



W.A.No.873 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.10.2023

CORAM :

**THE HON'BLE MR. JUSTICE R. MAHADEVAN
AND
THE HON'BLE MR. JUSTICE MOHAMMED SHAFFIQ**

**W.A.No.873 of 2023
and
C.M.P.No.8657 of 2023**

P.Ayyavoo

... Appellant

Vs.

1.The Secretary to the Government of Tamil Nadu,
School Education Department,
Secretariat, Chennai - 600 009.

2.The Director of School Education,
Chennai - 600 006.

3.The Joint Director of School Education (Personnel),
Chennai - 600 006.

... Respondents

Writ Appeal filed under Clause 15 of the Letters Patent, against the order dated 01.11.2021 made in Review Application No.118 of 2019 in W.P.No.18336 of 2012.

For Appellant : Mr.G.Murugendran

For Respondents : Mr.S.Silambanan
Additional Advocate General
assisted by Mrs.S.Anitha
Special Government Pleader

JUDGMENT



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(Judgment of the Court was delivered by R. MAHADEVAN, J.)

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This writ appeal is directed against the order passed by the learned Judge in Review Application No.118 of 2019 in W.P.No.18336 of 2012 on 01.11.2021.

2. The short facts which are necessary for disposal of this appeal are as follows:

2.1. The appellant / writ petitioner was initially appointed as craft teacher on 30.07.1973 and was subsequently promoted as Tamil Pandit in the year 1994. Thereafter, at the verge of retirement, based on the complaint given by one Saraswathi, who is none other than the first wife of the appellant stating that he had contracted second marriage, he was issued with a charge memo on 20.04.2006 and was not permitted to retire from service, on reaching the age of superannuation on 30.04.2006. The disciplinary proceedings ended with the punishment of removal of the appellant from service, vide order of the third respondent dated 30.03.2009, which was also confirmed by the appellate authority/second respondent on 12.01.2010. Challenging the orders dated 30.03.2009 and 12.01.2010, the appellant filed W.P.No.7922 of 2010 and the learned Judge vide order dated 22.12.2011, set aside the orders passed by the respondent authorities and remanded the matter for fresh consideration. However, the second respondent rejected the claim of the appellant vide order dated 19.04.2012, against which, the appellant filed W.P.No.18336 of 2012 and



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the said writ petition was allowed on 09.09.2014, by holding that the action of the second respondent in initiating disciplinary proceedings against the appellant/writ petitioner under Rule 17-b of the Tamil Nadu Civil Services (Discipline and Appeal) Rules and serving notice for violating Rules 19 and 20 of the Tamil Nadu Government Servant Conduct Rules, 1973 and not converting the proceedings into one under the Tamil Nadu Pension Rules, is illegal and the authorities have no right to impose the punishment of removal from service on the appellant and accordingly, directed the respondents to work out the benefits due to the appellant and pay the same within a period of three months.

2.2. Since the aforesaid order dated 09.09.2014 passed in the writ petition has not been complied with by the respondents, the appellant/writ petitioner filed Contempt Petition No.826 of 2015, whereas, the respondents preferred Review Application bearing No.118 of 2019. By order dated 01.11.2021, the learned Judge allowed the review application, and closed the contempt petition. Aggrieved by the same, the appellant / writ petitioner is before this court with the present writ appeal.

3. The learned counsel for the appellant submitted that originally, the writ petition filed by the appellant challenging the order of punishment imposed on him, was allowed in his favour. However, the learned Judge in the review



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application, went on beyond the scope of review and reversed the findings rendered by another Judge in the writ petition, thereby allowing the review application, which is in violation of Rule 24 of the Madras High Court Appellate Side Rules. Placing reliance on the decision of the Supreme Court in *Pancham Lal Pandey v. Neeraj Kumar Mishra* [2023 SCC Online SC 143], the learned counsel submitted that rehearing and rewriting the original order are impermissible in the review application. Elaborating further, the learned counsel submitted that the complainant knew the factum of second marriage of the appellant in the year 1972 itself and the appellant entered into the service in the year 1973, however, she made the complaint after a lapse of 33 years, that too, just 9 days before the date of his retirement from service. It is also submitted that the marriage with the complainant was solemnized in the year 1969 and they were separated mutually, as per the customs followed by the villagers, which fact was established in the earlier round of litigation in WP.No.7922 of 2010. That apart, the learned counsel proceeded to contend that the Act cannot be applied retrospectively. The appellant contracted the 2nd marriage in the year 1972 and he entered into service on 30.07.1973, whereas the Tamil Nadu Government Servants' Conduct Rules, 1973 came into force only thereafter i.e., on 18.08.1973. Therefore, the applicability of the said Rules does not arise herein. It is also submitted by the learned counsel that Rule 56(1) of the Fundamental Rules did not apply, as there was no order extending the service of the appellant till the disposal of the



