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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 31-01-2019

CORAM:

THE HONOURABLE MR.JUSTICE R. SUBBIAH

and

THE HONOURABLE TMT.JUSTICE J. NISHA BANU

Review Application (MD) No. 14 of 2019

and

CMP (MD) No. 858 of 2019

in

WA (MD) No. 585 of 2016

1. The Secretary to Government
Cooperation, Food and Consumer Protection Department
Fort St. George
Chennai - 600 009
2. The Registrar of Cooperative Societies
N.V. Nataraan Maligai
120, Periyar EVR Road
Kilpauk, Chennai - 600 010
3. The Joint Registrar of Cooperative Societies
Sivaganga Division
Sivagangai ... Petitioners/Respondents

Versus

A. Kingston David
Record Clerk
O/o. Joint Registrar of Cooperative Societies
Sivagangai ... Respondent /Appellant

Prayer in REV.APLC(MD) . 14/ 2019 :

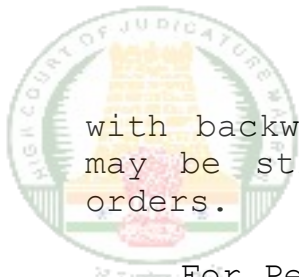
Review Application is filed under order 47 rule 1 and 2 of CPC to prefer this Memorandum of Grounds of Review Application to review the Judgement dated 08.12.2016 in W.A.(MD)No.585 of 2016.

Prayer in WA(MD) . 585 of 2016 :

Writ Appeal filed under section 15 of the Letters Patent against the order passed in W.P(MD)No.3679 of 2013, dated 17.09.2014 by a learned single of this Court.

Prayer in WP(MD) . 3679 of 2013 :

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 revise the petitioner's appointment as Junior Assistant with effect from his date of appointment (viz 19.01.2011) and further direct them to provide subsequent promotions from the cadre of Junior Assistant by considering his service rendered in the cadre of Record Clerk along



with backwages and other monetary benefits within a time frame as may be stipulated by this Court and pass such further or other orders.

For Petitioners

: Mrs.Srimathy

Special Government Pleader

For Respondent

: Mr.S.Visvalingam

ORDER

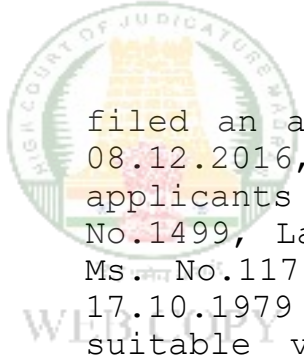
(Order of the Court was made by R. Subbiah, J)

The respondent herein has filed Writ Petition (MD)No. 3679 of 2013 before this Court praying for issuing a Mandamus directing the Review Applicants herein to revise his appointment as Junior Assistant with effect from the date of his appointment viz., 19.01.2011 and to further direct the Review Applicants herein to confer him promotion from the cadre of Junior Assistant by considering the services rendered by him in the cadre of Record Clerk with backwages and other monetary benefits.

2. According to the respondent, his father was employed as Senior Inspector in Animal Husbandry Department and during the course of such employment, he died in harness on 29.03.2002. After the death of his father, the respondent submitted an application to the second Applicant herein seeking appointment on compassionate grounds and considering the same, the second applicant appointed the respondent as Junior Clerk on 28.12.2010 and the respondent also joined the said post on 19.01.2011 in the office of the third applicant herein. At the time of appointment, the respondent was a holder of B.A. (Arts) Degree. It is his contention that for appointment to the post of Record Clerk the qualification prescribed was only 8th standard pass or fail. However, as he was in possession of higher qualification, he ought to have been appointed to the post of Junior Assistant for which the qualification prescribed was SSLC. It is also the contention of the respondent that as per G.O. Ms. No.1499, Labour and Employment Department dated 03.08.1989, the appointing authorities, under no circumstances, should appoint a dependent to a lower post when the dependent possess higher qualifications. In those circumstances, the respondent has filed the above writ petition.

3. By order dated 17.09.2014, the learned single Judge of this Court dismissed the writ petition filed by the respondent by holding that the respondent cannot, as a matter of right, seek for appointment on compassionate grounds. Further, the respondent was appointed with the object of giving immediate relief to the family of the deceased and therefore, the question of revising the appointment of the respondent cannot be countenanced.

