IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :: 11.01.2024

CORAM

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

AND

THE HONOURABLE MRS.JUSTICE R.KALAIMATHI

REVIEW APPLICATION No.7 of 2024

The Management,
Tamil Nadu State Transport Corporation
(Villupuram Division III) Ltd.,
Kancheepuram.

Formerly known as Puratchi
Thalaivar Dr.M.G.R.Transport Corporation,
Kancheepuram,
rep.by its Managing Director ... Applicant

-vs-

1.The Presiding Officer,
Principal Labour Court,
High Court Campus,
Chennai – 104.

2.G.Anthoni ... Respondents

Prayer: Review Application filed to review the judgment of this Court made in W.A.No.2145 of 2022, dated 15.03.2023.

For Applicant : Mr.M.Aswin

For Respondent 2 : Mr.V.Ajoy Khose

O R D E R

(By *S.Vaidyanathan,J.*)

This Review Application has been filed mainly on the ground that the applicant – employer has deposited 100% of the back wages to the tune of Rs.2,42,892/- on 13.09.2002, and, that, as per the order of the learned single Judge, as affirmed by the Division Bench, the employer is entitled to withdraw the amount lying in deposit. The employee has withdrawn 50% of the amount of Rs.2,42,892/- and, on the deposited amount, he was withdrawing interest once in three months.

2. For the sake of convenience, the relevant portions of the order of the learned single Judge, dated 24.09.2018, passed in W.P.No.33783 of 2002, are extracted below :

> *"17. As the second respondent already attained superannuation on 31.08.2009, the question of reinstatement at this juncture does not arise. However, the second respondent shall be entitled to get the pay benefits. Insofar as the period between the date of dismissal and the date of the award, already the backwages had been calculated and a sum of Rs.1,21,446/- has been deposited. Therefore, the said amount can be withdrawn by the second respondent with accrued interest.*

18. Insofar as the period between the date of award till the date of superannuation i.e., from 04.12.2001 and 31.08.2009, admittedly, the second respondent had not been in service as the impugned award had been stayed by this Court till the pendency of this Writ Petition. However, the principles of no work, no pay cannot be invoked in this case. At the same time, the second respondent, in the opinion of this Court may not be entitled to or it may not be justifiable to award the entire backwages for these period i.e., from the date of award till the date of superannuation. Therefore, in order to meet the ends of justice, this Court is of the view that the second respondent is entitled to claim 50% of the backwages for this period.

19. Therefore, the petitioner management can calculate the 50% of the backwages for the period from 04.12.2001 to 31.08.2009 and pay the same to the second respondent. Also the other retiral and pensionary benefits for which the second respondent is entitled to shall be calculated and be paid or continued to be paid to the second respondent.

20. It is made clear that merely because the 50% of the backwages is allowed between 04.12.2001 and 31.08.2009, that shall not be construed that the second respondent is entitled to claim service benefits only for 50% of the entire service period till his superannuation. In other words, the second respondent shall be entitled to claim all other benefits as a full serviced employee till his superannuation."

3. The Division Bench has confirmed the order of the learned single Judge in Paragraph 4 of its judgment in W.A.No.2145 of 2022, dated 15.03.2023, and also made it clear that the employee would be entitled to other benefits. Relevant Paragraph 5 of the judgment is extracted below :

> *"5. We make it very clear that the employee will be paid the terminal benefits due to him after adjusting the wages paid under Section 17B of the Industrial Disputes Act, 1947 and the calculation has got to be made based on the last drawn wages of the employee as on the date of superannuation. It is further made clear that in order to enable the employee to get pensionary benefits and other benefits, the Provident Fund payable by the employer shall be paid within a period of four months from the date of receipt of a copy of this order. With regard to contribution payable by the employee, the amount due to the employee can be taken into account, deducted and remitted to the Provident Fund Trust to enable the employee to get pensionary benefits. The employer and the employee shall remit the amount on or before 15.06.2023 without any interest. The amount received by the employee under Section 17B of the Industrial Disputes Act, 1947 needs to be adjusted from the 50% backwages payable to the employee. The amount lying in deposit before the Labour Court can be withdrawn by the employee and the same can be adjusted while calculating and paying the arrears to the employee."*

