



Rev. App. No.230/2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	Pronounced on
22.08.2023	28.08.2023

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

REVIEW APPLICATION NO. 230 OF 2022

IN

W.P. NO.13169 OF 2013

G.Rajaram

.. Petitioner

- Vs -

1. The Secretary to Government
Home Department (Police III)
Government of Tamil Nadu
Fort St. George, Chennai 600 009.

2. The Director General of Police
Chennai 600 004.

3. The Chairman
The Tamil Nadu Uniform Services
Recruitment Board
Chennai 600 020.

.. Respondents



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Review Petition filed under Order XLVII rule 1 r/w Section 114 of the Code of Civil Procedure, to review the order dated 17.08.2020 made in W.P. No.13169 of 2013.

For Petitioner : Mr. A.E.Chellaiya, SC, for
M/s. C.Saifullah

For Respondents : Mr. P.Kumaresan, AAG,
Assisted by Mr. L.S.M.Hasan Faizal, AGP

ORDER

The present petition has been filed to review the order passed by this Court in W.P. No.13169 of 2013 dated 17.08.2020.

2. This Court, vide order dated 17.08.2020, while recording the fact that inspite of grant of several opportunities, none appeared for the petitioner and also taking into consideration the fact that the writ petition was of the year 2013 and it pertained to the selection of candidates for the post of Sub Inspector, had taken up the case on merits and passed orders, the relevant portion of which is quoted hereunder :-

"2. The case was initially listed on 08.07.2020, there was no representation for the petitioner. Hence the matter was



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posted for hearing on 13.07.2020. When the matter is taken up today, there is no representation for the petitioner. Considering the fact that the matter is pending since 2013, this Court proceeds to decide the case on merits, based on the materials available on record and pass orders.

* * * * *

3.4. A perusal of the entire records reveal that with regard to the very same selection process, the petitioner filed various writ petitions and it is clear from the orders passed in the above petitions that the issue already stands settled. The records further reveal that the petitioner was not selected in the physical test as well as in the written test. Though the petitioner belongs to scheduled caste category, the cut off marks fixed by the State is 57.43, whereas the petitioner has secured only 54.80 marks.

4. The very same issue stands settled by the decision of the Hon'ble Apex Court in K.A.Nagamani Vs. India Airlines, 2009(3) SCC 515 and in Amalan Jyoti Borooh Vs. State of Assam 2004(3) SCC 227, wherein it has been held that 'a candidate participating in the selection process, on being found unsuccessful, he cannot challenge the very method adopted by the authorities and he was estopped from contending so'. Further in the absence of any specific rule or guidelines, it is always open to the selecting authority to adopt a reasonable criteria which will not be arbitrary or in violation of Article 14



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of the Constitution, which is also observed and approved by this Court in A.Saravanan Vs.TNPSC & Anr.

5.In the case on hand, the petitioner having participated in the selection process and having not come out successful, it is not open to the petitioner to challenge the method adopted for selection after participating in the selection process and grievance, if any, has to be voiced out at the initial stage and not at a stage, when he is declared unsuccessful. The petitioner, having not challenged the selection process at the initial point of time and having not come out successful, cannot come and challenge the very selection process, only because the result of the interview is not palatable to him. The petitioner cannot turn around and subsequently contend that the process of interview was unfair.”

3. From a careful perusal of the aforesaid order passed by this Court, it transpires that this Court had considered all the relevant facts and adverting to certain decisions of the Apex Court, had negative the stand of the petitioner and dismissed the petition. Aggrieved by the said order, the present review application is filed.

4. The main plank on which this review is prefaced is that opportunity was not granted to the petitioner to present his case as it was listed and taken



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up for hearing without the consent of the advocates on both sides, which was barred by Notification No.142/2020 dated 13.07.2020 of the High Court.

5. Learned senior counsel appearing for the petitioner in the review petition submitted that the case was taken up and dismissed without providing an opportunity of hearing to the petitioner counsel and, thus, there is violation of principles of natural justice as opportunity of hearing was not granted to the petitioner.

6. It is the further submission of the learned senior counsel that though many decisions were relied on by the petitioner with regard to the validity of an interview process, however, the same have not been taken into consideration by the Court, which if the petitioner counsel had presented, would have led to the Court coming to a different conclusion in favour of the petitioner.

7. It is the further submission of the learned senior counsel that the petitioner is an in-service candidate and is entitled to enjoy the 20% quota



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earmarked for in-service candidates and, therefore, he made application for selection under the in-service quota. Though the respondents claim that the petitioner made application both under in-service quota and open quota, the claim of the respondent is that the cut-off marks for in-service candidates belonging to Scheduled Caste is 57.43, whereas it is alleged that the petitioner obtained only 51.23 marks. It is the submission of the learned senior counsel that if the aforesaid contention is accepted then the petitioner is entitled for selection under the open quota as he had obtained more marks than what has been prescribed and, therefore, denying the petitioner selection is wholly erroneous. It is the submission of the learned senior counsel that the aforesaid aspect has not been considered by this Court while dealing with the merits of the writ petition as the petitioner was not granted opportunity to place the aforesaid submission.

