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Rev.A.No.



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.11.2022

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN
AND
THE HONOURABLE MR.JUSTICE C.SARAVANAN

Review Application No.18 of 2022

D.Damuraj

... Applicant

-VS-

1. The Director General of Police,
Tamil Nadu,
Chennai- 600 004.

2. The Secretary to Government
Home (Police) Department,
Secretariat,
Chennai- 600 009.

... Respondents

Prayer: Review Application filed to review the order of this Court made in W.A.No.879 of 2019 dated 10.12.2020 in dismissing the Writ Appeal on an erroneous view of law and facts and also in relation to availability of certain additional material documents as well as that consideration of fundamental rules.

For Review Applicant : Mr.Soundararajan
For Respondents : Mr.S.John S.Raja Singh
Additional Government Pleader

ORDER

The Review Applicant has come forward with this Application, seeking to review the judgment of this Court made in W.A.No.879 of 2019 dated 10.12.2020.



2. The Writ Petitioner / Review Applicant herein filed a writ petition in W.P.No.7010 of 2009 for a Writ of Certiorarified Mandamus to call for the records of the 1st Respondent in R.C.No.170773/Rect.II (1)/ 2008 dated 28.02.2009, quash the same and consequently direct the respondents to refix his seniority by placing his name in the appropriate place in the selected list of Sub-Inspector of Police drawn for the year 1994-1995 along with his batch-mates with effect from 01.03.1996 with all consequential service benefits including promotion taking into account the marks obtained by him in the Police Training. The said writ petition was dismissed by the learned Single Judge and thereafter, the Writ Appeal filed by the Writ Petitioner in W.A.No.879 of 2019 was dismissed on 10.12.2020, confirming the order of the learned Single Judge.

3. The learned counsel for the Applicant submitted that the Applicant herein was selected and appointed on 05.02.1996 with an instruction to undergo training from 01.03.1996 and due to personal reasons, he had not undergone training from 01.03.1996 and commenced his training only on 16.04.1999. Therefore, the Applicant was not given the benefit of seniority in the batch, who had duly undergone training on and from 01.03.1996. He further submitted that the persons, who had joined subsequently have been granted the benefits retrospectively and therefore, the Applicant's case must be considered by the Department on par with others and his name ought to be placed at least



at the bottom of the selected list of 1994-1995 batch. The learned counsel for the Applicant drew the attention of this Court to Rule 25 of the Tamil Nadu Police Subordinate Service Rule, which is extracted hereunder:

"25. Seniority:

(a) The seniority of a person in any class or category or the service shall, unless he has been reduced to a lower rank as a punishment, be determined by the rank obtained by him in the list of approved candidates drawn up by the appointing authority, subject to the rule of reservation where it applies. The date of commencement of his probation shall be the date on which he joins duty irrespective of his seniority unless he has been appointed temporarily under sub rule (d) of rule 10 or sub rule (b) of rule 15 as the case may be."

4. A reading of the aforesaid provision makes it very clear that after joining the duty, the probation of an employee would be declared upon successful completion of two years. The Writ Petitioner joined service only on 16.04.1999 and he was not sent for training along with other candidates selected for the year 1994-1995 and the Department removed his name from the seniority list and thereafter, asked him to undergo training with effect from 16.04.1999. We are not inclined to accept the contention of the learned counsel for the Applicant for the reason that though the Applicant was appointed as early as on 05.02.1996 with a direction to join training on 01.03.1996, he has not chosen to join the said training for which he submitted a representation stating that he was unable to join



because of his father's ill health and sought permission to join in the next batch of training.

His request was duly considered and the Department issued appointment order dated 16.04.1999 with instructions to join the training along with 1st batch of trainees selected for the year 1997-98 with effect from 16.04.1999 and hence the question of fixing seniority on par with the batchmates of the year 1994-1995 does not arise.

5. That apart, it is now fairly well settled by a series of decision's of this Hon'ble Court as also the Hon'ble Supreme Court that the scope of review is very minimal and it is circumscribed by the provisions of the statute. It would be relevant to refer to few Judgments of this Hon'ble Court as also the Hon'ble Supreme Court to understand and appreciate the scope of review jurisdiction to find out if the petitioner has made out a case for reviewing the order dated 01.09.2021 in W.A.No.2133 of 2021. A Hon'ble Division Bench of this Court in the case of ***The Special Officer, Kallal Co-operative Primary Agricultural and Rural Development Bank Ltd., Karaikudi, Sivagangai District Vs. R.M.Rajarathinam and Others [Review Application (MD). No.82 of 2013]*** decided on **04.02.2015**, held as follows:

“10... It is well settled that the scope of review is very limited. The review applicant cannot re-argue and he is not entitled for re-hearing on merits.”

6. In another decision of the Division Bench of this Court in the case of



Dhanalakshmi Vs. M.Shajahan and others reported in ***AIR 2004 Madras 512***, it was opined that the power of review is not an appeal in disguise. The relevant paragraphs of the said order are extracted below:

"11. From the above judgments, it is seen that the law is well settled inasmuch as the power of review is available only when there is an error apparent on the face of the record and not on erroneous decision. If the parties aggrieved by the judgment on the ground that it is erroneous, remedy is only questioning the said order in appeal. The power of review under Order 47 Rule 1 C.P.C. may be opened inter alia only if there is a mistake or an error apparent on the face of the record. The said power cannot be exercised as is not permissible for an erroneous decision to be "reheard and corrected". A review application also cannot be allowed to be "an appeal in disguise". Similarly, the error apparent on the face of the record must be such an error, which must strike one on mere looking at record and would not require any long drawn process of reasoning on points, where there may conceivably be two opinions."

