



Review Application (MD) No. 9 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on :10.02.2023

Pronounced on : 28.07.2023

CORAM :

**THE HON'BLE MR.JUSTICE D.KRISHNAKUMAR
AND
THE HON'BLE MR.JUSTICE P.D.AUDIKESAVALU**

Review Application (MD) No. 9 of 2023

Arokkia Arumairaj

... Petitioner

-VS-

1. Tamil Nadu State Transport Corporation (Madurai) Ltd.,
Bye pass Road,
Madurai – 10.

2. The Government of Tamil Nadu,
Rep. by its Secretary,
Transport Department (C2).
St. George Fort,
Chennai – 109.

... Respondents

Prayer:- Review Application filed under Order XLVII Rule 1 & 2 of Code of Civil Procedure read with 114 of the Code of Civil Procedure, to review the order passed in W.A (MD) No.1552 of 2018 dated 19.11.2018 on the file of the Madurai Bench of Madras High Court and allow the Review Application.

For Petitioner : Mr. A.Haja Mohideen

For Respondents : Mr. S.C.Herald Singh



J U D G M E N T

(Judgment of the Court was made by P.D. AUDIKESAVALU, J.)

Heard Mr. A.Haja Mohideen, Learned Counsel for the Petitioner and Mr. S.C.Herald Singh, Learned Counsel for the Respondents and perused the materials placed on record, apart from the pleadings of the parties.

2. The Petitioner in this application for review has sought for re-consideration of the order dated 19.11.2018 in W.A (MD) Nos. 1551 and 1552 of 2018 passed by the Division Bench of this Court in which the order dated 23.04.2015 passed in W.P (MD) No.14707 of 2015 was set aside and the said Writ Petition was dismissed.

3. The chronological sequence of events leading to the filing of this Review Petition are narrated below:-

- (i) The Petitioner, who was employed as Conductor in the Transport Corporation of the First Respondent, had been dismissed from service for misconduct on 24.11.2011 against which he had raised an industrial dispute. During the pendency of that industrial dispute, the First Respondent had offered to treat the Petitioner as fresh entrant and a



WEB COPY of the Industrial Disputes Act, 1947.

- settlement was entered between them to that effect under Section 18(1)
- (ii) In furtherance to the said settlement, the Petitioner had re-joined duty in the year 2007, and long thereafter he had filed the Writ Petition in W.P. No. 14707 of 2015 seeking declaration that the said settlement was illegal and invalid as he had been deprived of his past employment. The Writ Court was of the view that since the Petitioner had been dismissed from service on 24.11.2001 and had been out of employment till the offer of settlement was made on 15.03.2007, he had given up his claim for past services under economic duress which has serious financial consequences warranting interference by the Court.
- (iii) In that view of the matter, it was held that the Petitioner should be treated as permanent employee of the First Respondent from the date of his original appointment with continuity of service throughout for all notional purposes except for the payment of wages for the period from 24.11.2001 to 15.03.2007.
- (iv) The First Respondent had preferred the appeal in W.A. No. 1552 of 2018 before the Division Bench of this Court.
- (v) While expressing that the Writ Petition itself ought not to have been



WEB COPY

entertained in view of the binding decision of the Full Bench of this Court in ***P. Pitchumani -vs- The Management of Sri Chakra Tyres Ltd.***, [(2004) 3 CTC 1] that matters concerning service conditions of employee governed by the Industrial Disputes Act, 1947, have to be adjudicated only by the fora created in that statute and are not amenable to the writ jurisdiction of the Court under Article 226 of the Constitution of India, it was observed as follows:-

“ 3. It is not in dispute that during the pendency of the industrial disputes raised by the Petitioners against their dismissal from service, they have entered into settlement under Section 18(1) of the Industrial Disputes Act, 1947, which was binding on them. The circumstance that the Petitioners have been out of employment from the year 2001 onwards till the offer of employment as fresh entrants was made to them in 2007 was under economic duress, cannot be accepted. If the Petitioners were not satisfied with the offer made by the Respondent of providing employment to them as



