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Rev.Appln.Nos.187, 188 and 189 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.09.2024

CORAM

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

AND

THE HONOURABLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

Rev.Appln.Nos.187, 188 and 189 of 2024

P.Rengasamy

... Petitioner in
Rev.Appln.No.187 of 2024

R.Thangaraju

... Petitioner in
Rev.Appln.No.188 of 2024

S.John Benjamin

... Petitioner in
Rev.Appln.No.189 of 2024

Vs.

1.The Principal Secretary to Government
Home Department, Secretariat
Fort St.George, Chennai – 600 009.

2.The Director General of Police
Chennai – 600 004.

... Respondents
in all the Review Applications.

PRAYER in Rev.Appln. No.187 of 2024: Review Application filed under Order 47 Rule 1 of CPC read with Section 114 of CPC, to review the impugned order dated 20.10.2022 in W.A.No.40 of 2022.



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PRAYER in Rev.Appln. No.188 of 2024: Review Application filed under Order 47 Rule 1 of CPC read with Section 114 of CPC, to review the impugned order dated 20.10.2022 in W.A.No.51 of 2022.

PRAYER in Rev.Appln. No.189 of 2024: Review Application filed under Order 47 Rule 1 of CPC read with Section 114 of CPC, to review the impugned order dated 20.10.2022 in W.A.No.30 of 2022.

In Rev.Appln.No.187 of 2024:

For the Petitioner : Mr.Manishankar, Senior Counsel
for Mr.J.Monish

For the Respondents : Mr.P.Kumaresan, AAG
Asst by Mr.P.Ananda Kumar, GA

In Rev.Appln.Nos.188 and 189 of 2024:

For the Petitioner : Mr.K.Ravi Anantha Padmanabhan, SC
for Mr.B.Thirumalai

For the Respondents : Mr.P.Kumaresan, AAG
Asst by Mr.P.Ananda Kumar, GA

COMMON ORDER

(Order of the Court was made by S.S.SUNDAR, J.,)

All these Review Applications are directed against the common order of this Court dated 20.10.2022 made in a Batch of W.A.Nos.30 of 2022 etc.,. The review applicants are the respective respondent/writ petitioner in W.A.Nos.40, 51 and 30 of 2022.



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2. Brief facts which are necessary to dispose of these Review Applications are as follows:-

2.1. All the review applicants in the Review Applications were given appointment on various dates in the year 2000 as Sub-Inspectors of Police. However, they claim seniority along with their batchmates, who were all selected pursuant to the selection process in the year 1994 – 1995. The common prayer in all the Writ Petitions is to quash the impugned letters and G.O.Ms.No.1281 dated 22.09.1999, insofar as fixation of seniority below 1997 – 1998 Batch and to direct the 2nd respondent to refix the seniority of the writ petitioners by placing them below 1994 – 1995 Batch.

2.2. A learned Single Judge of this Court vide order dated 16.10.2019 allowed all the Writ Petitions. However, the respondents herein preferred batch of Writ Appeals as against the common order of the learned Single Judge. Ultimately, the appeals were allowed and the order passed in the Writ Petitions was set aside.

3. It is to be noted that the Division Bench of this Court while allowing the Writ Appeals considered every submissions of the review applicants herein on



merits. The Division Bench took note of the fact that a notification was issued calling upon the applications to fill up 500 vacancies in the cadre of Sub-Inspector of Police by way of direct recruitment in the year 1993– 1994. Subsequently, the vacancies were increased to 1100. During the course of selection process, it was found that 2091 candidates were found eligible for viva-voce. Taking into account, the total number of vacancies as 1100, 1320 candidates were called for medical examination and police verification. However, out of the 1320 candidates, 114 candidates were found unfit for the further selection process, leaving 1206 candidates being fit for appointment. Of the 1206 candidates, the top ranked 8 candidates belonged to SC/ST communities were adjusted against the backlog vacancies. For the remaining 1198 candidates, a gradation list, based on their communal rotation, was drawn up and accordingly, 1092 candidates were appointed.

