> the Government, which has exercised the power once,



can not exercise the same power in a given case for the second time. The Punjab and Haryana High Court again considered only the power of the Government to review its own order, which is not expressly given under the Statute.

32. The learned Senior Counsel for the respondent also relied upon yet another judgment of Division Bench of Allahabad High Court in the case of **Ajain Narain Agarwal vs Additional District Magistrate (City) Allahabad and others**, reported in **CDJ 2017 All HC 199**, dealing with a similar situation, where, the question was whether the authority can exercise the power of review to review his or its order without any Statute permitting such review application or power to such authority. The portion of the judgement relied upon by the learned Senior Counsel for the respondent reads as follows:

"36. On this issue, the Court is of the opinion that it is a settled legal proposition that unless the statute permits a review application, the same is not maintainable. In the absence of any provision in the Act granting an express power of review application, no review could be made and any order passed on the review application, if passed, is illegal and without jurisdiction. The Supreme Court has reiterated this proposition in a catena of decisions and, in *Kalabharati Advertising vs. Hemant Vimalnath Narichania and others*, 2010(9)SCC 437 the Supreme Court held that in the absence of any provision under an Act or the Rules, a review of an earlier order was impermissible as review is the creation of the statute and that jurisdiction of review can only be derived from a statute and not otherwise. The Supreme Court further held that in the absence of any statutory provision provided for review, entertaining an application for review or under the garb of clarification/modification/correction was not permissible.

37. In the light of the aforesaid, we are of the opinion that a review application was rejected by the authority on 24.10.2011, it was no longer open to the authority to reconsider the matter again. It is also a settled principle of law that a second review application is not maintainable and the principle contemplated under Order 48 Rule 9 of the C.P.C. would be fully applicable. No second review application can be entertained. The submission of the respondent that the second application was not a review application, but was a representation, is patently erroneous. The nomenclature of the application can be a representation or a second review application but, it remains the same. The fact remains



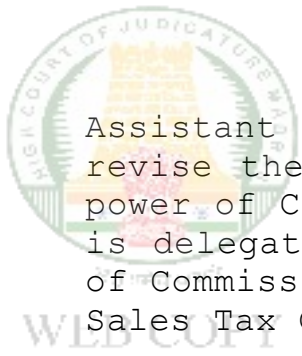
that a finality has to be achieved and once a review application has been entertained and thereafter rejected, a second application for reconsideration of the earlier order cannot be entertained. The authority had no jurisdiction to entertain a second application on the same subject nor had any power to reconsider a matter, which had become final and closed. The impugned order passed by the authority under political pressure was wholly illegal."

33. Ultimately, the Court has expressed a view that a second application for review cannot be permitted on the same subject, as the order passed in the review application has become final. The situation for exercising power under Rule 15A of the Rules in the present context is different.

34. The learned Senior Counsel for the respondent relied upon yet another judgment of Honourable Supreme Court in the case of **OCL India Limited vs State of Orissa and others**, reported in **(2003) 2 SCC 101**, wherein it has been held as follows:

"Thus, it is clear that the power conferred on the Assistant Commissioner was under clause (a) of sub-section (4) of section 23 of the Act read with rule 80 of the Rules. The Commissioner has revisional power to call for the records and revise the orders not only of the Sales Tax Officer but also of the Assistant Commissioner, Additional Commissioner and Special Additional Commissioner; the power that was delegated to the Assistant Commissioner was confined to the orders passed by the Sales Tax Officers. In the result the Commissioner retained his power to revise the orders 'passed by the Assistant Commissioner, Additional Commissioner and Special Additional Commissioner. However, in regard to the orders passed by the Sales Tax Officer, after the delegation, the Assistant Commissioner was competent to revise and, in fact he did exercise the power to revise the order of the Sales Tax Officer, after issuing a show cause notice dated December 13, 1995. If that be so, the power of the Commissioner (the delegator) under the afore-quoted provisions has been exhausted by the Assistant Commissioner and the Commissioner cannot, in law, exercise the delegated power over again."

