



Rev.Aplw.(MD) No.95 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 29.08.2023

CORAM:

THE HONOURABLE Mr.JUSTICE BATTU DEVANAND

Rev.Aplw.(MD) No.95 of 2023

against

W.P.(MD) No.23398 of 2016

1.The Manaing Director,
Tamil Nadu State Transport Corporation,
Tirunelveli Limited, Kattabomman Nagar,
Tirunelveli District.

2.The General Manager,
Tamil Nadu State Transport Corporation,
Tirunelveli Limited, Tirunelveli Region,
Vannarapettai, Tirunelveli.

.. Petitioners/Respondents

Vs.

S.Susilkumar

.. Respondent/Petitioner

Prayer: Petition filed under Order XLVII Rules 1 and 2 read with Section 114 of Civil Procedure Code to review the order of this Court dated 01.12.2016 made in W.P.(MD) No.23398 of 2016.

For Petitioner : Mr.R.Rajamohan
Standing Counsel

For Respondent : Mr.S.Govindan



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ORDER

This review application is filed under Order XLVII Rules 1 and 2 read with Section 114 of the Code of Civil Procedure seeking to review the order dated 01.12.2016 in W.P.(MD) No.23398 of 2016.

2. The review petitioners are the respondents in the writ petition and the respondent herein is the writ petitioner.

3. Heard the learned Standing Counsel for the review petitioners and the learned counsel appearing for the respondent. Perused the grounds raised in the review petition along with the material papers filed by the review petitioners.

4. Learned Standing Counsel appearing for the review petitioners submits that the impugned order under review was passed by the learned Single Judge ignoring the fact that the writ petitioner had three review pattern wage system at previous post, whereas his junior had four review



pattern wage system. The learned Standing Counsel would submit that the learned Single Judge has ignored the fact that the writ petitioner and his junior have been elevated to the post of Superintendent not under the same service condition. The learned counsel further submits that the learned Judge ignored the fact that the writ petitioner has not given reasons for claiming the pay anomaly after long delay.

5. Learned counsel appearing for the respondent herein submits that the respondent/writ petitioner being senior, he is entitled to get more pay or equal pay with that of his junior and the failure to consider his anomaly and the failure to rectify his pay construction between senior and junior amounts to discrimination among similarly placed persons and the same is *ex facie* illegal and is against the principles laid down by the Hon'ble Apex Court and this Court.

6. The learned counsel further submits that there is no any valid ground raised by the review petitioners to review the order of the learned Single Judge and as such, it is liable to be dismissed. He also would



submit that in view of the fact that against the order of the learned Single Judge, the review petitioners had filed writ appeal and as such, Order XLVII Rule 1 of Civil Procedure Code bars the review petitioners for filing this review petition.

7. Having heard the submissions of the respective counsels and upon perusal of the material papers available on record, it appears that the learned Single Judge by following the judgment of the Hon'ble Apex Court in ***Gurcharan Singh Grewal and another Vs. Punjab State Electricity Board and others*** reported in ***(2009) 3 SCC 94*** and a judgment of a Division Bench of this Court in ***K.K.Perumalsamy Vs. Tamil Nadu Electricity Board and others*** reported in ***2011 (1) CWC 652***, wherein it is held that the senior cannot be paid less than his juniors, even if there was anomaly in senior's pay, due to difference of incremental benefits in both the cases, allowed the writ petition directing the respondents therein to rectify the pay anomaly among similarly placed persons and to step up the pay of the writ petitioner on par with his junior.



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8. In fact, against the order of the learned Single Judge, a writ appeal has been filed by the review petitioners herein and the same was dismissed by common judgment dated 20.09.2017 in W.A.(MD) No.1217 of 2017 etc., batch.

9. In fact, as rightly contended by the learned counsel for the writ petitioner once the review petitioners filed writ appeal and the said writ appeal is dismissed, Order XLVII Rule 1 of Civil Procedure Code bars the review petitioners for filing this review petition. However, in view of the fact that while dismissing the writ appeals, the Division Bench granted liberty to the appellants therein to file review petitions, this Court is not inclined to go into the issue of maintainability of the review petition.

10. Admittedly, at the time of hearing of the writ petition before the learned Single Judge, the learned Standing Counsel for the respondents therein has not disputed the contention of the learned



counsel for the writ petitioner and the facts now the review petitioners are raising in this review petition have never been placed before the learned Single Judge at the time of passing the order. It is not the case of the review petitioners that they could not produce the material/evidence at the time of passing order, as it is not within their knowledge.

11. For proper adjudication of this case, Order XLVII Rule 1 of Civil Procedure Code is extracted hereinunder:

“1. Application for review of judgment.-

(1) Any person considering himself aggrieved-

(a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred,

(b) by a decree or order from which no appeal is allowed, or

(c) by a decision on a reference from a Court of Small Causes, and who, from the discovery of new and important matter or evidence which, after the 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, or on account of some mistake or error apparent on the



face of the record, or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgment to the Court which passed the decree or made the order.”

12. As per Order XLVII Rule 1 of C.P.C, any person can file review petition against a decree or order passed by the Court, subject to the following conditions:

- i. Who, from the discovery of new and important matter or evidence which was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, after the exercise of due diligence;
- ii. On account of some mistake,
- iii. Error apparent on the face of the record,
- iv. For any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgment to the Court which passed the decree or made the order.



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13. On a plain reading of Rule 1 of Order XLVII of Civil Procedure Code, from the discovery of new and important matter or evidence which was not within the knowledge or could not be produced at the time when the decree was passed or order made, after the exercise of due diligence by any person may apply for a review of judgment or order. But in the present case, this ground is not available to the review petitioners due to the reason that at the time of passing the order by the learned Single Judge, the said facts were not placed before the Court, though definitely such material would be available with them. This Court also noticed that there is no any error apparent on the face of the record in passing the order by the learned Single Judge. The said order is passed relying the proposition of law declared by the Hon'ble Apex Court and the Division Bench of this Court.

14. For the reasons stated above, this Court holds that the review petitioners utterly failed to satisfy the above essential ingredients required under Order XLVII Rule 1 of Civil Procedure Code for seeking



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to review the order passed by the learned Single Judge, particularly there is no error apparent on the face of the record.

15. Accordingly, this review petition is dismissed.

16. There shall be no order as to costs.

29.08.2023

NCC : Yes/No

Index : Yes/No

Internet : Yes

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BATTU DEVANAND, J.

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