4. A reading of the order of the learned single Judge, as affirmed by the Division Bench, would make it very clear that the employer has deposited the back wages as per the award of the Labour Court and it refers only to the back wages prior to the date of the award and not with regard to future payments. As the award was passed on 04.12.2001 and the employee had already retired on 31.08.2009, we are of the view that neither the learned single Judge nor the Division Bench has deprived the employee of the remaining amount lying in deposit.

5. It is now fairly well settled by a catena of decisions of this Court as also the Supreme Court that the scope of review is very minimal and it is circumscribed by the provisions of the statute. It would be relevant to refer to a few Judgments of this Court and also the Supreme Court to understand and appreciate the scope of review jurisdiction to find out if the applicant has made out a case for reviewing the order, dated 15.03.2023, passed in W.A.No.2145 of 2022.

6. A Division Bench of this Court, in the case of *The Special Officer, Kallal Co-operative Primary Agricultural and Rural Development Bank Ltd., Karaikudi, Sivagangai District Vs. R.M.Rajarathinam and Others [Review Application (MD). No.82 of 2013] decided on 04.02.2015,* held as follows:

> "10... It is well settled that the scope of review is very limited. The review applicant cannot re-argue and he is not entitled for re-hearing on merits."

7. In another decision of a Division Bench of this Court, in the case of *Dhanalakshmi Vs. M.Shajahan and others,* reported in *AIR 2004 Madras 512*, it was opined that the power of review is not an appeal in disguise. The relevant paragraphs of the said order are extracted below:

> "11. From the above judgments, it is seen that the law is well settled inasmuch as the power of review is available only when there is an error apparent on the face of the record and not on erroneous decision. If the parties aggrieved by the judgment on the ground that it is erroneous, remedy is only questioning the said order in appeal. The power of review under Order 47 Rule 1 C.P.C. may be opened inter alia only if there is a mistake or an error apparent on the face of the record. The said power cannot be exercised as is not permissible for an erroneous decision to be "reheard and corrected". A review application also cannot be allowed to be "an appeal in disguise". Similarly, the error apparent on the face of the record must be such an error, which must strikes one on mere looking at record and would not require any long drawn process of reasoning on points, where there may conceivably be two opinions."

8. Furthermore, in *R.Mohala Vs. M.Siva and others* in *Review Petition No.61 of 2018 and WMP.No.10818 and 10819 of 2018,* decided on *25.04.2018*, one of us (S.Vaidyanathan,J.) elaborately discussed the scope of review and, in Paragraph Nos.7 and 8, held as follows:

> “7.The basic principle to entertain the review under Order 47 Rule 1 C.P.C. is to correct the errors but not to substitute a view. The judgment under review cannot be reversed (or) altered taking away the rights declared and conferred by the Court under the said judgment; once a judgment is rendered, the Court becomes functus officio and it cannot set aside its judgment or the decree; no inherent powers of review were conferred on the Court; the review Court cannot look into the trial Court

judgment; it can look into its own judgment for limited purpose to correct any error or mistake in the judgment pointed out by the review petitioner without altering or substituting its view in the judgment under review; the review court cannot entertain the arguments touching the merits and demerits of the case and cannot take a different view disturbing the finality of the judgment; the review cannot be treated as appeal in disguise, as the object behind review is ultimately to see that there should not be miscarriage of justice and shall do justice for the sake of justice only and review on the ground that the judgment is erroneous cannot be sustained.