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charges, after he reached the age of superannuation. Ultimately, the learned counsel submitted that during the departmental enquiry, the appellant was not provided an opportunity to cross examine the material evidence as well as the statement adduced against him, which is abuse of process of law and in violation of the principles of natural justice and therefore, the order of punishment passed by the respondent authorities based on such enquiry, is perverse and vitiated in law. In such circumstances, the major punishment of removal from service inflicted on the appellant is disproportionate, as the object of the same is only to mend and not to strangle. The appellant has put in 33 years of service and is in his death bed and because of the termination order, he is unable to receive terminal benefits. With these submissions, the learned counsel sought to allow this writ appeal and to set aside the order passed by the learned Judge in the review application.

4. On the other hand, the learned Additional Advocate General appearing for the respondents submitted that the complaint given by his first wife is not of much significance, but it is a clear case of violation of the Tamil Nadu Government Servants Conduct Rules, which prohibits the Government servant from marrying twice. Admittedly, the appellant contracted second marriage, which fact was duly proved in the departmental enquiry and hence, he was inflicted with the punishment of removal from service. Thus, according to the



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learned Additional Advocate General, after analysing the entire factual matrix, the learned Judge has rightly decided the review application in favour of the respondents by the order impugned herein, which does not require any interference by this court.

5. Heard the rival submissions and perused the materials available on record.

6. The facts remain undisputed that the appellant contracted the second marriage in the year 1972 and thereafter, he joined the service as Craft Teacher on 30.03.1973. Based on the complaint filed by his first wife, he was subjected to disciplinary proceedings and was issued with charge memo on 20.04.2006, at the fag end of his retirement. As a result of the same, the appellant was not permitted to retire from service on attaining the age of superannuation on 30.04.2006. Upon completion of the enquiry, he was imposed with the punishment of removal from service on 30.03.2009 by the disciplinary authority and the appeal filed by him also came to be rejected by the appellate authority. Those orders passed by the respondent authorities were put to challenge by the appellant by filing WP.No.7922 of 2010, which was disposed of, by directing the authorities to consider the case of the appellant afresh. However, the respondent authorities rejected the claim of the appellant by order dated 19.04.2012, which



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was also challenged by the appellant by filing WP.No.18336 of 2012. The said writ petition was allowed in favour of the appellant on 09.09.2014, against which, the respondents filed review application, whereas the appellant preferred contempt petition for non-compliance of the said order by the respondent authorities. The learned Judge reversed the order passed by another learned Judge in the writ petition bearing No.18336 of 2012 and thereby allowed the review application and closed the contempt petition, by the order impugned herein. Therefore, the appellant / writ petitioner is before this court.

7. What was challenged in this writ appeal is to the order passed in the review application. At the outset, it is important to note that the scope of interference, in review proceedings, is extremely limited. A review proceeding cannot be equated with the original hearing of the case, and the finality of the judgment delivered by the Court, will not be reconsidered except "where a glaring omission or patent mistake or like grave error has crept in earlier by judicial fallibility [Refer : **Chandra Kanta v. Sheikh Habib, (1975) 3 SCR 933**]. The scope of review has been succinctly summarized by the Hon'ble Supreme Court in **Kamlesh Varma v. Mayawati [(2013) 8 SCC 320]**, which is reproduced herein:

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



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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.

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 [AIR 1922 PC 112] and approved by this Court in Moran Mar Basselios Catholicos v. Most Rev. Mar Poulouse Athanasius [(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 [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.

(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.