8. Therefore, it is submitted that the order passed in the writ petition requires to be revisited in the present review petition so as to render substantial justice to the petitioner.



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9. On the above contentions, this Court heard the learned Addl.

Advocate General appearing for the respondents, who placed his arguments on the basis of the counter filed by the respondents.

10. It is the submission of the learned Addl. Advocate General that the petitioner appeared for recruitment of Sub Inspector of Police both under open as well as departmental quota with enrolment Nos.010639 and 410065 respectively. However, the petitioner failed to qualify in the running test and, therefore, was disqualified from the selection process under the in-service quota.

11. It is the further submission of the learned Addl. Advocate General that initially under the open quota, the petitioner secured 30 marks in physical efficiency test and participating in the written test, secured 16.43 marks, in all aggregating to 46.43 marks. However, for the purpose of moving to the viva voce phase, the cut-off marks for Chennai Zone was fixed at 51.81 marks and the petitioner falling short, he was not called for viva voce. It is the further submission of the learned Addl. Advocate General that based on the orders of



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the Division Bench, which also enured to the benefit of the petitioner, he was called for viva voce. However, after further litigations, finally, based on the orders of this Court in R.A. No.48/2009 dated 14.7.09, wherein the zone-wise selection was held to be bad, the eligible candidates including the petitioner were directed to be considered on the basis of the cut off marks in the respective communities irrespective of the zones, pursuant to which the petitioner was called for viva voce in which the petitioner was awarded with 4.80 marks. Therefore, the total marks aggregated by the petitioner being 51.23 marks and the cut-off mark for SC candidates in Ramnad Range was 57.43, the petitioner was not considered for selection. Thereafter, the contempt petition filed by the petitioner was dismissed and, therefore, challenging the interview process, filing the present writ petition is wholly impermissible. It is also the further submission of the learned Addl. Advocate General that the selection process had taken about two and half decades back and it would not be in the interest of the persons recruited to disturb the said recruitment on the mere allegation of the petitioner. Therefore, learned Addl. Advocate General prayed that this Court may dismiss the present writ petition.



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12. This Court gave its careful consideration to the submissions advanced by the learned counsel appearing on either side and perused the materials available on record.

13. It is the well accepted ratio that a review against an order passed could be taken up and decided only with reference to the errors apparent on the face of the record and not otherwise. If the party is not successful before this Court, it has to approach the higher forum and under the guise of review, the petitioner cannot be allowed to reagitate the whole issue. A Court may accept a review petition when a glaring omission or patent mistake or like grave error has crept in earlier by judicial fallibility. When a review takes place, the Court will not take fresh stock of the case but just correct grave errors that have resulted in the miscarriage of justice. Also, judicial review can only correct a “*patent error*” and not “*minor mistakes of inconsequential import*”. In the ***Union of India v. Sandur Manganese & Iron Ores Ltd. (Rev. Ptn. (C) No.739/2012 – Dated 23.04.2013)***, the Apex Court laid down nine principles on when a review is maintainable. The Apex Court held that a



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review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected but lies only for patent error.

14. In the present case, the non-grant of opportunity to the petitioner is projected as a ground for this Court to entertain the present review petition. As already extracted supra, this Court, in the order dated 17.8.2020, has recorded a categorical finding that inspite of the matter being listed on 08.07.2020, there was no representation and so the matter was listed on 13.07.2020 on which date as well there was no representation. Only considering the fact that the matter pertains to selection and appointment and also taking into account the fact that the case is of the year 2013, the matter was taken up on merits.

15. When the petitioner had not taken any steps to represent the case inspite of the opportunities granted to him, but has come before this Court by placing reliance upon Notification No.142/2020 dated 14.7.2020 to contend that without consent of either side, the writ petition cannot be taken up for final hearing. Inspite of grant of opportunity to the petitioner on two



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occasions, the petitioner not having come before this Court to argue the case, the petitioner cannot take umbrage under the notification to claim that without consent of either side, the matter cannot be taken up for hearing, more especially when the matter is of the year 2013.

16. The curious question, therefore, that befalls for determination is – *Whether in the absence of either party and/or consent of both the parties, could the Court relegate the matter to cold storage for eternity, without dealing with the same.*

17. No legal provision is required to be adverted to for answering the above question, as the principles laid down by the Apex Court in *Sandur case* (*supra*) squarely answers the aforesaid issue and as stated above, the review is not an appeal in disguise to reagitate the issue. The Notification issued should be read harmoniously and not at the whim of the party, who has lost its case. When after affording reasonable opportunity to the petitioner the Court had gone ahead and decided the issue on merits, merely because a Notification was issued by the Registry would not bar this Court from taking up the said



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matters, which have been on the board of this Court for which there was no objection for taking up. The consent meant in the said notification is for the counsel to come before this Court and agree to a mutual date when the matter could be heard. When the counsel have refrained from appearing before this Court inspite of grant of opportunities, the hands of this Court cannot be tied by any notification so as to disable the Court from dealing with the matter.

