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Rev.Appln.No.152 of 2022



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.01.2024

CORAM

**THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN
AND
THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ**

Review Application No.152 of 2022

in

W.A. No.2183 of 2018

in

W.P. No.22063 of 2016

Accountant General
361 Anna Salai,
Chennai 600018.

..Petitioner

-VS-

1.E.P.Jayaraman
42 Vembuli Amman Koil Street,
Navalpur, Ranipet- 632 401.

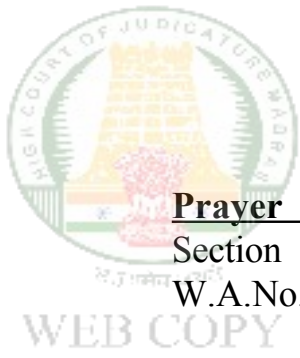
2.The Commissioner,
Panchayat Union,
Sholingur Vellore District.

3.The District Elementary Educational Officer,
Vellore District, Vellore.

4.District Collector,
Vellore District, Vellore.

5.The Director of Elementary Education,
DPI Complex, College Road,
College Road, Chennai- 600 006.

...Respondents



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Prayer : Review Application filed under Order XL(VII) Rule 1 read with Section 114 of the Civil Procedure Code against the order of this Court in W.A.No.2183 of 2018 dated 14.03.2022.

For Appellant : Mrs.Hema Muralikrishnan

For Respondents : Mr.C.Selvaraj
Additional Government Pleader

JUDGMENT

The review application has been filed in respect of the orders of this Court in W.A.No.2183 of 2018 dated 14.03.2022 whereby it was held that the pensionary benefits cannot be denied to the appellant/ 1st Respondent herein, after recording that he had resigned in September, 1974 on the premise that the crucial date to determine the entitlement to pension was 05.06.1981.

2. We had placed reliance on the decision of the Division Bench of this Court in the case of *State of Tamil Nadu and another vs. C.Kumar and another* reported in 2019 SCC Online Mad 2136. It is submitted by the petitioner that the above decision would have no bearing to the case of the 1st Respondent, who is a teacher of an Aided Institution and this Court failed to see that in the above judgment in W.A.No.2590 of 2018, this Court was concerned with a Workshop Instructor in Annamalai Polytechnic Chettinad,



who is a teaching staff of an Aided Technical Institution. It was submitted that G.O.Ms.No.37 dated 05.01.1983 prescribed / provided different crucial dates for different categories of staffs and Institutions as would be evident from the following table which forms part of G.O.Ms.No.37.

ABSTRACT

Pension to Staff Non-Government Educational Institutions Teaching Staff of Aided and Local Body Schools and teaching staff of aided colleges who resigned before the relevant crucial dates - Eligibility for pension from 05.06.1981 clarificatory orders issued.

DEPARTMENT OF EDUCATION SCIENCE AND TECHNOLOGY

G.O.Ms.No.37

Dated: 05.01.1983

ORDER:

The crucial dates from which the pension scheme for staff of non-government educational institutions was introduced for various categories of staff in non-govt, educational institutions and the dates from which those who retired before the crucial dates were allowed pension are as follows:

S.No.		Date from which pension scheme was introduced	Education G.O.Ms.No. Date:	Those who retired before crucial dates allowed pension from	Edu. G.O.No. And Date
1.	(a) Teaching staff of Aided and Local Body (Aided for purpose of retirement benefits always includes recognised "unaided" Schools also, including Anglo	01.04.65	1109 31.05.58	01.03.68	1505 24.09.68



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S.No.		Date from which pension scheme was introduced	Education G.O.Ms.No. Date:	Those who retired before crucial dates allowed pension from	Edu. G.O.No. And Date
	Indian Schools)				
	(b) Teaching staff non-Government Schools in the transferred area.	01.11.58 to 01.01.62 before 01.11.56	853 16.04.62	01.03.68 01.05.77	1505 24.09.68 1394 76-77
ii)	Non-Teaching staff of Aided Schools	01.04.72	627 11.05.72	05.06.81	1015 05.06.81
iii)	(a) Aided Colleges – Teaching Staff	01.04.62	1671 16.07.63	01.03.68	1505 24.09.68
	(b) Aided Colleges – Non-Teaching Staff	01.04.76	2213 11.10.76	05.06.81	1015 06.06.81
iv)	(a) Aided Technical Education Institutions Teaching Staff	01.01.75	650 23.04.75	05.06.81	1015 05.06.81
	(b) Aided Technical Educational Institutions Non-Teaching Staff	01.04.77	74 12.01.78	05.06.81	1015 05.06.81
(v)	Regional Engineering College Tiruuchirappali (all Staff)	01.01.75	1777 31.07.77	05.06.81	1015 05.06.81