8. It is settled law that even an erroneous decision cannot be a ground for the Court to undertake review, as the first and foremost requirement of entertaining a review petition is that the order under review of which is sought, suffers from any error apparent on the face of the order and in absence of any such error, finality attached to the judgment/order cannot be disturbed."

9. The Supreme Court, in the case of *Meera Bhanja Vs. Nirmala Kumari Choudhury,* reported in *(1995) 1 SCC 170*, while considering the scope of the power of review of the High Court under Order 47, Rule 1, C.P.C., held as follows:

"The review proceedings are not by way of an appeal and have to be strictly confined to the scope and ambit of Order 47, Rule 1 C.P.C. The review petition of error apparent on the face of the record and not on any other ground. An error apparent on the face of the record must be such an error which must strike one on mere looking at the record and would not require any longdrawn process of reasoning on points where there may conceivably be two opinions. The limitation of powers on court under Order 47, Rule 1, C.P.C. is similar to jurisdiction available to the High Court while seeking review of the orders under Article 226."

10. In *Parsion Devi Vs. Sumitri Devi,* reported in *1997 (8) SCC 715*, the Apex Court held as follows :

> "Under Order 47, Rule 1, CPC a judgment may be open to review inter alia if there is a mistake or an error apparent on the face of the record. An error which is not self-evident and has to be detected by a process of reasoning, can hardly be said to be an error apparent on the face of the record justifying the Court to exercise its power of review under Order 47, Rule 1, CPC. In exercise of the jurisdiction under Order 47, Rule 1, CPC, it is not permissible for an erroneous decision to be "reheard and corrected". A review petition, it must be remembered has a limited purpose and cannot be allowed to be "an appeal in disguise."

11. From a reading of the above referred decisions, it can be fairly inferred that:

> 1.Review is not an appeal in disguise.
>
> 2.The review proceedings are not by way of an appeal and have to be strictly confined to the scope and ambit of Order 47, Rule 1 C.P.C.
>
> 3.A wrong exposition of the law or a wrong application of the law and failure to apply the correct law cannot be a ground for review.
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> 4.The power to review is a restricted power given through a Court to go through the Judgment only to correct it or improve it, on the basis of some material which ought to have been considered, escaped consideration or failed to be placed before it for any other

reason, but not to substitute a fresh or a second Judgment.

> 5.The power of review cannot be invoked to correct the erroneous Judgment and the finality attached to a Judgment cannot be disturbed.
>
> 6.Only errors which are apparent on the face of the record in the sense that errors which strike on mere looking at record can only be corrected and not those that require long drawn process of reasoning on point.

The above are some of the basic principles, on which the power to review rests.

12. To review a Judgment / Order, the applicant needs to satisfy three basic requirements of Order 47 Rule 1 of C.P.C., which are as under:

> (i) Discovery of new and important matter or evidence which after 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;
>
> (ii) There is some mistake (or) error apparent on the face of the record in the judgment/order under review; and
>
> (iii) Or any other sufficient reasons."

13. The ground raised by the applicant, in our considered opinion, is beyond the scope of the provisions of Order 47 Rule 1 of CPC so also the law laid down by the Supreme Court and this High Court. The applicant, under the guise of Review Application, wants this Bench to re-write its Judgment, which is not possible under review jurisdiction. As already stated above, Review is not an appeal in disguise and

there is no error apparent on the face of the record.

14. Therefore, in our considered opinion, the review is not maintainable and the amount lying in deposit together with accrued interest shall be released to the employee within a period of 15 days from the date of receipt or production of this order since the amount is permitted to be withdrawn. We make it clear that no amount can be adjusted while extending the benefits to the employee. In Paragraph 5 of the order, we made it very clear that wages payable under Section 17-B of the Industrial Disputes Act,1947, alone can be adjusted, and not the amount of back wages lying in deposit.

15. Review Application is dismissed accordingly. No costs.

[S.V.N.,J.] [R.K.M.,J.]
11.01.2024

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Internet: Yes / No
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