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

Thus, it is crystal clear that error must be such that it is apparent on the face of record and the grounds mentioned in Order 47 Rule 1 of Civil Procedure Code need to be kept in mind, while exercising the power of review by the Court; that, the power to correct the mistake in review cannot extend to substituting the view taken in the original order. In other words, the error which is not self-evident and has to be detected by a process of reasoning, cannot be described as an error apparent on the face of the record justifying the Court exercising powers of review.

8.In ***Pancham Lal Pandey v. Neeraj Kumar Mishra and others [2023 Livelaw (SC) 111]***, cited on the side of the appellant herein, it was held by the Hon'ble Supreme Court that "*the provision of review is not to scrutinize the correctness of the decision rendered rather to correct the error, if any, which is visible on the face of the order/ record without going into as to whether there is a possibility of another opinion different from the one expressed*".

9.In the instant case, the review application bearing no.118 of 2019 came to be filed by the respondents herein seeking to review the order dated 09.09.2014 passed by the learned Judge in WP.No.18336 of 2012, wherein, a direction was issued to the authorities to work out the benefits due to the appellant and pay the same to him. In normal practice, the said matter has to be



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posted for hearing before the learned Judge, who originally passed the order. In this context, it may be relevant to refer to the decision of the Hon'ble Supreme

Court in ***Malthesh Gudda Pooja v. State of Karnataka and others [2011 (15) SCC 330]***, wherein, it was held as follows:

"21. When the provision for review by the same Judge/s was made, it was made on the assumption that the Judges will be available at the same place. The Rules did not contemplate the court having Benches outside the main seat or Circuit Benches and Judges moving from Bench to Bench or Judges and coming back after three months or six months. A Judge who sits and hears a matter in a Circuit Bench away from the main seat, may not be available in that particular Circuit Bench for a considerable time which may vary from three to six months or even more. Further, when two Judges heard the matter at a Circuit Bench, the chances of both Judges sitting again at that place at the same time, may not arise. But the question is in considering the applications for review, whether the wholesome principle behind Order 47 Rule 5 of the Code and Rule 5 of Chapter 3 of the High Court Rules providing that the same Judges should hear it, should be dispensed with merely because of the fact that the Judges in question, though continue to be attached to the Court are sitting at the Main bench, or temporarily at another bench. In the interests of justice, in the interests of consistency in judicial pronouncements and maintaining the good judicial traditions, an effort should always be made for the review application to be heard by the same Judges, if they are in the same court. Any attempt to too readily provide for review applications to be heard by any available Judge or Judges should be discouraged.

22. With the technological innovations available now, we do not see why the review petitions should not be heard by using the medium of video conferencing. Or an appropriate rule can be made, if such a rule is not already available, for consideration of the application written submissions alone. For example Order XL Rule 3 of the Supreme Court Rules provides that unless otherwise ordered by the court, an application for review shall be disposed of by circulation without any oral arguments but with written arguments. That will not in any way violate Section 114 of the Code providing for review. The solution may not be to send the review petition to the place where the concerned Judges are holding their sitting in view of the fact that would involve travel, engaging of new counsel, additional cost etc. and defeat the very purpose of having circuit benches. Every effort should be made to achieve the object of review by



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ensuring that the matter is considered by the Judge or the Bench which rendered the judgment. Be that as it may."

Whereas, the aforesaid review application has been listed for hearing before some other learned Judge, which is against the rule of practice. That apart, the learned Judge went on to proceed further beyond the scope of review, re-heard the matter and ultimately, reversed the findings of the learned Judge originally passed in the writ petition and thereby allowed the review application, which is patently illegal and contrary to the legal proposition as stated above. Therefore, this court is of the opinion that the order passed in the review application cannot be allowed to be sustained.

10.In such view of the matter, this writ appeal is allowed by setting aside the order dated 01.11.2021 passed in the Review Application No.118 of 2019 in W.P.No.18336 of 2012. There is no order as to costs. Consequently, connected miscellaneous petition is closed.

[R.M.D, J.] [M.S.Q, J.]
11.10.2023

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Index: Yes / No.

Speaking order/ Non-speaking order

Neutral Citation: Yes / No.



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School Education Department,
Secretariat, Chennai - 600 009.
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