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3. It was submitted by the 1st Respondent being a teaching staff of Aided School covered by Entry 1 of the above G.O. and thus the crucial date for the purpose of determining the entitlement of pension was 01.03.1968 and the 1st Respondent having retired in September, 1974 i.e., after the crucial date, would not be entitled to the benefit in terms of the above G.O. This Court had committed an error in relying upon the judgment of the Division Bench of this Court in W.A.No.2590 of 2018 which was concerned with Entry (iv) of the above G.O. which covered Teaching and Non-Teaching Staffs of Aided Technical Institutions. It was thus submitted that the order of this Court in W.A.No.2183 of 2018 is erroneous. Though there were other grounds which was raised in the review petition, the learned counsel for the petitioner in the Review Petition confined her arguments only to the above aspect.

4. To the contrary, the learned counsel for the Respondents would submit that there was no error much less error apparent on the face of the record warranting review of the order of this Court in Writ Appeal and placed reliance on the following judgments:

i) The Government of T.N vs. S.V.Paul Jeyaraj reported in 2001 1



WLR 852.

ii) Judgment of the Hon'ble Supreme Court in S.L.P.(C) No.22469 of 2001 dated 10.01.2002.

iii) The Principal Accountant General vs. S.Sankaran and another in W.A.(MD).No.333 of 2011 dated 26.04.2011.

iv) The District Elementary Educational Officer and others vs. S.Ayyavoo in W.A.(MD).No.311 of 2015 dated 16.07.2015.

5. We find that the above question of the crucial date being 01.03.1968 or 05.06.1981 has become academic inasmuch as, while considering G.O.Ms.No.37, this Court in the case of *the Govt. of Tamil Nadu and others vs. S.V.Paul Jeyaraj* reported in 2001 1 WLR 842, held that the above G.O cannot be interpreted in a manner whereby those who have retired after the introduction of the pension system are denied the benefit of pension. It was made clear that the teachers who had retired even after the crucial date can be sanctioned pension by the respective authorities competent to sanction pension. The relevant portion of the said judgment is extracted hereunder:

“7. It is therefore clear that a teacher who has resigned even after the crucial dates can be sanctioned pension by the respective authorities competent to sanction pension even without any specific orders from the higher authorities or of the Government condoning the resignation in each individual case. This would clinch the issue



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in favour of the respondent teacher and we find that the learned single Judge has also relied on the aforementioned Government Order, G.O.Ms. No. 37. This is apart from the fact that even the language of the Government Order dated 5.6.1981 and more particularly of paragraph 6(ii) cannot be interpreted so as to oust the teachers who have resigned after the introduction of the Pension Scheme. The provision has to be interpreted as giving a concessions even to the persons who have resigned earlier to the institution of the said Pension Scheme. We need not go into that aspect because G.O.Ms. No. 37 is more than clear. Therefore, we confirm the judgment of the learned single Judge. We are told that there is a stay in the matter. We direct the Government to finalise the pension of the respondent teacher within three months from today.”