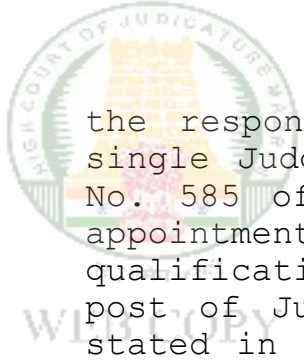
4. Aggrieved by the order dated 17.09.2014, the respondent has



filed an appeal in W.A. (MD) No. 585 of 2016. By judgment dated 08.12.2016, the Division Bench of this Court held that the review applicants herein did not follow the guidelines issued in G.O. Ms. No.1499, Labour and Employment Department dated 03.08.1989 and G.O. Ms. No.1179, Personnel and Administrative Reforms Department dated 17.10.1979 in getting sanction for accommodating the respondent in a suitable vacancy. It was also held that when the respondent possessed more qualification than the one required for the post of Record Clerk at the time of his appointment, the review applicants ought to have appointed him in the post of Junior Assistant. At the same time, as the respondent had given a letter of undertaking at the time of his appointment that he will not make any claim for appointment to the post of Junior Assistant in future, the Division Bench of this Court has refused the relief of granting monetary benefits to the respondent herein. The Division Bench of this Court also recorded the submission of the learned Government Pleader that presently there is a vacancy available for the post of Junior Assistant and therefore, directed the review applicants herein to revise the appointment of the appellant as Junior Assistant with effect from the date of his appointment and provide subsequent promotion from the cadre of Junior Assistant by considering his service rendered in the cadre of Record Clerk as the service rendered in the cadre of Junior Assistant. It is this Judgment dated 08.12.2016 passed in WA (MD) No. 585 of 2016, which is sought to be reviewed by the Review Applicants.

5. The learned Special Government Pleader appearing for the Review Applicants would contend that the respondent discharged his duties as a Record Clerk from the date of his appointment and such service rendered by him in the cadre of Record Clerk could not be treated as Junior Assistant. When the respondent was appointed on compassionate grounds, he cannot, as a matter of right, seek for appointing him in a post befitting his qualification even though he possessed higher qualification at the time of his appointment. The object of providing appointment is to redeem the family of the deceased government servant from abject poverty and keeping the said principles in mind, the respondent was accommodated in the post of Record Clerk. The respondent also signed a letter of undertaking stating that he will not make any claim for appointment to the post of Junior Assistant in future. Having signed such a letter of undertaking the respondent is estopped from filing the present writ petition. Further, at the time of appointment of the respondent, there was no post of Junior Assistant vacant and therefore, he was appointed to the post of Record Clerk. In such view of the matter, the learned Special Government Pleader prayed for allowing the present Review Application.

6. We have heard the learned Special Government Pleader for the Review applicants and perused the materials placed on record. The contentions raised in the present Review application have been urged in the writ appeal filed by the Review Applicants and after considering the same, this Court allowed the writ appeal filed by



the respondent by setting aside the order passed by the learned single Judge. In the Judgment dated 08.12.2016 passed in WA (MD) No. 585 of 2016, this Court had noted that even at the time of appointment, the respondent was in possession of higher qualification and therefore, he ought to have been appointed in the post of Junior Assistant befitting his qualification as has been stated in G.O. Ms. No.1499, Labour and Employment Department dated 03.08.1989 and G.O. Ms. No.1179, Personnel and Administrative Reforms Department dated 17.10.1979. Thus, the arguments which are now advanced on behalf of the Review applicants have already been considered and rejected by this Court. There is no new grounds raised on behalf of the applicant warranting us to review the Judgment dated 08.12.2016 passed in WA (MD) No. 585 of 2016. Further, there is no error apparent on the face of the records warranting us to review the Judgment dated 08.12.2016.

7. It is well settled that a Review Application cannot be entertained to re-argue the grounds which were already agitated. A review is permissible only if it is shown that there is an error apparent on the face of the record or certain vital points which were agitated have not been considered in the order which is sought to be reviewed. In the present case, the Review Applicants have not satisfied the above said two aspects. In this context, useful reference can be made to the decision of the Honourable Supreme Court in the case of (**Kamlesh Verma vs. Mayawati and others**) reported in **(2013) 8 SCC 320** wherein the Honourable Supreme Court, after examining various judgments has laid down the circumstances, as to when the Court can review its own judgments. The relevant portion of the judgment is extracted as under:

"12.This Court has repeatedly held in various Judgments that the jurisdiction and scope of review is not that of an appeal and it can be entertained only there is an error apparent on the face of record. A mere repetition through different counsel, of old and overruled arguments, a second trip over ineffectually covered grounds or minor mistakes of inconsequential import are obviously insufficient....."

... ..

"19. Review proceedings are not by way of an appeal and have to be strictly confined to the scope and ambit of Order XL VII Rule 1 of 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.

8. In the light of the above decision of the Honourable Supreme Court, we are of the view that the grounds raised by the Review Applicants in this Review Application cannot be entertained.



9. In the result, we dismiss the Review Application as devoid of merits. No costs. Consequently, connected CMP (MD) No. 858 of 2019 is closed.

sd/
Assistant Registrar(CS-II)

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/True Copy/

Sub Assistant Registrar

+1 CC to Mr.S.VISVALINGAM, Advocate (SR-43918[F] dated 31/01/2019)
+1 CC to SPL GP (SR-44524[F] dated 01/02/2019)

Rev Appln (MD) No.14 of 2019
31-01-2019

RSH
MK (14.03.2019) 5P 3C