



C.M.P. Nos.18375 & 19830 of 2022 in W.A. Nos.443 and 445 of 2022

S. VAIDYANATHAN, J.
and
MOHAMMED SHAFFIQ, J.

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W.A. Nos.443 and 445 of 2022 were dismissed by this Court *vide* a common judgment dated 07.03.2022 confirming the common order passed by the Single Bench in W.P. Nos.17594 and 17595 of 2016, in and by which, the Single Bench has upheld the punishment of postponement of increment for a period of three years with cumulative effect, inflicted on the petitioners herein, by the Disciplinary Authority, which was confirmed in the appeal as well the mercy petition filed by the petitioners herein.

2 According to the learned Senior Counsel appearing for the petitioners, if the aforesaid punishment is not modified into one without cumulative effect, not only the pay prospects, but also the terminal benefits of the petitioners will be seriously affected and hence, these miscellaneous petitions. (emphasis supplied)

3 We have carefully gone through the common judgment which is sought to be modified in these miscellaneous petitions. In our considered view, though the nomenclature of these petitions is “Civil Miscellaneous Petitions“, in effect, the petitioners seek only to review the common judgment in the writ appeal, in the guise of the instant miscellaneous petitions, which is impermissible.



4 At this juncture, we hasten to add that even if these petitions had been filed as review applications, even then, we would not have modified the punishment into one without cumulative effect, inasmuch as, there is no error apparent on the face of the record, only in which event, a review petition will lie. Perhaps, cleverly realising this, the petitioners have sought to file the instant petitions under the nomenclature Civil Miscellaneous Petition.

5 At this juncture, notwithstanding the fact the instant petitions are not filed to recall the common judgment, but what is sought is only modification of the common judgment, it would not be out of place to point out that when an order has been passed by a Single or Division Bench, the question of recalling the same by means of a miscellaneous petition or listing the matter under the caption “for being mentioned” is not permissible in view of the judgment of the Supreme Court in **Supertech Ltd. v Emerald Court Owner Resident Welfare Association and Others [(2021) 10 SCR 569]**, in which, the judgments of the Supreme Court in **Delhi Administration v Gurdip Singh Uban [AIR 2000 SC 3737]**, **Common Cause v Union of India (2004) 5 SCC 222** and **Zahira Habibuyllah Sheikh v State of Gujarat [(2004) 5 SCC 353]**, have been quoted with approval.



In view of the foregoing, these civil miscellaneous petitions fail as being devoid of merits and are accordingly, dismissed.

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(S.V.N., J.) (M.S.Q., J.)
11.01.2024

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