6. Before proceeding further, it may be relevant to remind that the scope in an application for review is limited. In this regard, it may be relevant to refer to the judgment of the Hon'ble Supreme Court in the case of *Kamlesh Verma v. Mayawati*, reported in (2013) 8 SCC 320, wherein it was held as under:

"14. Review of the earlier order cannot be done unless the court is satisfied that material error, manifest on the face of the order, undermines its soundness or results in miscarriage of justice. This Court in Col. Avtar Singh Sekhon v. Union of India [1980 Supp SCC 562 : 1981 SCC (L&S) 381] held as under: (SCC p. 566, para 12)

"12. A review is not a routine procedure. Here we resolved to hear Shri Kapil at length to remove any feeling that the party has been hurt without being heard. But we cannot review our earlier order unless satisfied that material error, manifest on the face of the order, undermines its soundness or results in miscarriage of justice. In Sow Chandra Kante v. Sk. Habib [(1975) 1 SCC 674 : 1975 SCC



(Cri) 305 : 1975 SCC (L&S) 184 : 1975 SCC (Tax) 200] this Court observed: (SCC p. 675, para 1)

‘1. ... A review of a judgment is a serious step and reluctant resort to it is proper only where a glaring omission or patent mistake or like grave error has crept in earlier by judicial fallibility. ... The present stage is not a virgin ground but review of an earlier order which has the normal feature of finality.’”

Summary of the principles

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

20.1. When the review will be maintainable:

- (i) *Discovery of new and important matter or evidence which, after the exercise of due diligence, was not within knowledge of the petitioner or could not be produced by him;*
- (ii) *Mistake or error apparent on the face of the record;*
- (iii) *Any other sufficient reason.*

The words “any other sufficient reason” have been interpreted in *Chhajju Ram v. Neki* [(1921-22) 49 IA 144 : (1922) 16 LW 37 : AIR 1922 PC 112] and approved by this Court in *Moran Mar Basselios Catholicos v. Most Rev. Mar Poulose Athanasius* [AIR 1954 SC 526 : (1955) 1 SCR 520] to mean “a reason sufficient on grounds at least analogous to those specified in the rule”. The same principles have been reiterated in *Union of India v. Sandur Manganese & Iron Ores Ltd.* [(2013) 8 SCC 337 : JT (2013) 8 SC 275]

20.2. When the review will not be maintainable:

- (i) *A repetition of old and overruled argument is not enough to reopen concluded adjudications.*
- (ii) *Minor mistakes of inconsequential import.*
- (iii) *Review proceedings cannot be equated with the original hearing of the case.*
- (iv) *Review is not maintainable unless the material error, manifest on the face of the order, undermines its soundness or results in miscarriage of justice.*
- (v) *A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected but lies only for patent error.*



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(vi) *The mere possibility of two views on the subject cannot be a ground for review.*

(vii) *The error apparent on the face of the record should not be an error which has to be fished out and searched.*

(viii) *The appreciation of evidence on record is fully within the domain of the appellate court, it cannot be permitted to be advanced in the review petition.*

(ix) *Review is not maintainable when the same relief sought at the time of arguing the main matter had been negated."*

7. Furthermore, in the case of *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



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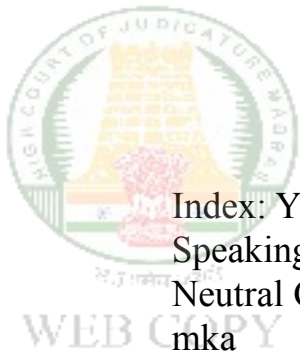


order under review of which is sought, suffers from any error apparent on the face of the order and in absence of any such error, finality attached to the judgment/order cannot be disturbed.?”

8. In the light of the above discussion, we do not propose to go into the question of whether the crucial date was 05.06.1981 or 01.03.1968 inasmuch as in the light of the judgment of the Division Bench of this Court in the case of *S.V.Paul Jeyaraj*, the same loses its significance/ relevance for it has been held that teachers retired after the crucial date cannot be ousted for the benefit of pension. Since the submissions of the petitioner herein even if assumed to be correct would not have materially altered the conclusion and thus we are not inclined to examine the same. The entire exercise becomes academic, in any event inconsequential, keeping in mind the above principles relating to review.

9. In view thereof, we do not propose to entertain the Review Application in view of the judgment of this Court in W.A.No.2590 of 2018. The Review Application stands dismissed. However, the time limit granted in the earlier order will run from the date of this order. No Costs.

[S.V.N., J.] [M.S.Q., J.]
11.01.2024



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Index: Yes/No
Speaking order / Non-Speaking order
Neutral Citation: Yes/No
mka

To:

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Panchayat Union, Sholingur Vellore District.
- 2.The District Elementary Educational Officer,
Vellore District, Vellore.
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