4. Initially 500 candidates were issued with appointment orders, which includes 8 candidates, who were selected against the backlog vacancies and were sent for training as 1st batch on 01.03.1996. Remaining 600 candidates were sent for tranining in the 2nd batch on 02.06.1997. However, the remaining 98 candidates were not appointed. After recording these facts, the Division Bench of



this Court, considered the merits of the submissions and allowed the batch of Writ

Appeals by stating the following reasons:-

“18. We have considered the rival submissions made on behalf of either side and perused the material records of the case. We are of the considered view that the order of the learned Single Judge is unsustainable for the following reasons:-

(i) By allowing the prayer of the respondents/writ petitioners, the writ petitioners would become seniors to about 1000 persons who were selected pursuant to 1997-1998 selection and any order of grant of relief of seniority cannot be passed without hearing the persons likely to be affected by the said order. In the Writ Petitions filed, the Secretary to the Government and the Director General of Police alone are shown as the respondents. Therefore, the order of the learned Judge, granting the relief, is erroneous in law;

(ii) Secondly, arising out of the self-same selection, when already another learned Judge had passed an order, dated 26.02.2010 in W.P.Nos.3497 to 3499 of 2010, there was no occasion for the learned Judge to take a contrary view. Even if the views were not to be accepted, propriety demands that the matter



should be placed before the larger bench and therefore, the learned Judge erred in allowing these Writ Petitions;

(iii) Thirdly, there can be no quarrel over the proposition as laid down by the Hon'ble Hon'ble Supreme Court of India in A.Raghu, son of Rajaiah (cited supra) and the earlier Division Bench of this Court in W.A.No.1581 of 2010 that if for any reason, a 'selected' candidate is belatedly appointed or sent for training, still seniority has to be granted to the selected candidate only as per Rule 25A i.e., as per the marks in the final examination and placing the candidate properly among the batch of persons with whom the candidate was selected. Even in the relevant passage of the earlier Division Bench and the Hon'ble Hon'ble Supreme Court of India is extracted above, it can be seen that the candidates were 'selected'. If only the candidate is 'selected', then such an argument would arise. Whereas, in this case, when selection was conducted pursuant to the notification, total number of vacancies were 1092. These 98 persons, even though were successful in the written examination and were called for viva-voice and Police verification, ultimately were 'not selected' since they



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did not come within the zone of merit. They even challenged their non-selection by filing Original Applications before the Tamil Nadu Administrative Tribunal in O.A.Nos.989 of 1998 etc., which also came to be dismissed on 10.09.1998. It is only by an extraordinary gesture, the Government has shown an act of benevolence to them vide G.O.MS.No.1281, dated 22.09.1999. The said benevolence came with a condition that the appointees cannot claim seniority vis-à-vis their batch i.e., 1994-1995 and that they will be kept below the persons who are selected in the year 1997-1998. Therefore, when any extraordinary gesture dehors the rules is shown by the Government and if that gesture is coupled with a condition, the acceptance of the writ petitioners of the G.O.MS.No.1281, dated 22.09.1999 would estop the writ petitioners from challenging the very same G.O thereafter. The petitioners cannot be permitted to approbate and reprobate.

19. Further, the Writ Petitioners also executed an undertaking voluntarily pursuant to the condition in the said G.O.MS.No.1281 and they did not question the Government Order until the year 2009. Therefore,



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there was no question of any statutory right being violated by the Government Order. If only the petitioners were 'selectees' i.e., if only the petitioners who are within the 1092 candidates like the respondent J.Pratap Prem Kumar in the earlier judgment of the Division Bench in W.A.No.1581 of 2010, the petitioners can press into Service Rule 25A and that their seniority should be along with their batch mates. In this case, they are not the batch mates of 1994-1995 as they did not come within the zone of consideration. It is on sympathetic consideration dehors the law, the Government has appointed them vide G.O.MS.No.1281 and if the sympathetic consideration comes with a condition, the writ petitioners have to abide by the condition and as a matter of fact, they have also complied with it by executing an undertaking. In all the other cases cited, including the decided cases or the Government Orders conferring the benefit of retrospective seniority along with batch mates, it can be seen that the respective candidates would have been selected in the batch. But, however, the appointment has been belatedly given pursuant to administrative delay or any error of rejection on the basis of Police verification, certificate verification etc., which was



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corrected later. The distinguishing feature in this case is that writ petitioners were never 'selected' in the year 1994-1995.