35. From the facts that are narrated and the issue considered by the Honourable Supreme Court, it is evident that the Honourable Supreme Court has considered the power of Commissioner, which has also been delegated to the Assistant Commissioner to revise the order passed by the Sales Tax Officer, after the



Assistant Commissioner exercised the power delegated to him to revise the order of Sales Tax Officer. It was held that if the power of Commissioner to review an order passed by his subordinate is delegated to Assistant Commissioner and he exercises the power of Commissioner, which was delegated to him to revise the order of Sales Tax Officer, the power of Commissioner is also exhausted.

36.By relying upon any of the precedents, Rule 15A of the Rules cannot be interpreted to conclude that under Rule 15A of the Rules, the Head of the Department has no authority to exercise his *suo motu* power of review, after an order has been passed by the authority subordinate to him in exercise of *suo motu* power of review.

37.The learned Senior Counsel for the respondent has also relied upon yet another judgment of Division Bench of this Court in the case of **The Director General of Police vs E.Jeyakumar**, in W.A.(MD)No.1088 of 2006, dated 30.11.2016. Placing reliance on the judgment of Division Bench in P.Selvaraju case, the Honourable Division Bench has held as follows:

"10. In case of Government servant serving in a department or office under the control of such Head of Department, in the considered opinion of the Court, the respondent / Writ Petitioner as Inspector of Police, NB CID was under the control of the Head of the Department, namely, Commissioner of Police, Chennai at the relevant point of time, though enquiry officer has found that the charges levelled against the petitioner have been proved, the disciplinary authority, namely, the Joint Commissioner of Police, (South Zone), Chennai has disagreed with the said findings and held that the respondent has to be exonerated from the charges and the same was reviewed by the Commissioner of Police, Chennai City, on 31.03.2011 and he has also concurred with the findings of the disciplinary authority. Once the power of review has been exercised by the reviewing authority, namely, the Commissioner of Police, Chennai city, the appellant/respondent in the Writ Petition cannot exercise the power of review once again and as rightly pointed out in the above cited judgments in paragraph No.18 of the judgment in W.A.(MD).No.775 of 2014 (cited supra) a review of review cannot lie and for that proposition relevance was also placed upon **Sow Chandra Kante and another Vs. Sheikh Habib, (1975) 1 SCC 674 and Kamlesh Verma Vs Mayawati and others, (2013) 8 SCC 320** and in the considered opinion of the Court, the above cited judgments which has also reached the finality are squarely applicable to the facts of the case and



therefore, the learned Judge had relied upon the order dated 12.07.2013 made in W.P(MD).No.13611 of 2011 to quash the impugned notice without going into the merits of the matter and this Court after going through the entire materials is of the view that the show cause notice is to be quashed."

38.The above judgment of Division Bench of this Court is not independent, but by relying upon the judgment of earlier Division Bench in **P.Selvaraju's** case. In view of the above discussions, we over rule the view expressed on the interpretation of Rule 15A of the Rules in the judgment in "**The Director General of Police, Tamil Nadu vs P.Selvaraju**", dated 29.09.2015 in W.A.No.775 of 2014, the judgment in "**The Secretary to Government vs N.Karunanithi**", dated 16.09.2016 in W.A.Nos.604 and 720 of 2016 and the judgment in W.A.(MD)No.1088 of 2016, dated 30.11.2016, in "**The Director General of Police vs E.Jeyakumar**" and uphold the view taken in the judgment of Division Bench in the case of "**R.Krishnaswamy vs The Director General of Police and another**", dated 16.02.2005, reported in **2005 (2) MLJ 353**.

39.In the light of discussions and conclusions reached above, we have no hesitation to answer both questions referred to us in the affirmative. In other words, the view taken in the case of **R.Krishnaswamy Vs. The Director General of Police and another**, reported in **2005(2) MLJ 353**, is in direct conflict with the subsequent judgment in the case of **The Secretary to Government Vs. N.Karunanithi**, in W.A.Nos.604 and 720 of 2016, which has not noticed the earlier judgment. Further in the light of provisions of Rule 15A of the Tamil Nadu Police Subordinate Service (Discipline and Appeal) Rules, 1955, the Head of the Department has the authority to exercise his *suo motu* power of review, after an order passed by the authority subordinate to it, exercising the power of *suo motu* review.