7. Furthermore, in ***R.Mohala Vs. M.Siva and others*** in ***Review Petition No.61 of 2018 and WMP.No.10818 and 10819 of 2018*** decided on ***25.04.2018***, one of us (SVNJ) elaborately discussed the scope of review and in Paragraph Nos.7 and 8, held as follows:

"7.The basic principle to entertain the review under Order 47 Rule 1 C.P.C. is to correct the errors but not to substitute a view. The judgment under review cannot be reversed (or) altered taking away the rights declared and conferred by the Court under the said judgment; once a judgment is rendered, the Court becomes functus officio and it cannot set aside its judgment or the decree; no inherent powers of review were conferred on the Court; the review Court cannot look into the trial Court judgment; it can look into its own judgment for limited purpose to correct any error or mistake in the judgment pointed out by the review petitioner



without altering or substituting its view in the judgment under review; the review court cannot entertain the arguments touching the merits and demerits of the case and cannot take a different view disturbing the finality of the judgment; the review cannot be treated as appeal in disguise, as the object behind review is ultimately to see that there should not be miscarriage of justice and shall do justice for the sake of justice only and review on the ground that the judgment is erroneous cannot be sustained.

8. It is settled law that even an erroneous decision cannot be a ground for the Court to undertake review, as the first and foremost requirement of entertaining a review petition is that the order under review of which is sought, suffers from any error apparent on the face of the order and in absence of any such error, finality attached to the judgment/order cannot be disturbed.”

8. The Hon'ble Supreme Court in the case of ***Meera Bhanja Vs. Nirmala Kumari Choudhury*** reported in ***(1995) 1 SCC 170***, while considering the scope of the power of review of the High Court under Order 47, Rule 1, C.P.C., held as follows:

"The 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 C.P.C. The review petition of error apparent on the face of the record and not on any other ground. An error apparent on the face of the record must be such an error which must strike one on mere looking at the record and would not require any longdrawn process of reasoning on points where there may conceivably be two opinions. The limitation of powers on court under Order 47, Rule 1, C.P.C. is similar to jurisdiction available to the High Court while seeking review of the orders under Article 226."

9. In the case in ***Parsion Devi Vs. Sumitri Devi***, reported in ***1997 (8) SCC 715***, the Hon'ble Apex Court held as follows:

"Under Order 47, Rule 1, CPC a judgment may be open to review inter alia if there is a mistake or an error apparent on the face of the record. An error which is not self-evident and has to be detected by a



process of reasoning, can hardly be said to be an error apparent on the face of the record justifying the Court to exercise its power of review under Order 47, Rule 1, CPC. In exercise of the jurisdiction under Order 47, Rule 1, CPC, it is not permissible for an erroneous decision to be "reheard and corrected". A review petition, it must be remembered has a limited purpose and cannot be allowed to be "an appeal in disguise."

10. From a reading of the above referred Judgments, it can be fairly discerned that:

1. Review is not an appeal in disguise.

2. The 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 C.P.C.

3. A wrong exposition of the law or a wrong application of the law and failure to apply the correct law cannot be a ground for review.

4. The power to review is a restricted power given through a Court to go through the Judgment only to correct it or improve it, on the basis of some material which ought to have been considered, escaped consideration or failed to be placed before it for any other reason, but not to substitute a fresh or a second Judgment.

5. The power of review cannot be invoked to correct the erroneous Judgment and the finality attached to a Judgment cannot be disturbed.

6. Only errors which are apparent on the face of the record in the sense that errors which strike on mere looking at record can only be corrected and not those that require long drawn process of reasoning on point.

11. The above are some of the basic principles on which the power to review rests.

The said principles are not exhaustive but only illustrative.



12. To review a Judgment / Order, the Applicants need to satisfy three basic requirements of Order 47 Rule 1 of C.P.C., which are as under:

(i) From discovery of new and important matter or evidence which after exercise of due diligence was not within his knowledge (or) could not be produced by him at the time when the decree was passed (or) order made;

(ii) There is some mistake (or) error apparent on the face of the record in the judgment under review; and

(iii) or any other sufficient reasons.”

13. The ground raised by the applicant in our considered opinion is beyond the scope of the provisions of Order 47 Rule 1 CPC and the law laid down by the Hon'ble Supreme Court and the Hon'ble High Court. The Review Applicants in the guise of the Review Petition want this Bench to re-write it's Judgment, which is not possible under review jurisdiction. As already stated above review is not an appeal in disguise and there is no error apparent on the fact of the record. Therefore, the Division Bench rightly confirmed the order of the learned Single Judge, which does not warrant any review. For all the above reasons, we find no merits in the review application and the same deserves to be dismissed.



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14. Accordingly, this Review Petition stands dismissed. No costs.

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[S.V.N., J.] [C.S.N., J]
29.11.2022

Index: Yes / No

Internet: Yes / No

Speaking order/Non speaking order

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S.VAIDYANATHAN, J.

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C.SARAVANAN, J.

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To

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