WEB COPY



Review Application (MD) No. 9 of 2023

fresh entrants, nothing prevented them from refusing to accept the same and proceed to get their claims for employment adjudicated in the proceedings under the Industrial Disputes Act, 1947, that were then pending. The conduct of the Petitioners in having accepted the offer made by the First Respondent resulting in closing the industrial disputes as having been settled between the parties then, has placed the First Respondent in a piquant situation, which the Petitioners cannot now take advantage at the cost of the public exchequer. Above all, we do not find any satisfactory explanation for the inordinate delay from the year 2007 to the year 2015 for the Petitioners to assail the forfeiture of their past service. Viewed from this perspective, the Writ Court ought not to have shown any indulgence to the Petitioners and extended them relief in the exercise of the discretionary powers of this Court under Article 226 of the



Constitution of India, 1950. Accordingly, the common order dated 05.06.2018 in W.P. (MD) Nos. 14706 and 14707 of 2015 is set aside and the Writ Petitions shall stand dismissed.”

This review application has been preferred against the said order.

4. The Petitioner has made a desperate attempt to re-agitate the same pleas, which have already been rejected by the Division Bench, and we are not inclined to once again undertake the exercise of traversing the same at length, having regard to the legal principles governing the ambit and scope of review under Section 114 read with Order XLVII Rule 1 of the Code of Civil Procedure, 1908, as succinctly culled out by the Hon’ble Supreme Court of India in ***Kamlesh Verma –vs- Mayavati*** [(2013) 8 SCC 320], after referring to earlier binding decisions on that subject, as follows:-

“ Summary of the Principles:

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

20.1. When the review will be maintainable:-



WEB COPY

- (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 record;*
- (iii) *Any other sufficient reason. The words “any other sufficient reason” has been interpreted to mean a reason sufficient on grounds at least analogous to those specified in the rule.*

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.*



WEB COPY

- (v) *A review is by no means an appeal in disguise whereby an erroneous decision is re-heard 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.*
- (ix) *Review is not maintainable when the same relief sought at the time of arguing the main matter had been negatived.”*

On perusal, it is seen that none of the grounds in the memorandum of review filed by the Petitioner relate to the permissible extents and on the contrary, they demonstrably fall under the category which are barred for consideration.

5. Learned Counsel for the Petitioner lastly made a fervent plea that by restoring the order of the Writ Court, the First Respondent would not incur much financial implication as the Petitioner would not be entitled to the



Review Application (MD) No. 9 of 2023

monetary benefits for the period from 24.11.2001 to 15.03.2007 when he had not actually worked, and that it was only the benefits of increment of continuity in service that the Petitioner would derive in his pay after he had re-joined duty. As already highlighted in the order passed by the Division Bench in the appeal, the conduct of the Petitioner in unconditionally accepting the order of settlement has resulted in avoiding the litigation from reaching its logical conclusion which certainly causes prejudice to the First Respondent to justify the termination of the Petitioner from service. Further, the inordinate delay on the part of the Petitioner in approaching the Court in the year 2015, after acting upon the settlement in the year 2007, definitely precludes the Petitioner from seeking any equitable relief from this Court in the exercise of its discretionary powers under Article 226 of the Constitution.

In the result, as we do not find any merit in this application for review, it is dismissed. No costs

(D.K.K., J.) (P.D.A., J.)
28.07.2023

skr

Index : Yes/No

NCS : Yes/No



WEB COPY



Review Application (MD) No. 9 of 2023



Review Application (MD) No. 9 of 2023

To

1. The Tamil Nadu State Transport Corporation (Madurai) Ltd.,
Bye pass Road,
Madurai – 10.
2. The Secretary to Government of Tamil Nadu,
Transport Department (C2).
St. George Fort,
Chennai – 109.



WEB COPY



Review Application (MD) No. 9 of 2023

D.KRISHNAKUMAR, J.
AND
P.D.AUDIKESAVALU, J.

skr

Review Application (MD) No. 9 of 2023

Reserved on : 10.02.2023

Pronounced on : 28.07.2023