20. In the result, these Writ Appeals stand allowed. Consequently, the Writ Petitions in W.P.Nos.8575, 11527, 11788, 13872, 13873, 22051, 22052, 26354 and 26355 of 2009 shall stand dismissed. Consequently, connected miscellaneous petitions are closed. However, in the facts and circumstances of the case, there shall be no order as to costs.”

5. It is admitted that the review applicants have preferred a Special Leave Petition before the Hon'ble Supreme Court and the 1st batch of cases in S.L.P. (Civil) Diary No.7470 of 2023 against the Judgment of this Court in W.A.Nos.30 of 2022 etc Batch dated 20.10.2022 was disposed of by a Judgment dated 13.03.2023. The 2nd batch of Special Leave Petition in S.L.P. (Civil) Diary No.21020 of 2023 was also disposed of by a Judgment dated 07.07.2023, by observing as follows:-

“Ms.Anitha Shenoy, learned senior counsel for the petitioner fairly draws attention to this Court's



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order dated 13.03.2023 in SLP (Civil) Diary No.7470 of 2023 and then submits that the petitioner instead of pressing this Special Leave Petition would explore alternate option as may be permitted in law.

In view of the above submission, the Special Leave Petition stands dismissed as not pressed, reserving the liberty as aforesaid.”

6. In all the cases, both the learned Senior Counsels appearing for the review applicants pointed out that though the Special Leave Petitions were dismissed, liberty was given to the review applicants to explore alternate options as may be permitted in law.

7. The learned Senior Counsels appearing for the review applicants submitted that this Court while allowing the Writ Appeals specifically observed that the petitioners though were successful in the written examination, called for viva voce and police verification, were not selected. It is now contended that this Court has committed serious error by holding that the review applicants were not selected. This Court is unable to accept the argument that this is an error.

8. The conclusion reached by this Court is very firm after considering all the



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facts and events. The review applicants cannot claim themselves to be selected or appointed, so that they will also be treated on par with the other candidates who were all selected and recruited in the Batch 1994 – 1995. One of the reasons given by this Court for allowing the Writ Appeals is that the review applicants have not even impleaded all those persons who were placed senior to them and appointed pursuant to the selection process of the year 1997 – 1998. This Court also took note of the error committed by the learned Single Judge while allowing the Writ Petitions, quiet contrary to the view taken by another learned Judge, who passed the order dated 26.06.2010 in W.P.Nos.3497 to 3499 of 2010. Even after taking up the matter on further appeal before the Hon'ble Supreme Court, the Hon'ble Supreme Court dismissed the SLP by accepting reasons assigned by the Division Bench allowing the Writ Appeals. In S.L.P. (Civil) Diary No.7470 of 2023 arising out of the common order of this Court filed by one S.John Benjamin, etc., the Hon'ble Supreme Court dismissed the petition after extracting the relevant portion of the order of this Court and held that the High Court had correctly declared the seniority of the review applicants.

9. Even though some of the grounds are raised before this Court as if the order of the Division Bench suffers from errors on the face of the record, this



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Court finds that the error referred to by the review applicants are only the findings on merits. The learned Senior Counsels tried to project a case that the Judgment of the Division Bench in allowing the Writ Appeals suffers from error apparent. Their submissions are by pointing out the conclusions reached by this Court, which according to the counsels are erroneous. This Court and the Hon'ble Supreme Court have made a distinction between an error apparent on the face of the record and an erroneous decision. An erroneous decision cannot be corrected by filing a review as this is not a scope for rehearing, in a review petition.

10. This Court has noticed that the Hon'ble Supreme Court has justified the conclusion reached by this Court in the Writ Appeals and held that the conclusions are justified. The Hon'ble Supreme Court has given reasons for dismissing the Special Leave Petition at the admission stage itself and hence it cannot be taken that the Special Leave Petition is dismissed *in limine*, so that a review can also be entertained after the dismissal of the Special Leave Petition.

11. We have carefully considered every issue that was raised before us in the Review Applications.



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12. It is to be noted that the review is not an appeal and unless there is an error apparent on the face of the record, there is no scope for review. It is also held by the Hon'ble Supreme Court that an error, which has to be detected by a process of reasoning is not an error apparent. This Court finds that the attempt of the learned Senior Counsels before us is that the Judgment passed by this Court earlier in a batch of Writ Appeals is erroneous, because, material facts were not considered by this Court and the findings are not in tune with the settled principles. The reasons adduced by the Division Bench is a decision based on conscious appreciation of all the contentions. The facts that are now projected by the review applicants have been recorded in first three paragraphs. The reasons given by the Division Bench are elaborate and after considering every submissions of the learned counsels appearing for the review applicants on merits. Further, all the grounds raised before us were also raised in the Special Leave Petitions filed by the review applicants before the Hon'ble Supreme Court.