18. Be that as it may. Coming to the merits of the review petition, as aforesaid, except for contending that there is no consent of either side for taking up the matter and that the decisions which have been relied on by the petitioner have not been taken into consideration, on the merits of the matter, no error apparent on the face of the record is pointed out by the petitioner to claim that the order requires to be reviewed.

19. However, since the petitioner had raised a plea that he was not heard and that he had raised a ground that his case was not properly considered on the basis of the marks, this Court, in the interest of rendering



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substantial justice, permitted the petitioner to espouse his cause by raising the plea, which was argued before this Court.

20. It is the stand of the respondents that the petitioner participated in both in-service and open quota and in the in-service category, the petitioner did not pass out the running test and, therefore, was disqualified from the selection process under the in-service quota.

21. Insofar as open quota is concerned, the petitioner, in aggregate secured 46.43 marks, though the cut-off was fixed at 51.81 marks for viva-voce. However, in view of the orders of the Division Bench, the petitioner, he was called for viva voce and, thereafter, based on the orders in R.A. No.48/2009 dated 14.7.09, the petitioner was called for viva voce in which he obtained 4.80 marks, aggregating to 51.23 marks, which is well short of the cut-off mark of 57.43 fixed for SC candidates. When the petitioner has failed to achieve the required cut-off, it does not lie in the mouth of the petitioner to contend that the interview was not conducted properly, as it is evident from the materials that the petitioner was awarded marks based on his



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performance in the interview and mere allegations on the conduct of interview without any tangible material to substantiate the same cannot be the basis for this Court to come to the aid of the petitioner. Therefore, the respondents, on the aforesaid materials, had rightly rejected the case of the petitioner for being considered.

22. Further, it is borne out by record that there has been continuous litigative process throughout the selection by one person or the other including the petitioner and ultimately the matter was agitated in review before the Division Bench in R.A. No.48/2009 and, thereafter, alleging non-compliance of the order, contempt petition in Cont. Ptn. No.1273/2009 was filed in which the Division Bench closed the contempt petition.

23. When the conduct of the interview was put in issue in W.P. No.13169/13, this Court had, on the basis of the ratio laid down in the decisions in *K.A.Nagamani – Vs – Indian Airlines (2009 (3) SCC 515)* and ***Amalan Jyoti Borooh – Vs – State of Assam (2004 (3) SCC 227)***, had dismissed the case of the petitioner that after having participated in the selection



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process and being unsuccessful, the petitioner is estopped from challenging the method of selection. When the petitioner has not obtained the requisite marks for being considered for selection, and when the Division Bench in R.A. No.48/2009 had given direction for conduct of fresh interview and in compliance of the aforesaid direction, interview has also been conducted, with which no infirmity was found by the Division Bench in the Cont. Ptn. No.1273/2009, the petitioner cannot be allowed to once again canvass the same grievance. This Court, had decided the issue on merits in W.P. No.13169/2013. Though the argument, which is now placed was not put up before this Court, however, this Court had considered the cut-off marks, which was the basis on which the selection was made and finding that the petitioner had not obtained the requisite marks, had rejected the case of the petitioner. Further, when the petitioner, on the merits of the case is not entitled to any relief, equally it is to be pointed out that in the grounds, except for pointing out the Notification No.142/2020 dated 14.7.2020 which barred this Court to take up the case, which has already been negative by this Court, no error apparent on the face of the record is pointed out, which renders reconsideration of the order passed by this Court.



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24. The mere fact that the petitioner had placed more than a dozen decisions in support of its case does not imply that it is the duty of this Court to delve into each and every decision separately and discuss about its applicability. This Court had taken into consideration the decision in *Nagamani's case (supra)*, which squarely devolved on the issue that was projected before the Court, while deciding the issue against the petitioner and that being the case, the contention that the decisions placed by the petitioner have not been considered cannot be said to be an error apparent on the face of the record, which requires reconsideration of the issue raised in the writ petition.

25. The reason of the petitioner to file the present review is nothing but an ingenious attempt to drag on the proceeding, which has been continuing since 1998. Successfully, for more than two decades and a half the petitioner had been filing one petition or the other and dragged on the proceeding in respect of a selection process, which, by efflux of time, had not only become stale but over the period had settled and, therefore, any order at



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this point of time otherwise would be nothing but unsettling the whole process of selection, which had attained finality long back. Therefore, the present review of the petitioner is nothing but another spoke in the said wheel, which has been rolling since 1998, to scuttle the whole selection process by making this Court to revisit the said selection, without any pertinent material, other than mere allegations, which, cannot be allowed to roll further.

26. For all the reasons aforesaid, there being no error apparent on the face of the record, pointed out on behalf of the petitioner, the contentions placed before this Court to enlist the sympathy of this Court cannot be a ground to reconsider the order passed by this Court in the review petition.

27. In the result, the review petition fails and, accordingly, the same is dismissed. There shall be no order as to costs.

28.08.2023

Index : Yes / No



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Home Department (Police III)
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M.DHANDAPANI, J.

GLN

**PRE-DELIVERY ORDER IN
REV. APP. NO. 230 OF 2022**

**Pronounced on
28.08.2023**



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