40.Before hearing the arguments on both sides on reference, the learned Special Government Pleader as well as the learned Senior Counsel for the respondent submitted that this Bench can also dispose the Writ Appeal on merits and that both parties have no grievance or objection for the disposal of the appeal. This Court, after answering the questions referred to this Bench, is also inclined to dispose of the appeal itself on merits.

41.After answering the questions under reference, we have realised another aspect of the case. The show cause notice impugned in the Writ Petition, dated 25.10.2011 though refers to the order passed by the second appellant, namely, the Commissioner of Police, dated 31.03.2011, setting aside the order of



punishment, the show cause notice was one purported to be one to review the order passed by the Disciplinary Authority, namely, the third appellant and not the second appellant, who has set aside the order of third appellant, dated 04.02.2011. When the second appellant set aside the order of third appellant and exercised the power of *suo motu* review, the order of third appellant does not exist, as it merges with the order of second appellant. In such circumstances, exercising the power of *suo motu* review to review the order of third appellant may not be proper.

42. Though the learned Special Government Pleader has relied upon a judgment of Division Bench of this Court in the case of **Tamil Nadu Arasu kootturuvu Paniyalargal Sangam vs M.R.Srinivasan**, reported in **2015 (5) CTC 225**, to hold that the Order 47 Rule 9 CPC does not prevent the second review of original order or decree following the judgment of Honourable Supreme Court in **Jaya Chandra Mohapatra vs Land Acquisition Officer**, reported in **2005 (1) CTC 76 (SC)**, this Court is unable to accept the same in the present context, where, this Court does not deal with the power of Court under Order 47 Rule 9 CPC. The power under Rule 15A though stated as a power of review, it is not the power, as it is understood in the legal parlance to compare the power and scope of review under Order 47 Rule 1 CPC, which deals with the power of Court to review its own order.

43. On a literal interpretation of the word "or" used in Rule 15A(1) of the Rules would certainly bar the review of an order of Disciplinary Authority, simultaneously by the appellate authority as well as the Head of the Department. When the word "and" is not used or "or" and "and" are used as conjunctives, it is impossible to derive a meaning, which would favour the exercising of power of *suo motu* review by higher authorities simultaneously to review the same order of Disciplinary Authority. If the rule is so interpreted to pave way for Head of the Department or the State Government to review the order passed by the original authority successively, that will invite undesired results leading to multiplicity of proceedings or conflicting decisions. Such an interpretation will be against public policy insofar as Rule 15A(1) of Tamil Nadu Police Subordinate Service (Discipline and Appeal) Rules, 1955, is concerned.

44. Considering the fact that the show cause notice impugned in the Writ Petition refers to the proceedings of the second appellant, dated 31.03.2011 and the second appellant, namely, the Commissioner of Police has not given any special reason relating to merits, we are of the view that the show cause notice, dated 25.10.2011 itself can be treated as a notice proposing to review the order of second appellant, dated 31.03.2011. We make it clear



that the Head of Department or the State Government can either enhance or remit the punishment awarded by the Disciplinary Authority, while reviewing the order of the Appellate Authority or the Head of the Department, as the case may be, since the order of Disciplinary Authority merges with that of the Appellate Authority / Head of the Department. Accordingly, the Writ Appeal is allowed and the order passed in W.P.(MD)No.13611 of 2011, dated 12.07.2013 is set aside. The respondent is given an opportunity to file his response / explanation to the show cause notice, dated 25.10.2011 within a period of three weeks from the date of receipt of a copy of this judgment. On receipt of such explanation from the respondent, the first appellant shall pass appropriate orders on merits and in accordance with law within a period of six weeks from the date of receipt of such explanation from the respondent. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CO)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

cmr

TO

- 1.The Director General of Police,
Dr.Radha Krishna Salai,
Chennai - 600 004.
- 2.The Commissioner of Police,
Chennai Police, Chennai -7.
- 3.The Joint Commissioner of Police,
South Zone, Chennai.
- 4.The Deputy Inspector General of Police,
NIB CID, Chennai.

+1CC TO M/S.AJMAL ASSO., Advocate Sr. No. 6839

Judgment made in
W.A(MD)No.686 of 2015
14.02.2020

KM(CO)

TR(20.02.2020) 22P 6C

<https://hcservices.ecourts.gov.in/hcservices/>