13. It will be useful to refer to the following judgments of the Hon'ble Supreme Court to understand better the scope and object of review.

(i) In ***S.Madhusudhan Reddy v. V. Narayana Reddy and others*** reported in ***2022 SCC Online SC 1034***;



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(ii) ***Sanjay Kumar Agarwal v. State Tax Officer and another*** reported in **2023 SCC Online SC 1406** and

(iii) ***S.Murali Sundaram v. Jothibai Kannan and others*** reported in **2023 SCC Online SC 185**.

14. Recently, this Court has also considered the scope of review in ***M.Krishna Kishore and another Vs. State of Tamil Nadu, Represented by its Secretary to Government*** (W.P.No.33561 of 2023 & Rev.Appl.(W) No.229 of 2023 dated 07.02.2024) wherein the principles reiterated by the Hon'ble Supreme Court in several Judgments have been summarised as follows:-

(a) It has been consistently held by Courts that a review has to be strictly confined to the grounds available under Order 47 Rule 1 of CPC.

(b) The scope of Order 47 Rule 1 of CPC has been considered in a plethora of judgments and it has been consistently held that the power of review cannot be compared with the appellate power which enables only the superior Court to correct even if the judgment of the subordinate Court is erroneous. A review cannot be entertained to rehear the proceedings. In other words, review cannot be



treated as an appeal in disguise.

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(c) Under Order 47 Rule 1 of CPC, a judgment can be reviewed if there is mistake or error apparent on the face of the record. It is also reiterated by Courts that it is essential that the error must be one which is manifest on the face of record. Even if a statement in the judgment is wrong, it would not follow that there is an error apparent on the face of the record, as Courts have drawn distinction between an erroneous decision and a decision which could be characterised as vitiated by error apparent. In other words, the error contemplated under the Rule must be as apparent from the face of the record and not an error which has to be detected by a process of reasoning.

(d) It is true that, what is an error apparent on the face of the record cannot be defined precisely or exhaustively and it must be left to be determined consciously on the facts of each case.

(e) A mere possibility of two views of subject is not a ground for review.

(f) In a review application it is not open to the Court to re-appreciate the evidence and reach a different conclusion even if that conclusion is possible. There cannot be an argument on appreciation of evidence which amount to converting the review petition into an appeal. Repetition of old or overruled argument cannot be entertained to reopen the decision on merits. The power of



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review can be exercised with extreme care, caution and circumspection and only in exceptional cases.

(g) Mere discovery of new or important matter of evidence is not sufficient ground for review and the party seeking review has to establish that the new matter or evidence was not within his knowledge even after the exercise of due diligence. Unless it is shown that the evidence which is discovered could not be produced before the Court earlier even after the exercise of due diligence, the Court will not entertain a review.

(h) Though the power of review can be exercised where there is some mistake or error apparent on the face or any analogous ground, it cannot be exercised on the ground that the decision was erroneous on merits.

(i) While applying the principles in writ jurisdiction, when the Court finds that the order was passed under a mistake and it would not have exercised the jurisdiction but for the erroneous assumption which in fact did not exist and its perpetration shall result in miscarriage of justice, then it cannot on any principle be precluded from rectifying the error.

15. Therefore, for all the above reasons, this Court is unable to review the Judgment of this Court in W.A.Nos.30, 40, 51 of 2022 dated 20.10.2024.



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Accordingly, the Review Applications stand dismissed. No costs.

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(D.B.C.,J.)

(S.S.S.R.,J.)

18.09.2024

Index:Yes/No

Internet:Yes/No

Neutral citation:Yes/No

Speaking/Non-speaking order

Jer

S.S.SUNDAR, J.,

and

D.BHARATHA CHAKRAVARTHY, J.,

Jer

To

1.The Principal Secretary to Government

Home Department, Secretariat

Fort St.George, Chennai – 600 009.

2.The Director General of Police

Chennai – 600 004.

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